

## AGENDA

### ORANGE COUNTY POWER AUTHORITY MEETING OF THE BOARD OF DIRECTORS

**Wednesday, April 19, 2023  
10:00 a.m.**

This meeting will proceed as an in-person meeting at the **Travelers Building, 3333 Michelson Dr., Irvine, CA 92612 in the Palm Room**. In addition, as a convenience to the public, the Orange County Power Authority is also providing an option for members of the public to remotely view and participate in the meeting. Further details are below. Please note that, in the event of a technical issue causing a disruption in the remote participation option, the meeting may continue unless otherwise required by law.

**Note:** Any member of the public may provide comments to the Orange County Power Authority Board of Directors on any agenda items (including closed session items) by requesting to speak during Item 4, or on any matter not appearing on the agenda but within the jurisdiction of the Board by requesting to speak during Item 5. When providing comments to the Board, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Board as a whole through the Chair. Comments may be provided in the following manner:

To provide comments during the meeting, in-person attendees, please fill out the public speaker slip and provide it to the clerk at the beginning of the meeting. Before Items 4 and 5, the Chair or Clerk will ask members of the public to join the queue to provide public comment. The queue will remain open for a reasonable amount of time to allow members of the public sufficient time to request to speak and inform the Board of the number of speakers. After such time, the queue will be closed and the members of the public who have joined the queue to speak will be recognized at the appropriate time may speak. To join the queue on Zoom video conference by computer or mobile phone, use the “Raise Hand” feature. If joining the meeting using the Zoom dial-in number, you can raise your hand and join the queue by pressing \*9. Members of the public will not be shown on video but will be able to speak when called upon.

Comments shall generally be limited to three minutes when speaking, provided that the Chair may equally reduce each speaker’s time to accommodate a large number of speakers or a large number of agenda items. If you have anything that you wish to be distributed to the Board, please provide it via [comments@ocpower.org](mailto:comments@ocpower.org), who will distribute the information to the Members.

The public may participate using the following remote options:

#### ZOOM WEBINAR

Please click the link below to join the webinar:

[Launch Meeting - Zoom](#)

Dial-in: 1-669-900-6833

Webinar ID: 882 3275 7913

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL**

4. **PUBLIC COMMENTS ON AGENDA ITEMS**

*Opportunity for members of the public to address the Board on any items on the agenda.*

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

*Opportunity for members of the public to address the Board on any items not on the agenda but within the jurisdiction of the Board.*

6. **DIRECTOR ANNOUNCEMENTS**

*Board Members may briefly provide information to other members of the Board and the public, ask questions of staff, or report on conferences, events, or activities related to Authority business. There is to be no discussion or action taken on comments made by Board Members unless authorized by law.*

7. **STAFF REPORT**

*Staff may briefly provide information to the Board and the public. The Board may engage in discussion if the specific subject matter of the report is identified, but the Board may not take any action. There is to be no other discussion or action taken unless authorized by law.*

8. **CLOSED SESSION**

1. **PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**

**Requested by Vice Chair Treseder**

Pursuant to Government Code Section §54957(b)(1)

2. **PUBLIC EMPLOYEE APPOINTMENT**

**Requested by Vice Chair Treseder**

Pursuant to Government Code Section §54957(b)(1)

Title: Acting Chief Executive Officer

3. **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

**Requested by Director Castaneda**

Pursuant to Government Code Section §54957(b)(1)

Title: Chief Executive Officer

4. **PUBLIC EMPLOYEE APPOINTMENT**

Pursuant to Government Code Section §54957(b)(1)

Title: General Counsel

**9. CONSENT CALENDAR**

*All items listed under the Consent Calendar are considered to be routine and may be enacted by one motion. Prior to the motion to consider any action by the Board of Directors, any public comments on any of the Consent Items will be heard. There will be no separate action unless members of the Board of Directors request specific items be removed from the Consent Calendar.*

**1. MINUTES FOR THE REGULAR BOARD MEETING OF MARCH 15, 2023**

**Recommended Action:**

Approve as submitted.

**2. LEGISLATIVE AND REGULATORY UPDATE**

**Recommended Action:**

Receive and File.

**3. RISK OVERSIGHT COMMITTEE UPDATE**

**Recommended Action:**

Receive and File.

**4. APPROVE ORANGE COUNTY POWER AUTHORITY'S POLICIES**

**Recommended Action:**

Approve the following Orange County Power Authority Policies:

- Policy Number 018: Investment Policy
- Policy Number 019: Reserve Policy
- Policy Number 020: Bad Debts and Delinquent Accounts Policy
- Policy Number 021: Rate Development Policy
- Policy Number 022: Member Information Sharing Policy

**5. APPROVE AMENDMENT NO. 1 WITH ORANGE COUNTY PRINTING COMPANY FOR PRINTING AND MAILING SERVICES**

**Recommended Action:**

Approve Amendment No. 1 with Orange County Printing Company for printing and mailing services.

**10. REGULAR CALENDAR**

*The following items call for discussion or action by the Board of Directors. The Board may discuss and/or take action on any item listed below if the Board is so inclined.*

**1. DEVELOPMENT OF ANNUAL BOARD OF DIRECTORS GOAL SETTING WORKSHOP**

**Recommended Action:**

Discuss and provide direction on the development of an Annual Orange County Power Authority Board of Directors Goal Setting Workshop.

**2. RATIFY RATES EFFECTIVE APRIL 1, 2023**

**Recommended Action:**

Ratify rates effective April 1, 2023.

**3. APPROVE LONG-TERM RENEWABLE POWER PURCHASE AGREEMENT WITH GRACE ORCHARD ENERGY CENTER, LLC**

**Recommended Action:**

Approve Long-term Renewable Power Purchase Agreement with Grace Orchard Energy Center, LLC.

**4. FISCAL YEAR 2023/2024 BUDGET FRAMEWORK**

**Recommended Action:**

Receive and File.

**5. CREATION OF BUDGET AD-HOC COMMITTEE FOR DEVELOPMENT OF FY2023/24 BUDGET**

**Recommended Action:**

Establish a temporary ad-hoc advisory committee related to development of FY2023/24 Budget and 5-Year Projection and appoint less than a majority of Board members to the committee.

**6. WEIGHTED VOTING UNDER THE JOINT POWERS AGREEMENT**

**Recommended Action:**

Discuss weighted voting under the OCPA Joint Powers Agreement and, if desired by the Board, potential alternative approaches.

**7. COMMUNITY ADVISORY COMMITTEE UPDATE**

**Recommended Action:**

Receive and File.

**11. ADJOURNMENT**

***Compliance with the Americans with Disabilities Act***

Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact 949-263-2612. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

### ***Availability of Board Documents***

Copies of the agenda and agenda packet are available at [www.ocpower.org](http://www.ocpower.org). Late-arriving documents related to a Board meeting item which are distributed to a majority of the Board prior to or during the Board meeting are available for public review as required by law. Public records, including agenda-related documents, can be requested electronically at [clerk@ocpower.org](mailto:clerk@ocpower.org) or by mail to 15642 Sand Canyon Avenue, P.O. Box 54283, Irvine, CA 92619-4283. The documents may also be posted at the above website. Such public records are also available for inspection, by appointment, at 3349 Michelson Drive, Suite 200, Irvine, CA 92612. Please contact [clerk@ocpower.org](mailto:clerk@ocpower.org) to arrange an appointment.

**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 7**

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To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer

Subject: CEO’S REPORT

Date: April 19, 2023

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**Orange County Power Authority Ongoing Net Energy Metering Enrollments**

The current Net Energy Metering (NEM) Enrollment phase began on April 1st. Two pre-enrollment notices and one Courtesy Letter have already been sent out to these customers. This phase includes nearly 3,200 NEM customers. NEM customers are being enrolled every other month based on their “true up” date with SCE. This allows customers to enjoy the full benefit of their NEM program. OCPA will continue to enroll residential NEM customers through August 2023.

OCPA offers many benefits to NEM customers, such as a 10% increase above SCE’s Net Surplus Compensation (NSC) rate, a true up month in April, and monthly billing instead of annual. NEM customers are encouraged to visit <http://www.ocpower.org/nem> to learn more about the benefits OCPA offers to NEM customers.

**Bylaws Update**

The Bylaws were circulated to member agencies on March 27, 2023. After the 30 day circulation they will be brought back to the Board at the May meeting.

**Staffing Update**

Orange County Power Authority is excited to announce the hiring of a Power Resources Director who joins OCPA with over 20 years of energy sector experience. He most recently served as the Assistant Director of Utility Operations with a Southern California MOU. He also holds a Bachelor’s and Master’s degree in Public Administration as well as a Certification in Energy Resource Management from UC Davis.

Also joining the OCPA is an Energy Programs Analyst, who comes to us from Meta where she was a Project Manager. Prior to Meta, she worked for Central Coast Community Energy (3CE) as their Community Engagement Manager. At 3CE she initiated and developed collaborative relationships with community members, local business owners, municipal staff, public officials, and other key stakeholders. She also has a BA in Human Communication Journalism and Media Studies and a Master of Business Administration from California State University, Monterey Bay. The Energy Program Analyst, role will be focused on expanding our energy program offerings in a way that is meaningful and relevant to our customers and our member agencies.

We are excited to have filled these critical roles and look forward to introducing our newest team members at the Board meeting.

OCPA has open recruitments for Chief Operating Officer, Energy Contracts and Compliance Analyst, Human Resources Generalist, and IT Specialist. Additional recruitments will be posted shortly, in accordance with the staffing plan approved in December 2022.

### **Request for Proposals**

The Request for Proposal (RFP) for Marketing, Communications, Strategy, Public Engagement, Digital and Graphic Design closed on April 4, 2023. Staff are currently evaluating proposals. It is expected that a recommendation will be made at the next Board Meeting on May 17, 2023. A new contract is anticipated to be executed by July 1, 2023.

### **Attachment**

Non Power Supply Contracts in Excess of \$50,000 to Under \$125,000

Orange County Power Authority  
Non Power Supply Contracts In Excess of \$50,000 to Under \$125,000

Item No	Vendor	Term	Contract Amount	Brief Service Description	Remark
1	Littler Mendelson, P.C.	8/10/2022-12/31/2023	\$125,000	Legal advice and counsel in labor and employment matters	Addendum to clarify the \$125k NTE term is from 8/10/2022 to 12/31/2023
2	LBA IV-PPI, LLC	5/1-10/31/2023	\$19,000/mo.	Office rent and services 3349 Michelson Dr., Irvine, CA 92612	Rent is within the approved budget and move within current facility as previously approved by the Board.





**MINUTES  
REGULAR MEETING  
BOARD OF DIRECTORS  
ORANGE COUNTY POWER AUTHORITY  
Wednesday, March 15, 2023**

**1. CALL TO ORDER**

Chair Jung called to order the Regular Meeting of the Orange County Power Authority Board of Directors at 10:05 a.m. on Wednesday, March 15, 2023.

**2. PLEDGE OF ALLEGIANCE**

Director Castañeda led the Pledge of Allegiance.

**3. ROLL CALL**

Present:	Director Donald P. Wagner	County of Orange
	Director Jose T. Castañeda	City of Buena Park
	Director Tammy Kim	City of Irvine
	Director Casey McKeon	City of Huntington Beach
	Vice Chair Kathleen Treseder	City of Irvine
	Chair Fred Jung	City of Fullerton

**4. PUBLIC COMMENTS ON AGENDA ITEMS**

The following spoke in public comments regarding March 15, 2023, agenda items:

Ayn Craciun  
Doug Elliott

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

The following spoke in public comments regarding March 15, 2023, non-agenda items:

Doug Elliott  
Walter Norbrega  
Ayn Craciun

**6. DIRECTOR ANNOUNCEMENTS**

Director Castañeda announced that at the Tuesday, March 14, Buena Park Council meeting Mayor Brown had requested for the withdrawal of their City from OCPA. He further requested to have on the April agenda the following items: the creation of an ad hoc committee of members of the Board to discuss the potential to hire an interim executive manager to help

implement the solutions from the audit items, an employee evaluation, the RFP's for general counsel services, and a discussion on changes to the CAC's scope, rules, and operating procedures.

Director Castañeda further requested to add to the public record the following: "In order to address and draw down conspiracy theories circulating amongst members of the City of Irvine community, we must first place the CPUC fines levied on all load serving entities during 2022 within the proper context. That is to say that when we transitioned from our normal mode, routine, to primarily work from home, that change had a dramatic impact on the energy sector. Because of that no load serving entity was prepared to deal with the resource adequacy adjustments that were necessary to comply with the regulations that have not kept up with the COVID-19 pandemic changes. Therefore, all load serving entities were fined equally and rightly by CPUC for not complying with resource adequacy summer requirements, which more energy used at home versus the commercial sector, and industrial warehouse services that subsequently led to the bankruptcy filing of Western Riverside and the draw down of Desert Community Energy in which Ryan Baron our previous general counsel, from BBK, had been serving as their general counsel. He is no longer serving as general counsel at OCPA. I wanted to add this to the public record so we can clarify whether or not there are any personal attacks ad hominem against any members of this Board rather than significant very substantive points that I was trying to make. Should members of this Board not come properly prepared with the full context of why we are doing what we are doing, in working to transform the energy sector and accelerate our transition to clean renewable energy, then I question our participation on this Board."

Vice Chair Treseder requested an update on the general counsel RFP process for the general counsel from the CEO.

CEO Probolsky stated that there was a written update on his report. The RFP had been circulated and responses were due on Friday and several questions had been answered for potential candidates. Staff expected to bring back the proposals at the next Board meeting.

Director McKeon requested to agendaize at the next meeting a detailed explanation as to the calculus that was used in the decision to pay the fine instead of providing the required resource adequacy that put the grid at risk.

## **7. STAFF REPORT**

CEO Probolsky submitted a written report. There has been a lot of discussion about the SCE green rate program and the accessibility or availability of that program. Every time that there is a rate change by SCE or OCPA we are required to create a comparison, a joint rate comparison document that happens in conjunction with SCE and gets published on both websites. SCE has taken down the links on their website for signups of the green rate program and they have added language to the JRC that the program is not available. Moving forward they will remove the green rate from the JRC to eliminate confusion for the public.

He announced that great progress had been made on staff recruitment. There were over 2,600 legislative bills in Sacramento, nearly 100 had a CCA or energy issue, these bills were being

tracked through CalCCA. He announced a new contract tracker that will be presented to the Board on a quarterly basis which contains all OCPA contracts. The new CAC tried to meet last night; however, they did not have a quorum. The members present had an informal discussion.

Chair Treseder thanked CEO Probolsky for the contract tracker, requested all documents on the Zodiac Solutions contract including any documentation on the award process including other responsive entities.

## **8. CONSENT CALENDAR**

Vice Chair Treseder removed item 8.1 for separate discussion.

Director Castañeda removed item 8.4 for separate discussion.

### **ACTION**

Director Kim made the motion, seconded by Director Castañeda to:

Approve consent calendar items 8.2 and 8.3.

The motion carried unanimously by the following vote:

Ayes: Chair Jung, Vice Chair Treseder, Director Wagner, Director Kim,  
Director McKeon, Director Castañeda  
Noes: None  
Absent: None

## **1. MINUTES FOR THE SPECIAL BOARD MEETING OF FEBRUARY 10, 2023**

Vice Chair Treseder apologized for the confusion, she did not want to pull this item.

### **Action Taken:**

Vice Chair Treseder made the motion, seconded by Chair Jung to:

Approve the Minutes as submitted.

The motion carried unanimously by the following vote:

Ayes: Chair Jung, Vice Chair Treseder, Director Kim, and Director McKeon  
Noes: None  
Absent: Director Wagner, and Director Castañeda

## **2. MINUTES FOR THE REGULAR BOARD MEETING OF FEBRUARY 15, 2023**

### **Action Taken:**

Approved as submitted.

**3. TREASURER'S REPORT – FISCAL YEAR ENDED DECEMBER 31, 2022**

**Action Taken:**

Received and filed the Treasurer's Report ending December 31, 2022.

**4. APPROVE ORANGE COUNTY POWER AUTHORITY'S FINANCIAL POLICIES**

**Action Taken:**

Item was continued to the April 19, 2023, Board Meeting.

**9. REGULAR CALENDAR**

**1. CONSIDER DRAFT BYLAWS AND THIRD AMENDMENT TO JOINT POWERS AGREEMENT (Chair Jung)**

Interim General Counsel Norvell provided a brief summary of this item and included the various changes.

Director Wagner clarified the two-year term and the ability to change the appointee.

Director Castañeda requested that serving Board members be OCPA customers. He further requested that Board Member initiated items be placed on the agenda five calendar days in advance and not ten business days, and the elimination of the Chair's approval of agenda items for Board members.

Chair Treseder requested clarification from Director Castañeda on the candidates going around with I-pads while canvassing.

Director Castañeda responded it was her and not subject to discussion at this time.

Chair Jung recapped Director Castañeda's requests for the bylaws. He stated that mandating Board Members be OCPA customers should be a given and did not fit within the bylaws. He was ok with the five-day period, and he did not need to greenlight the item as the Chair.

Director Castañeda would like the elimination of the second board director from the City of Irvine upon the start of the repayment of the initial loan.

Director McKeon requested an example of when the OCPA would need to exercise eminent domain.

Director Wagner warned the Board against not allowing new members to vote until they received power.

Vice Chair Treseder agreed with Director Wagner that any entity that OCPA had purchased power whether or not they were receiving this power, should have voting rights. She was ok amending the JPA to allow for entities to have voting right upon OCPA having purchased power for those entities.

Director Castañeda concurs with Director Wagner and Chair Treseder on the voting rights.

Interim General Counsel Norvell stated the proposed amendments were as follows:

1. Chair and Vice Chair needed to be OCPA customers.
2. Revising the 10 business day requirement for agenda items by Board Members to 5 calendar days.
3. Closing the second Irvine seat upon any repayment of the loan.

**Action Taken:**

Chair Jung made the motion, seconded by Director Kim to:

1. Review draft Bylaws and Third Amendment to Joint Powers Agreement.
2. Direct staff to provide Member Agencies with a copy of the proposed Bylaws and Third Amendment and place the Bylaws and Third Amendment on a future agenda for final approval.
3. Amend to revise to a five-calendar day period for Board Member initiated agenda items.

The motion carried unanimously by the following vote:

Ayes: Chair Jung, Vice Chair Treseder, Director Wagner, Director Kim,  
Director McKeon, Director Castañeda  
Noes: None  
Absent: None

## **2. OCPA DRAFT IMPROVEMENT PLAN**

Director of Communications & External Affairs Mosca provided a summary of the presentation on this item.

Former State Auditor and current Principal Chief Strategist for Balance Public Relations, Elaine Howle also provided additional information and best practices on this item.

Chair Jung asked why the Risk Oversight Committee (ROC) had not come to the Board for implementation.

Director Wagner stated the drivers of all these audits were the various competing views and until the dismissal of the CEO was attained the audits would not stop. He was not advocating for the dismissal, just stated a fact.

Director Kim stated the information provided to them before the fact sheet came out was different and the fact sheet was very scathing.

Chair Jung thanked Ms. Howle and staff for their work on this item. He suggested that the public use this plan as a measurement tool for the Board Members and the Agency.

Vice Chair Treseder stated that she appreciated this presentation and the accountability factors. She requested to have the Risk Oversight Committee (ROC) item moved up to April instead of May.

Director Castañeda thanked staff for the depth of their work on this item. He further thanked Ms. Howle and stated that this implementation plan cemented the integrity of OCPA and lauded the draft improvement plan. He appreciated the ability to memorialize what the agency would do to help improve itself and build public trust. He provided directions to staff on the website, there needed to be realistic timelines and suggested that a disclaimer needed to be added to the website. For the public records act requests, there needed to be information on the legal requirement for the number of days staff had to respond. For the budget and forecasting, projections vs. actuals, there needed to be a disclaimer that the gap between when the load serving entities or investor-owned utilities provided data to a new CCA did impact everything else that followed. As for the director of power, it was not the Agency's fault that there was a lack of talent available. All CCA's were experiencing the same issue when recruiting for their positions. The market needed assistance with a certification program that would help to create the talent for these specialized positions.

Chair Jung would like to have the Risk Oversight Committee (ROC) item be placed on the April agenda.

Director Wagner left the meeting at 11:45 a.m.

**Action Taken:**

Discussed OCPA Draft Improvement Plan and provided staff direction.

**3. APPROVE FISCAL YEAR 2022-2023 MID YEAR OPERATING BUDGET**

Chief Financial Officer (CFO) Law provided the summary for the presentation on this item.

Chair Jung asked if the unreliable data sets due to COVID-19 from Edison had gotten better for the Agency to be able to utilize that data for analysis.

CFO Law confirmed that the data was better; however, since mid-year, the Agency had been using its own customer data.

Chair Jung stated that a \$41 million reserve was not an easy thing to do and that the Agency's rate was two percent lower than Edison both items needed to be publicized.

Director Castañeda was happy to see that the Agency was fiscally viable and financially responsible.

Director McKeon stated the difference—the increase of \$41 million was due to the sale of the Agency's procured energy at a higher rate than the purchased rate.

CFO Law confirmed it was one of the factors along with the lower cost to procure power.

**Action Taken:**

Director Castañeda made the motion, seconded by Director Kim to:

Approve Fiscal Year 2022-2023 Mid-Year Operating Budget.

The motion carried unanimously by the following vote:

Ayes: Chair Jung, Vice Chair Treseder, Director Kim, Director McKeon,  
Director Castañeda  
Noes: None  
Absent: Director Wagner

**4. ENERGY MARKETS UPDATE**

Pacific Energy Advisors, Consultant, Kirby Dusel provided a brief summary of the presentation on this item.

Director Castañeda requested Mr. Dusel bring back at a future meeting how long it takes for a new Agency like OCPA to move toward expanding its capacity to help provide energy during the summer months. He would also like to know if there are any funding sources for agencies to acquire the necessary resources to expand their staff to help generate energy services. Director Castañeda requested the resource adequacy graphic, and information be placed on the website to inform consumers of these market prices. He would like to have the Director of Power as soon as possible. Director Castañeda requested to have consent calendar item four and regular calendar item five continued to the next meeting. He left the meeting at 12:49 p.m.

Director McKeon asked if the procured contracts were good for additional years. Mr. Dusel confirmed that the future was secure with the acquired contracts. The management of the portfolio also assisted in this process.

Director McKeon requested a copy of this presentation.

CEO Probolsky stated that it would be added to the website. He also requested Mr. Dusel clarify the RPS compliance report information.

Mr. Dusel clarified that the timing of the reports created confusion regarding the current status of the Authority. These reports are done annually.

Vice Chair Treseder asked if there was any information that could be provided to address the current power purchases to reflect an accurate report.

Mr. Dusel stated he would provide a high-level aggregated summary that may assist with providing this information.

**Action Taken:**

Received and filed.

**5. APPOINTMENT OF TWO AT-LARGE MEMBERS TO THE COMMUNITY ADVISORY COMMITTEE**

Chair Jung nominated Mr. Valadez.

Director Kim would like to give the opportunity to those who have not served.

Vice Chair Treseder stated that Ms. Forthal's personal statement was well done.

**Action Taken:**

Chair Jung made the motion, seconded by Director Kim to:

Appoint Oscar Valadez and Senait Forthal as the two at-large members of the CAC.

The motion carried unanimously by the following vote:

Ayes: Chair Jung, Vice Chair Treseder, Director Kim, and Director McKeon

Noes: None

Absent: Director Wagner, and Director Castañeda

CAC Member Shanin Ziemer provided a brief update on the CAC and requested that the Board use the expertise of the CAC members to help them.

**12. ADJOURNMENT**

There being no further business to come before the Board, Chair Jung adjourned the meeting at 1:27 p.m. The next OCPA Board of Directors Regular meeting will be on April 19, 2023.

**Submitted by:**

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**Brian S. Probolsky, Authority Secretary**



**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 9.2**

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To: Orange County Power Authority Board of Directors

From: Steven Halligan, Management Analyst

Subject: LEGISLATIVE AND REGULATORY UPDATE

Date: April 19, 2023

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**RECOMMENDED ACTION**

Receive and File.

**LEGISLATIVE UPDATE**

The California Legislature reconvened on January 4, 2023. The deadline to introduce legislation was February 17, 2023. 2,834 bills were introduced. Orange County Power Authority (OCPA) staff are currently tracking and analyzing 99 pieces of legislation. The Legislature is on recess from March 30 to April 10. The last day for fiscal bills to pass out of policy committees is April 28, 2023. The last day for non-fiscal bills to pass out of policy committees is May 5, 2023. June 2, 2023 is the deadline for bills to pass out of their original house.

Of the 99 bills being tracked they can be broken into the following categories: Affordability/Rates (6), Energy (12), Brown Act (4), Equity (5), Greenhouse Gas (12), Interconnection (5), Solar (6), Transportation (23), and Other (26). The other category includes legislation on the topics of Buildings, California Energy Commission (CEC), Energy Efficiency (EE), Distributed Energy Resource (DER), Public Utilities Commissions (PUC), Storage, and Transmission.

A summary of all 99 bills is attached as Attachment A.

**REGULATORY UPDATE**

Orange County Power Authority (OCPA) staff are monitoring several ongoing regulatory proceedings at the California Public Utilities Commission (CPUC). A brief description of the proceeding and any current status updates are provided below.

Affordability – R.18-07-006

The proceeding was opened in 2018 to establish processes for assessing and increasing the affordability of utility service. The CPUC has addressed metrics and methodologies for assessing affordability. The proceeding is currently in Phase 3, considering strategies to limit/mitigate future energy rate increases. A Staff proposal from the CPUC is expected to be released shortly with recommended strategies to mitigate energy rate increases.

#### BioMAT – R.22-10-010

The CPUC issued an Order Instituting Rulemaking (OIR) on October 20, 2022 to implement Assembly Bill (AB) 843 authorizing CCAs to participate in the Bioenergy Market Adjusting Tariff (BioMAT) program. AB 843 amended Public Utilities Code section 399.20 to extend to CCAs within an electrical corporation's service territory the existing renewable feed-in tariff for qualifying bioenergy electric generation facilities. A Prehearing Conference was held on March 10, 2023. A scoping memo and ruling is expected in April 2023 with a proposed decision issued in the third quarter of 2023.

#### Demand Flexibility – R.22-07-005

The CPUC issued an OIR on July 22, 2022 to advance customer demand flexibility through electric rates to support reliability, decarbonization, and affordability. Phase 1 Scoping Memo and Ruling, dated November 2, 2022, set forth the schedule for Phase 1 of the proceeding, including two tracks for establishing an income-graduated fixed charge for residential rates (Track A) and streamlining the adoption of demand flexibility rates for IOUs (Track B). Within Track B, Energy Division has formed two working groups. Working Group (WG) 1 will address demand flexibility rate design, including incorporation of wholesale market prices into demand flexibility price signals, and design of demand flexibility rates to enable all load-serving entities (LSE) to have the option to participate. The guidelines established in WG 1 will inform the IOUs' rate design applications in the California Energy Commission (CEC) Load Management Standards (LMS) proceeding. WG 2 will address the systems and processes for accessing prices and responding to price signals. To be considered are the systems and processes necessary to enable unbundled customers to take service on dynamic prices. Also, to be considered is the overlap with the development of demand flexibility rate design tools in the CEC LMS proceeding. On March 1, 2023, Administrative Law Judge (ALJ) Wang released a Proposed Decision Authorizing Funding for Track A of Phase 1 Consulting Services authorizing \$425,000 for third party consulting services relating to the income-graduated fixed charge.

#### Integrated Resource Planning (IRP) – R.20-05-003

The IRP proceeding considers the CPUC's electric procurement policies and programs to ensure safe, reliable, and cost-effective electricity supply. The proceeding evaluates system, local, and flexible reliability needs ten years out, authorizes procurement, and reviews LSEs' procurement plans. The next cycle of IRP will begin shortly.

#### Power Charge Indifference Adjustment (PCIA) - R.17-06-026

The primary focus of the PCIA proceeding is to ensure that when electric customers of the IOUs depart from IOU service to be served by other LSEs (including CCAs), the LSE customers remain responsible for only those costs previously incurred by the IOU on their behalf. The proceeding has two phases: Phase 1 dealt with exemptions from the PCIA for customers who participate in the California Alternate Rates for Energy (CARE) program or are served by medical baseline rates; Phase 2 included three WGs on benchmarking, prepayment, and portfolio optimization. The Assigned Commissioner issued a Second Amended Scoping Ruling on June 24, 2022, setting forth the remaining issues for Phase 2. The ALJ issued a Ruling on March 3, 2023 requesting comments

on a supplemental GHG-Free Staff proposal and whether the CPUC should consider additional issues before closing this proceeding.

#### Provider of Last Resort (POLR) – R.21-03-011

The CPUC issued a Scoping Memo and Ruling on September 16, 2021 to set forth the scope in the POLR proceeding. This proceeding implements the POLR requirements and framework directed by SB 520. The POLR proceeding will be considered in three phases. Phase 1 will focus on issues necessary to establish a comprehensive framework for existing POLRs. Phase 2 will set rules that allow a different entity to be designated as the POLR. Phase 3 may be opened to consider any additional issues not covered in Phase 1 or 2. A workshop is scheduled for April 4, 2023 to discuss the proposed FSR calculations.

#### Renewable Portfolio Standard (RPS) R.18-07-003 / Voluntary Allocation and Market Offer (VAMO)

The RPS proceeding monitors compliance by “retail sellers,” including IOUs, CCAs and ESPs, within the RPS program. Current RPS rules require 60 percent of retail sales to be from RPS-eligible resources by 2030, and at least 65 percent of the procurement a retail seller counts toward the RPS requirements to be from long-term contracts (ten years or more in duration). In addition, the RPS proceeding is the venue in which the PCIA/RPS Voluntary Allocation and Market Offer (VAMO) is being considered. The IOUs’ Advice Letters on the Long-Term Market Offer were approved on February 10, 2023. The IOUs can issue their solicitations any time after March 6, 2023, and bids will be due 35 calendar days after launch.

#### Resource Adequacy (RA) – R.21-0-002

The OIR for this proceeding set forth the following objectives: to continue the CPUC’s oversight of the RA program, to consider broader structural reforms to the program, and to establish RA procurement obligations for LSEs beginning with the 2023 RA year. This proceeding is split into two tracks. The implementation track has considered near term reforms, including the adoption of the local and flexible capacity requirements, reforms to the central procurement entity (CPE) structure, modifications to the planning reserve margin (PRM), and revisions to RA counting. The reform track considers broader structural changes to effectuate a 24-hour slice-of-day framework. On March 3, 2023, the CPUC issued a Proposed Decision on slice-of-day issues the RA Reform Track.

Staff are also monitoring the following proceedings: Building Decarbonization (R.19-01-011), Transportation Electrification (R.18-12-006), Demand Response (DR), Self-Generation Incentive Program (SGIP), Energy Efficiency (EE) (R.13-11-005), Net Energy Metering (NEM) 2.0 –DAC-GT/CS-GT (R.14-07-002), Green Tariff Shared Renewables (GTSR) (A.22-05-022), Distribution Resource Plans and Distribution Upgrades for a High DER Future (R.21-06-017), Distributed Energy Resource (DER) (R.22-11-013), De-Energization (R.18-12-005), Microgrids (R.19-09-009), Net Billing Tariff (NBT) aka NEM 3.0 (R.20-08-020), and Renewable Financing.

**FISCAL IMPACT**

None

**ATTACHMENTS**

Attachment A – 2023-24 Legislation Matrix

Bill	Author	Title	Topic	Summary	Status
<a href="#">AB 982</a>	Villapudua	Public Utilities Public Purpose Program Funds	Affordability	Creates Public Utilities Public Purpose Programs Fund to fund FERA/CARE + PPP programs	Ref. to Comm.
<a href="#">AB 1513</a>	Calderon	Wildfire bonds	Affordability	This bill would, in addition to capital expenditures related to wildfires, authorize the use of bonds secured by a rate component for recovery of wildfire mitigation efforts, operational and maintenance expenses related to an electrical corporation’s wildfire mitigation plan, wildfire risk mitigation costs, and vegetation management costs and expenses.	Ref. to Comm.
<a href="#">AB 1567</a>	Garcia	Bonds for wildfire + other utility expenses	Affordability	Issues \$4.1B for bond to cover wildfire, water, drought, flood, heat mitigation	Ref. to Comm.
<a href="#">SB 867</a>	Allen	Bonds for wildfire + other utility expenses	Affordability	Issues bond to cover wildfire, water, drought, flood, heat mitigation	Ref. to Comm.
<a href="#">SB 572</a>	Stern	Ratepayer protection	Affordability	Requires joint agencies to consider additional requirements to protect ratepayers from price spikes, stranded assets, duplication of services, and the risk of windfall profiteering and market manipulation.	Ref. to Comm.
<a href="#">AB 625</a>	Aguiar-Curry	Forest Biomass Waste Utilization Program	Bioenergy	This bill would require the PUC to continue the BioMAT program until implementation of the provisions authorizing community choice aggregators to participate in the program has been resolved as specified, and adequate time is given to community choice aggregators to participate in the program.	Ref. to Comm.
<a href="#">AB 678</a>	Alvarez	Biomethane procurement targets or goals: core transport agents	Bioenergy	This bill would require the commission to consider adopting specific biomethane procurement targets or goals for each gas corporation and core transport agent, as defined.	Ref. to Comm.
<a href="#">SB 488</a>	Alvarado-Gil	California Renewables Portfolio Standard Program: bioenergy projects: community choice aggregators	Bioenergy	Authorize the cumulative rated generating capacity to be procured from bioenergy projects regardless of when the projects commence operations + authorize CCAs to procure any portion of a POU’s required cumulative rated generating capacity from bioenergy projects capacity from bioenergy projects that was not procured because of the exemption described above.	Ref. to Comm.
<a href="#">AB 998</a>	Connolly	Biomass energy facilities: State Energy Resources Conservation and Development Commission: report	Biomass	Would require the commission, on or before December 31, 2024, to issue a report on the utility-scale biomass combustion facilities still in operation as of January 1, 2024. The bill would require the report to include an assessment various assessments.	Ref. to Comm.
<a href="#">AB 557</a>	Hart	Open meetings: local agencies: teleconferences	Brown Act	This bill would extend the abbreviated teleconferencing provisions when a declared state of emergency is in effect, or in other situations related to public health, as specified, indefinitely. The bill would also extend the period for a legislative body to make the above-described findings related to a continuing state of emergency and social distancing to not later than 45 days after the first teleconferenced meeting, and every 45 days thereafter, in order to continue to meet under the abbreviated teleconferencing procedures.	Ref. to Comm.

Bill	Author	Title	Topic	Summary	Status
<a href="#">AB 817</a>	Pacheco	Open meetings: teleconferencing: subsidiary body	Brown Act	This bill would authorize a subsidiary body to use alternative teleconferencing provisions similar to the emergency provisions indefinitely and without regard to a state of emergency. In order to use teleconferencing pursuant to this act, the bill would require the legislative body that established the subsidiary body by charter, ordinance, resolution, or other formal action to make specified findings by majority vote, before the subsidiary body uses teleconferencing for the first time and every 12 months thereafter.	Ref. to Comm.
<a href="#">SB 411</a>	Portantino	Brown Act teleconferencing	Brown Act	Can continue teleconferencing under Brown Act	Ref. to Comm.
<a href="#">SB 537</a>	Becker	Brown Act teleconferencing	Brown Act	This bill would authorize certain legislative bodies to use alternate teleconferencing provisions similar to the emergency provisions indefinitely and without regard to a state of emergency. The bill would also require a legislative body to provide a record of attendance on its internet website within 7 days after a teleconference meeting, as specified. The bill would define “legislative body” for this purpose to mean a board, commission, or advisory body of a multijurisdictional cross county agency, the membership of which board, commission, or advisory body is appointed and which board, commission, or advisory body is otherwise subject to the act. The bill would also define “multijurisdictional” to mean a legislative body that includes representatives from more than one county, city, city and county, special district, or a joint powers entity.	Ref. to Comm.
<a href="#">AB 593</a>	Haney	Zero-emission buildings	Buildings	This bill would require the commission, on or before June 1, 2024, to identify an emission reduction strategy, with milestones, for the building sector to support achieving those carbon emissions reduction goals, as provided. The bill would require the commission, on or before July 1, 2025, to implement the emission reduction strategy as a part of the Equitable Building Decarbonization Program and to take certain actions for purposes of implementing the strategy.	Ref. to Comm.
<a href="#">SB 48</a>	Becker	Water and Energy Savings Act	Buildings	This bill would require the Energy Commission and the State Water Resources Control Board, in consultation with the State Air Resources Board, Public Utilities Commission, and Department of Housing and Community Development, on or before July 1, 2026, to jointly develop a strategy for using the energy and water usage data described above to track and manage the energy and water usage and emissions of greenhouse gases of covered buildings in order to achieve the state’s goals, targets, and standards related to energy and water usage and emissions of greenhouse gases of covered buildings, as specified. The bill would authorize the Energy Commission and the State Water Resources Control Board, upon appropriation, to jointly establish energy and water usage building performance standards consistent with the strategy. The bill would require the Energy Commission and State Water Resources Control Board to triennially evaluate the progress of the strategy in achieving improvements in energy and water efficiency and reducing the emissions of greenhouse gases and evaluate the impacts of the strategy on disadvantaged communities, as specified.	Ref. to Comm.

Bill	Author	Title	Topic	Summary	Status
<a href="#">SB 306</a>	Caballero	Building decarbonization: Extreme Heat Action Plan	Buildings	This bill would require the office and the Natural Resources Agency, on or before July 1, 2024, and every 3 years thereafter, in consultation with relevant state agencies, to update the Extreme Heat Action Plan, as defined, to promote comprehensive, coordinated, and effective state and local government action on extreme heat, as provided. The bill would require the Extreme Heat Action Plan and subsequent updates to be posted on the internet website of the office and provided to the relevant fiscal and policy committees of the Legislature. The bill would require all state agencies identified in the Extreme Heat Action Plan to collaborate with the office and the agency to assist in the implementation of the plan and subsequent updates and post on their internet websites a summary of actions they have taken to implement the plan and subsequent updates.	Ref. to Comm.
<a href="#">AB 1181</a>	Zbur	Multifamily Affordable Housing Solar Roofs Program	Buildings	This bill would require, for eligible common areas and for tenant units that are separately metered, benefitting accounts, rather than low-income tenants, that participate in the program to receive credits on utility bills from the program. The bill would require the commission to ensure that electrical corporation tariff structures affecting the qualified multifamily affordable housing properties participating in the program reduce barriers to the installation of solar energy storage technologies.	Ref. to Comm.
<a href="#">SB 610</a>	Laird	CEC reporting	CEC	CEC chair must report annually to legislature	Ref. to Comm.
<a href="#">SB 664</a>	Stern	CEC IEPR deman forecasting	CEC	This bill would require the Energy Commission ensure that the demand forecasts in the integrated energy policy report account for multiday extreme and atypical weather events and include, at a minimum, one-in-10-year, one-in-20-year, and one-in-40-year peak demand forecasts.	Ref. to Comm.
<a href="#">SB 422</a>	Portantino	California Environmental Quality Act: expedited environmental review: climate change regulations	CEQA	This bill would also require those specified public agencies, at the time of adoption of a rule or regulation requiring the reduction in emissions of greenhouse gases, criteria air pollutants, or toxic air contaminants, to perform an environmental analysis of the reasonably foreseeable methods of compliance. By imposing additional requirements on air districts, this bill would impose a state-mandated local program.	Ref. to Comm.
<a href="#">AB 547</a>	Alanis	Distribution of energy resources	DERs	Spot bill	Ref. to Comm.
<a href="#">AB 1533</a>	Garcia	Definition of DERs	DERs	Changes definition of "ultraclean and low-emission distributed generation"	Ref. to Comm.
<a href="#">SB 57</a>	Gonzalez	Disconnection of residential service	Disconnection	This bill would require an electrical corporation, local publicly owned electric utility, gas corporation, local publicly owned gas utility, water corporation, or local agency that owns a public water system to postpone the disconnection of a customer’s residential service for nonpayment of a delinquent account when the temperature will be 32 degrees Fahrenheit or cooler, or 95 degrees Fahrenheit or warmer, within the utility’s service area during the 24 hours after that service disconnection would occur, as specified.	Ref. to Comm.
<a href="#">AB 691</a>	Ting	Public Utilities Commission: energy efficiency programs: report	EE	PUC must report bienally on ratepayer-funded energy efficiency programs	Ref. to Comm.

Bill	Author	Title	Topic	Summary	Status
<a href="#">AB 487</a>	Ting	Low-income energy programs: assessment	Equity	The PUC must make assessment biennially of the needs of low-income ratepayers to evaluate low-income program implementation and the effectiveness of weatherization services and energy efficiency measures in low-income households	Ref. to Comm.
<a href="#">AB 1198</a>	Grayson	GO-Biz: Equity in energy task force	Equity	Establishes within GO-Biz the Equity in Energy Task Force with members as defined. The bill would require the task force to develop a comprehensive strategy aimed at addressing equity in the energy industry	Ref. to Comm.
<a href="#">AB 1374</a>	Alvarez	Increases GGRF money to disadvantaged communities	Equity	Existing law requires the investment plan to allocate, among other things, a minimum of 25% of the available moneys in the fund to projects located within, and benefiting individuals living in, disadvantaged communities and an additional minimum of 5% of projects that benefit low-income households or to projects located within, and benefiting individuals living in, low-income communities located anywhere in the state.This bill would increase those amounts from 25% to 50% and from 5% to 15%.	Ref. to Comm.
<a href="#">SB 527</a>	Min	Neighborhood Decarbonization Program	Equity	This bill would require the Public Utilities Commission, in consultation with gas corporations, to develop and supervise the administration of the Neighborhood Decarbonization Program to facilitate the cost-effective decarbonization of targeted natural gas zones with the intent to provide benefits that include, but are not limited to, reduced emissions of greenhouse gases and air pollution, increased safety, and the maintenance of rate affordability for California gas customers, and to decommission gas assets in zones with the highest community burdens and those that would result in the highest projected ratepayer cost savings	Ref. to Comm.
<a href="#">SB 529</a>	Gonzalez	EV ride share for affordable housing	Equity	CEC must create a grant program to facilitate EV sharing services, as defined, operated at permanent affordable multifamily housing properties	Ref. to Comm.
<a href="#">AB 326</a>	Alanis	Geothermal resources	Geothermal	Spot bill	From Printer
<a href="#">AB 1623</a>	Muratsuchi	Electricity: resource adequacy requirements: energy storage	GHG and Reliability	This bill would require the commission, or before June 30, 2024, and as part of a new or existing proceeding, to revise the net qualifying capacity and effective flexible capacity methodologies for energy storage resources, as specified.	Ref. to Comm.
<a href="#">AB 9</a>	Muratsuchi	Global Warming Solutions Act; emissions limit	GHGs	Requires statewide GHG emissions are reduced to at least 55% below the 1990 level by no later than December 31, 2030.	Ref. to Comm.
<a href="#">AB 287</a>	E. Garcia	GGRF Funds: competetive grants: funding objectives	GHGs	Amending GGRF to pull more money into SD and Imperial Counties.	Ref. to Comm.
<a href="#">AB 397</a>	Essayli	Global Warming Solutions Act: scoping plan	GHGs	Requires the scoping plan to include GHG limits due to wildlands and forest fires.	Ref. to Comm.
<a href="#">AB 585</a>	Rivas	California Global Warming Solutions Act of 2006: literature review and progress report	GHGs	This bill would request the CCST, in its discretion, every 2 years, to perform a literature review, including source materials, to assess the infrastructure project types, scale, and pace necessary to achieve the quantities of renewable energy, and the distribution and transmission networks necessary, to achieve the state’s energy, climate change, and air quality goals, as specified.	Ref. to Comm.
<a href="#">AB 849</a>	E. Garcia	Community emissions reduction programs	GHGs	Require the air district, in adopting a community emissions reduction program, to consult with other relevant state agencies.	Ref. to Comm.



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Bill	Author	Title	Topic	Summary	Status
<a href="#">AB 1358</a>	Muratsuchi	Creates joint agency to reach renewable energy goals	GHGs	Creates joint agency Tracking Energy Development Taskforce to develop policy recommendations to achieve the state's renewable energy goals	Ref. to Comm.
<a href="#">AB 1373</a>	Garcia	Energy: firm zero-carbon resources	GHGs	Pushes back due date for joint agency report on firm zero-carbon resources	Ref. to Comm.
<a href="#">SB 12</a>	Stern	California Global Warming Solutions Act: Emissions Limit	GHGs	Requires statewide GHG emissions are reduced to at least 55% below the 1990 level by no later than December 31, 2030.	Ref. to Comm.
<a href="#">SB 253</a>	Weiner	GHG reporting	GHGs	Requires large companies in CA to report GHG emissions	Ref. to Comm.
<a href="#">SB 261</a>	Stern	GHG reporting	GHGs	Facilitates that report to CARB must also prepare a climate-related financial risk report and measures to reduce financial risk.	Ref. to Comm.
<a href="#">SB 511</a>	Blakespear	CARB report on GHG emissions	GHGs	CARB must report on greenhouse gas emission inventories for the calendar year 2025 for each city, county, city and county, and special district,	Ref. to Comm.
<a href="#">AB 324</a>	Pacheco	Renewable hydrogern	Hydrogen	Directs the CPUC to consider establishing a renewable hydrogern procurement goal.	Ref. to Comm.
<a href="#">AB 673</a>	Bennett	Hydrogen-fueling stations: preference	Hydrogen	This bill would, except for the Clean Transportation Program and moneys allocated from the Alternative and Renewable Fuel and Vehicle Technology Fund, require the commission, when considering providing funding for projects for the construction and operation of hydrogen-fueling medium- and heavy-duty stations, to evaluate whether the project needs to also include access for light-duty vehicles. In this evaluation, the bill would require the commission to consider safety, regional light-duty vehicle hydrogen fueling needs, and the station fueling capacity.	Ref. to Comm.
<a href="#">AB 914</a>	Friedman	CEQA streamlining for interconnection	Interconnection - Distribution Planning	This bill would exempt from CEQA certain electrical infrastructure projects intended to provide capacity or enhance reliability to accommodate the increased electrical demand or forecasted electrical demand associated with transportation electrification, building electrification, distributed energy projects, including energy storage projects, or the interconnection of a renewable generation source.	Ref. to Comm.
<a href="#">AB 50</a>	Wood	Public utilities: timely service: timely electrical interconnection	Interconnection - Load	This bill would require a public utility to furnish and maintain timely service, instrumentalities, equipment, and facilities. The bill would require the commission, on or before January 1, 2025, to determine the criteria for timely service for electric customers that meets specified requirements. Until the commission determines that criteria, the bill would require each large electrical corporation, among other things, to make a good faith effort to deliver electric service within 90 days of issuing a written commitment to serve for customers seeking a new connection, and within 30 days of issuing a written commitment to serve for customers seeking upgrades to an existing connection. If a large electrical corporation fails to deliver service to a customer by the date communicated on a written commitment to serve, the bill would require the impacted customer to be entitled to a utility bill credit, as specified.	Ref. to Comm.
<a href="#">SB 83</a>	Wiener	Electrical distribution grid: interconnection	Interconnection - Load	IOUS must interconnect a development project within 8 weeks of receiving a notification from project. IOU must annually report to the commission the number of applications for interconnection and the time period. IOU must compensate a development project applicant for failing to meet the 8-week time period.	Ref. to Comm.

Bill	Author	Title	Topic	Summary	Status
<a href="#">SB 410</a>	Becker	Powering Up Californians Act	Interconnection - Load	This bill, the Powering Up Californians Act, would require the PUC to establish a working group on or before March 1, 2024, as provided, to, among other things, propose processes that would improve the ability of utilities, which the bill would define as electrical corporations that operate electrical distribution systems, to be informed well in advance of needed increases in distribution system capacity for future housing developments, building electrification, electric vehicle charging infrastructure, and other activities that require increased distribution system capacity. The bill would require the PUC to establish, on or before September 30, 2024, reasonable average and maximum target interconnection time periods, as defined, and certain reporting requirements so that utility performance can be tracked and improved, as provided. The bill would require the PUC to require a utility to take any remedial actions necessary to achieve the PUC’s targets and would require all utility reporting to be publicly available, among other reporting requirements.	Ref. to Comm.
<a href="#">AB 643</a>	Berman	Interconnection DER shot clock	Interconnection - DER	CPUC reports and penalizes IOU delays to DER interconnection. IOUs must be more responsive to interconnection inquiries.	Ref. to Comm.
<a href="#">AB 65</a>	Mathis	Nuclear generation facilities	Nuclear	This bill would require the PUC, on or before January 1, 2026, to adopt a plan to increase the procurement of electricity generated from nuclear facilities and to phase out the procurement of electricity generated from natural gas facilities.	Ref. to Comm.
<a href="#">AB 1172</a>	Calderon	Nuclear fusion	Nuclear	Agencies report to leg analyzing the feasibility of using commercially viable nuclear fusion.	Ref. to Comm.
<a href="#">AB 3</a>	Zbur	Offshore wind energy: reports	Offshore Wind	This bill would require the commission to consult with specified entities and prepare a report, to be submitted to the Governor and the Legislature on or before July 1, 2025, that identifies potential alternatives, analyzes, and makes recommendations regarding procurement mechanisms and procurement strategies for offshore wind energy projects to be financed, entitled, constructed, and operated within the timeframes necessary for meeting the state’s carbon neutrality goals	Ref. to Comm.
<a href="#">AB 80</a>	Addis	Coastal resources: ocean research: West Coast Offshore Wind Science Entity	Offshore Wind	This bill would require the council, upon an appropriation by the Legislature, to establish and oversee, in coordination with other unspecified state agencies, a West Coast Offshore Wind Science Entity for the purpose of ensuring that comprehensive baseline monitoring of the California ocean ecosystem as well as targeted research are available and used to inform state and federal decisions, as provided. The bill would require the entity to perform specified functions, including reviewing and incorporating existing research, monitoring, and data standardization.	Ref. to Comm.
<a href="#">AB 344</a>	Wood	Offshore Wind	Offshore Wind	Spot bill	From Printer
<a href="#">SB 286</a>	McGuire	Offshore Wind energy projects	Offshore Wind	This bill would require the commission to process a consolidated coastal development permit for any new development that requires a coastal development permit and that is associated with, appurtenant to, or necessary for the construction and operation of offshore wind energy projects and transmission facilities needed for those projects.	Ref. to Comm.
<a href="#">SB 56</a>	Skinner	LSE; IRP	Procurement	Spot bill	From Printer
<a href="#">AB 1068</a>	Valencia	PUC rules on ex parte	PUC	Lessens ex parte rules on Commisioner staff meetings and written communications	Ref. to Comm.

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Bill	Author	Title	Topic	Summary	Status
<a href="#">AB 995</a>	Ting	Electricity: resouce adequacy requirements: reporting	RA	Requires LSEs including CCAs to report biannully (instead of anually) the % of local and system RA requirements from the previous calendar year that was met with zero carbon capacity.	Ref. to Comm.
<a href="#">AB 1538</a>	Muratsuchi	RA incentive payments to LSEs	RA	PUC must establish a Clean Energy Reliability Program, to provide incentive payments to LSEs that exceed their capacity requirements.	Ref. to Comm.
<a href="#">AB 1429</a>	Boerner Horvath	Rates/charges	Rates	This bill would require the commission, in a new or existing proceeding, to evaluate the energy usage estimation methodologies and mechanisms of electrical corporations and gas corporations in order to correct inaccurate energy usage estimates.	Ref. to Comm.
<a href="#">AB 538</a>	Holden	Multistate regional transmission system organizations: membership	Regionalization	This bill would prohibit a California electrical transmission facility owner, a retail seller of electricity, or a local publicly owned electric utility from joining a multistate regional transmission system organization, as defined, unless the bylaws or other organizational documents that govern the organization, and the organization’s operations, meet Federal Energy Regulatory Commission requirements and other specified requirements.	Ref. to Comm.
<a href="#">AB 1664</a>	Friedman	Self-generation incentive program: block grant	SGIP	This bill would require, as part of administering the funds used to provide incentives to eligible residential customers, the commission to establish a block grant structure for eligible entities, as defined, to apply for grants on behalf of residential households to increase the resiliency of residential households, as specified. The bill would require the commission, in determining the block grant funding criteria, to consider and prioritize one or more specified requirements.	Ref. to Comm.
<a href="#">AB 2</a>	Ward	Recycling solar photovoltaic modules	Solar	This bill would require a manufacturer of solar photovoltaic panels sold or offered for sale in this state, or its agent, to develop an end-of-life management plan for the management and recycling of the solar photovoltaic panels it manufactured and the component materials.	Ref. to Comm.
<a href="#">AB 704</a>	Patterson	Energy: building standards: photovoltaic requirements	Solar	This bill, until January 1, 2027, would require residential construction intended to repair, restore, or replace a residential building damaged or destroyed as a result of a disaster in an area in which a state of emergency has been proclaimed by the Governor to comply only with requirements regarding photovoltaic systems pursuant to the regulations, if any, that were in effect at the time the damaged or destroyed residential building was originally constructed and would not require that construction to comply with any additional or conflicting photovoltaic system requirements in effect at the time of repair, restoration, or replacement.	Ref. to Comm.
<a href="#">AB 1132</a>	Friedman	Solar energy systems: permit fees.	Solar	Existing law, for purposes of governing property rights, defines a “solar energy system” as specified to include any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating. Existing law prescribes and limits permit fees that a city or county may charge for a residential and commercial solar energy system. Existing law repeals these provisions on January 1, 2025. This bill would extend that repeal date to January 1, 2034.	Ref. to Comm.
<a href="#">AB 1238</a>	Ward	Hazardous waste: solar panels	Solar	This bill would require the department to develop alternative management standards for managing photovoltaic modules.	Ref. to Comm.

Bill	Author	Title	Topic	Summary	Status
<a href="#">SB 49</a>	Becker	Tax incentives; Solar Canopies	Solar	Legislation to provide tax incentives for the construction of solar canopies over large parking lots to boost the local generation of clean electricity in urban and suburban areas while reducing the need for dedicated land in rural areas and transmission to deliver the clean energy into population centers.	Ref. to Comm.
<a href="#">SB 355</a>	Eggman	Multifamily Affordable Housing Solar Roofs Program	Solar	This bill would limit the applicability of the requirement that low-income tenants who participate in the program receive credits on utility bills to units that are separately metered. If the development has at least 45% of units reserved for tenants in extremely low-income households and is master-metered, the bill would specify that those direct economic benefits to low-income tenants may include providing housing.	Ref. to Comm.
<a href="#">SB 38</a>	Laird	Battery energy storage facilities: emergency response and evacuation plans	Storage	This bill would require each battery energy storage facility in the state to have an emergency response plan and an evacuation plan that covers the area of the battery energy storage facility.	Ref. to Comm.
<a href="#">SB 605</a>	Padilla	Wave/tidal energy	Tidal energy	This bill would require the Energy Commission and the Ocean Protection Council, on or before February 1, 2024, to commence a comprehensive, collaborative study to evaluate the feasibility and benefits of using wave energy and tidal energy, as specified.	Ref. to Comm.
<a href="#">SB 319</a>	McGuire	Electrical transmission planning	Transmission	This bill would require the Energy Commission, PUC, and Independent System Operator to coordinate and implement a joint workplan through specified proceedings and other resource planning activities led by the Energy Commission, and to agree on principles for forecast cases and a single recommended forecast set and use it consistently in transmission planning and resource procurement cycles to the extent possible.	Ref. to Comm.
<a href="#">SB 420</a>	Becker	Streamline transmission facilities	Transmission	Requires a lead agency to monitor clean energy and electrical transmission facility planning and deployment, and identify facilities necessary to maintain system reliability, and streamline them.	Ref. to Comm.
<a href="#">SB 619</a>	Padilla	Transmission	Transmission	Would expand the facilities eligible to be certified by the commission to include electrical transmission lines carrying electricity from certain other facilities that are located in the state, regardless of whether the electricity is carried to a point of junction with any interconnected electrical transmission system	Ref. to Comm.
<a href="#">AB 1293</a>	Irwin	Transportation electrification: service energization timeline	Transportation	This bill would require each electrical corporation to develop an electric vehicle service energization timeline to ensure that customers with electric vehicle charging infrastructure are connected to the electrical grid within 125 business days.	Ref. to Comm.
<a href="#">AB 6</a>	Friedman	Solutions for Congested Corridors Program: reduction of greenhouse gas emissions	Transportation	This bill would instead require a metropolitan planning organization, within 120 business days after adoption, to submit an adopted sustainable communities strategy or an alternative planning strategy, if applicable, to the state board for both review and approval. The bill would instead require that the state board’s review include acceptance or rejection of the metropolitan planning organization’s determination described above. The bill would require the state board to complete its review within 180, instead of 60, business days.	Ref. to Comm.

Bill	Author	Title	Topic	Summary	Status
<a href="#">AB 241</a>	Reyes	Clean Transportation Program: Air Quality Improvement Program: funding	Transportation	This bill would expand the purpose of the program to include developing and deploying innovative technologies that transform California’s fuel and vehicle types to help reduce criteria air pollutants and air toxics.	Ref. to Comm.
<a href="#">AB 463</a>	Hart	Electricity: prioritization of service: public transit vehicles	Transportation	CPUC must consider the economic, social equity, and mobility impacts of a temporary discontinuance in electrical service to the customers that rely on electrical service to operate public transit vehicles.	Ref. to Comm.
<a href="#">AB 579</a>	Ting	Schoolbuses: zero-emission vehicles	Transportation	Require, commencing January 1, 2035, 100% of all newly purchased or contracted schoolbuses of a school district, county office of education, or charter school to be zero-emission vehicles, where feasible.	Ref. to Comm.
<a href="#">AB 591</a>	Gabriel	Electrical vehicle service equipment: universal connectors and public accessibility	Transportation	Require an electric vehicle charging station that requires payment of a fee to allow a person desiring to use the station to pay via credit card	Ref. to Comm.
<a href="#">AB 772</a>	Jackson	Electric vehicle chargers	Transportation	Requires IOUs + POUs after 2024 to install an EV charger at a homeowner’s property within a reasonable time. The PUC will establish accounts to track moneys allocated to IOUs and POUs for that purpose.	Ref. to Comm.
<a href="#">AB 980</a>	Friedman	Active Transportation Program: report	Transportation	This bill would require an applicant that receives funding under the program for a project to, within one year of completing the project, submit a report to the commission describing how the project met active transportation goals.	Ref. to Comm.
<a href="#">AB 1182</a>	Petrie-Norris	Energy: GO-Biz	Transportation	This bill would require GO-Biz to take specified actions to align state incentives with federal funds awarded in the Inflation Reduction Act (IRA) and the Infrastructure Investment and Jobs Act (IIJA), including that GO-Biz identify opportunities to cofund grants that meet the state’s climate goals, post federal IRA and IIJA grants, tax incentives, or other opportunities on their internet website, and collaborate with state agencies to maximize awards to projects in the state.	Ref. to Comm.
<a href="#">AB 1267</a>	Ting	Zero-emission vehicle incentive programs: diesel and gasoline superusers	Transportation	The bill would require the state board, on or before January 1, 2025, to develop and implement a strategy to, among other things, identify the drivers who are gasoline superusers and are low or moderate income and expedite the replacement of the vehicles of those drivers, as specified.	Ref. to Comm.
<a href="#">AB 1349</a>	Irwin	Zero-emission vehicle charging stations: open data portal.	Transportation	Require recipients of grants for ZEV charging stations to collect data on the status of their stations and to submit that data to a publicly accessible application.	Ref. to Comm.
<a href="#">AB 1504</a>	McCarty	EV charging zoning	Transportation	This bill would provide that EV charging station includes EV charging stations installed in the public right-of-way and EV charging stations installed with a battery storage system.	Ref. to Comm.

2023/2024 California Legislation

Bill	Author	Title	Topic	Summary	Status
<a href="#">AB 1525</a>	Bonta	Transportation Agency: allocations for projects in priority populations.	Transportation	This bill would require the agency, on and after July 1, 2024, to ensure that at least 60% of the moneys allocated for agency, Department of Transportation, or California Transportation Commission projects, as defined, are allocated for projects that are located in priority populations, as defined, address an important need of priority populations, and provide at least 5 direct, meaningful, and assured benefits, or additional cobenefits, to priority populations, as specified.	Ref. to Comm.
<a href="#">AB 1529</a>	Gabriel	ZEV charing stations	Transportation	This bill would require the commission to identify potential financial and regulatory incentives for gasoline stations to convert to electric vehicle charging stations.	Ref. to Comm.
<a href="#">AB 1580</a>	Carillo	Develop a State Electric Vehicle Infrastructure Deployment Plan that is consistent with federal requirements	Transportation	This bill would require the commission and the Department of Transportation, on or before June 30, 2024, to jointly develop a State Electric Vehicle Infrastructure Deployment Plan that is consistent with federal requirements and guidance provided by the federal National Electric Vehicle Infrastructure Formula Program.	Ref. to Comm.
<a href="#">AB 1614</a>	Gabriel	Study possibilities of transitioning gas stations to EVs	Transportation	This bill would require the state board to conduct a study on how to phase out the existence of gasoline fueling stations by a specified date and the potential incentives that may be required in order to transition those stations into electric vehicle charging stations.	Ref. to Comm.
<a href="#">SB 30</a>	Umberg	ZEV signage	Transportation	Spot bill to develop light-duty ZEV charging station signage along state highways and a publicly accessible online platform that identifies the locations of EV charger along state highways.	Ref. to Comm.
<a href="#">SB 84</a>	Gonzalez	Clean Transportation Program	Transportation	This bill would expand the purpose of the program to include developing and deploying innovative technologies that transform California’s fuel and vehicle types to help reduce criteria air pollutants and air toxics. The bill would no longer require the commission to provide certain project preferences.	Ref. to Comm.
<a href="#">SB 233</a>	Skinner	ZEV charging	Transportation	This bill would require that, beginning in model year 2027, all new electric vehicles sold in California be bidirectional capable, including light-duty passenger vehicles and school buses, except as exempted by the state board.	Ref. to Comm.
<a href="#">SB 397</a>	Wahab	EV chargers	Transportation	This bill would require the state board, upon appropriation by the Legislature, to establish a program to install and maintain electric vehicle service equipment at safety roadside rests, with the goal of serving at least one-half of the parking spaces, excluding those parking spaces designed for use by a tractor-trailer, at each safety roadside rest in California.	Ref. to Comm.
<a href="#">SB 493</a>	Min	MD/HD infrastructure assesment	Transportation	CEC must create assessment of the electric and hydrogen infrastructure needed to meet the stated MD/HD deadlines.	Ref. to Comm.
<a href="#">SB 507</a>	Gonzalez	ZEV goal assesment	Transportation	CEC must asses whether EV charging infrastructure is enough needed for state goals, and evaluate equitable deployment.	Ref. to Comm.
<a href="#">SB 823</a>	Smallwood-Cuevas	EV charger discount card	Transportation	PUC must create an IOU Discounted Electric Vehicle Charging Payment Card Program for residents to use at public EV chargers in order to pay a rate equivalent if they were using an at-home EV charger	Ref. to Comm.

Bill	Author	Title	Topic	Summary	Status
<a href="#">AB 735</a>	Berman	Workforce development: utility careers	Workforce	This bill would establish the High Road Utility Careers (HRUC) program, to be administered by the board, to connect existing resources with individuals interested in careers in the utility sector and ensure a continued reliable workforce for California utilities.	Ref. to Comm.
<a href="#">AB 1195</a>	Calderon	Community grants for climate projects and workforce	Workforce	Creates Climate Change Preparedness, Resiliency, and Jobs for Communities Program to fund grants to develop and implement multibenefit, community-level, climate-beneficial projects to support community and landscape resiliency and workforce development	Ref. to Comm.
<a href="#">SB 822</a>	Durazo	Ensuring labor for state renewable energy and transportation	Workforce	Instill policies and programs to create or support high-quality jobs in the energy, resources, and transportation sectors	Ref. to Comm.



**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 9.3**

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To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer

Subject: RISK OVERSIGHT COMMITTEE UPDATE

Date: April 19, 2023

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**RECOMMENDED ACTION**

Receive and File.

**BACKGROUND**

The Risk Oversight Committee (ROC) was established via the Board-adopted Energy Risk Management Policy (Policy No. 11). Per the policy, members of the ROC will be selected by the Chief Executive Officer, who will serve as the ROC's Chair. The ROC currently consists of the CEO, CFO, Power Resources Director (starting April 18, 2023), Pacific Energy Advisors (PEA) representatives, and transactional counsel from the Authority's contracted law firm.

The ROC has the authority to:

- Meet at least once per quarter or as otherwise called to order by the ROC's Chair.
- No less than once per quarter, provide a report to the Board regarding its meetings, deliberations, and any other areas of concern.
- From time to time, adopt and/or adapt risk management guidelines defining internal controls, strategies, and processes for managing market risks incurred through or attendant upon wholesale trading, retail marketing, long-term contracting, CRR trading, and load and generation scheduling.
- Specify the categories of permitted transactions and set risk limits for wholesale trading. The ROC will receive and review information and reports regarding risk management, wholesale trading transactions, and the administration of supply contracts.
- Have direct responsibility for enforcing compliance with this Policy. Any material violations of this Policy, as determined by the ROC, shall be reported to the Board for appropriate action.

As part of its recent audit of OCPA, the State Auditor recommended that the Board consider amending the Energy Risk Management Policy (Policy No. 11) to alter the membership of the ROC to include a limited subset of Board members in a manner that does not violate open meeting



**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 9.3**

requirements of the Brown Act. Following review and discussion with the Interim General Counsel, it was determined that formally adding Board members to the ROC through an amendment to the Energy Risk Management Policy would make the ROC meetings subject to the Brown Act, which is incompatible with the ROC's responsibilities for reviewing and analyzing market-sensitive information and prospective transactions, substantial aspects of which are confidential under CPUC rules and best practices for CCAs. As an alternative, the CEO has initiated a practice of inviting the Board Chair and Vice Chair to ROC meetings to observe. This is intended to provide additional Board oversight of the ROC without making Board members official members of the ROC under the Energy Risk Management Policy. This practice was initiated with the April 3, 2023 meeting and will continue for future meetings.

**ANALYSIS AND DISCUSSION**

The Risk Oversight Committee (ROC) met on April 3, 2023 at 10:30 AM. Attendees included Brian Probolsky CEO, Tiffany Law CFO, PEA consultants Kirby Dusel and John Dalessi, Glen Price of Best, Best & Krieger. Fred Jung, Chair of the Board of Directors observed the meeting. The Vice Chair of the Board of Directors was also invited to attend but was not available.

The ROC discussed the following:

- Role of the ROC
- Q2 2023 Risk Management Report Hedge Positions
  - Renewable Energy Positions
  - RPS Compliance for Period 4 (CP4)
  - Resource Adequacy Positions
  - Market Exposure and Risk
  - Counterparty Credit Exposure
- Position Reports

There are no Policy violations to report.

The next ROC meeting will take place on July 10, 2023.

**FISCAL IMPACT**

None

**ATTACHMENTS**

None

**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 09.4**

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To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer  
Tiffany Law, Chief Financial Officer

Subject: APPROVE ORANGE COUNTY POWER AUTHORITY’S POLICIES

Date: April 19, 2023

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**RECOMMENDED ACTION**

Approve the following Orange County Power Authority Policies:

- Policy Number 018: Investment Policy
- Policy Number 019: Reserve Policy
- Policy Number 020: Bad Debt and Delinquent Account Policy
- Policy Number 021: Rate Development Policy
- Policy Number 022: Member Access to Confidential Information Policy

**DISCUSSION**

**Investment Policy**

The primary objectives of the investment activities of OCPA are:

- 1) Compliance - To be in compliance with all Federal, State and local laws, as well as all OCPA policies and procedures.
- 2) Safety of Principal – Preservation of principal is the foremost objective of OCPA.
- 3) Liquidity – OCPA’s portfolio will remain sufficiently liquid to enable OCPA to meet its cash flow requirements.
- 4) Return on Investment – OCPA’s investment portfolio will be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, while considering the investment risk constraints and cash flow needs.

**Reserve Policy**

Expounds on the purposes of the reserves policy, target levels and goals, and how the reserves will be funded. Establishes conditions for use of the reserves, requirements for replenishment, recommends actions if reserve funds exceed the maximum level, renews process for the target goal, and reporting schedule.

**Bad Debt and Delinquent Account Policy**

Provides a framework for handling delinquent accounts and bad debt management.

**Rate Development Policy**

Establishes a transparent, fiscally responsible framework for the design, development, and implementation of OCPA rate structures. The policy aims to ensure that rate design is customer-

centric, and that rates are set to recover costs associated with power purchase, operational costs, and debt services. The policy reflects OCPA's commitment to designing and implementing rates that meet revenue requirements and maintain targeted reserves, while also ensuring rate competitiveness, stability, and long-term financial viability.

### **Member Access to Confidential Information Policy**

Orange County Power Authority (OCPA) has access to sensitive information that is generated by OCPA or becomes available to OCPA in connection with its operation of a community choice aggregation program that serves energy for the benefit of the electrical utility customers within the jurisdictional boundaries of each party to the OCPA Joint Powers Agreement (Member).

Some of this sensitive information is confidential information that is protected from disclosure under applicable law. Examples include, without limitation: (i) "Customer Information" that is protected under State law as reflected in OCPA's Policy Number 003 (Customer Information Confidentiality Policy); (ii) confidential information concerning employees of OCPA that is protected under State law; (iii) "market sensitive information" concerning energy markets that is contained in power procurement contracts, bids and negotiation documents; and (iv) proprietary information generated by OCPA concerning current and future electrical load profiles, energy and pricing forecasts and regulatory documents that are filed under seal. "Market sensitive information" includes information concerning the following: (i) price, (ii) quantity, (iii) credit terms and collateral, (iv) the location of energy generation resources that are being acquired, and (v) projections of energy procurement and use.

The protection of confidential information is vital to the operation of OCPA and the failure of OCPA to protect such information can result in legal and regulatory liability. The failure of OCPA to maintain the confidentiality of market sensitive information and other proprietary information generated by OCPA can further impair the ability of OCPA to procure energy in the market on the best terms available, undermining the key objective of OCPA to provide energy, and particularly renewable energy, to its customers at competitive rates.

The Board of Directors of OCPA has access to confidential information so that the Board can carry out its oversight of OCPA operations, although the form of access may be restricted to viewing such information through a secure portal. As a general rule, the policy of OCPA has been that the access to confidential information afforded to each Director as the appointed representative of a Member of OCPA is sufficient to protect the interests of the Members. With each extension of access beyond the Board, OCPA staff and necessary professional advisors, the risk of unauthorized disclosure, security breaches and legal liability to OCPA and its operations increases.

Members of OCPA have asked OCPA to expand access to confidential information in a safe and secure manner that allows the Members to evaluate various aspects of OCPA operations and the potential liability of Members with respect to those operations and, in order to accommodate such requests, OCPA, in coordination with its General Counsel, has determined that certain confidential information may be shared with Members pursuant to Government Code section 7921.505(c)(5), which provides that there is no waiver of confidentiality when an agency discloses otherwise

confidential information to another governmental agency when the recipient agency agrees to treat the disclosed material as confidential. The recipient agency must identify in writing the persons who are permitted to obtain the information and that it will only use the confidential information for purposes that are consistent with existing law.

Recently, each Member of OCPA has executed (or is in the process of reviewing and executing) a Non-Disclosure Agreement with OCPA that provides access to current market sensitive information. Proposed Policy Number 22 would formalize the process regarding future requests for access to confidential information of OCPA and provide as follows:

1. A Member will make a request in writing to the Chief Executive Officer of OCPA stating the confidential information that is requested under the Policy, the individuals who will have access to the confidential information and the purpose of the request;
2. The Member must enter into a Non-Disclosure Agreement with OCPA in a form reasonably acceptable to the General Counsel setting forth the obligations of the Member to protect confidential information of OCPA, and which will provide certain restrictions on access;
3. The type of confidential information requested must be information that has been approved for access to Members under Exhibit A to the Policy;
4. The scope and duration of any access to confidential information would be limited and reasonable so as not to place an undue administrative burden on OCPA or result in elevated risk of confidential information being misappropriated or disclosed. For example, requests would be for discrete periods of time and could not be made more than two (2) times per year unless the Board otherwise agrees to establish an archive of a certain class of confidential information for regular access; and
5. If the General Counsel or Chief Executive Office believes that there has been a change in law or circumstance that substantially alters the risk of providing confidential information pursuant to the Policy, then the Member request may be held for review by the Board at the next regularly scheduled general meeting.

The types of confidential information that may be shared with Members under the proposed Policy is:

1. Market sensitive information with respect to the purchase of energy, resource adequacy, renewable energy certificates and any other product required for regulatory purposes that is contained in unredacted long term power purchase agreements, enabling agreements (EEI and WSPP), transaction confirmations and other energy purchase agreements and contracts of a similar nature.
2. Market sensitive information contained in documents that are directly related to the performance of power purchase agreements and contracts referred to in item 1 above such as invoices, lockbox payment history and letters of credit.

3. Market sensitive information that is contained in regulatory filings of the Authority that are filed under seal.

## **FISCAL IMPACT**

The approval of these policies will not result in any fiscal impact. Following the approval of the reserve policy, OCPA will incorporate a minimum reserve balance equivalent to 30% of the total operating budget expenditures into future annual budgets and projections, commencing in the fiscal year 2024/25.

## **ATTACHMENTS**

1. Policy Number 018: Investment Policy
2. Policy Number 019: Reserve Policy
3. Policy Number 020: Bad Debt and Delinquent Account Policy
4. Policy Number 021: Rate Development Policy
5. Policy Number 022: Member Access to Confidential Information Policy

## **Orange County Power Authority Policy Number 018: Investment Policy**

### **Purpose**

Orange County Power Authority (“OCPA”) shall invest public funds in such a manner as to comply with state and local laws; ensure prudent money management; provide for daily cash flow requirements; and meet the objectives of the Policy, in priority order of safety, liquidity and return on investment.

### **Standard of Care**

The standard of prudence to be used by investment officials will be the “prudent investor” standard, which states that, “when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency.”

### **Scope**

This Investment Policy applies to all funds and investment activities and financial assets of OCPA. This Policy does not apply to the investment of bond proceeds, which would be governed by any applicable bond documents.

### **Objectives**

The primary objectives, in priority order, of the investment activities of OCPA are:

#### With respect to all investments:

1. To be in compliance with all Federal, State and local laws as well as all OCPA policies and procedures.
2. All investments of OCPA shall be undertaken in a manner which seeks the preservation of principal.
3. To remain sufficiently liquid to enable OCPA to meet all operating requirements which might be reasonably anticipated.
4. To maximize return consistent with risk limitations identified herein and prudent investment principles.

#### With respect to short-term cash management objectives:

1. To accelerate receipt of all funds due to OCPA.
2. To accurately monitor and forecast expenditures and revenues, thus enabling OCPA to invest funds to the fullest extent possible.
3. The investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow needs.

### **Delegation of Authority**

Pursuant to Section 53607, the Board hereby delegates responsibility to manage investment funds to the Treasurer of OCPA. The Treasurer of OCPA is the Chief Financial Officer and all powers or authority granted to the Chief Financial Officer in this Policy are exercised in the capacity of the Treasurer. The Treasurer has authority to appoint Deputy Treasurer(s), as Treasurer deems necessary for prompt and genuine discharge of duties, pursuant to Section 53607.

OCPA may engage the services from one or more external investment advisers, who are registered under the Investment Advisers Act of 1940, to assist in the management of OCPA's investment portfolio in a manner consistent with the OCPA's objectives. External investment advisers may be granted discretion to purchase and sell investment securities in accordance with this Investment Policy.

### **Ethics and Conflict of Interest**

The authorized employees involved in the investment process will refrain from personal business activities that could conflict with proper execution of the investment program, or which could impair their ability to make impartial decisions.

Pursuant to OCPA's Conflict of Interest Code, the authorized employees will disclose any financial interests and investment holdings that could affect the performance of OCPA's portfolio or the individual's judgement or decisions regarding OCPA's portfolio.

### **Authorized Financial Dealers and Institution**

The Chief Financial Officer will maintain a list of approved financial institutions authorized to provide investment services to OCPA. These may include "primary" dealers or regional dealers that qualify under Securities & Exchange Commission Rule 15C3-1 (uniform net capital rule). A determination should be made to ensure that all approved broker/dealer firms, and individuals covering OCPA, are reputable and trustworthy. In addition, the broker/dealer firms should have the ability to meet all of their financial obligations in dealing with OCPA. The firms, and individuals covering OCPA, should be knowledgeable and experienced in Public Agency investing and the investment products involved. No public deposit shall be made except in a qualified public depository as established by the established state laws. All financial institutions and broker/dealers who desire to conduct investment transactions with OCPA must supply the Chief Financial Officer with the following: audited financial statements, proof of registration with the Financial Industry Regulatory Authority, trading resolution, proof of State of California registration, completed broker/dealer questionnaire, certification of having read the OCPA's investment policy and depository contracts.

An annual review of the financial condition and registrations of qualified bidders will be conducted by the Chief Financial Officer. A current audited financial statement is required to be on file for each financial institution and broker/dealer in which OCPA invests.

If OCPA utilizes an investment advisor, the investment advisor may use its own list of authorized broker/dealers to conduct transactions on behalf of OCPA.

### **Authorized Investments**

OCPA is authorized by California Government Code Section 53600 et seq. to invest in the types of securities listed below. A security purchased in accordance with this section shall not have a forward settlement date exceeding 45 days from the time of investment.

Where this section specifies a percentage limitation for a particular security type, that percentage is applicable only on the date of purchase. Credit criteria listed in this section refer to the credit rating at the time the security is purchased. If an investment's credit rating falls below the minimum rating required at the time of purchase, the Chief Financial Officer will perform a timely review and decide whether to sell or hold the investment.

### **U.S. Treasury Obligations**

United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

### **U.S. Agency Obligations**

Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.

### **Municipal Obligations**

Registered state warrants or treasury notes or bonds of California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of California.

Registered treasury notes or bonds of any of the other 49 states in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any of the other 49 states, in addition to California.

Bonds, notes, warrants or other evidence of indebtedness of a local agency within California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

Bonds issued by OCPA, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by OCPA or by a department, board, agency, or authority of OCPA.

OCPA is prohibited from investing in any debt issued by member agencies of OCPA who are parties to the OCPA Joint Powers Agreement.

### **Deposits at Bank(s)**

FDIC insured or fully collateralized demand deposit accounts, savings accounts, market rate accounts, time certificates of deposits ("TCDs") and other types of bank deposits in financial institutions located in California. The amount on deposit in any financial institution shall not



exceed the shareholder's equity. To be eligible to receive OCPA's deposits, the financial institution must have received a minimum overall satisfactory rating, under the Community Redevelopment Act, for meeting the credit needs of California Communities in its most recent evaluation. Bank deposits are required to be collateralized as specified under Government Code Section 53630 et seq. The Chief Financial Officer, at his/her discretion, may waive the collateralization requirements for any portion that is covered by federal deposit insurance. OCPA shall have a signed agreement with any depository accepting OCPA's funds per Government Code Section 53649. The maturity of TCDs may not exceed 5 years in maturity. There is no limit on the percentage of the portfolio that may be invested in bank deposits. However, a maximum of 50 percent of the portfolio may be invested in TCDs. Banks eligible to receive deposits will be federally or state chartered and will conform to Government Code 53635.2.

#### Placement Service Deposits

Bank deposits placed with a private sector entity that assists in the placement of deposits with eligible financial institutions located in the United States. The full amount of the principal and the interest that may be accrued during the maximum term of each deposit shall at all times be insured by federal deposit insurance. Placement Deposits shall meet all of the requirements of Government Code Section 53601.8. Purchases of placement service deposits may not exceed 50% of OCPA's investment portfolio.

#### Local Agency Investment Fund (LAIF)

Funds may be invested in the Local Agency Investment Fund ("LAIF"). The LAIF was established by the California State Treasurer for the benefit of local agencies.

#### Commercial Paper

Commercial paper of "prime" quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical rating organization ("NRSRO"). The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or (2):

- (1) The entity meets the following criteria: (A) Is organized and operating in the United States as a general corporation. (B) Has total assets in excess of five hundred million dollars (\$500,000,000). (C) Has debt other than commercial paper, if any, that is rated in a rating category of "A" or its equivalent or higher by an NRSRO.
- (2) The entity meets the following criteria: (A) Is organized within the United States as a special purpose corporation, trust, or limited liability company. (B) Has program wide credit enhancements including, but not limited to, overcollateralization, letters of credit, or a surety bond. (C) Has commercial paper that is rated "A-1" or higher, or the equivalent, by an NRSRO.

Eligible commercial paper shall have a maximum maturity of 270 days or less. Purchases of eligible commercial paper shall not exceed 40% of OCPA's funds.

### Medium Term Notes

Defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated in a rating category of “A” or better by an NRSRO. Purchases of medium-term notes shall not exceed 30% of OCPA’s funds.

### Negotiable Certificates of Deposits

Negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the California State Code), a state or federal credit union, or by a federally licensed or state-licensed branch of a foreign bank. Purchases of negotiable certificates of deposits shall not exceed 30% of the OCPA’s funds.

### Mortgage Pass-Through and Asset-Backed Securities

A mortgage pass-through security, collateralized mortgage obligation, mortgaged backed or other pay-through bond, equipment lease-backed certificate, consumer receivable pass-through certificate or consumer receivable backed bond. Securities eligible for investment under this subdivision shall be rated in a rating category of “AA” or its equivalent or better by an NRSRO and have a maximum remaining maturity of five years or less. Purchase of securities authorized by this subdivision shall not exceed 20% of OCPA’s funds.

### Supranational Obligations

United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development, International Finance Corporation, or Inter-American Development Bank, with a maximum remaining maturity of five years or less, and eligible for purchase and sale within the United States. Investments under this subdivision shall be rated in a rating category of “AA” or better by an NRSRO and shall not exceed 30% of OCPA’s funds.

### Joint Power Authority Pool

Shares of beneficial interest issued by a joint powers authority organized pursuant to Section 6509.7 that invests in the securities and obligations authorized in subdivisions (a) to (r), inclusive, of Government Code 53601. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint powers authority. To be eligible under this section, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:

- (1) The adviser is registered or exempt from registration with the Securities and Exchange Commission.
- (2) The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (q), inclusive, of Government Code 53601.
- (3) The adviser has assets under management in excess of five hundred million dollars (\$500,000,000).

### **Money Market Funds**

Shares of beneficial interest issued by diversified management companies that are Money Market Funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940. These funds must either have attained the highest rating/ranking by at least two NRSROs or have retained an investment advisor registered with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars (\$500,000,000).

Investments in this category will not exceed 20% of OCPA's funds and no more than 10% may be invested in any one money market fund.

### **Hedging Program**

Staff may examine and recommend to the Board an investment strategy that is consistent with this policy, and which will hedge against revenue loss due to high PCIA or increased prices of natural gas commodity.

### **Reporting Requirements**

The Chief Financial Officer will provide a year-to-date investment summary to the Board of Directors on a monthly basis. The summary will show the type of investment, the average balance of funds invested, and average annual percentage yield.

### **Investment Pools/Mutual Funds**

A thorough investigation of the pool/fund is required prior to investing, and on a regular basis. Best efforts will be made to acquire the following information:

1. A description of eligible investment securities, and a written statement of investment policy and objectives.
2. A description of interest calculations and how it is distributed, and how gains and losses are treated.
3. A description of how the securities are safeguarded (including the settlement processes), and how often the securities are priced and the program audited.
4. A description of who may invest in the program, how often, what size deposit and withdrawal are allowed.
5. A schedule for receiving statements and portfolio listings.
6. Are reserves, retained earnings, etc. utilized by the pool/fund?
7. A fee schedule, and when and how is it assessed.
8. Is the pool/fund eligible for bond proceeds and/or will it accept such proceeds?

### **Collateralization**

Collateralization will be required on certificates of deposit. In order to anticipate market changes and provide a level of security for all funds, the collateralization level will be 110% of market value for certificates of deposit.

Collateral will always be held by an independent third party with whom OCPA has a current custodial agreement. A clearly marked evidence of ownership (safekeeping receipt) must be supplied to the entity and retained. The right of collateral substitution is granted.

**Maturity Limit**

Investments will generally not exceed a term of five years unless a shorter maturity is designated herein. To the extent possible, OCPA will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, OCPA will not directly invest in securities maturing more than 5 years from the date of purchase (to the extent permitted under the Government Code) unless the Board of Directors has provided approval at least three months prior to the investment. For purposes of compliance with this section, an investment's term or remaining maturity shall be measured from the settlement date to final maturity. Reserve funds may be invested in securities exceeding 5 years if the maturity of such investments is made to coincide as nearly as practicable with the expected use of the funds.

**Internal Control**

The Chief Financial Officer is responsible for establishing and maintaining an internal control structure designed to provide reasonable assurance that the assets of OCPA are protected from loss, theft, or misuse.

The Chief Financial Officer or his/her designee shall arrange for an annual audit by an external CPA firm in compliance with the requirements of state law and generally accepted accounting principles as pronounced by the Governmental Accounting Standards Board. As part of the audit, investment transactions will be tested. The annual audit will be an integral part, but not the sole part of management's program of monitoring internal controls.

**Safekeeping and Custody**

All security transactions, entered into by OCPA shall be conducted on a delivery-versus-payment basis. Securities will be held by a third-party custodian and evidenced by safekeeping receipts.

**Performance Standards**

OCA's portfolio shall be structured to achieve a market-average rate of return through various economic cycles, commensurate with the investment risk constraints and the cash flow needs. Investment performance will be calculated on a gross basis before fees and expenses and tracked monthly for internal use and monitoring.

**Policy Review**

The Investment Policy will be reviewed annually. Any changes to the Investment Policy will be submitted to the Board of Directors for approval.

## **Orange County Power Authority Policy Number 019: Reserve Policy**

### **Purpose**

OCPA will prudently manage its operations in a manner that supports its long-term financial independence and stability while providing sufficient financial capacity to meet short term obligations.

Adequate reserves will enable OCPA to satisfy working capital requirements, procure energy at competitive rates, adhere to loan covenants, obtain and maintain an investment grade credit rating, cover unanticipated expenditures, and support rate stability.

Reserves are defined as the Net Position plus funds held in the Rates Stabilization Fund. The Net Position represents the difference between OCPA's assets and liabilities as defined by the Government Accounting Standards Board and consistent with Generally Accepted Accounting Principles.

The Reserve Policy outlines the appropriate types and target levels (minimum and maximum) of unrestricted/undesignated reserves as prescribed in the following policy.

The four most important purposes of a reserve policy are to:

1. **Plan for contingencies.** OCPA will maintain sufficient reserves to minimize rate increases due to market volatility (power supply shocks or maintain rate competitiveness), weather impacts on demands, economic downturns, emergencies (such as natural disasters), and regulatory changes.
2. **Maintain good standing with rating agencies.** OCPA will maintain sufficient reserves to obtain, maintain, or improve credit ratings.
3. **Avoid interest expense.** Having sufficient reserves avoids interest expense to cover short-term cash shortfalls using reserves instead of debt.
4. **Ensure cash availability when revenue is unavailable.** Reserves can be used to bridge times of the year that normally see temporary low levels of cash. Maintaining adequate reserves can balance intra-period differences in cash availability.

### **Policy**

#### **Reserve Target Levels**

Starting FY2024/25, OCPA shall maintain a minimum reserve balance equal to 30% of total operating budget expenditures, with a goal of increasing the reserve to 50% of total operating budget expenditures. The maximum reserve is 75% of total operating budget expenditures.

#### **Funding the Target Amount**

Funding reserves will generally come from excess revenues over expenditures or one-time revenues.

#### **Conditions for Use of Reserves**

OCPA will strive to avoid the appropriation of reserve balance for recurring operating expenditures.

The reserve balance may be used to:

1. Provide revenues to make up for unanticipated revenue shortfall of spikes in power supply expenses.
2. Provide temporary resources in the event of an economic downturn while expenditure reductions and/or rate adjustments are implemented.
3. Provide resources to meet emergency expenditures.

### **Excess Reserves**

If reserve funds exceed the maximum level, OCPA will consider enhancing program expenditures, capital improvements, paying down existing debt, offsetting other long-term liabilities, and reducing rates.

### **Reserves between Minimum and Maximum**

No other action by OCPA will be required if reserves are between the minimum and maximum levels.

### **Periodic Review of Targets**

If the risk factors behind the target are eliminated or new risk factors emerge as a result of changes in the industry, legislation, or economic conditions, the basis of the reserve will be reviewed, and the funding level may be adjusted accordingly.

### **Reporting**

Reserve levels will be monitored during the fiscal year and reported in the annual budget review reports. The reserve target levels will be analyzed annually, and over/under reserve determination shall be made in conjunction with year-end financial results. These results will be reported to the Boards as part of the year-end financial report presentation.

**Orange County Power Authority**  
**Policy Number 020: Bad Debt and Delinquent Account Policy**

**Purpose**

The object of this policy is to provide guidelines for the determination of delinquent accounts.

**Background**

Southern California Edison (“SCE”) issues bills to OCPA customers., and accounts become “past due” 20-22 days after the bill is issued. SCE’s collection process varies between residential and commercial customers, with specific letters and notices sent to encourage payment:

For Residential Customers

- 1<sup>st</sup> bill after the account is past due, the bill will have a “PAST DUE” watermark.
- 2<sup>nd</sup> bill after the account continues to be past due, the bill will have a “DISCONNECT” watermark.
- A 10-day Final Call Notice will be sent, and the account will become eligible for disconnection.

For Commercial Customers

- A 15-day Commercial Overdue letter will be sent when accounts become “past due”.
- A 10-day Final Call Notice will be sent if the total amount due is greater than \$800 and there are more than \$400 due in disconnect-able charges, and the account becomes eligible for disconnection.

**Policy**

Accounts with outstanding balances of 160 days or more, identified in the monthly accounts receivable aging report provided by SCE, are eligible to be returned to SCE. Closed accounts may be written off.

These guidelines ensure that OCPA's accounts are managed effectively and that appropriate measures are taken to manage delinquent accounts.

## **Orange County Power Authority Policy Number 021: Rate Development Policy**

### **Purpose**

This policy provides the framework for Orange County Power Authority's ("OCPA") Board of Directors and staff to ensure OCPA's rate design, development and implementation process remains transparent, fiscally responsible and centered on the customer.

As a public agency, OCPA must, at minimum, set rates to recover costs associated with the purchase of power, operational costs, meeting financial metrics, and debt services. It is in the best interest of OCPA and its customers to design and implement rates that meet revenue requirements as well as targeted reserves, while maintaining rate competitiveness, stability, and long-term financial viability.

### **Background**

OCPA customers receive electric delivery service under a wide variety of Southern California Edison's ("SCE") rate schedules that include Residential (D), Commercial and Industrial (GS), Agricultural and Pumping (PA), and Street Lighting and Traffic Control (LS and TC). In Spring 2022, OCPA commenced its commercial customer enrollment, serving GS, PA, LS and TC classes. Residential customers were enrolled in Fall 2022. Because of the timing differences in enrollments, OCPA's residential customers are assigned the 2022 vintage for the purpose of calculating SCE Power Charge Indifference Adjustment ("PCIA") charges and other surcharges, while non-residential customers are assigned to the 2021 vintage.<sup>1</sup>

OCPA advocates for ratepayers by providing a choice of electricity providers and shifting control of local energy supply decisions from profit-driven, incumbent utility into the hands of residents and businesses located in our service jurisdiction. This creates competition in rates that benefits customers, increases transparency, and ensures a better overall customer experience.

### **OCPA Primary Rate Setting Objectives**

OCPA has set goals and priorities that shall be taken into account during the rate design process:

1. Local Control  
Board discretion on rate-setting.
2. Cost Recovery  
Rates are adequate to cover all expenses, debt services, and other financial obligations.
3. Stability  
Rates shall enable the creation of a prudent rate stabilization reserve fund to mitigate significant swings in rates, cover unforeseen expenses, negotiate favorable terms with power suppliers, obtain and maintain an investment-grade credit rating, and achieve strategic goals.

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<sup>1</sup> Vintages assigned to customers in future mass enrollments, if any, may be different based on the timing of the enrollment.



4. Competitive

Rates shall allow OCPA to effectively retain and attract customers by offering superior electricity services with higher renewable content than the incumbent investor-owned utility.

5. Equity

Variations in rates among customers are based on justifiable differences in their usage characteristics and/or cost of service.

**OCA Rate Setting Timeline**

Typically, SCE updates its annual Energy Resource Recovery Account ("ERRA") forecast for electric generation rates and PCIA changes, which becomes effective in January and is usually approved by the California Public Utilities Commission ("CPUC") in December.

Following the approval of the ERRA, staff will present a proposed Rate Design for the year to the Board for review and approval. With frequent power market changes and evolving regulatory policies, SCE changes their rates multiple times a year, which may require staff to propose intra-year rate changes to the Board for review and approval.

Upon the Board's approval of the annual OCA Rate Design, staff will make necessary adjustments to OCA rates as soon as practicable and as necessary during the year to maintain the approved OCA Rate Design for all customers. Staff will place a report on the agenda detailing the adjustment and request ratification of the adjusted OCA rates at the next regular board meeting.

The approved OCA rates will be published on the OCA website prior to their effective date, allowing customers to compare, plan, and gain a better understanding of their upcoming bills.

**Joint Rate Comparison**

As per the regulatory requirements, SCE and OCA must collaborate to publish and post a Joint Rate Comparison on their respective websites for each rate change. This will enable customers to easily compare the rates and assess any potential changes in their bills.

**Future Cost-Based Rate Design**

OCA may evaluate the viability of transitioning to a Cost-Based (Cost-of-Service) rate design, rather than a rate design directly tied to SCE rates, after it has established sufficient reserves in accordance with the OCA Reserves Policy. The Cost-Based rate design is the prevailing method utilized by most utilities to calculate their retail rates and provides enhanced rate stability to customers.

**Orange County Power Authority**  
**Policy Number 022: Policy on Member Access to Confidential Information**

**Background and Purpose**

Orange County Power Authority (OCPA) has access to sensitive information that is generated by OCPA or becomes available to OCPA in connection with its operation of a community choice aggregation program that serves energy for the benefit of the electrical utility customers within the jurisdictional boundaries of each party to the OCPA Joint Powers Agreement (Member).

Some of this sensitive information is confidential information that is protected from disclosure under applicable law. Examples include, without limitation: (i) “Customer Information” that is protected under State law as reflected in OCPA’s Policy Number 003 (Customer Information Confidentiality Policy); (ii) confidential information concerning employees of OCPA that is protected under State law; (iii) “market sensitive information” concerning energy markets that is contained in power procurement contracts, bids and negotiation documents; and (iv) proprietary information generated by OCPA concerning current and future electrical load profiles, energy and pricing forecasts and regulatory documents that are filed under seal. “Market sensitive information” includes information concerning the following: (i) price, (ii) quantity, (iii) credit terms and collateral, (iv) the location of energy generation resources that are being acquired, and (v) projections of energy procurement and use.

For the purposes of this Policy, information that is referred to herein as “confidential” is information that would be protected from disclosure pursuant to an exemption under the California Public Records Act (Cal. Gov. Code § 7920.000, *et seq.*) or other applicable law.

The protection of confidential information is vital to the operation of OCPA and the failure of OCPA to protect such information can result in legal and regulatory liability. The failure of OCPA to maintain the confidentiality of market sensitive information and other proprietary information generated by OCPA can further impair the ability of OCPA to procure energy in the market on the best terms available, undermining the key objective of OCPA to provide energy, and particularly renewable energy, to its customers at competitive rates.

The Board of Directors of OCPA has access to confidential information so that the Board can carry out its oversight of OCPA operations, although the form of access may be restricted to viewing such information through a secure portal. As a general rule, the policy of OCPA has been that the access to confidential information afforded to each Director as the appointed representative of a Member of OCPA is sufficient to protect the interests of the Members. With each extension of access beyond the Board, OCPA staff and necessary professional advisors, the risk of unauthorized disclosure, security breaches and legal liability to OCPA and its operations increases.

Members of OCPA have asked OCPA to expand access to confidential information in a safe and secure manner that allows the Members to evaluate various aspects of OCPA operations and the potential liability of Members with respect to those operations and, in order to accommodate such requests, OCPA, in coordination with its General Counsel, has determined that certain confidential information may be shared with Members pursuant to Government Code section 7921.505(c)(5), which provides that there is no waiver of confidentiality when an agency discloses otherwise confidential information to another governmental agency when the recipient agency agrees to treat

the disclosed material as confidential. The recipient agency must identify in writing the persons who are permitted to obtain the information and that it will only use the confidential information for purposes that are consistent with existing law.

### **Policy**

The policy of OCPA going forward with respect to providing access to Members to confidential information will be as follows:

1. A Member will make a request in writing to the Chief Executive Officer of OCPA setting forth the confidential information that is requested under this Policy, the individuals who will have access to the confidential information and the purpose of the request;
2. The Member must enter into a Non-Disclosure Agreement with OCPA in a form reasonably acceptable to the General Counsel setting forth the obligations of the Member to protect confidential information of OCPA. Such Agreement will restrict full access to confidential information to individuals (employees or professional advisors) who are reasonably necessary for carrying out the intended evaluation of the information, with limited access via secure portal provided to individuals in a supervisory or oversight capacity;
3. The type of confidential information requested must be information that has been approved for access to Members by the Board of OCPA as set forth in Exhibit A to this Policy;
4. The scope and duration of any access to confidential information must be limited and reasonable so as not to place an undue administrative burden on OCPA or result in elevated risk of confidential information being subject to physical or digital misappropriation and unauthorized disclosure. For example, requests will be for discrete periods of time and will not be made more than two (2) times per year unless the Board otherwise agrees to establish an archive of a certain class of confidential information for regular access; and
5. To the extent that the General Counsel or Chief Executive Office of OCPA believes that there has been a change in law or circumstance that substantially alters the risk of providing confidential information pursuant to this Policy, then the Member request may be held for review by the Board at the next regularly scheduled general meeting.

EXHIBIT A  
TO POLICY NUMBER 22

Confidential Information that may be shared with Members:

1. Market sensitive information with respect to the purchase of energy, resource adequacy, renewable energy certificates and any other product required for regulatory purposes that is contained in unredacted long term power purchase agreements, enabling agreements (EEI and WSPP), transaction confirmations and other energy purchase agreements and contracts of a similar nature.
2. Market sensitive information contained in documents that are directly related to the performance of power purchase agreements and contracts referred to in item 1 above such as invoices, lockbox payment history and letters of credit.
3. Market sensitive information that is contained in regulatory filings of the Authority that are filed under seal.

**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 9.5**

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To: Orange County Power Authority Board of Directors

From: Steven Halligan, Management Analyst

Subject: APPROVE AMENDMENT NO. 1 WITH ORANGE COUNTY  
PRINTING COMPANY FOR PRINTING AND MAILING SERVICES

Date: April 19, 2023

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**RECOMMENDED ACTION**

Approve Amendment No. 1 with Orange County Printing Company for printing and mailing services.

**BACKGROUND**

In 2022, Orange County Power Authority (OCPA) released a Request for Proposals (RFP) for Printing and Mailing Services for multiple required mailings including Net Energy Metering (NEM) enrollments, Joint Rate Comparison mailers, Pre and Post Enrollment Notices, Courtesy Letters, and others. In June 2022, OCPA Board of Directors approved a one-year agreement with Orange County Printing Company (OCPC), an RRD Company. The approved contract expires June 30, 2023. The RFP allowed for up to a two-year extension to the contract.

**ANALYSIS AND DISCUSSION**

OCPA is seeking an amendment to extend the contract for one additional year. The not-to-exceed amount in the current contract is \$657,201.60. OCPA estimates that \$540,414 will be spent against this contract by June 30, 2023. This leaves approximately \$116,787.59 remaining in the existing contract. The lower-than-expected costs are due to lower costs of postage due to highly concentrated mailing locations and a lower number of mailings needed.

It is estimated that the remaining \$116,787.59 will cover Fiscal Year 2023/24 mailings which includes additional NEM phases, ongoing Post-Enrollment Notices, and the Power Content Label mailings.

Staff have reviewed the performance of Orange County Printing Company and have been satisfied with their performance under the contract. Staff believes an extension, which was contemplated under the initial RFP, is in the best interest of OCPA

**FISCAL IMPACT**

The amount needed for FY23/24 will be included in the proposed FY 23/24 budget. The contract has a not-to-exceed amount of \$657,201.60.

**ATTACHMENTS**

**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 9.5**

Attachment A – Amendment No. 1 with Orange County Printing Company, an RRD  
Company

**FIRST AMENDMENT TO GOODS AND SERVICES AGREEMENT BETWEEN  
ORANGE COUNTY POWER AUTHORITY AND ORANGE COUNTY PRINTING  
COMPANY, AN RRD COMPANY**

THIS FIRST AMENDMENT (“**First Amendment**”) is entered into effective as of June 30, 2023 (“**Amendment Effective Date**”), by and between the ORANGE COUNTY POWER AUTHORITY, a California joint powers authority (“**Authority**”) and ORANGE COUNTY PRINTING COMPANY, AN RRD COMPANY (“**Consultant**”). Authority and Consultant are sometimes individually referred to herein as the “**Party**” and collectively as the “**Parties**.”

**RECITALS**

A. The Parties entered into a Goods and Services Agreement between Orange County Power Authority and Orange County Printing Company, an RRD Company dated June 30, 2022 (“**Agreement**”).

B. Pursuant to the Agreement, Consultant provides printing and mailing services to Authority.

C. The Parties desire to execute this First Amendment to extend the effective date.

**AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the Parties agree to the following terms and conditions:

1. Amendment 1 to the Agreement. The Parties hereby agree to amend the Agreement as follows:
  - a. Section 1.2. Section 1.2 of the Agreement is amended to extend the term of the agreement from June 30, 2023 to June 30, 2024 with an option to extend the term for one additional year.
2. Capitalized Terms. Any capitalized terms not defined herein shall have the meanings set forth in the Agreement.
3. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.
4. Full Force. Except as expressly set forth herein, the Agreement shall remain unmodified and in full force and effect.

**IN WITNESS WHEREOF**, the Parties have executed this First Amendment to the Good and Services Agreement between Orange County Power Authority and Orange County Printing Company, an RRD Company as of the date first set forth above.

**ORANGE COUNTY POWER  
AUTHORITY**

**ORANGE COUNTY PRINTING  
COMPANY, AN RRD COMPANY**

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

General Counsel



**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 10.1**

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To: Orange County Power Authority Board of Directors

From: Joe Mosca, Director of Communications & External Affairs

Subject: DEVELOPMENT OF ANNUAL BOARD OF DIRECTORS GOAL SETTING WORKSHOP

Date: April 19, 2023

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**RECOMMENDATION**

Discuss and provide direction on the development of an Annual Orange County Power Authority Board of Directors Goal Setting Workshop.

**BACKGROUND**

The Orange County Power Authority (OCPA) Board has previously discussed an interest in holding an Annual OCPA Board of Directors Goal Setting Workshop for the purpose of developing annual goals and objectives for OCPA. OCPA staff supports the development of an annual goal-setting workshop and believes it would benefit the agency.

If the Board is supportive of developing an annual workshop, then OCPA staff recommends that the Board either create an ad hoc committee or identify a Board Member to work with OCPA staff to:

1. Retain the services of a professional goal-setting facilitator
2. Set the agenda and goals for the workshop

For planning purposes and subject to location and facilitator availability, Staff recommends that the Board select two of the following dates:

Wednesday, May 31, 2023  
Friday, June 2, 2023  
Wednesday, June 14, 2023  
Friday, June 16, 2023

**FISCAL IMPACT**

None

**ATTACHMENT**

None

**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 10.2**

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To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer  
Tiffany Law, Chief Financial Officer

Subject: RATIFY RATES EFFECTIVE APRIL 1, 2023

Date: April 19, 2023

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**RECOMMENDED ACTION**

Ratify rates effective April 1, 2023.

**BACKGROUND**

OCPA rate design is closely linked to SCE's generation rates and the Power Charge Indifference Adjustments (PCIA). On December 13, 2022, the Board approved the OCPA 2023 rate design, which includes Basic Choice rates set at a 2% discount to Southern California Edison's (SCE) equivalent generation rates, Smart Choice rates set at 1.0 cent per kWh greater than Basic Choice rates, and 100% Renewable Choice rates set at 1.5 cents per kWh greater than Basic Choice rates.

Staff has updated the OCPA 2023 rates in accordance with the final 2023 rates tariff published by SCE on January 1, 2023. The Board ratified these rates on January 17, and they became effective January 9, 2023.

It is worth noting that historically, SCE has adjusted their generation rates 5-6 times a year. Following its January 2023 rates change, SCE filed a rates change request with the CPUC to be effective from March 2023, due to an update in their cost of capital resulting in a reduction in delivery and generation revenue requirements. This change has reduced SCE's generation rates by approximately 0.1% and PCIA rates by approximately 1% respectively. The net financial impact on OCPA revenue is minimal, with an increase of approximately \$5k for FY2022/23.

**ANALYSIS AND DISCUSSION**

SCE published its updated final rates on March 1, 2023. Due to our billing system requirements, OCPA's rates became effective April 1, 2023.

The approved 2023 OCPA rate schedules have been published on OCPA's website. The rates will be communicated on customer bills and published in the Joint Rate Comparison mailer to be sent to all customers in May 2023.

**FISCAL IMPACT**

The Board's ratification of the OCPA rates will not have any fiscal impact.

**ATTACHMENTS**

OCA Rate Schedules Effective April 1, 2023 – Residential and Commercial Customers

COMMERCIAL CUSTOMERS					
OCPA Rate Schedule	Period	Basic Choice	Smart Choice	100% Renewable Choice	Time Period Definitions
TOU-GS-1-D					
Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.15010	\$ 0.16010	\$ 0.16510	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.13599	\$ 0.14599	\$ 0.15099	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.09076	\$ 0.10076	\$ 0.10576	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.14159	\$ 0.15159	\$ 0.15659	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.10135	\$ 0.11135	\$ 0.11635	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.07701	\$ 0.08701	\$ 0.09201	8am - 4pm, every day
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 2-50kv (\$/kWh)	\$ (0.00058)	\$ (0.00058)	\$ (0.00058)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 51-219kv (\$/kWh)	\$ (0.00114)	\$ (0.00114)	\$ (0.00114)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kv (\$/kWh)	\$ (0.00117)	\$ (0.00117)	\$ (0.00117)	All electric usage
DEMAND CHARGE (\$/KW)					
	SUMMER ON-PEAK	\$ 20.49	\$ 20.49	\$ 20.49	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 6.29	\$ 6.29	\$ 6.29	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER ON-PEAK AND WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 2-50kv (\$/kW)	\$ (0.19)	\$ (0.19)	\$ (0.19)	4pm - 9pm, Monday - Friday
	SUMMER ON-PEAK AND WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 51-219kv (\$/kW)	\$ (0.46)	\$ (0.46)	\$ (0.46)	4pm - 9pm, Monday - Friday
	SUMMER ON-PEAK AND WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 220kv (\$/kW)	\$ (0.46)	\$ (0.46)	\$ (0.46)	4pm - 9pm, Monday - Friday
TOU-GS-1-E					
Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.54699	\$ 0.55699	\$ 0.56199	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.14908	\$ 0.15908	\$ 0.16408	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.10791	\$ 0.11791	\$ 0.12291	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.22381	\$ 0.23381	\$ 0.23881	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.12642	\$ 0.13642	\$ 0.14142	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.06860	\$ 0.07860	\$ 0.08360	8am - 4pm, every day
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 2-50kv (\$/kWh)	\$ (0.00164)	\$ (0.00164)	\$ (0.00164)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 51-219kv (\$/kWh)	\$ (0.00357)	\$ (0.00357)	\$ (0.00357)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kv (\$/kWh)	\$ (0.00361)	\$ (0.00361)	\$ (0.00361)	All electric usage
TOU-GS-1-ES					
Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.59051	\$ 0.60051	\$ 0.60551	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.16084	\$ 0.17084	\$ 0.17584	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.11622	\$ 0.12622	\$ 0.13122	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.20923	\$ 0.21923	\$ 0.22423	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.11844	\$ 0.12844	\$ 0.13344	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.06428	\$ 0.07428	\$ 0.07928	8am - 4pm, every day
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 2-50kv (\$/kWh)	\$ (0.00164)	\$ (0.00164)	\$ (0.00164)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 51-219kv (\$/kWh)	\$ (0.00357)	\$ (0.00357)	\$ (0.00357)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kv (\$/kWh)	\$ (0.00361)	\$ (0.00361)	\$ (0.00361)	All electric usage
TOU-GS-1-A					
Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.19929	\$ 0.20929	\$ 0.21429	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.18670	\$ 0.19670	\$ 0.20170	8am - 12pm & 6pm - 11pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.17983	\$ 0.18983	\$ 0.19483	All other hours
	WINTER MID-PEAK	\$ 0.13385	\$ 0.14385	\$ 0.14885	8am - 9pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.12093	\$ 0.13093	\$ 0.13593	All other hours
TOU-GS-1-B					
Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.11082	\$ 0.12082	\$ 0.12582	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.10395	\$ 0.11395	\$ 0.11895	8am - 12pm & 6pm - 11pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.10020	\$ 0.11020	\$ 0.11520	All other hours
	WINTER MID-PEAK	\$ 0.13385	\$ 0.14385	\$ 0.14885	8am - 9pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.12093	\$ 0.13093	\$ 0.13593	All other hours
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 15.04	\$ 15.04	\$ 15.04	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 4.89	\$ 4.89	\$ 4.89	8am - 12pm & 6pm - 11pm, Monday - Friday

## COMMERCIAL CUSTOMERS

OCPA Rate Schedule	Period	Basic Choice	Smart Choice	100% Renewable Choice	Time Period Definitions
TOU-GS-2-D					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.14485	\$ 0.15485	\$ 0.15985	Summer - June through September; Winter - October through May 4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.13250	\$ 0.14250	\$ 0.14750	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.08679	\$ 0.09679	\$ 0.10179	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.09938	\$ 0.10938	\$ 0.11438	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.09995	\$ 0.10995	\$ 0.11495	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.05483	\$ 0.06483	\$ 0.06983	8am - 4pm, every day
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 2-50kv (\$/kWh)	\$ (0.00117)	\$ (0.00117)	\$ (0.00117)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 51-219kv (\$/kWh)	\$ (0.00254)	\$ (0.00254)	\$ (0.00254)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kv (\$/kWh)	\$ (0.00256)	\$ (0.00256)	\$ (0.00256)	All electric usage
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 25.97	\$ 25.97	\$ 25.97	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 6.82	\$ 6.82	\$ 6.82	4pm - 9pm, every day
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 2-50kv (\$/kw)	\$ (0.59)	\$ (0.59)	\$ (0.59)	4pm - 9pm, Monday - Friday
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 51-219kv (\$/kw)	\$ (1.37)	\$ (1.37)	\$ (1.37)	4pm - 9pm, Monday - Friday
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 220kv (\$/kw)	\$ (1.38)	\$ (1.38)	\$ (1.38)	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 2-50kv (\$/kw)	\$ (0.16)	\$ (0.16)	\$ (0.16)	4pm - 9pm, every day
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 51-219kv (\$/kw)	\$ (0.36)	\$ (0.36)	\$ (0.36)	4pm - 9pm, every day
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 220kv (\$/kw)	\$ (0.36)	\$ (0.36)	\$ (0.36)	4pm - 9pm, every day
TOU-GS-2-E					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.47497	\$ 0.48497	\$ 0.48997	Summer - June through September; Winter - October through May 4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.13250	\$ 0.14250	\$ 0.14750	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.08679	\$ 0.09679	\$ 0.10179	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.15171	\$ 0.16171	\$ 0.16671	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.09995	\$ 0.10995	\$ 0.11495	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.05483	\$ 0.06483	\$ 0.06983	8am - 4pm, every day
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 2-50kv (\$/kWh)	\$ (0.00173)	\$ (0.00173)	\$ (0.00173)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 51-219kv (\$/kWh)	\$ (0.00384)	\$ (0.00384)	\$ (0.00384)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kv (\$/kWh)	\$ (0.00387)	\$ (0.00387)	\$ (0.00387)	All electric usage
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 7.30	\$ 7.30	\$ 7.30	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 2.83	\$ 2.83	\$ 2.83	4pm - 9pm, every day
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 2-50kv (\$/kw)	\$ (0.24)	\$ (0.24)	\$ (0.24)	4pm - 9pm, Monday - Friday
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 51-219kv (\$/kw)	\$ (0.56)	\$ (0.56)	\$ (0.56)	4pm - 9pm, Monday - Friday
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 220kv (\$/kw)	\$ (0.57)	\$ (0.57)	\$ (0.57)	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 2-50kv (\$/kw)	\$ (0.07)	\$ (0.07)	\$ (0.07)	4pm - 9pm, every day
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 51-219kv (\$/kw)	\$ (0.15)	\$ (0.15)	\$ (0.15)	4pm - 9pm, every day
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 220kv (\$/kw)	\$ (0.15)	\$ (0.15)	\$ (0.15)	4pm - 9pm, every day

## COMMERCIAL CUSTOMERS

OCPA Rate Schedule	Period	Basic Choice	Smart Choice	100% Renewable Choice	Time Period Definitions
TOU-GS-2-B Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.10620	\$ 0.11620	\$ 0.12120	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.09966	\$ 0.10966	\$ 0.11466	8am - 12pm & 6pm - 11pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.09608	\$ 0.10608	\$ 0.11108	All other hours
	WINTER MID-PEAK	\$ 0.12797	\$ 0.13797	\$ 0.14297	8am - 9pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.07763	\$ 0.08763	\$ 0.09263	All other hours
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 18.01	\$ 18.01	\$ 18.01	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 6.05	\$ 6.05	\$ 6.05	8am - 12pm & 6pm - 11pm, Monday - Friday
TOU-GS-2-R Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.34402	\$ 0.35402	\$ 0.35902	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.16606	\$ 0.17606	\$ 0.18106	8am - 12pm & 6pm - 11pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.09608	\$ 0.10608	\$ 0.11108	All other hours
	WINTER MID-PEAK	\$ 0.12797	\$ 0.13797	\$ 0.14297	8am - 9pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.07763	\$ 0.08763	\$ 0.09263	All other hours
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 2-50kv (\$/kWh)	\$ (0.00293)	\$ (0.00293)	\$ (0.00293)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 51-219kv (\$/kWh)	\$ (0.00664)	\$ (0.00664)	\$ (0.00664)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kv (\$/kWh)	\$ (0.00669)	\$ (0.00669)	\$ (0.00669)	All electric usage
TOU-GS-3-D Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.13463	\$ 0.14463	\$ 0.14963	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.12320	\$ 0.13320	\$ 0.13820	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.08476	\$ 0.09476	\$ 0.09976	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.09707	\$ 0.10707	\$ 0.11207	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.09763	\$ 0.10763	\$ 0.11263	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.05356	\$ 0.06356	\$ 0.06856	8am - 4pm, every day
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 2-50kv (\$/kWh)	\$ (0.00117)	\$ (0.00117)	\$ (0.00117)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 51-219kv (\$/kWh)	\$ (0.00253)	\$ (0.00253)	\$ (0.00253)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kv (\$/kWh)	\$ (0.00256)	\$ (0.00256)	\$ (0.00256)	All electric usage
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 22.30	\$ 22.30	\$ 22.30	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 8.07	\$ 8.07	\$ 8.07	4pm - 9pm, every day
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 2-50kv (\$/kW)	\$ (0.51)	\$ (0.51)	\$ (0.51)	4pm - 9pm, Monday - Friday
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 51-219kv (\$/kW)	\$ (1.19)	\$ (1.19)	\$ (1.19)	4pm - 9pm, Monday - Friday
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 220kv (\$/kW)	\$ (1.20)	\$ (1.20)	\$ (1.20)	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 2-50kv (\$/kW)	\$ (0.19)	\$ (0.19)	\$ (0.19)	4pm - 9pm, every day
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 51-219kv (\$/kW)	\$ (0.44)	\$ (0.44)	\$ (0.44)	4pm - 9pm, every day
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 220kv (\$/kW)	\$ (0.44)	\$ (0.44)	\$ (0.44)	4pm - 9pm, every day

## COMMERCIAL CUSTOMERS

OCPA Rate Schedule	Period	Basic Choice	Smart Choice	100% Renewable Choice	Time Period Definitions
TOU-GS-3-E					
Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.38832	\$ 0.39832	\$ 0.40332	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.12320	\$ 0.13320	\$ 0.13820	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.08476	\$ 0.09476	\$ 0.09976	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.15332	\$ 0.16332	\$ 0.16832	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.09763	\$ 0.10763	\$ 0.11263	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.05356	\$ 0.06356	\$ 0.06856	8am - 4pm, every day
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 2-50kv (\$/kWh)	\$ (0.00213)	\$ (0.00213)	\$ (0.00213)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 51-219kv (\$/kWh)	\$ (0.00475)	\$ (0.00475)	\$ (0.00475)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kv (\$/kWh)	\$ (0.00479)	\$ (0.00479)	\$ (0.00479)	All electric usage
DEMAND CHARGE (\$/KW)					
	SUMMER ON-PEAK	\$ 6.27	\$ 6.27	\$ 6.27	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 3.34	\$ 3.34	\$ 3.34	4pm - 9pm, every day
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 2-50kv (\$/kw)	\$ (0.21)	\$ (0.21)	\$ (0.21)	4pm - 9pm, Monday - Friday
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 51-219kv (\$/kw)	\$ (0.50)	\$ (0.50)	\$ (0.50)	4pm - 9pm, Monday - Friday
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 220kv (\$/kw)	\$ (0.50)	\$ (0.50)	\$ (0.50)	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 2-50kv (\$/kw)	\$ (0.08)	\$ (0.08)	\$ (0.08)	4pm - 9pm, every day
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 51-219kv (\$/kw)	\$ (0.18)	\$ (0.18)	\$ (0.18)	4pm - 9pm, every day
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 220kv (\$/kw)	\$ (0.18)	\$ (0.18)	\$ (0.18)	4pm - 9pm, every day
TOU-GS-3-B					
Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.10140	\$ 0.11140	\$ 0.11640	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.09500	\$ 0.10500	\$ 0.11000	8am - 12pm & 6pm - 11pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.09174	\$ 0.10174	\$ 0.10674	All other hours
	WINTER MID-PEAK	\$ 0.12741	\$ 0.13741	\$ 0.14241	8am - 9pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.07623	\$ 0.08623	\$ 0.09123	All other hours
DEMAND CHARGE (\$/KW)					
	SUMMER ON-PEAK	\$ 14.94	\$ 14.94	\$ 14.94	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 4.99	\$ 4.99	\$ 4.99	8am - 12pm & 6pm - 11pm, Monday - Friday
TOU-GS-3-R					
Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.28538	\$ 0.29538	\$ 0.30038	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.14314	\$ 0.15314	\$ 0.15814	8am - 12pm & 6pm - 11pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.09174	\$ 0.10174	\$ 0.10674	All other hours
	WINTER MID-PEAK	\$ 0.12741	\$ 0.13741	\$ 0.14241	8am - 9pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.07623	\$ 0.08623	\$ 0.09123	All other hours
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 2-50kv (\$/kWh)	\$ (0.00249)	\$ (0.00249)	\$ (0.00249)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 51-219kv (\$/kWh)	\$ (0.00560)	\$ (0.00560)	\$ (0.00560)	All electric usage
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kv (\$/kWh)	\$ (0.00565)	\$ (0.00565)	\$ (0.00565)	All electric usage
TOU-8-SEC-D					
Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.13259	\$ 0.14259	\$ 0.14759	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.12132	\$ 0.13132	\$ 0.13632	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.08372	\$ 0.09372	\$ 0.09872	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.09589	\$ 0.10589	\$ 0.11089	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.09646	\$ 0.10646	\$ 0.11146	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.05285	\$ 0.06285	\$ 0.06785	8am - 4pm, every day
DEMAND CHARGE (\$/KW)					
	SUMMER ON-PEAK	\$ 23.20	\$ 23.20	\$ 23.20	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 7.11	\$ 7.11	\$ 7.11	4pm - 9pm, every day

## COMMERCIAL CUSTOMERS

OCPA Rate Schedule	Period	Basic Choice	Smart Choice	100% Renewable Choice	Time Period Definitions
TOU-8-PRI-D Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.12706	\$ 0.13706	\$ 0.14206	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.11650	\$ 0.12650	\$ 0.13150	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.08025	\$ 0.09025	\$ 0.09525	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.09212	\$ 0.10212	\$ 0.10712	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.09283	\$ 0.10283	\$ 0.10783	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.05089	\$ 0.06089	\$ 0.06589	8am - 4pm, every day
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 22.31	\$ 22.31	\$ 22.31	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 8.35	\$ 8.35	\$ 8.35	4pm - 9pm, every day
TOU-8-SUB-D Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.11927	\$ 0.12927	\$ 0.13427	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.10968	\$ 0.11968	\$ 0.12468	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.07516	\$ 0.08516	\$ 0.09016	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.08630	\$ 0.09630	\$ 0.10130	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.08730	\$ 0.09730	\$ 0.10230	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.04783	\$ 0.05783	\$ 0.06283	8am - 4pm, every day
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kv (\$/kWh)	\$ (0.00075)	\$ (0.00075)	\$ (0.00075)	All electric usage
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 24.64	\$ 24.64	\$ 24.64	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 7.97	\$ 7.97	\$ 7.97	4pm - 9pm, every day
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 220kv (\$/kw)	\$ (0.25)	\$ (0.25)	\$ (0.25)	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 220kv (\$/kw)	\$ (0.08)	\$ (0.08)	\$ (0.08)	4pm - 9pm, every day
TOU-8-SEC-E Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.37057	\$ 0.38057	\$ 0.38557	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.12132	\$ 0.13132	\$ 0.13632	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.08372	\$ 0.09372	\$ 0.09872	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.14192	\$ 0.15192	\$ 0.15692	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.09646	\$ 0.10646	\$ 0.11146	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.05285	\$ 0.06285	\$ 0.06785	8am - 4pm, every day
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 6.52	\$ 6.52	\$ 6.52	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 2.94	\$ 2.94	\$ 2.94	4pm - 9pm, every day
TOU-8-PRI-E Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.35236	\$ 0.36236	\$ 0.36736	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.11650	\$ 0.12650	\$ 0.13150	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.08025	\$ 0.09025	\$ 0.09525	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.16455	\$ 0.17455	\$ 0.17955	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.09283	\$ 0.10283	\$ 0.10783	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.05089	\$ 0.06089	\$ 0.06589	8am - 4pm, every day
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 5.48	\$ 5.48	\$ 5.48	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 0.95	\$ 0.95	\$ 0.95	4pm - 9pm, every day
TOU-8-SUB-E Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.38687	\$ 0.39687	\$ 0.40187	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.10968	\$ 0.11968	\$ 0.12468	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.07516	\$ 0.08516	\$ 0.09016	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.14478	\$ 0.15478	\$ 0.15978	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.08730	\$ 0.09730	\$ 0.10230	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.04783	\$ 0.05783	\$ 0.06283	8am - 4pm, every day
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kv (\$/kWh)	\$ (0.00095)	\$ (0.00095)	\$ (0.00095)	All electric usage
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 2.34	\$ 2.34	\$ 2.34	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 1.14	\$ 1.14	\$ 1.14	4pm - 9pm, every day
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 220kv (\$/kw)	\$ (0.02)	\$ (0.02)	\$ (0.02)	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK (WEEKDAYS) VOLTAGE DISCOUNT - DEMAND 220kv (\$/kw)	\$ (0.01)	\$ (0.01)	\$ (0.01)	4pm - 9pm, every day



## COMMERCIAL CUSTOMERS

OCPA Rate Schedule	Period	Basic Choice	Smart Choice	100% Renewable Choice	Time Period Definitions
TOU-8-SEC-B Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.10002	\$ 0.11002	\$ 0.11502	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.09340	\$ 0.10340	\$ 0.10840	8am - 12pm & 6pm - 11pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.09048	\$ 0.10048	\$ 0.10548	All other hours
	WINTER MID-PEAK	\$ 0.12108	\$ 0.13108	\$ 0.13608	8am - 9pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.07646	\$ 0.08646	\$ 0.09146	All other hours
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 15.97	\$ 15.97	\$ 15.97	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 5.24	\$ 5.24	\$ 5.24	8am - 12pm & 6pm - 11pm, Monday - Friday
TOU-8-PRI-B Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.09616	\$ 0.10616	\$ 0.11116	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.08941	\$ 0.09941	\$ 0.10441	8am - 12pm & 6pm - 11pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.08700	\$ 0.09700	\$ 0.10200	All other hours
	WINTER MID-PEAK	\$ 0.12553	\$ 0.13553	\$ 0.14053	8am - 9pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.07516	\$ 0.08516	\$ 0.09016	All other hours
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 15.71	\$ 15.71	\$ 15.71	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 5.05	\$ 5.05	\$ 5.05	8am - 12pm & 6pm - 11pm, Monday - Friday
TOU-8-SUB-B Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.09012	\$ 0.10012	\$ 0.10512	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.08353	\$ 0.09353	\$ 0.09853	8am - 12pm & 6pm - 11pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.08154	\$ 0.09154	\$ 0.09654	All other hours
	WINTER MID-PEAK	\$ 0.11607	\$ 0.12607	\$ 0.13107	8am - 9pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.07126	\$ 0.08126	\$ 0.08626	All other hours
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kV (\$/kWh)	\$ (0.00075)	\$ (0.00075)	\$ (0.00075)	All electric usage
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 17.95	\$ 17.95	\$ 17.95	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 5.82	\$ 5.82	\$ 5.82	8am - 12pm & 6pm - 11pm, Monday - Friday
	SUMMER ON-PEAK AND MID-PEAK VOLTAGE DISCOUNT - DEMAND 220kV (\$/kW)	\$ (0.37)	\$ (0.37)	\$ (0.37)	8am - 11pm, Monday - Friday
TOU-8-SEC-R Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.28344	\$ 0.29344	\$ 0.29844	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.13805	\$ 0.14805	\$ 0.15305	8am - 12pm & 6pm - 11pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.09048	\$ 0.10048	\$ 0.10548	All other hours
	WINTER MID-PEAK	\$ 0.12108	\$ 0.13108	\$ 0.13608	8am - 9pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.07646	\$ 0.08646	\$ 0.09146	All other hours
TOU-8-PRI-R Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.27385	\$ 0.28385	\$ 0.28885	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.12965	\$ 0.13965	\$ 0.14465	8am - 12pm & 6pm - 11pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.08700	\$ 0.09700	\$ 0.10200	All other hours
	WINTER MID-PEAK	\$ 0.12553	\$ 0.13553	\$ 0.14053	8am - 9pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.07516	\$ 0.08516	\$ 0.09016	All other hours
TOU-8-SUB-R Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.27161	\$ 0.28161	\$ 0.28661	12pm - 6pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.12342	\$ 0.13342	\$ 0.13842	8am - 12pm & 6pm - 11pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.08154	\$ 0.09154	\$ 0.09654	All other hours
	WINTER MID-PEAK	\$ 0.11607	\$ 0.12607	\$ 0.13107	8am - 9pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.07126	\$ 0.08126	\$ 0.08626	All other hours
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kV (\$/kWh)	\$ (0.00118)	\$ (0.00118)	\$ (0.00118)	All electric usage
TOU-8-SEC-RBU Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.13259	\$ 0.14259	\$ 0.14759	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.12132	\$ 0.13132	\$ 0.13632	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.08372	\$ 0.09372	\$ 0.09872	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.09589	\$ 0.10589	\$ 0.11089	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.09646	\$ 0.10646	\$ 0.11146	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.05285	\$ 0.06285	\$ 0.06785	8am - 4pm, every day
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 23.20	\$ 23.20	\$ 23.20	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 7.11	\$ 7.11	\$ 7.11	4pm - 9pm, every day

## COMMERCIAL CUSTOMERS

OCPA Rate Schedule	Period	Basic Choice	Smart Choice	100% Renewable Choice	Time Period Definitions
TOU-8-PRI-RBU Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.12706	\$ 0.13706	\$ 0.14206	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.11650	\$ 0.12650	\$ 0.13150	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.08025	\$ 0.09025	\$ 0.09525	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.09212	\$ 0.10212	\$ 0.10712	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.09283	\$ 0.10283	\$ 0.10783	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.05089	\$ 0.06089	\$ 0.06589	8am - 4pm, every day
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 22.31	\$ 22.31	\$ 22.31	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 8.35	\$ 8.35	\$ 8.35	4pm - 9pm, every day
TOU-8-SUB-RBU Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.11927	\$ 0.12927	\$ 0.13427	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.10968	\$ 0.11968	\$ 0.12468	4pm - 9pm, Saturday, Sunday, & holidays*
	SUMMER OFF-PEAK	\$ 0.07516	\$ 0.08516	\$ 0.09016	9pm - 4pm, every day
	WINTER MID-PEAK	\$ 0.08630	\$ 0.09630	\$ 0.10130	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.08730	\$ 0.09730	\$ 0.10230	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.04783	\$ 0.05783	\$ 0.06283	8am - 4pm, every day
	YEAR ROUND VOLTAGE DISCOUNT - ENERGY 220kV (\$/kWh)	\$ (0.00075)	\$ (0.00075)	\$ (0.00075)	All electric usage
DEMAND CHARGE (\$/KW)	SUMMER ON-PEAK	\$ 24.64	\$ 24.64	\$ 24.64	4pm - 9pm, Monday - Friday
	WINTER MID-PEAK	\$ 7.97	\$ 7.97	\$ 7.97	4pm - 9pm, every day
	SUMMER ON-PEAK VOLTAGE DISCOUNT - DEMAND 220kV (\$/kW)	\$ (0.25)	\$ (0.25)	\$ (0.25)	4pm - 9pm, Monday - Friday

## OCA Rates in SCE Territory

### Department of Water Resources Bond Charge

The **Department of Water Resources Bond Charge (DWRBC)** is the Wildfire Fund Non-Bypassable Charge which supports the California Wildfire Fund. The DWRBC was set to expire in 2021, but was extended for 15 years to establish a wildfire liability fund. This charge is assessed to all customers, including SCE-only customers, but is collected separately for CCA customers. The funds go to the State of California for potential disbursement to IOUs, such as SCE, if a catastrophic event occurs. Customers on CARE and Medical Baseline Programs are currently exempt from these charges.

### Competition Transition Charge

The ongoing **Competition Transition Charge (CTC)** recovers the CPUC-approved market price limit for legacy electricity contracts (signed prior to 1998), as well as statutorily authorized costs that are related to restructuring of California's electric industry prior to the energy crisis. These charges are assessed to all customers, including SCE-only customers, but are collected separately for CCA customers and go directly to SCE.

### Surcharge

The Generation Municipal Surcharge (GMS) Factor recovers franchise fees paid by SCE to operate within certain municipal jurisdictions within California. This charge is assessed to all customers, including SCE-only customers, but is collected separately for CCA customers. The charge equals the product of the GMS factor and the SCE rates or charges that have been removed from the bill of a customer receiving CCA service. An exemption applies to CA political subdivision and certain cogeneration or nonutility generation facilities. It is the responsibility of the customer to self-identify for exemption.

Rate Group	DWRBC (All Vintages)	CTC (All Vintages)	GMS Factor (All Vintages)
Domestic <sup>1</sup>	\$ 0.00652	\$ (0.00003)	0.009261
GS-1 <sup>2</sup>	\$ 0.00652	\$ (0.00002)	0.009261
TC-1 <sup>3</sup>	\$ 0.00652	\$ (0.00002)	0.009261
GS-2 <sup>4</sup>	\$ 0.00652	\$ (0.00002)	0.009261
TOU-GS-3 <sup>5</sup>	\$ 0.00652	\$ (0.00002)	0.009261
TOU-8-Sec <sup>6</sup>	\$ 0.00652	\$ (0.00002)	0.009261
TOU-8-Pri <sup>6</sup>	\$ 0.00652	\$ (0.00002)	0.009261
TOU-8-Sub <sup>6</sup>	\$ 0.00652	\$ (0.00002)	0.009261
Small AG <sup>7</sup>	\$ 0.00652	\$ (0.00002)	0.009261
Large AG <sup>8</sup>	\$ 0.00652	\$ (0.00002)	0.009261
St. Lighting <sup>9</sup>	\$ 0.00652	\$ (0.00002)	0.009261

<sup>2</sup> Includes Schedules GS-1, TOU-GS-1, TOU-GS-1-RTP, AL-2 (On-Peak), LS-3 Option B (On- Peak), and TOU-EV-7.

<sup>3</sup> Includes Schedules TC-1, Wi-Fi-1, and WTR.

<sup>4</sup> Includes Schedules GS-2, TOU-EV-8, TOU-GS-2, and TOU-GS-2-RTP.

<sup>5</sup> Includes Schedules TOU-GS-3 and TOU-GS-3-RTP.

<sup>6</sup> Includes Schedules TOU-EV-9, TOU-8, TOU-8-RBU, and TOU-8-RTP.

<sup>7</sup> Includes Schedules PA-1, PA-2, TOU-PA-2, and TOU-PA-2-RTP.

<sup>8</sup> Includes Schedules TOU-PA-3 and TOU-PA-3-RTP.

<sup>9</sup> Includes Schedules AL-2-(Off-Peak), DWL, LS-1, LS-2, LS-3, LS-3 Option B (Off-Peak), and OL-1.

## OCA Rates in SCE Territory

### Power Charge Indifference Adjustment

The **Power Charge Indifference Adjustment (PCIA)** is a fee collected by SCE and assessed to customers who receive their electric generation services from another provider. The PCIA is considered an "exit fee" assessed by SCE to cover costs for departing customers; resources acquired prior to a customer's change in service providers, and to ensure their current customers are "indifferent" to costs associated with the departed customers. SCE assigns customers a "PCIA Vintage" based on the date a customer's respective community enrolled in alternative service; this date is reset upon reenrollment if a customer opts-out and later re-enrolls in OCA service. The PCIA is charged on a per kWh basis based on net monthly usage, and is unaffected by time of use.

Rate Group	PCIA 2021 Vintage
Domestic <sup>1</sup>	\$ 0.01596
GS-1 <sup>2</sup>	\$ (0.00479)
TC-1 <sup>3</sup>	\$ (0.00509)
GS-2 <sup>4</sup>	\$ (0.00503)
TOU-GS-3 <sup>5</sup>	\$ (0.00488)
TOU-8-Sec <sup>6</sup>	\$ (0.00476)
TOU-8-Pri <sup>6</sup>	\$ (0.00466)
TOU-8-Sub <sup>6</sup>	\$ (0.00440)
Small AG <sup>7</sup>	\$ (0.00493)
Large AG <sup>8</sup>	\$ (0.00487)
St. Lighting <sup>9</sup>	\$ (0.00614)

## RESIDENTIAL CUSTOMERS

OCA Rate Schedule	Period	Basic Choice	Smart Choice	100% Renewable Choice	Time Period Definitions
<b>DOMESTIC</b>					
GENERATION CHARGE (\$/KWH)	YEAR-ROUND	\$ 0.13440	\$ 0.14440	\$ 0.14940	All electric usage
<b>TOU-D-4</b> Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.26126	\$ 0.27126	\$ 0.27626	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.15650	\$ 0.16650	\$ 0.17150	4pm - 9pm, Saturday, Sunday, & holidays
	SUMMER OFF-PEAK	\$ 0.09516	\$ 0.10516	\$ 0.11016	All other hours
	WINTER MID-PEAK	\$ 0.19556	\$ 0.20556	\$ 0.21056	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.11898	\$ 0.12898	\$ 0.13398	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.09996	\$ 0.10996	\$ 0.11496	8am - 4pm, every day
<b>TOU-D-5</b> Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.39746	\$ 0.40746	\$ 0.41246	5pm - 8pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.22294	\$ 0.23294	\$ 0.23794	5pm - 8pm, Saturday, Sunday, & holidays
	SUMMER OFF-PEAK	\$ 0.08691	\$ 0.09691	\$ 0.10191	All other hours
	WINTER MID-PEAK	\$ 0.27766	\$ 0.28766	\$ 0.29266	5pm - 8pm, every day
	WINTER OFF-PEAK	\$ 0.11792	\$ 0.12792	\$ 0.13292	8pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.08874	\$ 0.09874	\$ 0.10374	8am - 5pm, every day
<b>TOU-D-A</b> Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.33108	\$ 0.34108	\$ 0.34608	2pm - 8pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.12919	\$ 0.13919	\$ 0.14419	8am - 2pm & 8pm - 10pm, Monday - Friday 8am - 10pm, Saturday, Sunday & holidays
	SUMMER SUPER OFF-PEAK	\$ 0.08639	\$ 0.09639	\$ 0.10139	10pm - 8am, every day
	WINTER ON-PEAK	\$ 0.19033	\$ 0.20033	\$ 0.20533	2pm - 8pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.09467	\$ 0.10467	\$ 0.10967	8am - 2pm & 8pm - 10pm, Monday - Friday 8am - 10pm, Saturday, Sunday & holidays
	WINTER SUPER OFF-PEAK	\$ 0.08874	\$ 0.09874	\$ 0.10374	10pm - 8am, every day
<b>TOU-D-B</b> Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.50406	\$ 0.51406	\$ 0.51906	2pm - 8pm, Monday - Friday
	SUMMER OFF-PEAK	\$ 0.12913	\$ 0.13913	\$ 0.14413	8am - 2pm & 8pm - 10pm, Monday - Friday 8am - 10pm, Saturday, Sunday & holidays
	SUMMER SUPER OFF-PEAK	\$ 0.04049	\$ 0.05049	\$ 0.05549	10pm - 8am, every day
	WINTER ON-PEAK	\$ 0.17221	\$ 0.18221	\$ 0.18721	2pm - 8pm, Monday - Friday
	WINTER OFF-PEAK	\$ 0.09468	\$ 0.10468	\$ 0.10968	8am - 2pm & 8pm - 10pm, Monday - Friday 8am - 10pm, Saturday, Sunday & holidays
	WINTER SUPER OFF-PEAK	\$ 0.04178	\$ 0.05178	\$ 0.05678	10pm - 8am, every day
<b>TOU-D-PRIME</b> Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.37315	\$ 0.38315	\$ 0.38815	4pm - 9pm, Monday - Friday
	SUMMER MID-PEAK	\$ 0.12274	\$ 0.13274	\$ 0.13774	4pm - 9pm, Saturday, Sunday, & holidays
	SUMMER OFF-PEAK	\$ 0.07675	\$ 0.08675	\$ 0.09175	All other hours
	WINTER MID-PEAK	\$ 0.31187	\$ 0.32187	\$ 0.32687	4pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.06283	\$ 0.07283	\$ 0.07783	9pm - 8am, every day
	WINTER SUPER OFF-PEAK	\$ 0.06283	\$ 0.07283	\$ 0.07783	8am - 4pm, every day
<b>TOU-D-T</b> Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.17463	\$ 0.18463	\$ 0.18963	12pm - 6pm, Monday - Friday except holidays*
	SUMMER OFF-PEAK	\$ 0.15734	\$ 0.16734	\$ 0.17234	All other hours
	WINTER ON-PEAK	\$ 0.12763	\$ 0.13763	\$ 0.14263	12pm - 6pm, Monday - Friday except holidays*
	WINTER OFF-PEAK	\$ 0.11461	\$ 0.12461	\$ 0.12961	All other hours
<b>TOU-EV-1</b> Summer - June through September; Winter - October through May					
GENERATION CHARGE (\$/KWH)	SUMMER ON-PEAK	\$ 0.34829	\$ 0.35829	\$ 0.36329	12pm - 9pm, every day
	SUMMER OFF-PEAK	\$ 0.04001	\$ 0.05001	\$ 0.05501	9pm - 12pm, every day
	WINTER ON-PEAK	\$ 0.13790	\$ 0.14790	\$ 0.15290	12pm - 9pm, every day
	WINTER OFF-PEAK	\$ 0.05330	\$ 0.06330	\$ 0.06830	9pm - 12pm, every day

\*Holidays are New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas.

## OCA Rates in SCE Territory

### Department of Water Resources Bond Charge

The **Department of Water Resources Bond Charge (DWRBC)** is the Wildfire Fund Non-Bypassable Charge which supports the California Wildfire Fund. The DWRBC was set to expire in 2021, but was extended for 15 years to establish a wildfire liability fund. This charge is assessed to all customers, including SCE-only customers, but is collected separately for CCA customers. The funds go to the State of California for potential disbursement to IOUs, such as SCE, if a catastrophic event occurs. Customers on CARE and Medical Baseline Programs are currently exempt from these charges.

### Competition Transition Charge

The ongoing **Competition Transition Charge (CTC)** recovers the CPUC-approved market price limit for legacy electricity contracts (signed prior to 1998), as well as statutorily authorized costs that are related to restructuring of California's electric industry prior to the energy crisis. These charges are assessed to all customers, including SCE-only customers, but are collected separately for CCA customers and go directly to SCE.

### Surcharge

The Generation Municipal Surcharge (GMS) Factor recovers franchise fees paid by SCE to operate within certain municipal jurisdictions within California. This charge is assessed to all customers, including SCE-only customers, but is collected separately for CCA customers. The charge equals the product of the GMS factor and the SCE rates or charges that have been removed from the bill of a customer receiving CCA service. An exemption applies to CA political subdivision and certain cogeneration or nonutility generation facilities. It is the responsibility of the customer to self-identify for exemption.

Rate Group	DWRBC (All Vintages)	CTC (All Vintages)	GMS Factor (All Vintages)
Domestic <sup>1</sup>	\$ 0.00652	\$ (0.00003)	0.009261
GS-1 <sup>2</sup>	\$ 0.00652	\$ (0.00002)	0.009261
TC-1 <sup>3</sup>	\$ 0.00652	\$ (0.00002)	0.009261
GS-2 <sup>4</sup>	\$ 0.00652	\$ (0.00002)	0.009261
TOU-GS-3 <sup>5</sup>	\$ 0.00652	\$ (0.00002)	0.009261
TOU-8-Sec <sup>6</sup>	\$ 0.00652	\$ (0.00002)	0.009261
TOU-8-Pri <sup>6</sup>	\$ 0.00652	\$ (0.00002)	0.009261
TOU-8-Sub <sup>6</sup>	\$ 0.00652	\$ (0.00002)	0.009261
Small AG <sup>7</sup>	\$ 0.00652	\$ (0.00002)	0.009261
Large AG <sup>8</sup>	\$ 0.00652	\$ (0.00002)	0.009261
St. Lighting <sup>9</sup>	\$ 0.00652	\$ (0.00002)	0.009261

<sup>2</sup> Includes Schedules GS-1, TOU-GS-1, TOU-GS-1-RTP, AL-2 (On-Peak), LS-3 Option B (On- Peak), and TOU-EV-7.

<sup>3</sup> Includes Schedules TC-1, Wi-Fi-1, and WTR.

<sup>4</sup> Includes Schedules GS-2, TOU-EV-8, TOU-GS-2, and TOU-GS-2-RTP.

<sup>5</sup> Includes Schedules TOU-GS-3 and TOU-GS-3-RTP.

<sup>6</sup> Includes Schedules TOU-EV-9, TOU-8, TOU-8-RBU, and TOU-8-RTP.

<sup>7</sup> Includes Schedules PA-1, PA-2, TOU-PA-2, and TOU-PA-2-RTP.

<sup>8</sup> Includes Schedules TOU-PA-3 and TOU-PA-3-RTP.

<sup>9</sup> Includes Schedules AL-2-(Off-Peak), DWL, LS-1, LS-2, LS-3, LS-3 Option B (Off-Peak), and OL-1.

## OCA Rates in SCE Territory

### Power Charge Indifference Adjustment

The **Power Charge Indifference Adjustment (PCIA)** is a fee collected by SCE and assessed to customers who receive their electric generation services from another provider. The PCIA is considered an "exit fee" assessed by SCE to cover costs for departing customers; resources acquired prior to a customer's change in service providers, and to ensure their current customers are "indifferent" to costs associated with the departed customers. SCE assigns customers a "PCIA Vintage" based on the date a customer's respective community enrolled in alternative service; this date is reset upon reenrollment if a customer opts-out and later re-enrolls in OCA service. The PCIA is charged on a per kWh basis based on net monthly usage, and is unaffected by time of use.

Rate Group	PCIA 2021 Vintage
Domestic <sup>1</sup>	\$ 0.01596
GS-1 <sup>2</sup>	\$ (0.00479)
TC-1 <sup>3</sup>	\$ (0.00509)
GS-2 <sup>4</sup>	\$ (0.00503)
TOU-GS-3 <sup>5</sup>	\$ (0.00488)
TOU-8-Sec <sup>6</sup>	\$ (0.00476)
TOU-8-Pri <sup>6</sup>	\$ (0.00466)
TOU-8-Sub <sup>6</sup>	\$ (0.00440)
Small AG <sup>7</sup>	\$ (0.00493)
Large AG <sup>8</sup>	\$ (0.00487)
St. Lighting <sup>9</sup>	\$ (0.00614)

**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 10.3**

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To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer

Subject: APPROVE LONG-TERM RENEWABLE POWER PURCHASE AGREEMENT  
WITH GRACE ORCHARD ENERGY CENTER, LLC

Date: April 19, 2023

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**RECOMMENDED ACTION**

Approve Long-term Renewable Power Purchase Agreement with Grace Orchard Energy Center, LLC.

**BACKGROUND**

Under the California Renewables Portfolio Standard, sixty-five percent (65%) of the renewable energy that is required to be provided by a load serving entity such as Orange County Power Authority (OCPA) must be pursuant to long-term agreements of at least 10 years in duration. The purpose of this requirement is to incentivize the construction of new renewable energy facilities in the State of California. Entering into long-term agreements with the developers of utility scale renewable energy projects is also a vital component of OCPA's long term strategy to provide renewable energy to its customers and supports the financing and development of such projects in California. Furthermore, the ability to lock in large long-term sources of renewable supply provides cost certainty and rate stability. If a load serving entity fails to meet this requirement for its compliance period (*e.g.*, CP4 2021-2024), the CPUC is required to assess a substantial penalty of \$50 per MWh.

OCPA received two responses to its request for offers for long-term supply in 2022 and only one party, NextEra Energy Resources, LLC (NextEra), moved forward in the negotiation process. NextEra is the sole owner of Grace Orchard Energy Center (Grace), a wholly owned affiliate of NextEra, and is a major provider of energy to OCPA. Long-term agreements are complex and often take six months or more to negotiate. Negotiation began in earnest with NextEra in September. Buyer credit has become more of an issue in the last year with lenders financing large renewable projects, making the process even more difficult for newer CCA that do not yet have substantial reserves or credit ratings. In the case of OCPA, the process has been complicated by the decision of the County of Orange to withdraw and the discussion of withdrawal by other members, resulting in heightened evaluation of OCPA as a credit risk. Despite this challenge, OCPA has been able to negotiate financial covenants and credit terms that will allow OCPA to move forward.



## **ANALYSIS AND DISCUSSION**

Staff negotiated the Grace Orchard Energy Center power purchase agreement (PPA) for the purchase of renewable energy and resource adequacy. The project is a solar-plus-battery-storage project to be developed by Grace in Riverside County. NextEra is one of the largest developers of renewable energy projects in the United States.

The project has a guaranteed capacity of 90 MW of solar production and up to 30 MW of battery storage capacity. The storage component of the project is contingent upon the ability of the seller to obtain capacity deliverability status for more than 10 MW of storage capacity and the capability to deliver resource adequacy for OCPA.

The PPA offers fixed energy and battery storage prices over a 20-year term. These prices are competitive based on the current market. Renewable energy produced by the facility will be approximately 262,000 MWh/year in year one, laying a strong foundation of long-term renewable energy deliveries within OCPA's power supply portfolio. Grace has also agreed to provide additional renewable energy product for OCPA in 2024 and 2025 to assist OCPA in meeting its long-term contracting requirement for Compliance Periods 4 and 5.

Grace will be posting collateral security in the form of a letter of credit for the benefit of OCPA in connection with the development of the project, which security can be called upon if Grace does not complete the project by the Guaranteed Commercial Operation Date, currently anticipated in 2026, subject to certain permitted extensions. Other than for the renewable energy product for 2024 and 2025, OCPA has negotiated financial covenants that will allow it to avoid posting collateral security for its obligations related to construction of Grace. If OCPA is unable to meet its covenants, then it will be required to post collateral security in the form of a letter of credit that is substantially the same amount that is being posted by Grace for development security. If OCPA is unable to post this security, then Grace will have the right to terminate the PPA and, if occurring prior to Grace's in-service date, OCPA will be subject to an early termination fee in the amount of this security. Grace has also negotiated that it has the right to terminate the PPA without penalty or cause if any additional members withdraw from OCPA. This was necessary in order to give Grace comfort that it has a reliable long-term partner.

## **FISCAL IMPACT**

The competitive energy and capacity pricing of the PPA are confidential under the CPUC's rules regarding market sensitive information. The long-term purchase of renewable energy and capacity will provide OCPA with significant value and cost certainty over the term of this PPA.

## **ATTACHMENT**

Attachment A – Renewable Power Purchase Agreement with Grace Orchard Energy Center LLC

**RENEWABLE POWER PURCHASE AGREEMENT  
COVER SHEET**

**Seller:** Grace Orchard Energy Center, LLC, a Delaware limited liability company

**Buyer:** Orange County Power Authority, a California joint powers authority (“OCPA”)

**Description of Facility:** A 90 MW<sub>AC</sub> solar photovoltaic project, which includes a 30 MW/120 MWh co-located battery energy storage facility (with the size of such battery energy storage facility subject to the terms of the Deliverability Transfer), located in Riverside County, in the State of California, with its first point of interconnection to be with transmission facilities that are under the operational control of a California balancing authority.

**Milestones:**

Milestone	Expected Date for Completion
Execute Interconnection Agreement	Completed
CEC Pre-Certification Obtained	12/01/2025
Expected Construction Start Date	06/01/2025
Full Capacity Deliverability Status Obtained	Commercial Operation Date
Expected Commercial Operation Date	06/01/2026
Guaranteed Commercial Operation Date	06/01/2026 (subject to extensions in accordance with Section 4 of <u>Exhibit B</u> )
RA Guarantee Date	60 days after Commercial Operation

**Delivery Term:** Twenty (20) Contract Years

**Delivery Term Expected Energy:**

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

**Guaranteed PV Capacity:** 90 MW

**Guaranteed Storage Capacity:** 30 MW at four (4) hours of continuous discharge or as adjusted by the Deliverability Transfer

**Guaranteed Efficiency Rate (based on charging only from Generating Facility):**

Contract Year	Guaranteed Efficiency Rate
1	
2	
3	
4	
5	

Contract Year	Guaranteed Efficiency Rate
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

**Guaranteed Commercial Operation Date:** 06/01/2026, subject to extensions in accordance with Section 4 of Exhibit B.

**Contract Price**

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 20	

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	

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**Product**

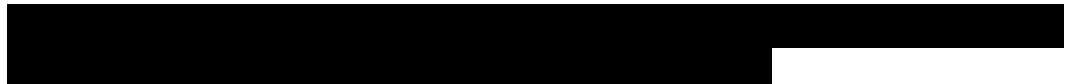
- ☒ Metered Energy
- ☒ Renewable Energy Credits and any other Green Attributes associated with Metered Energy delivered at the Interconnection Point, net of storage losses if required by Law (if Renewable Energy Credits, please check the applicable box below):
  - ☒ Portfolio Content Category 1
  - ☐ Portfolio Content Category 2
  - ☐ Portfolio Content Category 3
- ☒ Ancillary Services, if any, that may be obtained from the Facility
- ☒ Capacity Attributes, including Resource Adequacy Benefits, if any, associated with the Facility (select options below as applicable):
  - ☒ Energy Only Status (with respect to the Installed PV Capacity only)
  - ☒ Full Capacity Deliverability Status (with respect to the Installed Storage Capacity only, and at least 60 days prior to the RA Guarantee Date)
- ☒ All rights and products and attributes associated with the maximum dependable operating capability of the Storage Facility to be charged with, store and discharge electric energy.
- ☒ Bridge Product

**Scheduling Coordinator:** Seller (or Seller's designee)

**Security Amounts:**

Seller Credit Support:

Seller Development Security:



Seller Performance Security:



Guarantor: NextEra Energy Capital Holdings, Inc. (as of the Effective Date)

Buyer Credit Support: See Section 8.10

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## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_ (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” Except as otherwise specified herein, all capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

### RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility;  
and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

### ARTICLE 1 DEFINITIONS

1.1 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.13(c).

“**AD/CVD**” means antidumping and/or countervailing duty.

“**Adjusted Days of Liquidity On Hand**” or “**ADLH**” has the meaning set forth in Section 8.10.

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transfer” and “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include its Ultimate Parent, NEER, NEECH, NEOP, and NEP, and their respective direct or indirect subsidiaries.

**“After-Tax Basis”** means, with respect to any payment received, or deemed to have been received, by any Person, the amount of such payment (the **“Base Payment”**), supplemented by a further payment (the **“Additional Payment”**) to such Person so that the sum of the Base Payment plus the Additional Payment will be equal to the Base Payment, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment). Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the statutory rate applicable to corporations under subchapter C of the Internal Revenue Code of 1986, as amended, and subject to the highest state and local income tax rate then in effect for corporations in the states in which the Person is subject to taxation during the applicable fiscal year, and shall take into account the deductibility, if applicable (for Federal income tax purposes), of state and local income taxes.

**“Agreement”** has the meaning set forth in the Preamble and includes the Cover Sheet; any Exhibits, schedules, and written supplements hereto; and any designated collateral, credit support or similar arrangement between the Parties.

**“Amendment Notice”** has the meaning set forth in Section 2.7.

**“Ancillary Services”** means spinning reserve, non-spinning reserve, frequency regulation ramp support, VAR dispatch, power factor correction, voltage control, and any other ancillary services that the Facility is capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

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

**“Annual Forecast”** has the meaning set forth in Section 4.3(i)(i).

**“Applicable Instructions”** has the meaning set forth in Section 4.3(b).

**“Automated Dispatch System”** or **“ADS”** has the meaning set forth in the CAISO Tariff.

**“Automatic Generation Control”** or **“AGC”** has the meaning set forth in the CAISO Tariff.

**“Availability Adjustment”** has the meaning set forth in Exhibit P.

**“Availability Standard”** has the meaning set forth in the CAISO Tariff.

**“Bank Agreements”** mean the MUFG Credit Agreement and any other any credit agreement, loan agreement, letter of credit, reimbursement agreement, bond purchase agreement, liquidity agreement or other agreement or instrument (or any amendment, supplement or modification thereto) entered into by Buyer with any Person under which any Person or Persons undertakes to make loans, extend credit or liquidity to Buyer or to purchase securities pursuant to such agreement in connection with any bonds, notes or other such obligations.

**“Bankrupt”** or **“Bankruptcy”** means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) 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 (f) is generally unable to pay its debts as they fall due.

**“Bridge Product”** has the meaning set forth in Section 3.10(a).

**“Bridge Product Delivery Cessation Date”** has the meaning set forth in Section 3.10(d).

**“Bridge Product Delivery Term”** has the meaning set forth in Section 3.10(d).

**“Bridge Product Force Majeure”** has the meaning set forth in Section 3.10(f).

**“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

**“Buyer”** has the meaning set forth on the Cover Sheet.

**“Buyer Bid Curtailment”** means Seller or the Scheduling Coordinator reduces, or causes to be reduced (to the extent such reduction is caused by Applicable Instructions with respect to either the Generating Facility or the Storage Facility), Metered Energy from the Generating Facility by an amount, and for a period of time, set forth in a CAISO Dispatch Instruction, whether received by ADS or other form of communication, that results in the Generating Facility producing Metered Energy less than the full amount of Energy forecasted, in accordance with Section 4.3, for that same period of time, and such Dispatch Instruction is consistent with the Applicable Instructions, and may result from any of the following:

(i) not having submitted a Self-Schedule or an Energy Supply Bid for the MWhs subject to the reduction;

(ii) having submitted an Energy Supply Bid and the MWhs subject to the reduction were not awarded a schedule in connection with such Energy Supply Bid, including where for the period of time set forth in the CAISO Dispatch Instruction, there is a Negative LMP that is equal to or below the Negative LMP Strike Price;

(iii) having submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Generating Facility; or

(iv) having submitted a bid for the Facility, including without limitation an Ancillary Services Bid with respect to the Storage Facility, that results in the curtailment, regardless of whether or not Scheduled, of Metered Energy and/or the Generating Facility.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (i), (ii) or (iii), then the calculation of Deemed Delivered Energy during such Buyer Bid Curtailment Period shall not include any Metered Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period. For avoidance of doubt, if a Buyer Bid Curtailment and a CAISO system-wide Overgeneration Curtailment Order occur in the same Settlement Interval, the curtailment shall be treated as a Buyer Bid Curtailment for the purpose of the calculation of Deemed Delivered Energy.

**“Buyer Bridge Credit Support”** means a Letter of Credit in the amount set forth in Section 8.10.

**“Buyer Credit Support”** means the Buyer Bridge Credit Support and the Buyer Non-Bridge Credit Support.

**“Buyer Curtailment Order”** means the instruction in accordance with the Applicable Instructions from Buyer to Seller to reduce Metered Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Buyer Bid Curtailment, Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility and/or Curtailment Order.

**“Buyer Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces Metered Energy from the Generating Facility pursuant to or as a result of (a) a Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) a Buyer Event of Default hereunder which directly causes Seller to be unable to deliver Metered Energy to the Delivery Point; *provided*, the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

**“Buyer DAM Bid Price”** means the Buyer-determined price component of a bid that is used for an Economic Bid into the Day-Ahead Market as derived in accordance with Sections 4.3(b) and (d), and Exhibit D.

**“Buyer Default”** means an Event of Default of Buyer.

**“Buyer Dispatched Test”** has the meaning set forth in Section 4.9(c).

**“Buyer Non-Bridge Credit Support”** means a Letter of Credit in the amount set forth in Section 8.10.

**“Buyer RTM Bid Price”** means the Buyer-determined price component of a bid that is used for an Economic Bid into the Real-Time Market, as derived in accordance with Sections 4.3(b) and (d), and Exhibit D.

**“Buyer Storage Termination Notice”** has the meaning set forth in Section 2.3(b).

**“Buyer’s Indemnified Parties”** has the meaning set forth in Section 18.2.

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.10(a).

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

**“CAISO Certification”** means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Storage Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Storage Facility.

**“CAISO Charges Invoice”** has the meaning set forth in Exhibit D.

**“CAISO Commercial Operation”** has the same meaning as “Commercial Operation” as defined in the CAISO Tariff.

**“CAISO Dispatch”** means any Charging Instruction or Discharging Instruction given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

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

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

**“California Renewables Portfolio Standard”** or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

**“Capacity Attribute”** means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Generating Facility can generate and deliver to the Delivery Point, or that the Storage Facility can discharge to the Delivery Point, at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules, including Resource Adequacy Benefits.

**“Capacity Damages”** means collectively Storage Capacity Damages and PV Capacity Damages.

**“CEC”** means the California Energy Commission or its successor agency.

**“CEC Certification and Verification”** means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible

Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Metered Energy delivered to the Delivery Point, net of storage losses if required by Law, qualifies as generation from an Eligible Renewable Energy Resource.

**“CEC Precertification”** means that the CEC has issued a precertification for the Generating Facility indicating that the planned operations of the Generating Facility would comply with applicable CEC requirements for CEC Certification and Verification.

**“Change in Law”** means the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any Law; (b) any change in any Law or in the administration, interpretation or application of any Law by any Governmental Authority; (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; (d) any change to a Resource Adequacy Ruling; (e) any order, decision, resolution, rule, regulation, guidance document, or other determination of the CPUC, or (f) any change in the CAISO Tariff or any document included in the definition thereof whether or not approved by FERC.

**“Change of Control”** means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of any class of outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller;

*provided further*, a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

**“Charge Code”** has the meaning set forth in the CAISO Tariff.

**“Charging Energy”** means all Metered Energy produced by the Generating Facility and delivered to the Storage Facility (including pursuant to a Charging Instruction), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility.

**“Charging Instruction”** means the operating instruction, and any subsequent updates, given by Buyer in accordance with the Applicable Instructions, and any action of Seller or the SC in accordance with the Applicable Instructions, or given by the CAISO to Seller or the Scheduling Coordinator, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, (a) any such operating instruction shall be in accordance

with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer or the CAISO to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Instruction”, such “Charging Instruction” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. Any instruction to charge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Instruction.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Date**” means the date Commercial Operation is achieved.

“**Commercial Operation Delay Damages**” means an amount equal to [REDACTED], unless the Agreement is terminated as to the Storage Facility only, in which case such an amount shall be reduced to an amount equal to [REDACTED].

“**Commercial Operation Storage Capacity Test**” means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“**Communications Protocols**” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“**Compensable Penalties**” has the meaning set forth in Section 12.2.

“**Compliance Actions**” has the meaning set forth in Section 3.13(a).

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.13.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Consent to Collateral Assignment**” has the meaning set forth in Section 14.3.

“**Construction Start**” has the meaning set forth in Exhibit B.

“**Construction Start Date**” has the meaning set forth in Exhibit B.

“**Contract Price**” has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is each of the Renewable Rate and the Storage Rate.

“**Contract Term**” has the meaning set forth in Section 2.1.

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.



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

**“Cover Sheet”** means the cover sheet to this Agreement, which is incorporated into this Agreement.

**“COVID-19”** means the epidemic disease designated coronavirus disease 2019 (COVID-19) by the World Health Organization and the related virus designated Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) by the International Committee on Taxonomy of Viruses, and any variants and mutations thereof, and the efforts of a Governmental Authority to combat such disease.

**“CPUC”** means the California Public Utilities Commission, or successor entity.

**“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 issuer rating by Fitch, S&P or Moody’s. If ratings by Fitch, S&P and Moody’s are not equivalent, the lower rating shall apply.

**“Curtailment Order”** means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency; or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected; or (iii) in response to an Energy oversupply or potential Energy oversupply, and the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the VER forecast for the Generating Facility during the relevant time period;

(b) a curtailment ordered by the Transmission Provider, including a PTO, for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider, including PTO, due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

Notwithstanding anything to the contrary in this Agreement, to the extent permitted by CAISO, Seller or Seller's SC shall use commercially reasonable efforts to deliver Charging Energy to the Storage Facility during such Curtailment Order. For clarification, any notice, order, or instruction from the CAISO to curtail or reduce Metered Energy and/or the Generating Facility that results from Buyer or the SC for the Storage Facility, as the result of a Buyer instruction or lack of instruction to the SC, having submitted a Self-Schedule, Energy Supply Bid, or bid for Ancillary Services for the Storage Facility, is a Buyer Bid Curtailment not a Curtailment Order.

**"Curtailment Period"** means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; *provided* that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**"Cycles"** means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) four (4) times the weighted average Effective Storage Capacity for such Contract Year to date.

**"DA Percentage"** means an amount determined by offer algorithms and other bidding strategies expressed as a percentage of the Day-Ahead Forecast for the Generating Facility, as derived in accordance with Sections 4.3 (b) and (d), and Exhibit D.

**"Damage Payment"** means: (a) with respect to Seller, an amount equal to the amount of the Development Security required to have been posted by Seller as of the applicable Early Termination Date less (i) any amounts paid by Seller including without limitation any Commercial Operation Delay Damages, and further less (ii) any amounts which Buyer has drawn from the Development Security; and (b) with respect to Buyer, the amount as calculated in Section 11.3(a)(ii).

**"Day-Ahead Forecast"** has the meaning set forth in Section 4.3(i)(iv).

**"Day-Ahead Market"** or **"DAM"** has the meaning set forth in the CAISO Tariff.

**"Day-Ahead Schedule"** has the meaning set forth in the CAISO Tariff.

**"Dedicated Interconnection Capacity"** has the meaning set forth in Section 6.3.

**"Deemed Delivered Energy"** means the amount of energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall, for any time period, be equal to the difference between (a) the Real-Time Forecast, *minus* (b) the amount of energy that the Generating Facility produced and delivered to the Delivery Point during the Buyer Curtailment Period; *provided* that, if the applicable difference between the foregoing clauses (a) and (b) is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility's PNode during such Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in any Settlement Interval by the amount of any Charging Energy that would not have been able to be delivered to the Storage Facility during such Settlement

Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage. In the event of an overlapping Buyer Bid Curtailment and a Curtailment Order, Seller shall exclude Energy curtailed during such Curtailment Order time period from the calculation of Deemed Delivered Energy.

**“Defaulting Party”** has the meaning set forth in Section 11.1(a).

**“Deficient Month”** has the meaning set forth in Section 4.10(d).

**“Deliverability Transfer”** has the meaning set forth in Section 2.3.

**“Deliverability Transfer Notice”** has the meaning set forth in Section 2.3.

**“Delivery Point”** has the meaning set forth in Exhibit A.

**“Delivery Term”** shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

**“Development Cure Period”** has the meaning set forth in Exhibit B.

**“Development Security”** means the PV Development Security and the Storage Development Security.

**“Discharging Energy”** means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Discharging Energy shall have originally been delivered to the Storage Facility as Charging Energy.

**“Discharging Instruction”** means the operating instruction, and any subsequent updates, given by Buyer in accordance with the Applicable Instructions and any action of Seller or the SC in accordance with the Applicable Instructions or the CAISO to the Facility, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh; *provided*, (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) if, during a period when the Storage Facility is instructed by Buyer or the CAISO to be discharging, the sum of Metered Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such “Discharging Instruction” shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and Metered Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer or the CAISO issues a further modified Discharging Instruction. Any instruction to discharge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Instruction.

**“Disclosing Party”** has the meaning set forth in Section 18.2.

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

“**DOC**” means the U.S. Department of Commerce.

“**Early Termination Date**” has the meaning set forth in Section 11.2(a).

“**Economic Bids**” has the meaning set forth in the CAISO Tariff.

“**Effective Date**” has the meaning set forth on the Preamble.

“**Effective Storage Capacity**” means the lesser of (a) P<sub>MAX</sub>, and (b) the maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

“**Efficiency Rate**” means the rate calculated by dividing Energy Out by Energy In (a) pursuant to Exhibit O for the initial Efficiency Rate, and (b) based on actual Storage Facility operations for each calendar month thereafter.

“**Electrical Losses**” means all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of Metered Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) between the Delivery Point and the Storage Facility Metering Point associated with delivery of Charging Energy to the Storage Facility, in each case as applicable.

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

“**Energy**” means electrical energy, measured in kilowatt-hours or multiple units thereof.

“**Energy In**” means AC energy charged (in MWh) to the Storage Facility as measured at the Storage Facility Meter pursuant to a Charging Instruction.

“**Energy Management System**” or “**EMS**” means the Facility’s energy management system.

“**Energy Out**” means that total AC energy discharged (in MWh) as measured at the Storage Facility Meter pursuant to a Discharging Instruction.

“**Energy Replacement Damages**” has the meaning set forth in Section 4.7.

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

**“Event of Default”** has the meaning set forth in Section 11.1.

**“Excess Energy”** means the sum of Metered Energy and Deemed Delivered Energy that is delivered in a Contract Year by Seller which is in excess of [REDACTED] of Expected Energy for the Contract Year.

**“Excused Event”** has the meaning set forth in Exhibit P.

**“Expected Commercial Operation Date”** has the meaning set forth on the Cover Sheet.

**“Expected Construction Start Date”** has the meaning set forth on the Cover Sheet.

**“Expected Energy”** means the quantity of Metered Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year in the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to reflect the reduction in Guaranteed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

**“Facility”** means the combined Generating Facility and the Storage Facility.

**“Facility Energy”** means Metered Energy and/or Discharging Energy, as applicable, during any Settlement Interval or Settlement Period.

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

**“Fifteen Minute Market”** or **“FMM”** has the meaning set forth in the CAISO Tariff.

**“Fitch”** means Fitch Ratings Ltd., or its successor.

**“Force Majeure Event”** has the meaning set forth in Section 10.1.

**“Forced Facility Outage”** means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

**“Forward Certificate Transfers”** has the meaning set forth in Section 4.10(a).

**“Full Capacity Deliverability Status”** or **“FCDS”** has the meaning set forth in the CAISO Tariff.

**“Full Capacity Deliverability Status Finding”** means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

**“Future Environmental Attributes”** means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the development, construction, operation or ownership of the Facility and other financial incentives in the form of credits,

reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

**“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 this Agreement for the remaining Contract Term (or in the case of Section 3.10(g)(iii) and 3.10(g)(v), Bridge Product Delivery Term), determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party (or in the case of Section 3.10(g)(iii) and 3.10(g)(v)), 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, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term or Bridge Product Delivery Term, as applicable, and include the value of Green Attributes and Capacity Attributes (or in the case of Section 3.10(g)(iii) and 3.10(g)(v), Green Attributes).

**“Generating Facility”** means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) Metered Energy to the Delivery Point, and (ii) Charging Energy to the Storage Facility; *provided*, the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

**“Generating Facility Meter”** means the CAISO approved revenue quality meter or meters (with a 0.3 accuracy class) and/or CAISO approved metering plan, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Metered Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

**“Generating Facility Metering Point”** means the location(s) of the Generating Facility Meter(s) shown in Exhibit R.

**“Generating Product”** means (a) Metered Energy, (b) Renewable Energy Credits, (c) Green Attributes, (d) Capacity Attributes, if any, and (e) Ancillary Services, if any, in each case arising from or relating to the Generating Facility.

**“Governmental Authority”** means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and the CPUC; *provided*, “Governmental Authority” shall not in any event include any Party.

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the development, construction, operation or ownership of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

**“Green Tag Reporting Rights”** means the right of a purchaser of renewable energy to report ownership of accumulated Green Tags in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

**“Green Tags”** means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of Metered Energy.

**“Guaranteed Capacity”** means the sum of (a) the Guaranteed PV Capacity, and (b) the Guaranteed Storage Capacity.

**“Guaranteed Commercial Operation Date”** has the meaning set forth on the Cover Sheet.

**“Guaranteed Efficiency Rate”** means, for each Contract Year, the minimum guaranteed Efficiency Rate of the Storage Facility set forth on the Cover Sheet for such Contract Year.

**“Guaranteed Energy Production”** has the meaning set forth in Section 4.7.

**“Guaranteed PV Capacity”** means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (*i.e.*, measured at the Generating Facility Meter and

adjusted for Electrical Losses to the Delivery Point), set forth on the Cover Sheet, as may be adjusted pursuant to Exhibit B, Section 5.

**“Guaranteed Storage Availability”** has the meaning set forth in Section 4.8.

**“Guaranteed Storage Capacity”** means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW AC at the Delivery Point (*i.e.*, measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) for four (4) hours of continuous discharge, set forth on the Cover Sheet, as may be adjusted pursuant to Exhibit B, Section 5.

**“Guarantor”** means, with respect to Seller, any Person that (a)(i) is NextEra Energy Capital Holdings, Inc. (provided it is an Affiliate of Seller), or other third party reasonably acceptable to Buyer or (ii) has a Credit Rating of [REDACTED], (b) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (c) executes and delivers a Guaranty for the benefit of Buyer.

**“Guaranty”** means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit S, or as reasonably acceptable to Buyer.

**“Indemnified Party”** has the meaning set forth in Section 16.1.

**“Indemnifying Party”** has the meaning set forth in Section 16.1.

**“Initial Synchronization”** means the commencement of Trial Operations (as defined in the CAISO Tariff).

**“Installed Capacity”** means the sum of (x) the Installed PV Capacity and (y) the Installed Storage Capacity.

**“Installed PV Capacity”** means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (*i.e.*, measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

**“Installed Storage Capacity”** means the lesser of (a) P<sub>MAX</sub>, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Storage Facility Meter Point by the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

**“Inter-SC Trade”** has the meaning set forth in the CAISO Tariff.

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller (or its Affiliate) pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.



**“Interconnection Capacity Limit”** means the maximum instantaneous amount of Energy that is permitted to be delivered from the Facility to the Delivery Point under the Interconnection Agreement for the Facility, in the amount of 90 MW.

**“Interconnection Facilities”** means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

**“Interconnection Point”** means the Colorado River 230 kV substation.

**“Interest Rate”** has the meaning set forth in Section 8.2.

**“Interim Milestones”** means the development activities for significant milestones set forth on the Cover Sheet, not including the Expected Commercial Operation Date, Guaranteed Commercial Operation Date, or the RA Guarantee Date.

**“ITC”** means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986, as such Law may be amended or superseded.

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

**“Joint Powers Agreement”** means that certain Joint Powers Agreement, with an effective date of November 20, 2020, as amended by that certain First Amendment dated February 9, 2021 and that certain Second Amendment dated October 25, 2022, as such agreement may be further amended or amended and restated from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

**“kWh”** means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

**“Law”** means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

**“Lender”** means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

**“Letter(s) of Credit”** means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch, having assets of at least \$10 billion, and with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, in a form substantially similar to the letter of credit set forth in: (a) Exhibit K if issued on behalf of Seller for the benefit of Buyer; and (b) Exhibit L if issued on behalf of Buyer for the benefit of Seller.

**“Licensed Professional Engineer”** means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

**“Local Capacity Area Resource”** has the meaning set forth in the CAISO Tariff.

**“Local RAR”** means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

**“Locational Marginal Price”** or **“LMP”** has the meaning set forth in the CAISO Tariff.

**“Losses”** means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement (or in the case of Section 3.10(g)(iii) and 3.10 (g)(v), the Bridge Product) for the remaining Contract Term (or in the case of Section 3.10(g)(iii) and 3.10 (g)(v), Bridge Product Delivery Term), determined in a commercially reasonable manner. Factors used in determining economic loss to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party (or in the case of Section 3.10(g)(iii) and 3.10 (g)(v)), 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, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term or Bridge Product Delivery Term, as applicable, and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives (or in the case of Section 3.10(g)(iii) and 3.10 (g)(v), Green Attributes).

**“Lost Output”** has the meaning set forth in Section 4.7(a)(ii).

**“Managed Instructions”** have the meaning set forth in Section 4.3(b)(i) and Exhibit D.

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

**“Metered Energy”** means all Energy generated and delivered by the Generating Facility, as measured at the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use (but not for any storage losses) to the Delivery Point.

**“Milestones”** means the development activities for significant milestones set forth on the Cover Sheet.

**“Monthly Capacity Payment”** means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the provision of Effective Storage Capacity and Capacity Attributes associated with the Storage Facility and other Storage Product, as calculated in accordance with Exhibit C.

**“Monthly Forecast”** has the meaning set forth in Section 4.3(i)(ii).

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

**“MUFG Credit Agreement”** means that certain Revolving Credit Agreement between Buyer and MUFG Union Bank, N.A. dated as of September 21, 2021, as such agreement may be further amended or amended and restated from time to time.

**“MW”** means megawatts in alternating current, unless expressly stated in terms of direct current.

**“MWh”** means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

**“NEECH”** means NextEra Energy Capital Holdings, Inc.

**“NEER”** means NextEra Energy Resources, LLC.

**“NEOP”** means NextEra Energy Operating Partners, LP.

**“NEP”** means NextEra Energy Partners, LP.

**“Negative LMP”** means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars (\$0).

**“Negative LMP Strike Price”** means a Buyer RTM Bid Price at or below which the Generating Facility is willing to reduce Metered Energy.

**“NERC”** means the North American Electric Reliability Corporation.

**“Net Buyer CAISO Settlements”** has the meaning set forth in Section 4.3(e)(ii).

**“Net Buyer CAISO Settlements Protocol”** has the meaning set forth in Section 4.3(e)(iii).

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

**“Network Upgrades”** has the meaning set forth in the CAISO Tariff.

**“New PV/BESS Trade Measure Event”** has the meaning set forth in Section 2.7.

**“New PV/BESS Trade Measure Extensions”** has the meaning set forth in Exhibit B.

**“Non-Defaulting Party”** has the meaning set forth in Section 11.2.

**“Notice”** shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, next Business Day courier service, or electronic messaging (e-mail).

**“NOC Reduction”** has the meaning set forth in Section 3.8(e).

**“Operating Restrictions”** means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

**“Partial Deliverability Status”** has the meaning set forth in the CAISO Tariff.

**“Participating Generator Agreement”** has the meaning set forth in the CAISO Tariff.

**“Participating Transmission Owner”** or **“PTO”** has the meaning set forth in the CAISO Tariff.

**“Party”** has the meaning set forth in the Preamble.

**“Party Security”** has the meaning set forth in Section 8.12.

**“Performance Measurement Period”** means each two (2) consecutive Contract Year periods during the Delivery Term, calculated on a non-rolling basis such that no Contract Year is included in more than one Performance Measurement Period. The first Performance Measurement Period shall include Contract Years 1 and 2. The second Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

**“Performance Security”** means (i) cash, (ii) a Letter of Credit, or (iii) a Guaranty in the amount set forth on the Cover Sheet.

**“Permitted Transfer”** means each of the following transactions:

(a) Transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; *provided*, that: (i) Ultimate Parent retains the authority, directly or indirectly, to control Seller (or if applicable, the surviving entity), or (ii) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility;

(b) A Change of Control of Ultimate Parent, NEECH, NEP, NEOP, or NEER;

(c) Any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility and that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;

(d) The direct or indirect transfer of shares of, or equity interests in, Seller to a Lender;  
or

(e) A transfer of the Facility (or the direct or indirect ownership of equity interests in Seller) in connection with any of the following: (i) all or substantially all of the assets of NEER, NEECH, or Ultimate Parent; (ii) all or substantially all of NEER's or Ultimate Parent's renewable energy generation portfolio; or (iii) all or substantially all of NEER's or Ultimate Parent's solar generation and/or energy storage portfolio; or (iv) the direct or indirect transfer of shares of, or equity interests in, Seller to a person in which, following the transfer, an Affiliate of NEER continues to hold an economic interest in the Facility; provided, that in the case of each of (i) through (iv) above: (A) the transferee (1) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller's duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (2) meets the Seller credit security requirements; and (B) the entity that operates the Facility following such transfer is (or contracts with) a Qualified Operator.

**"Permitted Transferee"** means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of [REDACTED]

[REDACTED]; and

(b) At least three (3) years of experience in the ownership and operations of power generation and energy storage facilities similar to the Facility, including the duties of the Scheduling Coordinator, or has retained a third-party with such experience to operate the Facility and act as Scheduling Coordinator.

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include its Ultimate Parent, NEER, NEECH, NEOP, and NEP, and their respective direct or indirect subsidiaries.

**"Person"** means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

**"Planned Outage"** means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

**"PMAX"** means the applicable CAISO-certified maximum operating level of the Storage Facility.

**"PMIN"** means the applicable CAISO-certified minimum operating level of the Storage Facility.

**"PNode"** has the meaning set forth in the CAISO Tariff.

**"Portfolio"** means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller's Affiliates or

the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

**“Portfolio Content Category”** means PCC1, PCC2 or PCC3, as applicable.

**“Portfolio Content Category 1”** or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 2”** or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 3”** or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Financing”** means any tax equity or debt transaction entered into by an Affiliate of Seller that is secured only by a Portfolio.

**“Portfolio Financing Entity”** means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

**“Positive Uninstructed Deviation Credit”** has the meaning set forth in Section 4.3(f).

**“Product”** has the meaning set forth on the Cover Sheet.

**“Progress Report”** means a progress report including the items set forth in Exhibit E.

**“Prudent Operating Practice”** means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts 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 a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety

Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“**PTC**” means the production tax credit established pursuant to Section 45 or Section 45Y, each to the extent applicable to the Facility, of the United States Internal Revenue Code of 1986, as such Law may be amended or superseded.

“**PTC Rate**” means, to the extent applicable to the Generating Facility and within the statutory payment period, the then-current rate of the PTC (per MWh) on an After-Tax Basis as set forth in applicable Internal Revenue Service guidance.

“**PV Capacity Damages**” has the meaning set forth in Section 5 of Exhibit B.

“**PV Development Security**” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet for the Guaranteed PV Capacity.

“**PV/BESS Equipment**” means solar photovoltaic cells, photovoltaic modules, batteries, battery modules, onboard sensors, control components, inverters, or any of their components.

“**Qualified Operator**” means Seller or an operator of photovoltaic solar generation facilities that has sufficient experience and technical capability to perform for Seller’s benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated three (3) or more photovoltaic solar generation facilities, each having a nameplate capacity rating of twenty (20) MW or more, for not less than three (3) years and at least one (1) battery energy storage facility having a nameplate capacity rating of one (1) MW and/or two (2) MWh or more, for not less than two (2) years.

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

“**RA Compliance Showing**” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“**RA Deficiency Amount**” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“**RA Guarantee Date**” means the date that is sixty (60) days after the Commercial Operation Date.

“**RA Shortfall**” has the meaning set forth in Section 3.8(a).

“**RA Shortfall Month**” has the meaning set forth in Section 3.8(a).

**“RTM Bid Forecast”** means the forecast of the Energy to be produced by the Generating Facility prepared by the CAISO or its designee in accordance with the Eligible Intermittent Resources Protocol and CAISO Tariff section 4.8.2, or its successor provision, and communicated to the Scheduling Coordinator for the Generating Facility for use in submitting bids in the Real-Time Market or, alternatively, a third-party forecast as permitted under Section 4.3(i).

**“Real-Time Forecast”** means the total amount of energy that the Generating Facility would have produced during such Buyer Curtailment Period, as calculated by Seller in a manner reasonably acceptable to Buyer using the best available data obtained through commercially reasonable methods and meteorological data at the Generating Facility during such Buyer Curtailment Period, and any adjustments necessary to accurately reflect the Generating Facility’s capacity to produce and deliver energy to the Delivery Point, including applicable losses and manufacturers’ warranted power curves, subject to Buyer’s verification not to be unreasonably withheld.

**“Real-Time Market”** or **“RTM”** has the meaning set forth in the CAISO Tariff.

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

**“REC Vintage”** means the date of REC creation, which pursuant to the California RPS program, will not be valid if older than 36 months.

**“Receiving Party”** has the meaning set forth in Section 18.2.

**“Reliability Network Upgrades”** has the meaning set forth in the CAISO Tariff.

**“Remedial Action Plan”** has the meaning set forth in Section 2.6.

**“Renewable Energy Credit”** or (**“REC”**) has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

**“Renewable Energy Incentives”** means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the production of electricity from, or the construction, operation or the ownership of, the Facility or any part thereof (including the Tax Credits and other credits under Sections 38, 45, 45Y, 46, 48, and 48E of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute, Future Environmental Attribute, or Capacity Attribute.

**“Renewable Rate”** has the meaning set forth on the Cover Sheet.

**“Replacement Energy”** has the meaning set forth in Exhibit G.



**“Replacement Green Attributes”** has the meaning set forth in Exhibit G.

**“Replacement Product”** has the meaning set forth in Exhibit G.

**“Replacement RA”** means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Storage Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within SP 15 TAC Area and, to the extent that the Storage Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

**“Requested Confidential Information”** has the meaning set forth in Section 18.2.

**“Required Credit Rating”** means, with respect to any Person, if such Person has only one Credit Rating, then one of the following, or if such Person has two or more Credit Ratings, at least two of the following: a Credit Rating of BBB- or higher by S&P; Baa3 or higher by Moody’s; and BBB- or higher by Fitch.

**“Residual Unit Commitment”** has the meaning set forth in the CAISO Tariff.

**“Resource Adequacy Benefits”** means the rights and privileges attached to the Storage Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Storage Facility.

**“Resource Adequacy Plan”** or **“RA Plan”** has the meaning set forth in the CAISO Tariff.

**“Resource Adequacy Requirements”** or **“RAR”** means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

**“Resource Adequacy Resource”** shall have the meaning used in Resource Adequacy Rulings.

**“Resource Adequacy Rulings”** means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 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, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

**“RPS Energy”** has the meaning set forth in Section 4.10.

**“RTD”** has the meaning set forth in the definition of CAISO Real Time Market in the CAISO Tariff.

**“RTD Imbalance Energy”** has the meaning set forth in the CAISO Tariff.

**“RTD Price”** means the relevant LMP for the CAISO Settlement Point during the applicable RTD Settlement Interval.

**“S&P”** means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

**“SCADA System”** means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS, AGC, or similar instructions from the CAISO.

**“Schedule”** has the meaning set forth in the CAISO Tariff, and **“Scheduled”** has a corollary meaning.

**“Scheduled Energy”** means the Metered Energy, Charging Energy or Discharging Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule(s), FMM Schedule(s) (as defined in the CAISO Tariff), and/or any other financially binding Schedule(s), market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

**“Scheduling Coordinator”** or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

**“Security Interest”** has the meaning set forth in Section 8.12.

**“Self-Schedule”** has the meaning set forth in the CAISO Tariff.

**“Seller”** has the meaning set forth on the Cover Sheet.

**“Seller Bridge Product Supplier Agreement”** has the meaning set forth in Section 3.10(f).

**“Seller Initiated Test”** has the meaning set forth in Section 4.9(c).

**“Seller Storage Termination Notice”** has the meaning set forth in Section 2.3(c).

**“Seller’s WREGIS Account”** has the meaning set forth in Section 4.10(a).

**“Settlement Amount”** means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

**“Settlement Interval”** has the meaning set forth in the CAISO Tariff.

**“Settlement Period”** has the meaning set forth in the CAISO Tariff.

**“Settlement Point”** means the CAISO designated PNode for the Facility.

**“SQMD Plan”** has the meaning set forth in the CAISO Tariff.

**“Shared Facilities”** means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

**“Short-Notice Opportunity RA Outage”** has the meaning set forth in the CAISO Tariff.

**“Showing Month”** shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

**“Site”** means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

**“Site Control”** means that Seller or its Affiliate: (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of, or the holder of an option for, an easement, right-of-way grant, or similar instrument with respect to the Site.

**“SOC”** or **“State of Charge”** means the (a) level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by four (4) hours, expressed as a percentage.

**“SP-15”** means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

**“Station Use”** means (1) with respect to the Generating Facility, the Energy (including Energy produced or discharged by the Generating Facility) that is used within the Generating Facility to power the information technology, telecommunications, lights, motors, temperature control systems, control facility systems and other electrical loads that are necessary for operation of the Generating Facility; and (2) with respect to the Storage Facility, the Energy (including Energy produced or discharged by the Storage Facility) that is used within the Storage Facility to power the information technology, telecommunications, lights, motors, temperature control systems, control facility systems and other electrical loads that are necessary for operation of the Storage Facility except during periods in which the Storage Facility is charging or discharging pursuant to a Charging Instruction or Discharging Instruction.

**“Storage Capacity Damages”** has the meaning set forth in Section 5 of Exhibit B.

**“Storage Capacity Test”** or **“SCT”** means any test or retest of the Storage Facility to establish the Installed Storage Capacity or Effective Storage Capacity conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

**“Storage Development Security”** means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet for the Guaranteed Storage Capacity.

**“Storage Facility”** means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product, and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof; *provided*, the “Storage Facility” does not include the Generating Facility or the Shared Facilities.

**“Storage Facility Meter”** means the CAISO approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

**“Storage Facility Metering Point”** means the location(s) of the Storage Facility Meter shown in Exhibit R.

**“Storage Product”** means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

**“Storage Rate”** has the meaning set forth on the Cover Sheet.

**“Stored Energy Level”** means, at a particular time, the amount of Energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

**“Supplemental Instructions”** has the meaning set forth in Section 4.3(b)(iii).

**“Supplementary Storage Capacity Test Protocol”** has the meaning set forth in Exhibit O.

**“System Emergency”** means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

**“Tax”** or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a

Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

**“Tax Credits”** means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production, sale or storage of renewable energy from, or the operation or the ownership of, the Facility or any part thereof.

**“Terminated Transaction”** has the meaning set forth in Section 11.2(a).

**“Termination Payment”** has the meaning set forth in Section 11.3(b).

**“Test Energy”** means Metered Energy delivered (i) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (b) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (ii) ending upon the occurrence of the Commercial Operation Date.

**“Test Energy Rate”** has the meaning set forth in Section 3.6.

**“Transmission Delays”** has the meaning set forth in Exhibit B.

**“Transmission Provider”** means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

**“Transmission System”** means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

**“Transmission System Outage”** means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

**“Ultimate Parent”** means NextEra Energy, Inc., a Delaware corporation.

**“Uninstructed Imbalance Energy”** has the meaning set forth in the CAISO Tariff.

**“Variable Energy Resource”** or **“VER”** has the meaning set forth in the CAISO Tariff.

**“Weekly Forecast”** has the meaning set forth in Section 4.3(i)(iii).

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

**“WREGIS Certificate Deficit”** has the meaning set forth in Section 4.10(d).

**“WREGIS Certificates”** has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

**“WREGIS Operating Rules”** means those operating rules and requirements adopted by WREGIS as of January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

**“WRO Restraint”** means any withhold release order or other import restraint issued by U.S. Customs and Border Protection or other applicable Governmental Authority, including under the Uyghur Forced Labor Prevention Act, that prevents or delays the import or release of any PV/BESS Equipment into the United States and such order prevents or delays the delivery of such PV/BESS Equipment to Seller for incorporation into the Generating Facility and/or the Storage Facility.

**“WRO Restraint Extension”** has the meaning set forth in Exhibit B.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.

## **ARTICLE 2**

### **TERM; CONDITIONS PRECEDENT; EXTENSIONS**

#### **2.1 Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”); *provided*, subject to Buyer’s obligations in Section 3.6 and Section 3.10, Buyer’s obligations to pay for and/or accept any Product, are subject to Seller’s completion of the conditions precedent pursuant to Section 2.4.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

**2.2 Seller’s Condition Precedent.** From the Effective Date through and including the Facility’s Commercial Operation Date, Buyer shall provide written Notice to Seller, within ten (10) Business Days, of Buyer’s receipt of any notice of election to withdraw from Buyer provided by (a) the City of Irvine, (b) the City of Huntington Beach, and/or (c) each of (i) the City of Buena

Park, and (ii) the City of Fullerton (with such Notice under this subsection (c) to be provided by Buyer to Seller within ten (10) Business Day of Buyer's receipt of the second such entity's notice of election to withdraw from Buyer). Seller shall have the right to terminate this Agreement upon receipt of any Notice under this Section 2.2.

Seller's exercise of such termination under this Section 2.2 shall require that Seller provide Notice of such termination to Buyer, signed by a duly-authorized officer of Seller, which provides that Seller is exercising its right to terminate this Agreement in total pursuant to this Section 2.2 of the Agreement. Neither Party shall have any liability to the other Party as a result of any termination of this Agreement under this Section 2.2, except for any liability of Buyer to Seller for Bridge Product which Seller is not able to mitigate, capped at the amount of the Buyer Bridge Credit Support, and Seller shall be entitled to return of its Development Security and Buyer shall be entitled to return of any Buyer's Credit Support (subject to Seller's right to draw against the Buyer Bridge Credit Support for Bridge Product which Seller is not able to mitigate), as applicable.

### 2.3 **Deliverability Transfer Condition Precedent.**

(a) On or before the first anniversary of the Effective Date, Seller shall provide Buyer with either a Deliverability Transfer Notice or a Seller Storage Termination Notice. To the extent Seller has not provided either a Deliverability Transfer Notice or a Seller Storage Termination Notice by the first anniversary of the Effective Date, Buyer shall provide Notice of such non-receipt, and Seller shall provide Buyer either a Deliverability Transfer Notice or a Seller Storage Termination Notice, as applicable, within ten (10) Business Days of Seller's receipt of such Notice from Buyer.

(b) The "**Deliverability Transfer Notice**" is a Notice from Seller to Buyer advising either that (i) Seller has obtained Full Capacity Deliverability Status for the Storage Facility, or (ii) Seller has obtained Partial Deliverability Status for the Storage Facility and the MW quantity of such Partial Deliverability Status for the Storage Facility ("**Deliverability Transfer**"). If the Deliverability Transfer reflects Partial Deliverability Status for the Storage Facility of less than twenty (20) MW, Buyer shall have the right to terminate this Agreement as to the Storage Facility only by providing Seller with Notice ("**Buyer Storage Termination Notice**"), and the other applicable provisions of this Agreement shall be adjusted accordingly. If Buyer fails to deliver the Buyer Storage Termination Notice to Seller within twenty (20) days following Buyer's receipt of the Deliverability Transfer Notice, Buyer's right to terminate the Agreement as to the Storage Facility only shall be waived and the Guaranteed Storage Capacity shall be reset at the MW quantity of Partial Deliverability Status set forth in the Delivery Transfer Notice. Neither Party shall have any liability to the other Party as a result of any termination of this Agreement as to the Storage Facility only under this Section 2.3(b).

(c) Notwithstanding Section 2.3(b), if Seller fails to obtain Full Capacity Deliverability Status or Partial Deliverability Status for the Storage Facility in a quantity of more than ten (10) MW by the first anniversary of the Effective Date, Seller shall have the right to advise Buyer that Seller is electing to terminate this Agreement, as to the Storage Facility only (a "**Seller Storage Termination Notice**"). The Seller Storage Termination Notice shall advise Buyer that Seller is electing to terminate this Agreement as to the Storage Facility only as a result of Seller's failure to obtain Full Capacity Deliverability Status or Partial Deliverability Status for the Storage



Facility in a quantity of more than ten (10) MW, and upon the provision of such Seller Storage Termination Notice, the Agreement with respect to the Storage Facility only shall be terminated and the other applicable provisions of this Agreement shall be adjusted accordingly. Neither Party shall have any liability to the other Party as a result of any termination of this Agreement as to the Storage Facility only under this Section 2.3(c).

#### 2.4 **Other Conditions Precedent.**

The Delivery Term shall not commence until Seller completes or Buyer waives each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H, and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed PV Capacity, the Installed Storage Capacity and the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and one (1) or more meter service agreements or metering plans, as applicable, between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of the same delivered to Buyer;

(c) An Interconnection Agreement for the Facility between Seller (or its Affiliate) and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable permits and government approvals required for the operation of the Facility have been obtained;

(e) Seller has obtained CAISO Commercial Operation for the Generating Facility;

(f) Seller has received CEC Precertification of the Generating Facility (and reasonably expects to receive final CEC Certification and Verification for the Generating Facility in no more than one hundred eighty (180) days after the Commercial Operation Date);

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Generating Facility, qualified reporting entity service agreements, and other appropriate documentation required to effect Generating Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Generating Facility within the WREGIS system;

(h) Seller has obtained CAISO Certification for the Storage Facility;

(i) Seller has satisfied the applicable insurance requirements in Article 17; and

(j) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8.

**2.5 Development; Construction; Progress Reports.**

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to a quarterly or monthly (as applicable) meeting between representatives of Buyer and Seller within five (5) Business Days of receipt by Seller of Buyer's request for a meeting to review the Progress Reports and discuss Seller's construction progress.

(b) The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Interim Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

**2.6 Remedial Action Plan.** If Seller misses an Interim Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Interim Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Interim Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Interim Milestones and all subsequent Interim Milestones by the Guaranteed Commercial Operation Date (as may be extended in accordance with Section 4 of Exhibit B); provided, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Interim Milestones and to achieve the Guaranteed Commercial Operation Date (as may be extended in accordance with Section 4 of Exhibit B) in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.6, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Interim Milestone.

**2.7 New PV/BESS Trade Measure Events.** (a) Notwithstanding anything to the contrary in this Agreement, in connection with any New PV/BESS Trade Measure Event: Within thirty (30) days of the occurrence or cessation, as applicable, of a New PV/BESS Trade Measure Event that applies to any PV/BESS Equipment, Seller shall give written notice to Buyer of such event, which notice sets forth Seller's commercially reasonable opinion as of that date of (1) the components of the Facility that are potentially impacted, (2) whether there are commercially reasonably available alternatives to such components to mitigate the impact of the New PV/BESS Trade Measure Event, and (3) any anticipated delay in the Guaranteed Commercial Operation Date and any other applicable Milestones. Within ten (10) Business Days of written notice, Seller and Buyer shall meet and confer to discuss such impacts, and to the extent the costs and delays

associated with such anticipated impacts can be identified and mitigated with reasonable certainty, Seller and Buyer will commence negotiations of potential changes to this Agreement to keep the construction of the Facility on track including keeping Seller financially whole. If the impacts are uncertain as of the date of such negotiations or Seller and Buyer are not able to agree on changes to this Agreement, then such meetings will continue on no less than a monthly basis until the earlier to occur of (i) Seller and Buyer agreeing to such changes in a signed amendment to this Agreement, (ii) a notice of termination of this Agreement pursuant to Section 2.7(d), and (iii) cessation of the New PV/BESS Trade Measure Event. If neither Party has given notice of termination pursuant to Section 2.7(d), then within sixty (60) days of the cessation of the New PV/BESS Trade Measure Event, Seller will give notice to Buyer pursuant to Section 2.7(c) below.

(b) Subject to the terms of Section 2.7(d), while the New PV/BESS Trade Measure Event is ongoing and for a period of ninety (90) days following its cessation, Seller may suspend development and construction of the Facility, or any part thereof and shall receive a day-for-day extension of the Guaranteed Commercial Operation Date and other applicable Milestones.

(c) Seller shall, within sixty (60) days of the cessation of the New PV/BESS Trade Measure Event (or at such earlier date as Seller may, in its sole discretion, determine it has reasonable certainty of the impacts of the event), provide written notice to Buyer of: (i) any increase in the cost of the Facility as a result of the New PV/BESS Trade Measure Event and any proposed increase in the Contract Price to compensate Seller for such cost; and (ii) an extension of the Guaranteed Commercial Operation Date and any other applicable Milestones to accommodate delays or cost increases that Seller reasonably expects to incur, including under any replacement arrangement, as a result of such New PV/BESS Trade Measure Event (an **“Amendment Notice”**). Within thirty (30) days of receipt of the Amendment Notice, Buyer will give written notice of its acceptance or rejection of such terms. If Buyer accepts the terms, then Buyer and Seller will move forward with an appropriate amendment to this Agreement. If the Buyer rejects the terms or does not timely provide any such written notice, then subject to the rights of the Parties under Section 2.7(d), Buyer and Seller will continue to negotiate such terms in good faith. If Seller has not provided an Amendment Notice or a termination notice pursuant to Section 2.7(d) within sixty (60) days following the cessation of the New PV/BESS Trade Measure Event, then the New PV/BESS Trade Measure Event will be deemed to have not resulted in any material impact on the obligations of the Parties under this Agreement, except for the extension set forth in Section 2.7(b).

(d) At any time following the occurrence of the New PV/BESS Trade Measure Event until the date that is sixty (60) days following the cessation of such event if Seller in its sole discretion determines that it does not make economic sense for Seller to proceed with the Agreement due to increased project costs and/or schedule delays, then Seller may terminate this Agreement (for the avoidance of doubt, regardless of any prior or pending Amendment Notices with respect to such New PV/BESS Trade Measure Event) upon at least thirty (30) days written notice to Buyer. Within thirty (30) days following either (1) Buyer’s receipt of an Amendment Notice, or (2) twelve (12) months after the occurrence of the New PV/BESS Trade Measure Event if Buyer has not received either an Amendment Notice or a Notice from Seller that Seller will not be providing Buyer with an Amendment Notice, Buyer will have the right to terminate this Agreement upon thirty (30) days written notice to Seller if (A) the proposed increase in the Contract Price is greater than either (i) [REDACTED]

[REDACTED], or (B) the extension of the Guaranteed Commercial Operation Date is greater than [REDACTED]. Neither Party shall have any liability to the other Party as a result of any termination of this Agreement under this Section 2.7.

**“New PV/BESS Trade Measure Event”** means any of the following events, during the period while the applicable ruling request, inquiry, rulemaking, or other filing or proceeding remains pending or subject to appeal before the DOC or other applicable Governmental Authority:

- i. Filing of any anti-circumvention ruling request alleging that manufacturers or importers are circumventing any AD/CVD orders on PV/BESS Equipment;
- ii. Initiation of any anti-circumvention inquiry into whether manufacturers or importers are circumventing any AD/CVD orders on PV/BESS Equipment or issuance in any such inquiry of any finding or ruling that manufacturers or importers are circumventing any AD/CVD orders on PV/BESS Equipment; or
- iii. Filing or initiation of any rulemakings, adjudications, or other proceedings to increase, extend, or expand application of, or impose any new, tariffs, including but not limited to AD/CVD, or other trade measures on PV/BESS Equipment.

For the avoidance of doubt, the Parties acknowledge that (a) any judicial or administrative challenge to, or withdrawal (in whole or in part) of, (I) that certain Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia, by the President of the United States, dated June 6, 2022, or supporting Presidential Determination Pursuant to Section 303 of the Defense Production Act, or (II) any implementation thereof by the DOC or other Governmental Authority, including through any rulemaking, shall trigger the occurrence of a New PV/BESS Trade Measure Event with respect to the DOC’s anti-circumvention investigation in Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China, Petition filed February 8, 2022 by Auxin Solar, Inc. in four separate DOC dockets: A-570-979 Malaysia; Thailand; Cambodia; and Vietnam, and (b) any final affirmative determination by DOC in such anti-circumvention investigation that expands the scope of its preliminary affirmative circumvention determinations, as published on December 8, 2022 in 87 Fed. Reg. 75,221, to cover companies or activities excluded in such preliminary affirmative determinations, or narrows the scope of, or vacates or reverses, any negative circumvention determinations or guidance on avoiding circumvention in such published issuance, shall trigger the occurrence of a New PV/BESS Trade Measure Event with respect to such anti-circumvention investigation.

2.8 **Seller’s Termination for Convenience Right.** Notwithstanding anything to the contrary in this Agreement, and without limiting Seller’s rights to terminate for other reasons set forth in this the Agreement, Seller shall have the right to terminate this Agreement in total, for convenience at any time prior to the Expected Construction Start Date, in exchange for payment of the Damage Payment to Buyer. Seller’s exercise of such termination for convenience shall require that Seller provide at least fifteen (15) Business Days’ Notice of such termination for convenience signed by a duly-authorized officer of Seller which specifically provides that Seller

is exercising its right to terminate this Agreement in total, for Seller's convenience and specifically provides that such termination is being made pursuant to this Section 2.8 of the Agreement.

### **ARTICLE 3 PURCHASE AND SALE**

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer shall have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Metered Energy; *provided*, that the Metered Energy will be subject to proportional adjustments resulting from any reductions or offsets imposed under rules or policies of the California Energy Commission to account for losses resulting from the Storage Facility; *provided, further, however*, that such losses may not exceed the Guaranteed Efficiency Rate.

3.3 **RTD Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Metered Energy, Charging Energy, and/or Discharging Energy delivered from the Generating Facility and/or received or delivered by the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. Following the Commercial Operation Date, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Buyer, except as otherwise expressly set forth in this Agreement.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and to Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but

there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Generating Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Generating Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Product of the Generating Facility on an as-available basis. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to [REDACTED] (the "**Test Energy Rate**") unless Buyer elects in a Notice provided to Seller no later than five (5) days prior to the first day on which Test Energy is expected to be available from the Generating Facility to instead pay Seller the Renewable Rate in which case Buyer shall pay Seller the Renewable Rate for such Test Energy and associated Product, in addition to the amounts specified in Section 4.5(h). The conditions precedent in Section 2.4 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes.** Subject to the Parties' termination rights with respect to the Storage Facility under Section 2.3(b) and Section 2.3(c), as between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining Full Capacity Deliverability Status or, if the Deliverability Transfer Notice reflects a level of Deliverability less than Full Capacity Deliverability Status, the level in MW set forth therein.

(a) Throughout the Delivery Term and subject to Section 3.13, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Storage Facility.

(b) Throughout the Delivery Term and subject to Section 3.13, Seller shall maintain eligibility for, as applicable, Full Capacity Deliverability Status or the lower level of Deliverability set forth in the Deliverability Transfer Notice, for the Storage Facility from the CAISO and shall perform all actions necessary to ensure that the Storage Facility qualifies to provide all Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.13, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.13, Seller shall comply with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

### 3.8 Resource Adequacy Failure.

(a) RA Deficiency Determination. For each RA Shortfall Month after the RA Guarantee Date, Seller shall pay to Buyer the applicable RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(c), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer. “RA Shortfall Month” means any Showing Month in which there is an RA Shortfall. “RA Shortfall” means the positive difference, if any, between (i) the Qualifying Capacity of the Guaranteed Storage Capacity during the RA Shortfall Month minus (ii) the Net Qualifying Capacity of the Storage Facility for such month able to be shown on Buyer’s monthly RA Plan to the CAISO and CPUC and counted as Resource Adequacy for System RA, and, if applicable, Local RA.

(b) RA Deficiency Amount Calculation. The “RA Deficiency Amount” for an RA Shortfall Month shall equal the product of:

(i) the applicable RA Shortfall in MW multiplied by

(ii) the lower of:

(A) [REDACTED] per kW-month; or

(B) the sum of (1) any penalty actually imposed on Buyer by the CPUC (expressed in dollars per kW-month) for failure to meet the CPUC’s resource adequacy requirements as a direct result of the RA Deficiency Amount, which penalty shall be reasonably documented by Buyer, and (2) [REDACTED] (or its successor).

(c) Replacement RA. Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall; *provided* that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a Notice to Buyer at least five (5) Business Days before the deadline that a Scheduling Coordinator must meet to submit its monthly resource adequacy plan, as established by CAISO or any other Governmental Authority.

(d) RA Deficiency Amounts True-Up. If Seller owes an RA Deficiency Amount for any Showing Month and an Availability Adjustment of less than one hundred percent (100%) applies to the Monthly Capacity Payment due hereunder with respect to the calendar month corresponding to such Showing Month, then to the extent (i) the actual mechanical or operational unavailability of the Facility in such calendar month is directly correlated with any NQC reduction for purposes of determining the RA Deficiency Amount arising out of the corresponding Showing Month, and (ii) such actual mechanical or operational unavailability of the Facility corresponds to the Availability Adjustment of less than one hundred percent (100%) being applied to the Monthly Capacity Payment owed to Seller hereunder, then Seller shall owe either the applicable RA

Deficiency Amount calculated hereunder for such Showing Month, or the applicable reduction to the Monthly Capacity Payment due hereunder, whichever is larger, but not both, and the payments shall be adjusted accordingly.

(e) **NQC Reduction**. Notwithstanding anything to the contrary in this Agreement, if the Net Qualifying Capacity of the Facility or any similar calculation is reduced as a result of a Change in Law, including (i) any change in the CPUC's or the CAISO's resource counting rules, (ii) any change in the CAISO's deliverability assessment methodology for all solar or storage facilities as a resource class, (iii) any replacement or modification of Net Qualifying Capacity as the value used to measure the qualifying capacity of the Facility, including any replacement with a value such as unforced capacity, or the utilization of any successor value as a supplemental means of measuring the qualifying value of the Facility along with Net Qualifying Capacity, or (iv) a change in electric system conditions beyond the control of Seller that causes the application of the CAISO's existing deliverability methodology to effect the Net Qualifying Capacity of the Storage Facility (each an "**NQC Reduction**"), then the NQC Reduction shall be added to the then current Net Qualifying Capacity of the Facility able to be shown on Buyer's monthly or annual RA Plan to the CAISO and CPUC and counted as Resource Adequacy for System RA, and, if applicable, Local RA, and the total shall be used as the value in subsection (ii) in the calculation of any RA Shortfall (i.e., the value set forth in 3.8(a)(ii)).

3.9 **CEC Certification and Verification**. Subject to Section 3.13 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **Bridge Product**. In addition to the Parties' rights and obligations under this Agreement with respect to the Facility, Seller agrees to use commercially reasonable efforts to deliver Bridge Product, and Buyer agrees to purchase and pay for, in advance of any REC transfer associated with Bridge Product, on an installment basis Bridge Product, to be delivered or made available to Buyer in accordance with the following terms and conditions:

- (a) "**Bridge Product**" are Portfolio Content Category 1 RECs intended to meet the requirements of California Public Utilities Code 399.13(b) and CPUC Decision D.17-06-026.
- (b) The quantity of Bridge Product shall be:
  - a. For 2024 REC Vintage, [REDACTED] Portfolio Content Category 1 RECs (the "**2024 Firm Amount**") and the potential for an



amount in addition to the 2024 Firm Amount up to [REDACTED] Portfolio Content Category 1 RECs (the “**2024 Contingent Amount**”); and

- b. For 2025 REC Vintage, [REDACTED] Portfolio Content Category 1 RECs (the “**2025 Firm Amount**”) and the potential for an amount in addition to the 2025 Firm Amount [REDACTED] Portfolio Content Category 1 RECs (the “**2025 Contingent Amount**”).
- (c) The “**Bridge Product Price**” shall be [REDACTED]/MWh.
- (d) The “**Bridge Product Delivery Term**” shall commence on January 1, 2024 and continue until the earlier of: (i) the Commercial Operation Date, (ii) the termination of this Agreement in accordance with its terms, or (iii) (A) June 1, 2025 for the 2024 Firm Amount and any 2024 Contingent Amount (the “**2024 Bridge Product Delivery Cessation Date**”), and (B) June 1, 2026 for the 2025 Firm Amount and any 2025 Contingent Amount (the “**2025 Bridge Product Delivery Cessation Date**” and together with the 2024 Bridge Product Delivery Cessation Date, the “**Bridge Product Delivery Cessation Date**”); provided that the Bridge Product Delivery Term shall be extended solely for the purpose of transferring the WREGIS Certificates associated with the Bridge Product delivered to Buyer prior to the Delivery Cessation Date. Subject to the Buyer payment provisions in this Section 3.10 and Sections 8.1(a) through 8.5, Seller shall make commercially reasonable efforts to transfer the WREGIS Certificates to Buyer associated with the Bridge Product no later than by the end of the Calendar Quarter directly succeeding the Calendar Quarter during which Energy from the Bridge Product generation was delivered to the CAISO.
- (e) The “**Invoiced Bridge Product Quantity**” shall mean the amount of Bridge Product to be received by Buyer under the next Bridge Product delivery installment.
- (f) “**Bridge Product Force Majeure**” means an event or circumstance that occurs under Seller’s agreement with its bridge product supplier (the “**Seller Bridge Product Supplier Agreement**”) which materially adversely affects the ability the supplier under the Seller Bridge Product Supplier Agreement to perform its obligations under that agreement, which event or circumstance was not reasonably anticipated as of the start of the delivery term under that agreement and which is not within the reasonable control of, or the result of the negligence of, the party claiming force majeure under that agreement, and which the claiming party is unable to overcome or avoid or cause to be avoided, by the exercise of reasonable care. Note that capitalized terms used in the remainder of this paragraph shall have the meanings provided to them in the Seller Bridge Product Supplier Agreement. Force Majeure may not be based on (i) the loss or failure of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product; (iii) Seller’s ability to sell the Product to another at a price greater than the Contract Price; (iv) Buyer’s ability to produce Product; or (v) Buyer’s ability to purchase product similar to the Product at a price less than the Contract Price. In the case of a Party’s obligation to make payments hereunder, Force Majeure will be only an event or act of a governmental authority that on any day disables the banking system through which a Party makes such payments.

(g) Other terms and conditions regarding the Bridge Product:

(i) Seller, or its designated scheduling coordinator, will perform all scheduling requirements applicable to the Bridge Product. All scheduling shall be performed consistent with all applicable CAISO and WECC prevailing protocols.

(ii) For Bridge Product that is to be transferred from Seller to Buyer or otherwise made available by Seller to Buyer, through WREGIS, with respect to each next installment of Bridge Product, Buyer will pay Seller, in advance, an amount equal to the “**Invoiced Bridge Product Payment**”, which shall be the product of the Bridge Product Price and the Invoiced Bridged Product Quantity. Seller shall be entitled to retain all revenues associated with delivery of Energy from the Bridge Product to the CAISO. Each Party will be responsible for all fees, costs, and charges associated with registering and maintaining its own WREGIS account. Invoicing and payment for such Bridge Product shall be made in accordance with Sections 8.1 – 8.5.

(iii) Seller represents and warrants that throughout the Bridge Product Delivery Term, the Bridge Product conforms to the definition and attributes of PCC1 RECs. The Bridge Product is intended to qualify as a long-term contract pursuant to California Public Utilities Code 399.13(b) and CPUC Decision D.17-06-026, and such eligibility is a material term. Notwithstanding the foregoing, Buyer has not relied on any representation or warranty of Seller regarding the ability of the Bridge Product to qualify as a long-term contract pursuant to California Public Utilities Code 399.13(b) and CPUC Decision D.17-06-026. If, Buyer receives written guidance from a regulatory authority that the Bridge Product does not, or would not, qualify as a long-term contract, Buyer shall have the right to terminate the Bridge Product Delivery Term on thirty (30) days’ prior written Notice. Neither Party shall have any liability to the other Party as a result of any termination of the Bridge Product Delivery Term under this Section 3.10(g)(iii), except that Buyer shall pay Seller for WREGIS Certificates, if any, that have been transferred to Seller’s WREGIS account but not yet to Buyer’s WREGIS account by the date of the Notice.

(iv) For purposes of delivery of Bridge Product, a Force Majeure Event shall include any Force Majeure Event as defined under Article 10 of this Agreement; as well as any “Force Majeure” as defined under Section 1.23 of the Master Power Purchase and Sale Agreement published by the Edison Electric Institute (Version 2.1, 4/25/00). In addition, Seller will also be entitled to Force Majeure Event relief as set forth under Article 10 of this Agreement for a Bridge Product Force Majeure Event, which for clarification purposes, any such Bridge Product Force Majeure Event shall not be limited to a maximum time period.

(v) Seller shall not be deemed to have failed to meet any Bridge Product delivery obligation unless Seller has failed to transfer WREGIS Certificates of the applicable REC Vintage to Buyer in an amount equal to either the 2024 Firm Amount or the 2025 Firm Amount, within sixty (60) days of the applicable Bridge Product Delivery Cessation Date. The failure of Seller to deliver Bridge Product in accordance with this Section 3.10, including for avoidance of doubt any failure of any representation and warranty with respect to this Section 3.10, shall not constitute an Event of Default by Seller under Article 11 of this Agreement. Buyer’s exclusive remedy shall be a Settlement Amount, based solely on the undelivered quantity of the 2024 Firm Amount or the 2025 Firm Amount and such amount shall be capped at [REDACTED]

[REDACTED]

(vi) For avoidance of doubt, the conditions precedent in Section 2.4 are not applicable to the Parties' obligations under this Section 3.10.

3.11 **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller, subject to Section 3.13, has used commercially reasonable efforts to comply with such change in law. [STC 6]

For greater clarity, "Project" as used in this Section 3.11 mean the Generating Facility and the phrase "the Project's output" means RPS Energy as defined herein.

3.12 **California Renewables Portfolio Standard.** Subject to Section 3.13, Seller shall take all other actions necessary to ensure that the Metered Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time, and accounting for any adjustments included in the definition of RPS Energy.

3.13 **Compliance Expenditure Cap.** If a Change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement that are made subject to this Section 3.13, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped (i) with respect to Generating Product at [REDACTED], and (ii) with respect to Storage Product at [REDACTED], as applicable ("**Compliance Expenditure Cap**").

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions.**"

(b) If Seller reasonably anticipates the need to incur costs and expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated cost and expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs and expenses that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.13 within sixty (60) days after Buyer's

receipt of same, or if Buyer does not pay the costs and expenses in excess of the Compliance Expenditure Cap, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability or obligation under this Agreement for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take the Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs and expenses to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs and expenses from Seller.

(e) If a Change in Law prevents Seller from complying with its obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product pursuant to Sections 3.1, 3.2, 3.4, 3.5, 3.7, 3.8, 3.9, 3.10, 3.11 or 3.12, and it is not possible to overcome the Change in Law through Compliance Actions or the expenditure of money, then (i) Seller shall provide Notice to Buyer of such Change in Law and the consequences for Seller's performance hereunder, and (ii) Seller shall be excused from the affected compliance and delivery obligations hereunder to the extent arising from the Change in Law (including, if applicable, the obligation to pay RA Deficiency Amounts with respect to RA Shortfalls).

(f) For avoidance of doubt, Buyer shall continue to pay Seller under this Agreement without any reduction in revenues that otherwise would result from any such Change in Law.

3.14 **Project Configuration.** In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties (and Seller's Lenders, to the extent applicable) as set forth in a written agreement.

## **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

### **4.1 Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Delivery Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point (except for Metered Energy used as Charging Energy), and Buyer shall take delivery of such Product at the Delivery Point (except for Metered Energy used as Charging Energy) in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be

responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and RTD Imbalance Energy charges except as otherwise set forth in this Agreement. The Metered Energy, Charging Energy and Discharging Energy will be scheduled with the CAISO by Seller (or Seller's designated Scheduling Coordinator) in accordance with Section 4.3 and Exhibit D.

(b) Green Attributes. All Green Attributes associated with both (1) Test Energy, and (2) Metered Energy during the Delivery Term, are each exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) Energy Products. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy-related products or Ancillary Services that may become recognized from time to time in the CAISO market and that are not expressly listed in Exhibit Q (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including any obligation to incur more than *de minimis* costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including any obligation to incur more than *de minimis* costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

(d) Excess Energy. Buyer will not be obligated to accept Excess Energy in any given Contract Year. To the extent that Buyer does not accept such Excess Energy, Seller will have the right to sell such Excess Energy in the CAISO market and, notwithstanding anything to the contrary in this Agreement, to retain all CAISO revenues RECs/Green Attributes and other Generating Product associated with such Excess Energy. Alternatively, to the extent that Buyer accepts any Excess Energy in any given Contract Year, Buyer shall compensate Seller for such Excess Energy as set forth in Section (c)(2) of Exhibit C.

#### 4.2 **Title and Risk of Loss.**

(a) Energy. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

#### 4.3 **Scheduling, Forecasts, and Outages.**

(a) Scheduling Coordinator Services.

(i) Seller, at its sole cost, shall provide (or cause to be provided) all required Scheduling Coordinator services for the Facility.

(ii) Each Party shall use commercially reasonable efforts as necessary to facilitate the other Party's efforts to meet its obligations under applicable CAISO, PTO, FERC, CEC, or other Governmental Authority requirements.

(iii) Each Party shall use commercially reasonable efforts to schedule and operate the Storage Facility to maximize Metered Energy, including Energy that would have otherwise been clipped.

(b) Managed Instructions; Supplemental Instructions; Applicable Instructions.

(i) Managed Instructions. No later than six (6) months prior to the Expected Commercial Operation Date of the Facility, Seller shall provide Buyer with proposed instructions for bidding, scheduling, and operation of the Facility, including charging and discharging of the Storage Facility (the "Managed Instructions"). In accordance with this Section 4.3.(b) and Exhibit D, and no later than thirty (30) days prior to the Expected Commercial Operation Date of the Facility, Buyer shall issue initial Managed Instructions to Seller. The Managed Instructions shall be consistent with this Agreement, including but not limited to the Operating Restrictions and Seller's obligations under the CAISO Tariff and Law, including compliance with the Availability Standard.

(ii) Buyer may issue revised Managed Instructions to Seller at any time during the Delivery Term. Seller may object to the revised Managed Instructions in part or in whole if the Managed Instructions are not consistent with this Agreement, Operating Restrictions, Seller's obligations under the CAISO Tariff, or Law. If Seller does not object within three (3) Business Days of receipt of the Managed Instructions, the Managed Instructions shall be deemed accepted, and Seller shall comply with the revised Managed Instructions. If Seller disputes the Managed Instructions, Seller shall continue to follow the prior Managed Instructions. Seller may propose reasonable changes to the Managed Instructions at any time and Buyer shall respond in a timely manner provided that Buyer shall not be required to make any change that would have an adverse impact on Buyer's use of Product in compliance with all applicable Laws including without limitation the CAISO Tariff and in compliance with all other provisions of this PPA including without limitation the Operating Restrictions set forth in Exhibit Q. The Parties shall cooperate in good faith to reach agreement in a timely manner on changes to the revised Managed Instructions.

(iii) Buyer may at any time, direct Seller to submit DAM and/or RTM bids that differ from the Managed Instructions ("Supplemental Instructions") upon written notice in accordance with Exhibit D. The Supplemental Instructions shall comply with this Agreement, the Operating Restrictions, and Seller's obligations under the CAISO Tariff and Law. With respect to any specific Settlement Interval, the Managed Instructions shall control except to the extent of Seller's timely receipt of any Supplemental Instructions which are explicitly contrary to the Managed Instructions, which Supplemental Instructions shall control to that limited extent (together, the Managed Instructions and any Supplemental Instructions, the "Applicable Instructions").

(iv) Seller shall comply with the currently effective Applicable Instructions.

(c) Day-Ahead Market and Real-Time Market Scheduling. Seller or Seller's SC shall submit Economic Bids or Self-Schedules for the Facility at the Settlement Point in the Day Ahead Market and in the Real-Time Market (including both the FMM and the RTM) in accordance with the Applicable Instructions, including Buyer's DAM and RTM Bid Prices, and the DA Percentage.

(d) Changes to DA Percentage, the Buyer DAM Bid Price, and/or the Buyer RTM Bid Price. Buyer may change the DA Percentage, the Buyer DAM Bid Price, and/or the Buyer RTM Bid Price in accordance with the Managed Instructions Protocol in Exhibit D and Section 4.3(b).

(e) CAISO Costs and Revenues.

(i) Seller shall be responsible for:

(A) Fifty percent (50%) of any Uninstructed Imbalance Energy charges (for avoidance of doubt, Buyer shall be responsible for the other Fifty percent (50%) of any Uninstructed Imbalance Energy charges) and one-hundred percent (100%) of any other CAISO charges, costs, and penalties resulting from (1) the unavailability of the Facility, (2) Seller's failure to notify CAISO of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), (3) any other failure by Seller to abide by the CAISO Tariff, this Agreement, or with any Dispatch Instruction or Curtailment Order, or the Forced Outages notice provision in Section 4.6(b), and (4) penalties related to non-performance with respect to Ancillary Services and Residual Unit Commitment awards due to conditions within Seller's control. Notwithstanding the foregoing, Buyer shall be responsible for all costs, charges, expenses, penalties, and obligations under the Availability Standard due to any acts or omissions of Buyer as Scheduling Coordinator, if applicable (i.e., to the extent if the Agreement were to be amended to change the Scheduling Coordinator from Seller to Buyer), that are not in accordance with this Agreement and the CAISO Tariff.

(B) If during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon Seller or the Facility due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be Seller's responsibility.

- (C) Seller shall be responsible for all CAISO fees, charges, and penalties imposed as a result of deviations between RTD Scheduled Energy and Facility Energy during any Settlement Interval due solely to real-time uninstructed Energy, except for those charges caused by decreases or increases in solar irradiance and/or caused by Buyer.
- (D) Subject to the foregoing (A) – (C), Seller shall pass through to Buyer all CAISO costs and revenues associated with the Facility, which shall be reflected as a credit on the monthly invoices provided to Buyer in accordance with the invoicing and payment provisions of Article 8, including the netting provisions of Section 8.6.

(ii) Buyer shall receive all CAISO net revenues, credits, and other payments (such as Bid Cost Recovery) associated with the Facility for each Settlement Period and shall be responsible for all other CAISO costs, fees, and charges, but excluding (1) any Availability Incentive Payments (as defined in the CAISO Tariff) which are for the benefit of the Seller and for Seller's account and any Non-Availability Charges (as defined in the CAISO Tariff) which are the responsibility of the Seller and for Seller's account, (2) those set forth in Section 4.3(e)(i) ("**Net Buyer CAISO Settlements**"), and (3) as identified in Exhibit U.

(iii) Exhibit U sets forth an initial allocation of responsibility for Charge Codes consistent with this Section 4.3(e). Following the Effective Date, the Parties shall cooperate to prepare and mutually agree upon a written protocol (the "**Net Buyer CAISO Settlements Protocol**") to set forth appropriate administrative details to carry out the calculation and allocation of CAISO costs and CAISO revenues described in this Section 4.3(e). In the event that the Charge Codes agreed to by the Parties in the Net Buyer CAISO Settlements Protocol are amended or deleted or new CAISO charges, costs, revenues, penalties, or fees are implemented, Seller in its role as SC shall promptly notify Buyer and the Parties shall mutually agree upon adjustments to the Net Buyer CAISO Settlements Protocol as necessary to allocate the new or amended CAISO costs and revenues in a manner that is consistent with the intent of this Section 4.3(e).

(f) Positive Uninstructed Deviations. If the RTD Price is lower than the Buyer RTM Bid Price to supply Energy in any Settlement Interval, Seller shall credit Buyer on the monthly invoice for the product of (1) Buyer RTM Bid Price minus the RTD Price, and (2) the quantity of Energy produced by the Facility and delivered to the Delivery Point in excess of the Dispatch Instruction (positive uninstructed deviations) for that Settlement Interval ("**Positive Uninstructed Deviation Credit**").

(g) CAISO Charges. Each Party shall use commercially reasonable efforts to cooperate with the other Party to allow that Party to comply with any obligations, and minimize any potential liability, it may have under the CAISO Tariff in relation to Product under this Agreement.

(h) Variable or Intermittent Energy Resource Programs. During the Contract



Term, Buyer may direct Seller to participate in any CAISO program for scheduling variable or intermittent energy resources at Buyer's sole cost to the extent that such participation is consistent with Seller's obligations under this Agreement and the CAISO Tariff. Buyer shall use commercially reasonable efforts to facilitate Seller's participation in such programs.

(i) Forecasts. For the RTM, Seller shall use the RTM Bid Forecast. For all forecasts described hereunder other than the Real-Time Forecast, Seller shall use generally accepted industry standards to produce such forecasts. If the RTM Bid Forecast becomes unavailable, the Real-Time Forecast shall apply. For all other forecasts, other than the RTM Bid Forecast, upon Buyer's written request, Seller shall retain, at Buyer's expense, a third-party forecasting service reasonably acceptable to Buyer and Seller to produce each such requested forecasts. Seller shall provide identical input data to such third-party service provider as are used to produce Seller's own forecasts. Such forecast(s) shall be provided to Buyer in a manner reasonably acceptable to Buyer.

(i) No later than thirty (30) calendar days prior to the end of each Contract Year, Seller will provide a forecast of available capacity and production ("**Annual Forecast**") detailing hourly expected available generation and monthly capacity and all proposed Planned Outages for the next Contract Year. Within five (5) Business Days following any change to the Planned Outage schedule for such Contract Year, Seller will provide notice to Buyer with an updated Annual Forecast reflecting the updated Planned Outage schedule, which will automatically supersede the prior Annual Forecast for such Contract Year.

(ii) No later than ten (10) calendar days prior to the first day of each month of the Delivery Term, Seller shall provide an electronic update, in a format specified by Buyer, to the Annual Forecast for that calendar month ("**Monthly Forecast**"). The Monthly Forecast shall include hourly available capacity and expected generation and all Planned Outages.

(iii) No later than seven (7) calendar days prior to the first day of each week of the Delivery Term, Seller shall provide a weekly forecast of available capacity and production and any changes in Planned Outages ("**Weekly Forecast**"). The Weekly Forecast shall include hourly available capacity and generation and all Planned Outages.

(iv) By 5:30 PM Pacific Time on the Business Day immediately preceding the date of delivery, Seller shall provide a forecast of available capacity and production for each hour of the date of delivery ("**Day-Ahead Forecast**"). The Day-Ahead Forecast shall include hourly available capacity and generation and all Planned Outages.

(j) Reserved.

(k) Reserved.

(l) Curtailment. Seller shall reduce delivery amounts as directed by the Reliability Coordinator, CAISO, PTO, or any successor thereto pursuant to a Curtailment Order. Except for an overlapping Curtailment Order, on the one hand, and a Buyer Bid Curtailment or Buyer Curtailment Order, on the other hand, Buyer shall not be required to pay Seller for the Product that Seller could have delivered to Buyer but for such Curtailment Order.

**Dispatch Down/Curtailment.**

(a) General. Seller agrees to reduce the amount of Metered Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Bid Curtailment or Buyer Curtailment Order; *provided*, Seller is not required to reduce such amount to the extent the reduction is or would be inconsistent with the limitations of the Facility set out in the Operating Restrictions. In the event the Facility is curtailed: (i) due to a System Emergency or any Force Majeure Event, Seller shall not be liable for failure to deliver such curtailed Energy and Buyer shall not be obligated to pay for such curtailed Energy; (ii) by the CAISO or the Transmission Owner, Seller shall not be liable for failure to deliver such curtailed Energy and Buyer shall not be obligated to pay for such curtailed Energy; and (iii) for any reason other than a Buyer Bid Curtailment or Buyer Curtailment Order, Seller shall not be liable for failure to deliver such curtailed Energy and Buyer shall not be obligated to pay for such curtailed Energy.

(b) Buyer Bid Curtailments and Buyer Curtailment Orders. (1) Seller shall curtail deliveries of, and shall not be liable for failure to deliver, Facility Energy pursuant to Buyer Bid Curtailments and Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy during any such Buyer Curtailment Periods at the Renewable Rate plus the PTC Rate. (2) After Commercial Operation Date, to the extent the Generating Facility is not eligible to receive PTCs, (i) Seller will provide Notice thereof to Buyer, (ii) Buyer shall no longer be obligated to pay Seller the PTC Rate, and (iii) Seller shall repay to Buyer within forty-five (45) days any payments made by Buyer to Seller of any PTC Rate amounts pertaining to time periods after the date of such determination. Thereafter, to the extent the Generating Facility subsequently becomes eligible to receive the PTC Rate, Seller shall provide Buyer Notice thereof, and Buyer shall pay Seller the PTC Rate for Deemed Delivered Energy for time periods after such subsequent eligibility date.

(c) Failure to Comply. If Seller fails to comply with a Curtailment Order or Buyer Bid Curtailment, or Buyer Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction of the Curtailment Order, Buyer Bid Curtailment, or Buyer Curtailment Order Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, actually paid to Seller by Buyer for delivery of such excess MWh and (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period and Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Curtailment Order.

(d) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO and Buyer, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at

any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

#### 4.5 **Charging and Discharging Energy.**

(a) **Charging Generally.** Upon receipt of a valid Charging Instruction, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility. Except as otherwise expressly set forth in this Agreement, Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy.

(b) **Charging Instructions.** Subject to compliance with the CAISO Tariff and other applicable Laws, Operating Restrictions, and the Applicable Instructions in Exhibit D, Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Instructions to be issued, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Instruction issued in accordance with this Agreement will be effective unless and until Buyer, through the Applicable Instructions, or the CAISO modifies such Charging Instruction by providing Seller with an updated Charging Instruction.

(c) **No Unauthorized Charging.** Subject to the Applicable Instructions in Exhibit D, Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Instruction (it being understood that Seller may adjust a Charging Instruction to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the CAISO, Transmission Provider or Governmental Authority. If, during the Delivery Term, Seller charges the Storage Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Instruction, or (ii) in violation of the first sentence of this Section 4.5(c), then (x) Seller shall pay Buyer the cost of such Energy associated with such charging of the Storage Facility, and (y) Buyer shall be entitled to discharge such Energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge. Notwithstanding the foregoing, during any Curtailment Period, Buyer and Seller shall use commercially reasonable efforts to cause all curtailed Metered Energy to be used as Charging Energy to the extent allowed by CAISO.

(d) **No Unauthorized Discharging.** Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Instruction (it being understood that Seller may adjust a Discharging Instruction to the extent necessary to maintain

compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the CAISO, Transmission Provider or Governmental Authority. Through the Applicable Instructions, Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), subject to the requirements and limitations set forth in this Agreement.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders applicable to such Settlement Interval shall have priority over any Charging Instructions or Discharging Instructions applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Instruction or Discharging Instruction if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Bid Curtailment, Buyer Curtailment, or other instruction or direction from Buyer or a Governmental Authority or the Transmission Provider.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder or as expressly addressed in Section 4.5(g), Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches that are not the result of Applicable Instructions shall have priority over any Charging Instruction or Discharging Instruction that are the result of Applicable Instructions, and Seller shall have no liability for violation of this Section 4.5 or any Charging Instructions or Discharging Instruction if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility deviates from a CAISO Dispatch, Seller shall be responsible for one hundred percent (100%) of Uninstructed Imbalance Energy charges and penalties resulting from such deviation; provided, however, that such deviation is not due to incorrect information received from the CAISO or if Seller's compliance with any CAISO Dispatch is otherwise inconsistent with the Operating Restrictions or the Master File. To the extent the Storage Facility is unable to respond to Automated Dispatch Signals during any Calculation Interval, then the exclusive remedies shall be as set forth in Section 4.3(e)(A) and such Calculation Interval shall be deemed UNAVAILHRS<sub>y</sub> as such term is defined in Exhibit P.

(h) Pre-Commercial Operation Date Period Use and Charging and Discharging. Prior to CAISO Storage Certification, Buyer shall have no rights to issue or cause to be issued Charging Instructions or Discharging Instructions, and Seller shall have exclusive rights to charge and discharge the Storage Facility; *provided*, in regard to the Storage Facility, prior to CAISO Certification Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility and Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility testing. Upon CAISO Certification, Buyer shall have exclusive rights to issue or cause to be issued Charging Instructions or Discharging Instructions, and shall use commercially reasonable efforts to assist

Seller's efforts to complete any installation, commissioning and testing activities of the Storage Facility.

(i) Station Use. Seller is responsible for providing and all Energy to serve Station Use (including paying the cost of any Energy procured and used to serve Station Use except for Energy that originates as Charging Energy that serves the Storage Facility solely when it is charging or discharging, and is included in the Efficiency Rate). The supply of Station Use from the Generating Facility or the Storage Facility that is accomplished in accordance with the applicable tariff of the local utility providing retail service to the Site shall not be deemed a violation of this Agreement, including Sections 4.5(c), (d), and (f); *provided that* Station Use may not be supplied from the Facility during idle periods when the Storage Facility is not charging or discharging. In no event will Buyer pay for any Energy that is supplied for Station Use except for Energy that originates as Charging Energy that serves the Storage Facility solely when it is charging or discharging, and is included in the Efficiency Rate.

(j) Reserved.

(k) No Grid Charging. Throughout the Delivery Term, notwithstanding any other provision of this Agreement, (A) the Storage Facility shall not receive charging energy from any source other than the Generating Facility, and (B) Buyer shall not issue or cause the issuance of (and Seller shall not be required to comply with) any instruction, order, Charging Instruction, Discharging Instruction, or other communication requiring the Storage Facility to be charged from any source other than the Generating Facility (except as may be ordered by the CAISO in anticipation of, or during, a declared emergency), and Buyer shall not issue any instruction requiring Seller to, Seller shall not be required to, and nothing in this Agreement shall be construed as requiring Seller to, comply with any instruction, order, Charging Instruction, Discharging Instruction, or other communication requesting or requiring the Storage Facility to be charged, discharged, or operated in any manner which results in or gives rise to any reduction in Metered Energy (except as may be ordered by CAISO including pursuant to any Dispatch Instructions, a Curtailment Order, a Buyer Bid Curtailment, or a Buyer Curtailment Order, or in order to comply with the requirements of the CAISO Tariff).

#### 4.6 Reduction in Energy Delivery Obligation.

(a) Facility Maintenance.

(i) Seller shall provide to Buyer written schedules for Planned Outages by September 15<sup>th</sup> of each Contract Year for the following Contract Year or no later than thirty (30) days prior to the date set forth by the CAISO pursuant to CAISO Tariff section 9.3.6.2, or its successor. Buyer may provide comments no later than twenty (20) days after receiving any such schedule, and Seller shall in good faith take into account any such comments. Seller shall deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled

pursuant to Section 4.6(a)(i) or by providing at least ten (10) days' notice subject to consent by Buyer not to be unreasonably withheld, conditioned or delayed. Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Storage Facility, as a Resource Adequacy Resource that is subject to the Availability Standard, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer).

(iii) Seller shall not during the months of June through October inclusive schedule any non-emergency maintenance during daylight hours that reduces the energy generating capability of the Generating Facility by more than ten percent (10%), unless (A) such outage is required to avoid damage to the Facility, (B) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through October, (C) such outage is required in accordance with Prudent Operating Practices, (D) the Parties agree otherwise in writing or if none of (A) – (D) apply, than (E) Seller shall be permitted so reduce the energy generating capability of the Generating Facility or the charging or discharging capability of the Storage Facility, as applicable, to perform non-emergency maintenance, however, Seller shall be responsible for any direct damages actually incurred by Buyer that are not duplicative of any other damages/amounts payable to Buyer under this Agreement including without limitation RA Shortfall and Availability Adjustment amounts. Section 4.6 shall not apply to Short-Notice Opportunity RA Outages approved by the CAISO

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period or upon notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event to the extent such Force Majeure Event requires or results in such reduction.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

#### 4.7 **Guaranteed Energy Production**.

(a) During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Metered Energy, plus any Deemed Delivered Energy and Lost Output, in a total amount no less than the Guaranteed Energy Production in each Performance Measurement Period, subject to the following:

(i) **"Guaranteed Energy Production"** means an amount of Metered Energy, as measured in MWh, equal to the total Expected Energy for the applicable Performance Measurement Period multiplied by [REDACTED]

(ii) For purposes of determining whether Seller has achieved the Guaranteed Energy Production, in addition to Metered Energy, Seller shall be deemed to have delivered to Buyer any (i) Deemed Delivered Energy, (ii) Energy in the amounts that Seller could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Force Majeure Events, System Emergency, and/or Curtailment Periods (collectively, the “**Lost Output**”), and (iii) Replacement Product provided by Seller (“**Adjusted Energy Production**”).

(b) If the Adjusted Energy Production is less than the applicable Guaranteed Energy Production amount in any Performance Measurement Period, then Seller shall pay Buyer liquidated damages equal to [REDACTED]

(“**Energy Replacement Damages**”).

No payment shall be due if the calculation yields a negative number.

(c) Seller may, as an alternative to paying Energy Replacement Damages, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an Inter-SC Trade during the months of April to October following the conclusion of the applicable Performance Measurement Period (A) upon a schedule reasonably acceptable to Buyer, and (B) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. If Seller exercises this right, no payment shall be owed to Seller for the delivery of such Replacement Product.

(d) Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period to the extent of any Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver Metered Energy to the Delivery Point.

#### 4.8 **Storage Availability and Efficiency.**

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Availability of no less than [REDACTED] (the “**Guaranteed Storage Availability**”), which Annual Storage Availability shall be calculated in accordance with Exhibit P. If Seller fails to achieve the Guaranteed Storage Availability, then Buyer’s payment for the Storage Product for such Contract Year shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit P) to be made within thirty (30) days of the end of such Contract Year, which, except as set forth in Section 11.1(b)(iv), shall be Buyer’s sole and exclusive remedy in connection with Seller’s failure to meet the Guaranteed Storage Availability.

(b) If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, as calculated pursuant to Section (b)(6) of Exhibit C. Payment of such liquidated damages shall be Buyer’s sole and exclusive remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate.

#### 4.9 **Storage Facility Testing.**

(a) Storage Capacity Tests. Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity then the actual capacity determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) Additional Testing. Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Buyer or CAISO Dispatches.

(c) Buyer or Seller Initiated Tests. Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility (“**Buyer Dispatched Test**”). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “**Seller Initiated Test**”.

(i) For any Seller Initiated Test, other than Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices); provided, however, when these requests occur during off-peak hours, notice by Seller to Buyer is reduced to seventy-five (75) minutes and Buyer’s cooperation for Seller to perform such tests shall not be unreasonably withheld.

(ii) No Charging Instructions or Discharging Instructions shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.



(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility and Buyer shall be entitled to all CAISO revenues associated with a Storage Facility discharge during a Buyer Dispatched Test. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer the amount of Buyer's payment of the Charging Energy for such Seller Initiated Test, and (2) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy, but all Green Attributes associated therewith shall be for Buyer's account at no additional cost to Buyer. Seller shall retain, in the month following Seller's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Seller and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller. Any such representative(s) of Buyer shall adhere to the safety and security procedures of Seller, which shall be provided by Seller to Buyer in writing. Buyer shall indemnify and hold Seller harmless for any losses or claims for personal injury, death or property damage to the Facility or Site solely to the extent caused by Buyer, its authorized agents, employees, and inspectors, during any such access.

4.10 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Metered Energy delivered at the Interconnection Point, net of storage losses if required by Law ("**RPS Energy**") are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition, in connection with Renewable Energy Credits with respect to RPS Energy:

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

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since

WREGIS Certificates will only be created for whole MWh amounts of RPS Energy generated, any fractional MWh amounts (*i.e.*, kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the RPS Energy for such calendar month as evidenced by the Generating Facility's metered data (subject to adjustment as set forth in the definition of RPS Energy).

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the RPS Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction of, Seller, then the amount of Metered Energy in the Deficient Month shall be reduced by the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, such adjustment shall not apply to the extent that Seller either (i) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (ii) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (A) upon a schedule reasonably acceptable to Buyer and (B) *provided* that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, including any penalties actually incurred by Buyer due to the inability to include the WREGIS Certificate Deficit within a regulatory reporting period (e.g., no penalties should be incurred if Buyer does not have a deficit during such regulatory reporting period). Notwithstanding the foregoing, but without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the RPS Energy in the same calendar month.

(g) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under this Agreement. [STC REC-2].

(h) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1]. For greater clarity, the foregoing representation and warranty applies only to Renewable Energy Credits transferred to Buyer with respect to RPS Energy as defined herein.

## **ARTICLE 5 TAXES**

5.1 Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

## **ARTICLE 6 MAINTENANCE OF THE FACILITY**

6.1 Maintenance of the Facility. Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Dedicated Interconnection Capacity.** Seller shall ensure during the Test Energy period and throughout the Delivery Term that: (a) subject to Section 6.4, the Facility will have rights under an Interconnection Agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed PV Capacity; and (b) subject to Section 6.4 and Section 2.3, Seller shall have sufficient interconnection capacity and rights under such Interconnection Agreement to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller's obligations under the Agreement, including with respect to Resource Adequacy, and to allow dispatch of the Facility to be fully reflected in the CAISO's market optimization in accordance with the Applicable Instructions and not result in CAISO market awards that are not physically feasible (collectively, the "**Dedicated Interconnection Capacity**"). For avoidance of doubt, the Dedicated Interconnection Capacity shall not exceed the Guaranteed PV Capacity. Seller shall hold Buyer harmless from any penalties, RTD Imbalance Energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide, or any third party use of, the Dedicated Interconnection Capacity.

6.4 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements, including through shared ownership of an Affiliate or other entity that is the party to and interconnection customer under the Interconnection Agreement; *provided*, such agreements shall (a) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, and (b) provide for separate metering of the Facility.

## **ARTICLE 7 METERING**

### **7.1 Metering.**

(a) Seller shall measure Metered Energy using the Generating Facility Meter(s). Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter(s). Seller shall separately meter all Station Use using the Storage Facility Meter during periods when the Storage Facility is idle. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. If Seller elects to submit a SQMD Plan for the Facility, or only the Storage Facility, as applicable, then all Facility Meters, or all Storage Facility Meters, as applicable, will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, or only the Storage Facility, as applicable, at Seller's sole cost, throughout the period to which the SQMD Plan applies.

Seller shall promptly provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R, as may be revised to be consistent with any CAISO-approved Plan. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility, or only the Storage Facility, as applicable. Seller, any Seller designated SC, and Buyer, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web or the CAISO Market Results Interface – Settlements (MRI-S) (or their successors) and/or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility, or only the Storage Facility, as applicable.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Instructions and Discharging Instructions as set forth in the definitions of Charging Instruction and Discharging Instruction in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under, the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the applicable meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and also with respect to the Generating Facility Meter, WREGIS; provided, such period may not exceed twelve (12) months.

## ARTICLE 8 INVOICING AND PAYMENT; CREDIT

### 8.1 Invoicing.

(a) Bridge Product. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer no less than forty-five (45) days prior to the date that any RECs associated with Bridge Product are, or will be, transferred from Seller to Buyer or otherwise made available by Seller to Buyer. Each invoice for Bridge Product shall be in a format reasonably acceptable to Buyer, and will: (i) establish the quantity of the Bridge Product to be transferred (“**Invoiced Bridge Product Quantity**”); and (ii) the dollar amount owed as determined under Section 3.10.

(b) Non-Bridge Product Amounts. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer no later than the tenth (10<sup>th</sup>) day of each month for the previous calendar month for all non-Bridge Product amounts. Each invoice shall: (a) reflect records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product (other than Bridge Product) delivered by the Facility for any Settlement Period during the preceding month, and for other amounts due to or from Seller hereunder as set forth in Exhibit C; and (b) be in a format reasonably acceptable to Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 Payment. Buyer shall make payment to Seller for the Product and for any other amounts due to Seller hereunder as set forth in Exhibit C by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder; *provided, however*, that changes to invoice, payment, wire transfer and other banking information must be made in writing and delivered via certified mail or next-Business Day delivery by reputable courier service and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes. For Bridge Product amounts, Buyer shall pay Seller in advance of the delivery of any RECs associated with Bridge Product, such that Buyer shall pay Seller within fifteen (15) days after the invoice date for Bridge Product; provided that for clarification purposes, Seller shall have no obligation to deliver or make available to Buyer any RECs associated with Bridge Product for which Buyer has not pre-paid Seller. For all non-Bridge Product amounts, Buyer shall pay undisputed invoiced amounts within thirty (30) days after the invoice date; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another under this Agreement is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus [REDACTED] (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** 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. 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 five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P and any relevant items in Exhibit C, 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.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, (1) Seller shall deliver the PV Development Security to Buyer within thirty (30) days after the Effective Date, and (2) Seller shall deliver the Storage Development Security within thirty (30)

days after providing Buyer with a Deliverability Transfer Notice if Buyer has not provided a timely Buyer Storage Termination Notice and if Seller has not provided a timely Storage Termination Notice. Seller shall maintain the Development Security in full force and effect until the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, at which time Buyer shall return the Development Security to Seller, less any amounts drawn in accordance with this Agreement. Subject to this Section 8.7 and the other terms of this Agreement governing Seller's Development Security requirements, Seller may change the type and/or issuer (as applicable) of the Development Security from time to time and at any time. For avoidance of doubt, Seller shall have no replenishment obligation with respect to the Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit S. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. Subject to this Section 8.8 and the other terms of this Agreement governing Seller's Performance Security requirements, Seller may change the type and/or issuer (as applicable) of the Performance Security from time to time and at any time. For avoidance of doubt, Seller shall have no replenishment obligation with respect to the Performance Security.

8.9 **Buyer's Financial Statements.** From the Effective Date, unless such financial statements are available on the internet at <https://www.ocpower.org/resources/key-documents/>, Buyer shall provide to Seller unaudited quarterly financial statements within ninety (90) days of the end of each of Buyer's fiscal quarters, and audited annual financial statements within one hundred eighty (180) days after the end of each of Buyer's fiscal years. Buyer's fiscal year is from July 1 to June 30. Buyer's financial statements shall have been prepared in accordance with generally accepted accounting principles as adopted by the Governmental Accounting Standards Board.

8.10 **Buyer's Financial Covenants and Buyer Credit Support.**

(a) Within thirty (30) days after each calendar quarter, commencing with the fiscal quarter ended June 30, 2023, and for each fiscal quarter of Buyer ended thereafter for the Contract Term, Buyer shall provide Seller a statement by either Buyer's Chief Executive Officer or Chief Financial Officer certifying that Buyer remains in compliance with, and in good standing under, Buyer's Bank Agreements ("**Buyer Bank Agreement Compliance Certificate**"). The provisions of this Section 8.10(a) shall not apply for so long as Buyer maintains a Required Credit Rating or to the extent that all outstanding obligations under Bank Agreements have been paid in full and any credit facilities issued thereunder have been terminated (excluding a termination for default).

(b) Buyer shall notify Seller within five (5) Business Days of acquiring knowledge thereof, of (i) any notice default or event of default, if not timely cured by Buyer within the applicable cure period (if any), under a Bank Agreement of which Buyer has knowledge, setting



forth the details of such default or event of default and the action which Buyer has taken and proposes to take with respect thereto (any such default or event of default by Buyer under any Bank Agreement, a “**Buyer Bank Agreement Default**”). Buyer shall thereafter promptly provide Seller written Notice of any change in status of such Buyer Bank Agreement Default, including without limitation any cure thereof or any material change in or termination of such Buyer Bank Agreement, as well as respond to any Seller inquiries with respect thereto, each within five (5) days of any such occurrence.

(c) No later than one hundred fifty (150) days after the end of each of Buyer’s fiscal years during the Contract Term commencing with Buyer’s fiscal year ending June 30, 2023, Buyer shall determine and provide to Seller a Notice (“**Credit Notice**”) specifying Buyer’s Adjusted Days of Liquidity on Hand and Equity to Assets Ratio (each as defined below) as of the end of the prior fiscal year.

(1) The “**Adjusted Days of Liquidity on Hand**” or “**ADLH**” shall be determined based on Buyer’s audited financial statements and Buyer shall include with the Credit Notice all information, including its audited financial statements, used in determining the ADLH. The ADLH shall be calculated as follows:

$$\frac{((\text{available unrestricted cash and investments}) + (\text{committed unused bank line})) * 365 \text{ days}}{\text{annual operating expenses}}$$

The ADLH threshold applicable to Buyer’s previous fiscal year (“**ADLH Threshold**”) shall be equal to or greater than the following number of days:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

(2) The “**Equity to Assets Ratio**” or “**EAR**” shall be determined based on Buyer’s audited financial statements and Buyer shall include with the Credit Notice all information, including its audited financial statements, used in determining the EAR. The EAR shall be calculated as follows:

$$\text{Total Net Position (Equity)} / \text{Total Assets}$$

The EAR threshold applicable to Buyer’s previous fiscal year (“**EAR Threshold**”) shall be equal to or greater than the following percentage:

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(3) If at any time during the Contract Term, Buyer's ADLH is less than the ADLH Threshold established for the relevant period in Section 8.10(c)(1), or if Buyer's EAR is less than the EAR Threshold established for the relevant period in Section 8.10(c)(2), either based on the Credit Notice or on Seller's review of Buyer's financial statements posted on its website, then Buyer shall provide to Seller, within ten (10) Business Days following the date that the Credit Notice is due, the Buyer Non-Bridge Credit Support.

(4) If Buyer is required to provide Buyer Non-Bridge Credit Support to Seller in accordance with this Section 8.10(c) and Buyer thereafter achieves an ADLH that is equal to or greater than the ADLH Threshold, and an EAR that is equal to or greater than the EAR Threshold in any subsequent calendar quarter of the relevant fiscal year period, as determined by Buyer's quarterly financial statements, then Seller shall return the Buyer Credit Support to Buyer within fifteen (15) Business Days following Notice thereof from Buyer. The provisions of this Section 8.10(c) shall again apply to Buyer at the end of Buyer's then-current fiscal year.

(5) The provisions of this Section 8.10(c) shall not apply for so long as Buyer maintains a Required Credit Rating. Should Buyer lose its Required Credit Rating, within ten (10) days, Buyer shall provide Notice thereof and a Credit Notice determined based on Buyer's most recent quarterly financial statements to Seller, and within twenty (20) days of losing such Required Credit Rating, Buyer shall be required to have provided Seller with any required Non-Bridge Credit Support to the extent Buyer's thresholds are less than the figures set forth in Section 8.10(c)(1) or Section 8.10(c)(2) above.

(d) Buyer Non-Bridge Credit Support. "**Buyer Non-Bridge Credit Support**" means credit support in the form of a Letter of Credit (or cash if consented to in advance in a separate writing by Seller in Seller's sole discretion) in the amount of [REDACTED] of Guaranteed Capacity with respect to the period of time from the Effective Date through Contract Year 10, and [REDACTED] of Installed Capacity with respect to Contract Years 11-20. Any such required Buyer Non-Bridge Credit Support shall be subject to the default provisions of Section 11.1(a)(iii) and 11.1(a)(viii), as applicable.

(e) Buyer Bridge Credit Support. To secure its obligations with respect to the Bridge Product under this Agreement, Buyer shall deliver the Buyer Bridge Credit Support to Buyer within thirty (30) days after the Effective Date. Buyer shall maintain the Buyer Bridge Credit Support in full force and effect until the indefeasible payment by Buyer to Seller for all Bridge Product delivered or made available by Seller to Buyer, at which time Seller shall return the Buyer Bridge Credit Support to Buyer, less any amounts drawn in accordance with this Agreement.

Subject to this Section 8.10 and the other terms of this Agreement governing the Buyer Bridge Credit Support requirements, Buyer may change the issuer of the Buyer Bridge Credit Support from time to time and at any time. “**Buyer Bridge Credit Support**” means credit support in the form of a Letter of Credit (or cash if consented to in advance in a separate writing by Seller in Seller’s sole discretion) in an amount equal to [REDACTED]

[REDACTED]. The Buyer Bridge Credit Support shall be subject to the default provisions of Section 11.1(a)(iii) and 11.1(a)(viii), as applicable. For avoidance of doubt, if Buyer has a Required Credit Rating, it shall not be required to provide the Buyer Bridge Credit Support; and for avoidance of doubt the requirement to provide the Buyer Bridge Credit Support shall again apply to Buyer if it obtains a Required Credit Rating, but thereafter fails to maintain a Required Credit Rating, with Buyer required to provide the Buyer Bridge Credit Support within twenty (20) days of losing such Required Credit Rating.

(f) Buyer agrees to establish rates and charges to its customers that are sufficient to provide revenues necessary, taking into account available reserves, to enable 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 related products.

(g) Buyer acknowledges and agrees that the obligations and covenants set forth in this Section 8.10 are and shall be deemed material for purposes of Section 11.1(a)(iii).

#### 8.11 **Intentionally Omitted.**

8.12 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, each Party hereby grants to the other Party a present and continuing first-priority security interest (“**Security Interest**”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, and Buyer Credit Support (collectively, “**Party Security**”) posted as cash pursuant to Sections 8.7, 8.8, 8.10 and 8.12, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of such other Party. Each Party agrees to take all action as the other Party reasonably requires in order to perfect such other Party’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence of an Event of Default, an Early Termination Date resulting from an Event of Default, or an occasion provided for in this Agreement where a Party is authorized to retain all or a portion of the Development Security, Performance Security, or Buyer Credit Support, the Party holding the Party Security may do any one or more of the following (in each case subject to the final sentence of this Section 8.12), subject to any other limitations set forth in this Agreement):

(a) Exercise any of its rights and remedies with respect to the Party Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by such Party as Party Security; and

(c) Liquidate all Party Security then held by or for the benefit of such Party free from any claim or right of any nature whatsoever of the posting Party, including any equity or right of purchase or redemption.

The Party holding the Party Security shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the posting Party's obligations under this Agreement (such posting Party remains liable for any amounts owing to the Party holding the Party Security after such application, subject to any limitations set forth elsewhere in this Agreement), subject to the obligation of the Party holding the Party Security to return any surplus proceeds remaining after such obligations are satisfied in full.

## **ARTICLE 9 NOTICES**

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by a reputable courier service for next Business Day delivery with delivery fees either prepaid or an arrangement with such courier service made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such courier service; (b) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm prevailing Pacific Time, on the next Business Day, provided that notice by electronic communication will not be deemed effective until confirmed by return electronic communication from the recipient; or (c) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## **ARTICLE 10 FORCE MAJEURE**

10.1 **Definition.**

(a) **"Force Majeure Event"** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party

relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event shall include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; pandemic (including COVID-19), landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; strikes or other labor difficulties caused or suffered by a Party or any third party; any temporary restraint or restriction imposed by applicable Law or any directive from a governmental authority; a material change or reimplementation of rules, regulations, or requirements after the Effective Date related to COVID-19; and a one-time failure of the final step-up transformer used by the Facility so long as it is maintained by Seller in accordance with Prudent Operating Practice.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Renewable Rate or Storage Rate unprofitable or otherwise uneconomic (including Buyer’s ability to buy the Product at a lower price, or Seller’s ability to sell Product at a higher price, than the Renewable Rate or Storage Rate); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Generating Facility or the Storage Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Generating Facility or the Storage Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Generating Facility or the Storage Facility; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event, and except for a one-time failure of the final step-up transformer used by the Facility so long as it is maintained by Seller in accordance with Prudent Operating Practice.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. The suspension of performance due to a claim of Force Majeure Event shall include any reasonable time period for mobilization/re-mobilization. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder. Notwithstanding any provision in this Agreement to the contrary, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of Seller to achieve the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (b) subject to Section 4 of Exhibit B and Seller’s payment of Commercial Operation Delay Damages under Section 2 of Exhibit B, limit Buyer’s right to declare

an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Sections 11.2 and 11.3.

10.3 **Notice.** Within five (5) Business Days of commencement of a Force Majeure Event (or, if later, the date when the non-performing Party became aware of the Force Majeure Event), the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of the Force Majeure Event (or, if later, the date when the non-performing Party became aware of the Force Majeure Event), the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim; *provided, however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination of the Generating Facility and/or the Storage Facility Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon Notice to the other Party with respect to the Generating Facility and/or the Storage Facility experiencing the Force Majeure Event, neither Party shall have any liability to the other Party in connection with such termination, and if terminated as to only the Generating Facility or the Storage Facility, the other applicable provisions of this Agreement shall be adjusted accordingly.

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

11.1 **Events of Default.** An "**Event of Default**" shall mean,

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

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) 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, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if such Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1); and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (B) failures to comply with Buyer Bid Curtailments, Buyer Curtailment Orders and Curtailment Orders, the exclusivity remedies for which are set forth in Section 4.4(c), (C) failures related to the Adjusted Energy Production that

do not trigger the provisions of Section 11.1(b)(vi), the exclusive remedies for which are set forth in Section 4.7; (D) failures related to the Monthly Storage Capacity Availability that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.8; (E) failures related to the Guaranteed Efficiency Rate, the exclusive remedies for which are set forth in Section (c)(6) of Exhibit C; (F) the failure to provide any Bridge Product, the exclusive remedy for which is set forth in Section 3.10(g)(v); and (G) failures related to any Uninstructed Imbalance Energy including related to CAISO Dispatches, the exclusive remedies for which are set forth in Sections 4.3(e)(A) and 4.5(g); and any such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable;

(vi) 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, other than in compliance with other provisions of this Agreement;

(vii) with respect to Buyer only, failure by Buyer to satisfy the requirements of Section 8.9. or the requirements of Section 8.10; or

(viii) with respect to any outstanding Letter of Credit provided for the benefit of a Party that is not then required under this Agreement to be canceled or returned, the failure by such Party required to post such Letter of Credit to provide for the benefit of the other Party either (a) if Seller, (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, or (b) if Buyer, a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit (or cash if consented to in advance in a separate writing by Seller in Seller's sole discretion), in each case, in the amount required hereunder within fifteen (15) Business Days after the Party providing the Letter of Credit receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) the Party required to maintain such Letter of Credit shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

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

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to achieve Commercial Operation within one hundred twenty (120) days after the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 4 of Exhibit B);

(iii) Intentionally omitted;

(iv) if, in any Performance Measurement Period during the Delivery Term, the average Annual Storage Availability is, in each Contract Year, less than [REDACTED];

(v) Reserved

(vi) if, in any Performance Measurement Period the Adjusted Energy Production is not at least [REDACTED] of the Expected Energy amount;

(vii) if Seller fails to maintain a Storage Capacity equal to at least [REDACTED] of the Effective Storage Capacity for longer than three hundred sixty five (365) consecutive days.

(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within fifteen (15) Business Days after Notice from Buyer;

(ix) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash or (2) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:



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

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty;

(c) with respect to Buyer as the Defaulting Party, the occurrence of any of the following:

(i) the failure of Buyer to provide a Buyer Bank Agreement Compliance Certificate; or

(ii) a Buyer Bank Agreement Default not timely cured by Buyer under the applicable Bank Agreement.

**11.2 Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (1) the Damage Payment (in the case of an Event of Default occurring before the Commercial Operation Date, including a Seller Event of Default under Section 11.1(b)(ii)), or (2) the Termination Payment (in the case of any other Event of Default by either Party), as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement pending declaration of an Early Termination Date under Section 11.2(a);

(d) to suspend performance pending declaration of an Early Termination Date under Section 11.2(a); and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Damage Payment; Termination Payment**. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment Prior to Commercial Operation Date**. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer. Notwithstanding anything to the contrary in this Agreement, in no event shall Seller's pre-Commercial Operation Date liability hereunder, including for any Commercial Operation Delay Damages, exceed in aggregate the amount of the Damage Payment (i.e., shall not exceed an amount equal to the Development Security required to have been posted by Seller as of the applicable Early Termination Date less (i) any amounts paid by Seller including Commercial Operation Delay Damages, and less (ii) any amounts which Buyer has drawn from the Development Security). Subject to the foregoing, Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer but was required to have been posted by Seller as of such Early Termination Date (if any) shall be immediately due and payable by Seller to Buyer. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss. Following any recovery by Buyer of the Damage Payment under this Agreement, Buyer shall return within ten (10) Business Days any Development Security held by Buyer which did not comprise a portion of the Damage Payment.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall be the lesser of:

(A) The sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Facility, less the fair market value (determined in a commercially reasonable manner) of (A) all Seller's assets individually, or (B) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer; or

(B) [REDACTED]

The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring on or after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes With Respect to Termination Payment or Damage Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 **Seller Pre-COD Liability Limitation.** Notwithstanding any other provision of this Agreement, Seller's aggregate liability under or arising out of this Agreement prior to the Commercial Operation Date shall not exceed an amount equal to the Damage Payment; provided, however, for clarification purposes, if this Agreement is terminated in accordance with other provisions of this Agreement for only part of the Facility (i.e., either the Generating Facility or the Storage Facility), upon such termination of this Agreement with respect to that one (1) applicable facility, the amount of the Damage Payment will reflect that there is only the Development Security for that one (1) applicable facility still outstanding, and the other applicable provisions of this Agreement shall be adjusted accordingly.

11.7 **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

## **ARTICLE 12**

### **LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, OR (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY 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. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE 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, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

FURTHERMORE, ANY REGULATORY FINES OR PENALTIES, EACH TO THE EXTENT DIRECTLY ATTRIBUTABLE TO RESOURCE ADEQUACY REQUIREMENTS, WHICH ARE IMPOSED ON BUYER DUE TO SELLER'S DEFAULT (WHICH BUYER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS), FOR WHICH BUYER HAS NOT ALREADY BEEN COMPENSATED FOR BY SELLER INCLUDING WITHOUT LIMITATION BY SELLER'S PAYMENT OF ANY R.A. DEFICIENCY AMOUNTS, SHALL BE DEEMED TO BE DIRECT DAMAGES; PROVIDED, HOWEVER, THAT SELLER'S LIABILITY FOR ANY SUCH REGULATORY FINES OR PENALTIES SHALL NOT EXCEED [REDACTED] IN THE AGGREGATE ("COMPENSABLE PENALTIES").

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 2.8, 3.8, 3.10(g)(v), 4.4(c), 4.7, 4.8, 11.2, 11.3 AND 11.6, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT D, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

### **ARTICLE 13**

#### **REPRESENTATIONS AND WARRANTIES; ADDITIONAL COVENANTS**

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent

of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Additional Seller Commitments.**

(a) Seller (or its Affiliate) shall maintain Site Control throughout the Delivery Term.

(b) Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term, Seller shall comply with all applicable federal, state and local Laws, and applicable orders and decrees of any courts or administrative bodies or tribunals, including applicable employment discrimination laws and prevailing wage laws.

## **ARTICLE 14 ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Seller may without the prior written consent of Buyer: (a) assign this Agreement to an Affiliate of Seller, including to NEOP, NEP and NEECH; (b) assign, collaterally assign, or pledge its interest hereunder and/or in the Facility to a financing party in accordance with Section 14.3; or (c) assign this Agreement in any Permitted Transfer.

14.2 **Change of Control.** Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided, however*, that: (a) a direct or indirect Change of Control of NEOP or NEP will not require the prior written consent of Buyer; and (b) a Change of Control of Seller shall not require Buyer's consent if the entity that is the Seller at the conclusion of the Change of Control is a Permitted Transferee. Any assignment made without the required written consent (if applicable), or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees. For avoidance of doubt, a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer, as no consent is required under this Agreement with respect to a Permitted Transfer.

14.3 **Collateral Assignment.** Subject to the provisions of this Section 14.3, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement in substantially the form attached as Exhibit T ("Consent to Collateral Assignment"). Seller shall reimburse Buyer for Buyer's out of pocket expenses, including reasonable attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing for the Facility. Buyer shall cooperate in good faith with Seller to agree upon, and subsequently shall execute and deliver, any certifications, consents, opinions, estoppels, direct agreements, amendments and other documents as may be reasonably requested by Seller or the financing party or its agent in connection with any financing or refinancing involving the Facility, including financings and refinancings in which an affiliate of Seller is the borrower; provided, that Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement.

14.4 **Shared Facilities; Portfolio Financing.** Buyer agrees and acknowledges that



Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer's rights, benefits, risks or obligations under this Agreement and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 **Accommodation of Lenders.** Buyer will, as soon as reasonably practicable after request, cooperate reasonably with Seller and any Lender to provide such consents to assignments, estoppels, certifications, representations, information or other documents as may be reasonably requested by Seller or such Lender in connection with any financing or assignment involving the Facility or this Agreement, including any financing in which an Affiliate of Seller is the borrower. Notwithstanding anything to the contrary in the foregoing, Buyer agrees that: (i) Buyer will provide the Lenders with notice of any Event of Default by Seller; (ii) for a period of thirty (30) days following the expiration of any cure period for a monetary Event of Default by Seller and ninety (90) days following the expiration of any cure period for a non-monetary Event of Default by Seller, such Lenders, or their designees, will have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure the Event of Default and such act performed by the Lenders, or their designees will be as effective to prevent or cure an Event of Default as if done by Seller; and (iii) Buyer will not terminate this Agreement if any Lenders have provided notice to Buyer that they must foreclose on the Facility prior to preventing or curing any Event of Default by Seller giving rise to such termination.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1 **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. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. [STC 17].

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) Business Days following the receipt of a written notice from either Party identifying such dispute, the authorized members of the Parties' senior management shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days of initiating such discussions, or within forty (40) days after notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall

be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

15.4 **Venue.** The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States, or the courts of the State of California, sitting in Orange County, California.

## **ARTICLE 16 INDEMNIFICATION**

### **16.1 Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent acts or willful misconduct of the Indemnifying Party, its Affiliates, or its directors, officers, employees, or agents.

(b) Nothing in this Section 16.1 shall enlarge or relieve a Party of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## ARTICLE 17 INSURANCE

### 17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED], endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [REDACTED] per occurrence and in aggregate. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions. The amount of insurance required above may be satisfied by any combination of primary and excess insurance.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Builder's All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, builder's all-risk insurance covering the Facility during such construction periods.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than [REDACTED]; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Within fifteen (15) Business Days after written request by Buyer, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by

Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and self-insure in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and business automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## **ARTICLE 18**

### **CONFIDENTIAL INFORMATION**

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than to the employees, lenders (including bona fide prospective lenders), counsel, accountants, directors or advisors, or representatives of a Party or its Affiliates who has a need to know such information and has 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 applicable to such Party or any of its Affiliates; *provided*, 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. The Parties agree and acknowledge that nothing in this Section 18.2 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.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). 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 Information. Over-designation includes stamping whole agreements, entire pages or series of pages as "Confidential" that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("**Requested Confidential Information**"), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents ("**Buyer's Indemnified Parties**"), from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer's Indemnified Parties for Buyer's refusal to disclose any Requested Confidential Information.

18.3        **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available except as otherwise limited under this Agreement, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4        **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties who has a need to know such information (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5        **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed

upon the contents of any such public statement.

## **ARTICLE 19 MISCELLANEOUS**

19.1       **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. 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.

19.2       **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.

19.3       **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4       **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5       **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6       **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes

to the rates, terms or conditions of service of this Agreement proposed by a Party 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). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7           **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8           **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

19.9           **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10          **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members in connection with this Agreement.

19.11          **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12          **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected

provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13            **Further Assurances**. Each of the Parties hereto agrees 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 not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

*[Signatures on following page]*



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

GRACE ORCHARD ENERGY  
CENTER, LLC, a Delaware limited  
liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ORANGE COUNTY POWER  
AUTHORITY, a California joint powers  
authority

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

### **FACILITY DESCRIPTION**

**Site Name:** Grace Orchard Energy Center

**Site includes all or some of the following APNs:** Seller to provide at least thirty (30) days prior to Commercial Operation Date

**County:** Riverside County, CA

**NEPA Lead Agency:** Riverside County

**Type of Generating Facility:** Solar Photovoltaic

**Operating Characteristics of Generating Facility:** 90 MW AC as-available Solar Photovoltaic

**Type of Storage Facility:** Electrochemical battery energy storage facility

**Operating Characteristics of Storage Facility:**

**Maximum Stored Energy Level (MWh) at COD:** 120 MWh (subject to Section 2.3)

**Minimum Stored Energy Level (MWh) at COD:** 0 MWh

**Maximum Charging Capacity at COD:** 30 MW (subject to Section 2.3)

**Minimum Charging Capacity at COD:** 0 MW

**Maximum Discharging Capacity at COD:** 30 MW (subject to Section 2.3)

**Minimum Discharging Capacity at COD:** 0 MW

**Maximum State of Charge at COD:** 100%

**Minimum State of Charge at COD:** 0%

**Operating Restrictions of Storage Facility:** See Exhibit Q

**Guaranteed Capacity:** See definition in Section 1.1

**Effective Storage Capacity:** See definition in Section 1.1

**Maximum Output:** 90 MW AC

**Delivery Point:** [REDACTED]

**Generating Facility Metering Points:** See Exhibit R

**Storage Facility Meter Points:** See Exhibit R

**Facility Interconnection Point:** [REDACTED].

**Facility PNode:** To be established prior to the Commercial Operation Date. Seller shall promptly notify Buyer following establishment of the PNode.

**Participating Transmission Owner:** Southern California Edison

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

- 1) **Construction of the Facility.** “**Construction Start**” will occur upon Seller’s execution of an engineering, procurement, and construction contract (or similar agreement) and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.”
- 2) **Commercial Operation.**
  - a) “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.4 of the Agreement.
  - b) Subject to the other terms of this Agreement, Seller shall cause Commercial Operation to occur by the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 4 of this Exhibit B). Seller shall notify Buyer that it intends to achieve Commercial Operation at least thirty (30) days before the anticipated Commercial Operation Date.
  - c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 4 of this Exhibit B), Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date, not to exceed a total of one-hundred twenty (120) days. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. Within fifteen (15) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of Commercial Operation Delay Damages set forth in such invoice subject to Section 8.5.
- 3) **Termination for Failure to Timely Achieve Commercial Operation.** If Seller has not achieved Commercial Operation by the deadline specified in Section 11.1(b)(ii), either Party may elect to terminate this Agreement within thirty (30) days of the expiration of the last such deadline; provided, however, unless excused by some other provision of this Agreement, upon such termination of this Agreement Buyer shall be entitled to the Damage Payment.
- 4) **Extension of the Guaranteed Commercial Operation Date.**
  - a) The Guaranteed Commercial Operation Date shall be automatically extended:  
(i) on a day-for-day basis for the duration of any Development Cure Period; (ii) in connection with any New PV Trade Measure for the amount of time specified by Seller in accordance with Section 2.7 of the Agreement (the “**New PV/BESS Trade Measure Extensions**”); and (iii) on a day-for-day basis for each day of delayed

delivery for any part of the Facility and any required remobilization or other source of delay caused with respect to any portion of the Facility for which achievement of Commercial Operation is prevented or delayed by any WRO Restraint (the “**WRO Restraint Extension**”).

- b) The Guaranteed Commercial Operation Date shall be automatically extended on a day-for-day basis for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, such as timely filing and prosecution of applications for permit, approvals and interconnections (all of the following permitted extensions collectively are the “**Development Cure Period**”):
  - i) the occurrence of any one more Force Majeure Events; or
  - ii) any delay in the completion of Interconnection Facilities, Shared Facilities, or transmission upgrades for the Facility that are caused by the transmission provider (e.g., the CAISO) or the transmission owner (e.g., Southern California Edison) and are outside of the reasonable control of Seller (“**Transmission Delays**”); or
  - iii) Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility (including for avoidance of doubt any Interconnection Facilities or Shared Facilities) and to permit Seller and the Facility to make available and sell Product.
- c) Any Development Cure Period shall extend the Guaranteed Commercial Operation Date. The Development Cure Period shall be no longer than [REDACTED] for the Commercial Operation Date; provided, however, Seller shall have the right to extend the Development Cure Period, upon Notice to Buyer provided prior to the expiration of such [REDACTED] time period, by up to an additional [REDACTED], by providing Buyer with the opportunity to request additional Bridge Product in an amount up to [REDACTED] of the Expected Energy for Contract Year 1 as set forth in the Cover Sheet, subject to the same terms, conditions, and limitations of Section 3.10. Any delays in the Commercial Operation that may occur as a result of any New PV Trade Measures Extensions or any WRO Restraint Extensions in accordance with Section 4(a) of this Exhibit B shall be separate from, and in addition to, any Development Cure Period.

5) **Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity.**

- a) If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have [REDACTED] days after the Commercial Operation Date to install additional capacity such that the Installed PV Capacity is equal to (but not greater than) the

Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay “**PV Capacity Damages**” to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed PV Capacity exceeds the total Installed PV Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

- b) If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have [REDACTED] days after the Commercial Operation Date to install additional capacity such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay “**Storage Capacity Damages**” to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed Storage Capacity exceeds the total Installed Storage Capacity, and the Guaranteed Storage Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
  - c) Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.
- 6) **Buyer’s Right to Draw on Development Security.** If Seller fails to pay any Commercial Operation Delay Damages within thirty (30) days of the date of Seller’s receipt of the invoice from Buyer, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof; provided, however, notwithstanding anything to the contrary in this Agreement, Seller’s liability for the period prior to the Final Commercial Operation, including without limitation for the failure to achieve Commercial Operation by the deadline specified in Section 11.1(b)(ii) shall be limited to the Damage Payment.

## EXHIBIT C

### COMPENSATION

Compensation under this Agreement shall be in accordance with this Exhibit C. The payment required under the invoices required by Section 8.1 of this Agreement will be an amount equal to the summation of the following in such month, as applicable:

(a) Bridge Product. Buyer shall pay the Invoiced Bridge Product Payment as set forth in 3.10; plus

(b) Test Energy. For Test Energy and associated Product, Buyer shall pay Seller the amount set forth in Section 3.6, in addition to the amounts specified in Section 4.5(h); plus

(c) Metered Energy, Deemed Delivered Energy, and Excess Energy. Buyer shall pay for:

(1) (A) Metered Energy as the product of the Renewable Rate and each MWh of Metered Energy, plus (B) Deemed Delivered Energy as the product of each MWh of Deemed Delivered Energy, if any, and the sum of the Renewable Rate plus the PTC Rate; plus

(2) Excess Energy accepted by Buyer pursuant to Section 4.1(d) at [REDACTED]; minus [REDACTED]

(3) Energy Replacement Damages, if any, as set forth in Exhibit G; minus

(4) The Positive Uninstructed Deviation Credit, if any, as set forth in Section 4.3(f); plus

(5) Monthly Capacity Payment. Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x one thousand (1,000) x Effective Storage Capacity x Availability Adjustment for all Storage Product, with the Availability Adjustment determined under Exhibit P. If the Effective Storage Capacity is adjusted pursuant to a Storage Capacity Test other than the first day of calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity is applicable; minus

(6) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by multiplying (i) the total Charging Energy for such month, by (ii) the percentage amount by which the Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) the Renewable Rate, which amount Seller shall set

off against amounts payable by Buyer in the applicable monthly invoice;  
minus

- (7) RA Deficiency Amount, if any, set forth in section 3.8(b); plus
- (8) Net Buyer CAISO Settlements, as required by section 4.3(e) and set forth in Exhibit U.

Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.



## **EXHIBIT D**

### **SCHEDULING COORDINATOR RESPONSIBILITIES; MANAGED INSTRUCTIONS; SUPPLEMENTAL INSTRUCTIONS AND APPLICABLE INSTRUCTIONS**

#### **Scheduling Coordinator Responsibilities:**

(a) Seller as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid and thereafter, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery and the receipt of Test Energy and the Product, as applicable, at the Delivery Point and for the purposes of conducting Storage Capacity Tests. As determined by Buyer, Seller (as the Facility's SC) shall submit Economic Bids and Self-Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, Business Practices, and Operating Procedures in the DAM, FMN, and RTM.

(b) Notices. Seller (as the Facility's SC) shall use a web-based system through which Seller shall submit to CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide Buyer access to such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to the CAISO and Buyer (in order of preference) telephonically, by electronic mail, or other transmission to the personnel designated to receive such information.

(c) CAISO Settlements. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.

(e) Dispute Costs. Seller (as the Facility's SC) may be required to dispute CAISO settlements in respect of the Facility. If Buyer has directed Seller to dispute a CAISO settlement, Buyer agrees to pay Seller's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Buyer with respect to the Facility.

(f) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Seller shall not change such data without providing Buyer with Notice.

(g) NERC Reliability Standards. Seller (as Scheduling Coordinator) shall comply with NERC reliability standards.

## **Managed Instructions; Supplemental Instructions and Applicable Instructions:**

### **Managed Instructions General Principles**

1. Seller, as the SC or through its designee to provide SC services, shall develop, maintain, and implement offer strategy algorithms (“**Offer Strategies**”). The Offer Strategies intend to coordinate the Generating Facility and Storage Facility to optimize Facility revenues consistent with complying with any Operating Restrictions, other restrictions under this Agreement, the Law, and the CAISO Tariff, including, but not limited to any Resource Adequacy must-offer obligations. In addition to seeking to optimize Facility revenues, the Offer Strategies may, among other considerations, provide for the recovery of any Federal Investment Tax Credit (“ITC”) value for the Storage Facility, Federal Production Tax Credit (“PTC”) value for the Generating Facility, and any Green Attribute value from the Facility, while accounting for market participant offer parameters, site derates and outages, co-located Generating Facility resource availability, and nodal market prices, among other things. The Offer Strategies will generate valid CAISO market offer parameters for the co-located resources at the Facility. Buyer will not have access to the underlying optimization logic used by the Offer Strategies to generate the Economic Bids or Self-Schedules for the Facility, but Buyer, in coordination with Seller, will develop and implement Managed Instructions to guide the Facility’s performance objectives and their prioritization, including, but not limited to, (i) specifying Ancillary Service product offerings, as allowed in this Agreement, (ii) adjust DAM and RTM participation though, among other things, the DA Percentage, (iii) direct potential outcomes or ranges for the Buyer DAM Bid Price and Buyer RTM Bid Pricing, including the Negative LMP Strike Price.

2. Seller shall use commercially reasonable efforts and cooperate in good faith to ensure Buyer has sufficient data and other information to monitor the performance of the Offer Strategies, including development of benchmarks, e.g., full DAM participation to determine incremental revenue, if any, from Energy and Ancillary Service products resulting from the Offer Strategies. Seller shall also be obligated to provide Buyer with a demonstration of software platforms, if any, including any application programming interface, used by Seller to implement the Offer Strategies.

### **Managed Instructions Protocol**

1. The Managed Instructions, including the form and format of the Managed Instructions and the communications methods and timing between Parties, shall be developed through good faith discussions between the Parties in accordance with Section 4.3 of this Agreement and this Exhibit D. The principles set forth herein reflect the mutual understanding of the Parties regarding how the Managed Instructions shall be developed and periodically revised over time.
2. Each Party shall cooperate with the other to implement Applicable Instructions that allow for full participation in each CAISO market stage and for all products allowed by CAISO rules as specified in the Agreement and the Buyer.
3. Parties shall confer from time to time as CAISO Tariff language and Business Practice Manual language is being considered and refined through Stakeholder Initiatives, to anticipate and implement changes that will be necessary to the Applicable Instructions.
4. Additional parameters made available to resources like the Storage Facility that support

improved operation beyond the current price-quantity Economic Bid or Self-Scheduling rules shall be incorporated into the Managed Instructions upon CAISO implementation.

5. The Managed Instructions shall at all times ensure continuity of bidding/scheduling/operations of the Facility in the CAISO markets that are compliant and feasible, by including terms that shall become effective upon a failure in communications between the Parties which would make the otherwise effective Managed Instructions or Applicable Instructions infeasible.
6. Parties shall work collaboratively to determine the appropriate algorithm to implement under the Managed Instructions to mitigate communication points of failure, as more information is gained, and market rules are finalized.
7. In accordance with Section 4.3(b)(iii), Buyer may issue Supplemental Instructions at any time directing Seller to submit RTM or DAM bids that differ from the currently effective Managed Instructions, which Supplemental Instructions shall be strictly limited to apply only to the specific Settlement Interval for which they are provided and to the extent contrary to the Managed Instructions, which together comprise the Applicable Instructions.

**EXHIBIT E**  
**PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress toward meeting each of the Interim Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description (a) about the progress relative to Seller's Interim Milestones, including whether Seller has met or is on target to meet the Interim Milestones, (b) identifying any missed Seller's Interim Milestones and the cause of the delay and providing a detailed description of Seller's corrective actions to achieve the missed Seller's Interim Milestones and all subsequent Seller's Interim Milestones by the Guaranteed Commercial Operation Date.
9. List of issues that are reasonably likely to affect Seller's Interim Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable).
14. Any other documentation reasonably requested by Buyer.

## EXHIBIT F-1

### MONTHLY EXPECTED AVAILABLE GENERATING FACILITY CAPACITY

[MW Per Hour] – *[Insert Month]*

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT F-2

### MONTHLY EXPECTED METERED ENERGY

[MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

### EXHIBIT F-3

#### MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY

[MW Per Hour] – *[Insert Month]*

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT F-4

### MONTHLY AVAILABLE STORAGE CAPABILITY

[MWh Per Hour] – *[Insert Month]*

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.



## EXHIBIT G

### ENERGY REPLACEMENT DAMAGES CALCULATION FOR GUARANTEED ENERGY PRODUCTION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, Energy Replacement Damages, as liquidated damages, shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)] = \text{Energy Replacement Damages}$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of

[REDACTED], plus (b) the market value of Replacement Green Attributes

D = the Renewable Rate, in \$/MWh

“**Adjusted Energy Production**” shall mean the sum of the following: Metered Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“**Replacement Energy**” means energy produced by a facility other than the Generating Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“**Replacement Green Attributes**” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Generating Facility.

“**Replacement Product**” means (a) Replacement Energy, and (b) Replacement Green Attributes.

No payment for Energy Replacement Damages shall be due if the calculation of (a) (A - B), (b) (C - D), or (c)  $[(A - B) * (C - D)]$ , yields a negative number.

Within sixty (60) days after each Contract Year after the second Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

## EXHIBIT H

### FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by \_\_\_\_\_[*licensed professional engineer*] (“**Engineer**”) to Orange County Power Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Grace Orchard Energy Center, LLC, a Delaware limited liability company (“**Seller**”) and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of \_\_\_\_\_[DATE], Engineer hereby certifies and represents to Buyer the following:

1. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.
2. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.
3. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on \_\_\_\_\_[DATE]\_\_\_\_\_.
4. The Generating Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed PV Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions, including solar irradiance and temperature, on the date of the Facility testing.
5. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Effective Storage Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.
6. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
7. Seller has demonstrated functionality of the Facility’s communication systems and Automatic Generation Control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.
8. Authorization to parallel the Facility was obtained from the Participating Transmission Owner on [date].
9. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [date].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT I-1

### FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Orange County Power Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Grace Orchard Energy Center, LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

- (a) The installed nameplate capacity of the Generating Facility is \_\_ MW AC (“**Installed PV Capacity**”);
- (b) The Commercial Operation Storage Capacity Test conducted on [Date] demonstrated a maximum dependable operating capability to discharge electric energy of \_\_ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);
- (c) The sum of (a) and (b) is \_\_\_\_ MW AC and shall be the “**Installed Capacity**”; and
- (d) Such Commercial Operation Storage Capacity Test demonstrated an Efficiency Rate of \_\_%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT I-2

### FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification (“**Certification**”) of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Orange County Power Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Grace Orchard Energy Center, LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test conducted on [Date] demonstrated a maximum dependable operating capability to discharge electric energy of \_\_\_ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the “**Effective Storage Capacity**”); and

(b) Such Storage Capacity Test demonstrated an Efficiency Rate of \_\_%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT J

### FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by Grace Orchard Energy Center, LLC, a Delaware limited liability company (“**Seller**”) to Orange County Power Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on \_\_\_\_\_ (the “**Construction Start Date**”);  
and
- (3) the Site on which the Facility is located is:  
\_\_\_\_\_  
(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the \_\_\_\_ day of \_\_\_\_\_.

[SELLER ENTITY]

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT K**

### **FORM OF LETTER OF CREDIT** **(issued on behalf of Seller for the benefit of Buyer)**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXX]

Beneficiary:

Orange County Power Authority,  
a California joint powers authority  
349 Michelson Dr Ste. 200  
Irvine, CA, 92612-8881

Ladies and Gentlemen:

By the order of NextEra Energy Capital Holdings, Inc. on behalf of Grace Orchard Energy Center, LLC, 700 Universe Blvd, Juno Beach, Florida 33408 ("Applicant"), we, [insert bank name and address] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the "Letter of Credit") in favor of Orange County Power Authority, a California joint powers authority ("Beneficiary"), 349 Michelson Dr. Ste. 200, Irvine, CA, 92612-8881, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100) (the "Available Amount"), pursuant to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_ and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the "Expiration Date").

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. New York time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary's dated statement purportedly signed by Beneficiary's duly authorized officer, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by electronic mail at [email address] or such other email address as specified from time-to-time by the Issuer.



The electronic transmittal shall be deemed delivered when received. Drawings made by electronic transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

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

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

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

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Orange County Power Authority, a California joint powers authority, Attn: Tiffany Law, 349 Michelson Dr. Ste 200, Irvine, CA, 92612-8881. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

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[Insert officer name]

[Insert officer title]

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized officer of [ ], [ADDRESS], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of Grace Orchard Energy Center, LLC (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_ because Beneficiary is entitled to a payment of liquidated damages from the Development Security for a delay as Applicant has failed to pay such liquidated damages within thirty (30) days of Applicant's receipt of such an invoice from Beneficiary as set forth in the Agreement or a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

\_\_\_\_\_  
Name and Title of Authorized Representative

Date\_\_\_\_\_

## EXHIBIT L

### FORM OF LETTER OF CREDIT (issued on behalf of Buyer for the benefit of Seller)

#### DATE OF ISSUANCE:

[Date of issuance]

#### Grace Orchard Energy Center, LLC ("Beneficiary")

700 Universe Blvd.

Juno Beach, FL 33408

Attention: Business Management

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. [REDACTED]

Sirs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as "**you**") this Irrevocable Standby Letter of Credit No. [REDACTED] (the "**Letter of Credit**") for the account of [[REDACTED] on behalf of] Orange County Power Authority, located at 349 Michelson Dr. Ste. 200, Irvine, CA, 92612-8881 ("**Applicant**"), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain Renewable Power Purchase Agreement dated as of [REDACTED], as amended from time to time (the "**Agreement**").

**1. Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit shall be [written dollar amount] United States Dollars (US\$[dollar amount]) (such maximum amount referred to as the "**Stated Amount**").

**2. Drawings.** A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at [bank address] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the "**Draw Certificate**"), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B hereto (the "**Draft**"), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile or original documents sent by overnight delivery or courier to [ISSUING BANK] at our address set forth above, Attention: [REDACTED] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 below). If presentation is made by facsimile transmission, you must contact us at [insert phone number] to confirm our receipt of the transmission. In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us.

**3. Time and Method for Payment.** We hereby agree to honor a drawing hereunder made in

compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, [ ] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, [ ] time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. **Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand.

5. **Expiration.** This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of Attachment C hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).

6. **Initial Period and Automatic Rollover.** The initial period of this Letter of Credit shall terminate on [one year from the issuance date] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered paragraph 9) that we elect not to consider this Letter of Credit extended for any such additional one year period.

7. **Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of New York, and inter-bank payments can be effected on the Fedwire system.

8. **Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, TO THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE “ISP98”), AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF NEW YORK WILL CONTROL, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

9. **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

10. **Irrevocability.** This Letter of Credit is irrevocable.

11. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP98 and Attachment A, Attachment B and

Attachment C hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

Sincerely,

[ISSUING BANK]

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

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

Address:

**ATTACHMENT A**

**FORM OF DRAW CERTIFICATE**

The undersigned hereby certifies to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. [REDACTED] (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

- (1) The undersigned is the [REDACTED] of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.
- (2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of [REDACTED] U.S. dollars (US\$ [REDACTED]), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).
- (3) Beneficiary and Orange County Power Authority (“**Applicant**”) are parties to that certain Renewable Power Purchase Agreement dated as of [REDACTED], as amended from time to time (the “**Agreement**”).
- (3) Beneficiary is making a drawing under this Letter of Credit because a Buyer Event of Default (as such term is defined in the Agreement) has occurred.

Or

Beneficiary is making a drawing under this Letter of Credit because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit instrument within thirty (30) days prior to such expiration date.

- (4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

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

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

Date: \_\_\_\_\_

- (5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

Grace Orchard Energy Center, LLC

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

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

Date: \_\_\_\_\_



**ATTACHMENT B**

**DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO.**

Date:

PAY TO: Grace Orchard Energy Center, LLC

U.S.\$ \_\_\_\_\_

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO.  
\_\_\_\_\_.

Grace Orchard Energy Center, LLC

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

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

Date: \_\_\_\_\_

**ATTACHMENT C**

**CANCELLATION CERTIFICATE**

Irrevocable Letter of Credit No.

The undersigned, being authorized by the undersigned (“**Beneficiary**”), hereby certifies on behalf of Beneficiary to  (“**ISSUING BANK**”) (“**Issuer**”), with reference to Irrevocable Letter of Credit No.  issued by Issuer to Beneficiary (the “**Letter of Credit**”), that all obligations of Orange County Power Authority (“**Applicant**”), under the that certain Renewable Power Purchase Agreement dated as of [\_\_\_\_\_], as amended from time to time (the “**Agreement**”) have been fulfilled.

Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer’s receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

Grace Orchard Energy Center, LLC

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

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

Date: \_\_\_\_\_

## EXHIBIT M

### FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by Grace Orchard Energy Center, LLC, a Delaware limited liability company (“**Seller**”) to Orange County Power Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:

#### **Unit Information<sup>1</sup>**

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

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<sup>1</sup> To be repeated for each unit if more than one.

Grace Orchard Energy Center, LLC

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT N

### NOTICES

<b>Grace Orchard Energy Center, LLC, a Delaware limited liability company (“Seller”)</b>	<b>ORANGE COUNTY POWER AUTHORITY, a California joint powers authority (“Buyer”)</b>
<b>All Notices:</b>  Street: 700 Universe Blvd. City: Juno Beach, FL 33408 Attn: Business Management  [Phone: 561--691-7723 (Office) 561-301-4685 (Mobile) Email: <a href="mailto:DL-NEXTERA-WESTINTERNATIONAL-REGION@nee.com">DL-NEXTERA-WESTINTERNATIONAL-REGION@nee.com</a> and <a href="mailto:Luke.Bachich@nexteraenergy.com">Luke.Bachich@nexteraenergy.com</a> ]	<b>All Notices:</b>  Orange County Power Authority P. O. Box 54283 Irvine, CA 92619 Attn: Brian Probolsky, Chief Executive Officer  Phone: (949) 767-8700 Email: <a href="mailto:brian@ocpower.org">brian@ocpower.org</a>
<b>Emergencies:</b>  Street: 700 Universe Blvd. City: Juno Beach, FL 33408 Attn: Business Management  [Phone: 561--691-7723 (Office) 561-301-4685 (Mobile) Email: <a href="mailto:DL-NEXTERA-WESTINTERNATIONAL-REGION@nee.com">DL-NEXTERA-WESTINTERNATIONAL-REGION@nee.com</a> and <a href="mailto:Luke.Bachich@nexteraenergy.com">Luke.Bachich@nexteraenergy.com</a> ]	<b>Emergencies:</b>  Orange County Power Authority P. O. Box 54283 Irvine, CA 92619 Attn: Brian Probolsky, Chief Executive Officer  Phone: (949) 767-8700 Email: <a href="mailto:brian@ocpower.org">brian@ocpower.org</a>
<b>Reference Numbers:</b> Duns: Federal Tax ID Number:	<b>Reference Numbers:</b> Duns: 117918392 Federal Tax ID Number: 86-1191848
<b>Invoices:</b> Attn: Business Management  [Phone: 561--691-7723 (Office) 561-301-4685 (Mobile) E-mail: <a href="mailto:DL-NEXTERA-WESTINTERNATIONAL-REGION@nee.com">DL-NEXTERA-WESTINTERNATIONAL-REGION@nee.com</a> and <a href="mailto:Luke.Bachich@nexteraenergy.com">Luke.Bachich@nexteraenergy.com</a> ]	<b>Invoices:</b> Attn: Tiffany Law Phone: (949) 767-8708 Email: <a href="mailto:tlaw@ocpower.org">tlaw@ocpower.org</a>

<b>Grace Orchard Energy Center, LLC, a Delaware limited liability company (“Seller”)</b>	<b>ORANGE COUNTY POWER AUTHORITY, a California joint powers authority (“Buyer”)</b>
<b>Scheduling: [TBD]</b> Attn: Phone: Facsimile: Email:	<b>Scheduling:</b> TEA CAISO Scheduling Coordinator 405 114th Ave SE #100, Bellevue, WA 98004 Phone: (425) 460-1118 Email: group-corp-tradingcaiso@teainc.org
<b>Confirmations: [TBD]</b> Attn: Phone: Facsimile: Email:	<b>Confirmations:</b> Attn: Tiffany Law Phone: (949) 767-8708 Email: tlaw@ocpower.org
<b>Payments:</b> Attn: Business Management Phone: (561) 694-4725 E-mail: <a href="mailto:DL-NEXTERA-WESTINTERNATIONAL-REGION@nee.com">DL-NEXTERA-WESTINTERNATIONAL-REGION@nee.com</a>	<b>Payments:</b> Attn: Tiffany Law Phone: (949) 767-8708 Email: tlaw@ocpower.org
<b>Wire Transfer:</b> Seller shall provide to Buyer the information below at least 60 days prior to the Commercial Operation Date. BNK: [TBD] ABA: [TBD] ACCT:[TBD]	<b>Wire Transfer:</b> BNK: To be provided ABA: To be provided ACCT: To be provided
<b>Defaults:</b>	<b>Defaults:</b>  P. O. Box 54283 Irvine, CA 92619 Attn: Brian Probolsky, Chief Executive Officer Telephone: (949) 767-8700 Email: brian@ocpower.org  Additional notices of an Event of Default to:  Best Best & Krieger LLP Attn: Ryan Baron Address: 18101 Von Karman Ave., Suite 1000 Irvine CA 92612 Phone: (949) 263-6568 Email: ryan.baron@bbklaw.com

## EXHIBIT O

### STORAGE CAPACITY TESTS

#### **Storage Capacity Test Notice and Frequency**

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test (COSCT) prior to the Commercial Operation Date. Such initial COSCT (and any subsequent COSCT permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such COSCT(s).

B. Subsequent Storage Capacity Tests. Following the COSCT, at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test (SCT). In addition, Buyer shall have the right to require a retest of the SCT at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity have varied materially from the results of the most recent prior SCT. Seller shall have the right to run a retest of any SCT at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity. No later than ten (10) Business Days following the COSCT or any SCT, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after each COSCT or SCT, as applicable, the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) determined pursuant to such COSCT or SCT, as applicable, shall become the new Effective Storage Capacity at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

D. Nomenclature. Except as otherwise stated, for purposes of Part I, Part II, and Part III of this Exhibit O, a SCT shall include the COSCT.

#### **Capacity Test Procedures**

##### **PART I. GENERAL.**

- A Each SCT shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. Buyer or its representative may be present for any SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

B Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS) and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Seller's RTU and the SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Seller's RTU and Seller's EMS interface and the ability to record SCADA System data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.
- (4) Generating Facility Conditions. Any SCTs requiring the availability of Charging Energy shall be conducted when the Generating Facility is producing at a rate equal to or above the Effective Storage Capacity continuously for a five (5)-hour period, *provided* that Seller may waive such conditions at its sole discretion. Any SCTs that are required or allowed to occur under this Exhibit O that take place in the absence of the above condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such SCT, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Test Elements. Each SCT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the SCT will still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity resulting from such SCT, if applicable, will be made in accordance with this Exhibit O.

- (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
- (2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least [REDACTED] continued by the electrical input at a rate up to the maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches 100%.



- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:
- (1) Time;
  - (2) The amount of Discharging Energy as measured by the Storage Facility Meter (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
  - (3) The amount of Charging Energy as measured by the Storage Facility Meter (kWh) (i.e., from each measurement device making up the Storage Facility Meter);
  - (4) Stored Energy Level (MWh).
- C. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
  - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
  - (3) Ambient air temperature (°F).
- D. Test Showing. Each SCT shall record and report the following datapoints:
- (1) That the SCT successfully started;
  - (2) The maximum sustained discharging level pursuant to A(1) above;
  - (3) The maximum sustained charging level pursuant to A(2) above;
  - (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the Test (for purposes of calculating the Ramp Rate);
  - (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the Test (for purposes of calculating the Ramp Rate);
  - (6) Amount of Charging Energy to go from 0% SOC to 100% SOC (Energy In);
  - (7) Amount of Discharging Energy, to go from 100% SOC to 0% SOC (Energy Out).
- E. Test Conditions.

- (1) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.
  - (2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F below.
  - (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.
- F. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped without any modification to the Effective Storage Capacity pursuant to Section I below; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.
- G. Test Report. Within ten (10) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:
- (1) A record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
  - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
  - (3) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.
- Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.
- If either Party rejects the results of any SCT, such sCT shall be repeated in accordance with Part II.F.
- H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to Commercial Operation, Seller shall deliver to Buyer for its review and approval

(such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to SCTs based on the then-current design of the Storage Facility (“**Supplementary Storage Capacity Test Protocol**”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

- I. Adjustment to Effective Storage Capacity. The Effective Storage Capacity shall be updated as follows:

The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test) multiplied by (ii) four (4) hours), shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.

- J. The total amount of Energy Out (as reported under Section II.D(7) above) divided by the total amount of Energy In (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the initial Efficiency Rate, and shall be used for the calculation in Exhibit C until updated after the first month of operations.

### PART III. INITIAL STORAGE CAPACITY TEST PROTOCOL.

#### A. **Effective Storage Capacity and Initial Efficiency Rate Test**

- Procedure:

- (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.
- (3) Command a real power charge that results in an AC power of Storage Facility’s maximum charging level, and continue charging as sustained until the SOC reaches at least [REDACTED], continued by charging at a rate up to the maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches 100%.
- (4) Reserved.

- (5) Record and store the AC energy charged to the Storage Facility from 0% SOC to 100% SOC as measured at the Storage Facility Meter (Energy In).
- (6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
- (7) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- (8) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.
- (9) Record and store the Energy Out from the commencement of discharging pursuant to Part III.A.6 until the Storage Facility has reached a 0% SOC pursuant to either Part III.A.6 or Part III.A.9, as applicable.

- Test Results

- (1) The resulting Effective Storage Capacity measurement is the Discharging Energy at the Storage Facility Meter pursuant to Part III.A(7) divided by four (4) hours.
- (2) The resulting initial Efficiency Rate is calculated as the total amount of Energy Out (as reported under Section III.A(10) above) divided by the total amount of Energy In (as reported under Section III.A(5) above), and expressed as a percentage, and shall be used for the calculation in Exhibit C until updated following the first month of operations.

## **B. AGC Discharge Test**

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's maximum discharging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  - (1) Record the Storage Facility active power level at the Storage Facility Meter.

- (2) Command the Storage Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
  - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

#### **C. AGC Charge Test**

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's full charging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  - (1) Record the Storage Facility active power level at the Storage Facility Meter.
  - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of Pmax at .95 power factor for ten (10) minutes.
  - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

#### **D. Reactive Power Production Test**

- Purpose: This test will demonstrate the reactive power production capability of the Storage Facility.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
  - (1) Record the Storage Facility reactive power level at the Facility Meter.
  - (2) Static MVAR Production Test: Step the Q setpoint in increments of 10MVAR until the MAXIMUM setpoint limits are reached. Hold for ten (10) minutes.
  - (3) Record and store the Storage Facility reactive power response.

- System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

#### **E. Reactive Power Consumption Test**

- Purpose: This test will demonstrate the reactive power consumption capability of the Storage Facility.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
  - (1) Record the Storage Facility reactive power level at the Facility Meter.
  - (2) Static MVAR Production Test: Step the Q setpoint in increments of 10MVAR until the MAXIMUM setpoint limits are reached. Hold for ten (10) minutes.
  - (3) Record and store the Storage Facility reactive power response.
- System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

## EXHIBIT P

### STORAGE FACILITY AVAILABILITY

#### Annual Storage Availability

(a) Calculation of Annual Storage Availability. Seller shall calculate the “**Annual Storage Availability**” in a given Contract Year using the formula set forth below:

$$\text{Annual Storage Availability (\%)} = \frac{[\text{MNTTHRS}_y - \text{UNAVAILHRS}_y]}{[\text{MNTTHRS}_y]}$$

where:

y = relevant Contract Year “y” in which availability is calculated;

MNTTHRS<sub>y</sub> is the total number of On-Peak Hours for the Contract Year;

UNAVAILHRS<sub>y</sub> is the total number of On-Peak Hours in the Contract Year during which the Storage Facility was unavailable to deliver Storage Product for any reason other than the occurrence of any of the following (each, an “**Excused Event**”): a Force Majeure Event; System Emergency; Curtailment Orders, Event of Default by Buyer, Storage Capacity Tests; Planned Outages and scheduled maintenance up to sixty (60) hours per Contract Year; or the Operating Restrictions in Exhibit Q. To be clear, hours of unavailability caused by any Excused Event will not be included in UNAVAILHRS<sub>y</sub> for such Contract Year. Any other event that results in unavailability of the Storage Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Storage Facility is available, but for less than the full amount of the then Effective Storage Capacity, the UNAVAILHRS<sub>y</sub> for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available Effective Storage Capacity.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Seller or its SC schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Seller or its SC is required to schedule or bid the Storage Facility in the Real-Time Market, and the Storage Facility is dispatched in the Real-Time Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

### **Availability Adjustment**

The applicable “**Availability Adjustment**” or “**AA**” is calculated as follows:

- (A) If the Annual Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

$$AA = 100\%$$

- (B) If the Annual Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to [REDACTED], then:

$$AA = 100\% - [REDACTED]$$

- (C) If the Annual Storage Availability is less than [REDACTED] but greater than or equal to [REDACTED] then:

$$AA = [REDACTED]$$

- (D) If the Annual Storage Availability is less than [REDACTED] then:

$$AA = 0$$



## EXHIBIT Q

### OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Storage Facility in the absence of Charging Instructions, Discharging Instructions or other similar instructions including the Applicable Instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

#### I. STORAGE FACILITY OPERATING RESTRICTIONS\*

File Update Date:	[XX/XX/20XX]		
Technology:	Lithium Ion Batteries		
A. Contract Capacity			
Guaranteed Storage Capacity (MW):	30		
Effective Storage Capacity (MW):	30		
B. Total Unit Dispatchable Range Information			
Interconnect Voltage (kV)	230		
Maximum Storage Level (MWh):	120		
Minimum Storage Level (MWh):	0		
Stored energy capability (MWh):	120		
Maximum Discharge (MW):	30		
Maximum Charge (MW):	30		
Guaranteed Efficiency Rate:	85.8%, degrading at 0.3% per year (PV charging)		
Maximum energy throughput (BET) (MWh/year):	43,800 (365 cycles)		
Maximum energy throughput (BET) (MWh/day):	240 (2 cycles)		
C. Charge and Discharge Rates			
Mode	Maximum/ Minimum (MW)	Ramp Rate (MW/min) Description	
Energy (Charge)	30/0	240	
Energy (Discharge)	30/0	240	
D. Ancillary Services			
Frequency regulation is included:	Yes		
Spin is included:	Yes		

\* Subject to Section 2.3

- Maximum annual average State of Charge (SOC) of [REDACTED]
- The Charge Rate may be limited above [REDACTED] SOC when constant voltage charging occurs

## **II. ADDITIONAL STORAGE FACILITY OPERATING RESTRICTIONS**

In addition to the Operating Restrictions in Section I above and notwithstanding any other provision of this Agreement, (A) the Storage Facility shall not receive charging energy from any source other than the Generating Facility, and (B) Buyer shall not issue or cause the issuance of (and Seller shall not be required to comply with) any instruction, order, Charging Instruction, Discharging Instruction, or other communication requiring the Storage Facility to be charged from any source other than the Generating Facility (except as may be ordered by the CAISO in anticipation of, or during, a System Emergency).

**EXHIBIT R**  
**METERING DIAGRAM**

To be updated by Seller prior to the Commercial Operation Date

## EXHIBIT S

### FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [\_\_\_\_\_] (the “**Effective Date**”) by and between NextEra Energy Capital Holdings, Inc., a Delaware corporation (“**Guarantor**”), and Orange County Power Authority, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

#### Recitals

- A. Buyer and Grace Orchard Energy Center, LLC, a Delaware limited liability company (“**Seller**”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “**PPA**”) dated as of [\_\_\_\_], 2023.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

#### Agreement

**1. Guaranty.** For value received, and subject to the terms and conditions hereof, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “**Guaranteed Amount**”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

**2. Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to

the PPA for ten (10) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within ten (10) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

**3. Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), and the Delivery Term has expired or terminated early, (y) the date that is twelve (12) months after the last day of the Delivery Term, or (z) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of

the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that, Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that are expressly waived under any provision of this Guaranty) in a subsequent action for recoupment, restitution, or reimbursement.

**4. Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

**5. Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

**6. Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate corporate or limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and

other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (d) except as disclosed in reports filed with the Securities and Exchange Commission by Guarantor's parent, NextEra Energy, Inc., there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

**7. Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by next Business Day express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at   
Attn:

If delivered to Guarantor, to it at   
Attn:

**8. Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of New York, excluding choice of law rules (other than Section 5-1401 and 5-1402 of the New York General Obligations Law), provided that, notwithstanding the foregoing, in no event shall such governing law prevent Buyer from complying with any obligations or from exercising any joint powers authority arising under the laws of the State of California. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States, or the courts of the State of California, sitting in Orange County, California.

**9. Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Guaranty is not assignable by Buyer without the prior written consent of Guarantor, which consent shall not be unreasonably withheld, except to the extent that the PPA is assigned in accordance with the terms

thereof. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

#### **10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.**

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A FEDERAL COURT OF THE STATE OF CALIFORNIA, OR, TO THE EXTENT SUCH FEDERAL COURT LACKS SUBJECT MATTER JURISDICTION, IN A STATE COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL



REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

*[Signature on next page]*

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

NEXTERA ENERGY CAPITAL HOLDINGS,  
INC.

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

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

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

BUYER:

[\_\_\_\_\_]

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

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

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

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

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

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

## EXHIBIT T

### FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment Agreement (this “Consent”) is entered into among (i) Orange County Power Authority, a California joint powers authority (“OCPA”), (ii) Grace Orchard Energy Center, LLC, a Delaware limited liability company (the “Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). OCPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the PPA (as defined below).

#### RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and OCPA have entered into that certain Renewable Power Purchase Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (“PPA”), pursuant to which Project Company will develop, construct, commission, test and operate the Facility and sell the Product to OCPA, and OCPA will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to OCPA certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);
- C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company or its upstream owners;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and

- E. It is a requirement under the Financing Agreement and the PPA that OCPA and the other Parties hereto shall have executed and delivered this Consent.

## AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

### SECTION 1. CONSENT TO ASSIGNMENT, ETC.

#### 1.1 Consent and Agreement.

OCPA hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to OCPA's rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

#### 1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that, following the occurrence of a default by Project Company under the PPA, OCPA is authorized to act in accordance with Collateral Agent's instructions and the terms of this Agreement, and that, other than arising due to the gross negligence or willful misconduct of OCPA, OCPA shall bear no liability to Project Company or Collateral Agent for acting in accordance therewith.

#### 1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable OCPA to terminate or suspend its performance under the PPA (a "PPA Default"), OCPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives OCPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent's intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to

cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of ninety (90) days (or, if such PPA Default is for failure by the Project Company to pay an amount to OCPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such PPA Default from OCPA to cure such PPA Default; *provided, that*, such additional cure period for the Collateral Agent shall commence on the later of (1) the end of the Project Company's cure period under the PPA and (2) the date the Collateral Agent receives notice of the PPA Default; *provided, further*, (a) if possession of the Facility is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide OCPA with reports concerning the status of efforts to cure a PPA Default upon OCPA's reasonable request.

#### 1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies OCPA (such notice, a "Financing Document Default Notice") that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, OCPA and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to OCPA and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; *provided*, before OCPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to OCPA's reasonable satisfaction that the Substitute Owner meets the qualifications of a Permitted Transferee under the PPA (a "Permitted Transferee"). For purposes of the foregoing, OCPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

#### 1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes

possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (“Replacement Owner”), OCPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term (“Replacement PPA”); *provided*, before OCPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to OCPA’s reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, OCPA is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent OCPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, OCPA may suspend performance of its obligations under such Replacement PPA, unless and until all PPA Defaults of Project Company under the PPA or Replacement PPA have been cured.

#### 1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Facility and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Facility is transferred; *provided*, the proposed transferee shall have demonstrated to OCPA’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

#### 1.7 Assumption of Obligations.

##### (a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to OCPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default, and payment of all other amounts due and payable to OCPA in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

##### (b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the PPA, including curing defaults, posting and collateral assignment of the PPA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

##### (c) No Liability.

OCPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPA as a result of this Consent (except to the extent

Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company's obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement PPA, Collateral Agent shall not have any personal liability to OCPA under the PPA or Replacement PPA and the sole recourse of OCPA in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Facility; *provided*, such limited recourse shall not limit OCPA's right to seek equitable or injunctive relief against Collateral Agent, or OCPA's rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

#### 1.8 Delivery of Notices.

OCPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by OCPA to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by OCPA under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy OCPA's obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to OCPA, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

#### 1.9 Confirmations.

OCPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which OCPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of OCPA under the PPA as between OCPA and Project Company.

#### 1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until OCPA receives a Financing Document Default Notice, OCPA shall deal exclusively with Project Company in connection with the performance of OCPA's obligations under the PPA. From and after such time as OCPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Facility is transferred pursuant to Section 1.6, OCPA shall, until Collateral Agent confirms to OCPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of OCPA's obligations under the PPA, and OCPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those

provided by any other Person.

#### 1.11 No Amendments.

To the extent permitted by Laws, OCPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.

### SECTION 2. PAYMENTS UNDER THE PPA

#### 2.1 Payments.

Unless and until OCPA receives written notice to the contrary from Collateral Agent, OCPA will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company. OCPA, Project Company, and Collateral Agent acknowledge that OCPA will be deemed to be in compliance with the payment terms of the PPA to the extent that OCPA makes payments in accordance with Collateral Agent's instructions. *[Collateral Agent may specify account information]*

#### 2.2 No Offset, Etc.

All payments required to be made by OCPA under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

### SECTION 3. REPRESENTATIONS AND WARRANTIES OF OCPA

OCPA makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

#### 3.1 Organization.

OCPA is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. OCPA has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

#### 3.2 Authorization.

The execution, delivery and performance by OCPA of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of OCPA and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of OCPA which, if not obtained, will prevent OCPA from performing its obligations hereunder or under the PPA except approvals or consents which have previously been obtained



and which are in full force and effect.

### 3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of OCPA by the appropriate officers of OCPA, and constitute the legal, valid and binding obligation of OCPA, enforceable against OCPA in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### 3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither OCPA nor, to OCPA's actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) OCPA and, to OCPA's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to OCPA's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either OCPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

### 3.5 No Previous Assignments.

OCPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by OCPA.

## SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and OCPA:

### 4.1 Organization.

Project Company is a limited liability company duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the PPA to the Collateral

Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

#### 4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

#### 4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, OCPA, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, OCPA, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either OCPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

#### 4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the PPA.

### SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of OCPA and Project Company:

#### 5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

#### 5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a

proceeding in equity or at law).

## SECTION 6. MISCELLANEOUS

### 6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the PPA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to OCPA or Project Company, in accordance with [\[Notice Section of the PPA\]](#) of the PPA, (b) if to Collateral Agent, to [\[Collateral Agent Name\]](#), [\[Collateral Agent Address\]](#), Attn: [\[Collateral Agent Contact Information\]](#), Telephone: [\[ \]](#), Fax: [\[ \]](#), and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

### 6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the PPA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

### 6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

### 6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by OCPA, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until OCPA has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the PPA or any Replacement PPA, its obligations under such PPA or Replacement PPA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

OCPA hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict

between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

*[Remainder of Page Left Intentionally Blank.]*

IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

Grace Orchard Energy Center, LLC  
a Delaware limited liability company.

ORANGE COUNTY POWER  
AUTHORITY,  
a California joint powers authority.

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

*[Name]*

*[Title]*

Date:\_\_\_\_\_

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

*[Name]*

*[Title]*

Date:\_\_\_\_\_

*[NAME OF COLLATERAL AGENT],*

*[Legal Status of Collateral Agent].*

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

*[Name]*

*[Title]*

Date:\_\_\_\_\_

## **SCHEDULE A**

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

## EXHIBIT U

### CAISO CHARGE CODES

The following table sets forth an initial allocation of Charge Codes, which may represent credits (expressed as a negative amount) as well as charges (expressed as a positive amount), between Buyer and Seller as they exist as of the Effective Date. The Parties shall mutually agree upon a final allocation in the Net Buyer CAISO Settlements Protocol. With respect to Ancillary Services, Seller's liability in the associated Charge Codes shall be limited to items within Seller's control, including but not limited to Forced Outage and compliance with ramp rates on file with CAISO. For the avoidance of doubt, any penalties due solely to decreases or increases in solar irradiance shall be for the account of Buyer; penalties due to overlapping causes including decreases or increases in solar irradiance and factors within Seller's control shall be for the account of the Seller.

Charge Code	Charge Code Description	PPA Section	Net Buyer CAISO Settlements	Net Seller CAISO Settlements
701	Forecasting Service Fee	4.3(i)	Included	Excluded
1487	Emergency Energy Exchange Program Neutrality Adjustment	4.3(e)(i)(B)	Excluded <sup>1</sup>	Included <sup>1</sup>
1591	EP Penalty Charge due CAISO Trustee	4.3(e)(i)(B) or 4.3(e)(ii), as applicable	Excluded or Included <sup>2</sup>	Included or Excluded <sup>2</sup>
1592	EP Penalty Allocation Payment	4.3(e)(ii)	Included	Excluded
4515	GMC Bid Transaction Fee	4.3(e)(ii)	Included	Excluded
4560	GMC Market Services Charge	4.3(e)(ii)	Included	Excluded
4561	GMC System Operations Charge	4.3(e)(ii)	Included	Excluded
4575	GMC – Scheduling Coordinator Identification Charge	4.3(e)(ii)	Included	Excluded
6011	Day Ahead Energy, Congestion, Loss Settlement	4.3(e)(ii)	Included	Excluded
6100	Day Ahead Spinning Reserve Capacity Settlement	4.3(e)(ii)	Included	Excluded
6124	No Pay Spinning Reserve Settlement	4.3(e)(i)(B)	Excluded <sup>3</sup>	Included <sup>3</sup>
6170	Real Time Spinning Reserve Capacity Settlement	4.3(e)(ii)	Included	Excluded
6200	Day Ahead Non-Spinning Reserve Capacity Settlement	4.3(e)(ii)	Included	Excluded
6224	No Pay Non-Spinning Reserve Settlement	4.3(e)(i)(B)	Excluded <sup>3</sup>	Included <sup>3</sup>
6270	Real Time Non-Spinning Reserve Capacity Settlement	4.3(e)(ii)	Included	Excluded
6460	FMM Instructed Imbalance Energy	4.3(e)(ii)	Included	Excluded
6470	Real Time Instructed Imbalance Energy Settlement	4.3(e)(ii)	Included	Excluded
6475	Real Time Uninstructed Imbalance Energy Settlement	4.3(e)(ii)	Included <sup>4</sup>	Excluded <sup>4</sup>
6482	Real Time Excess Cost for Instructed Energy Settlement	4.3(e)(ii)	Included	Excluded
6486	Real Time Excess Cost for Instructed Energy Allocation	4.3(e)(i)(B)	Excluded <sup>1</sup>	Included <sup>1</sup>
6488	Exceptional Dispatch Uplift Settlement	4.3(e)(ii)	Included	Excluded
6500	Day Ahead Regulation Up Capacity Settlement	4.3(e)(ii)	Included	Excluded
6524	Non Compliance Regulation Up Settlement	4.3(e)(i)(B)	Excluded <sup>3</sup>	Included <sup>3</sup>
6570	Real Time Regulation Up Capacity Settlement	4.3(e)(ii)	Included	Excluded
6600	Day Ahead Regulation Down Capacity Settlement	4.3(e)(ii)	Included	Excluded



6620	RUC and RTM Bid Cost Recovery Settlement	4.3(e)(ii)	Included	Excluded
6624	Non Compliance Regulation Down Settlement	4.3(e)(i)(B)	Excluded <sup>3</sup>	Included <sup>3</sup>
6630	IFM Bid Cost Recovery Settlement	4.3(e)(ii)	Included	Excluded
6636	IFM Bid Cost Recovery Tier 1 Allocation	4.3(e)(ii)	Included	Excluded
6670	Real Time Regulation Down Capacity Settlement	4.3(e)(ii)	Included	Excluded
6800	Day Ahead Residual Unit Commitment (RUC) Availability Settlement	4.3(e)(ii)	Included	Excluded
6824	No Pay Residual Unit Commitment (RUC) Settlement	4.3(e)(i)(B)	Excluded <sup>3</sup>	Included <sup>3</sup>
7070	Flexible Ramp Forecast Movement Settlement	4.3(e)(ii)	Included	Excluded
7071	Daily Flexible Ramp Up Uncertainty Capacity Settlement	4.3(e)(ii)	Included	Excluded
7077	Daily Flexible Ramp Up Uncertainty Award Allocation	4.3(e)(i)(B)	Excluded <sup>1</sup>	Included <sup>1</sup>
7078	Monthly Flexible Ramp Up Uncertainty Award Allocation	4.3(e)(i)(B)	Excluded <sup>1</sup>	Included <sup>1</sup>
7081	Daily Flexible Ramp Down Uncertainty Capacity Settlement	4.3(e)(ii)	Included	Excluded
7087	Daily Flexible Ramp Down Uncertainty Award Allocation	4.3(e)(i)(B)	Excluded <sup>1</sup>	Included <sup>1</sup>
7088	Monthly Flexible Ramp Down Uncertainty Award Allocation	4.3(e)(i)(B)	Excluded <sup>1</sup>	Included <sup>1</sup>
7251	Regulation Up Mileage Payment	4.3(e)(ii)	Included	Excluded
7261	Regulation Down Mileage Payment	4.3(e)(ii)	Included	Excluded
7891	Monthly CPM Settlement	4.3(e)(ii)	Included	Excluded
7989	Invoice Deviation Interest Distribution	4.3(e)(ii)	Included	Excluded
7999	Invoice Deviation Interest Allocation	4.3(e)(ii)	Included	Excluded
8526	GIP Forfeited Deposit Allocation	4.3(e)(ii)	Included	Excluded
8830	Monthly Resource Adequacy Availability Incentive Mechanism Settlement	3.6(c)	Excluded	Included
8831	Monthly Resource Adequacy Availability Incentive Mechanism Allocation	3.6(c)	Excluded	Included

<sup>1</sup> Seller's liability shall be limited to items within Seller's control, including but not limited to Forced Outage and compliance with ramp rates on file with CAISO, pursuant to Section 4.3(e)(i)(B). Any allocation related solely to decreases or increases in solar irradiance shall be for the account of Buyer; allocation due to overlapping causes including both decreases or increases in solar irradiance and factors within Seller's control shall be for the account of the Seller.

<sup>2</sup>Responsibility for the penalty should be assigned to the accountable Party.

<sup>3</sup> Non-compliance and no-pay charges related to Ancillary Service awards shall be limited to items with Seller's control, including but not limited to Force Outage and compliance with ramp rate on file with CAISO, pursuant to Section 4.3(e)(i)(B). Any charges related solely to decreases or increases in solar irradiance shall be for the account of Buyer; charges due to overlapping causes including both decreases or increases in solar irradiance and factors within Seller's control shall be for the account of the Seller.

<sup>4</sup>Responsibility of the Buyer per Section 4.3(e)(ii), subject to relevant crediting per Section 4.3(f).

**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 10.4**

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To: Orange County Power Authority Board of Directors

From: Tiffany Law, Chief Financial Officer

Subject: FISCAL YEAR 2023/2024 BUDGET FRAMEWORK

Date: April 19, 2023

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**RECOMMENDED ACTION**

Receive and File.

**DISCUSSION**

Staff will present the Fiscal Year 2023/2024 Budget Framework. This will include an overview of the general principles governing the budget of the Orange County Power Authority (OCPA), as well as a timeline for the preparation and adoption of the OCPA's Fiscal Year 2023/2024 budget.

**FISCAL IMPACT**

None

**ATTACHMENTS**

None

**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 10.5**

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To: Orange County Power Authority Board of Directors

From: Tiffany Law, Chief Financial Officer

Subject: CREATION OF BUDGET AND FINANCE AD-HOC COMMITTEE FOR  
DEVELOPMENT OF FY2023/24 BUDGET AND 5-YEAR PROJECTION

Date: April 19, 2023

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**RECOMMENDED ACTION**

Establish a temporary ad-hoc advisory committee related to development of FY2023/24 Budget and 5-Year Projection and appoint less than a majority of Board members to the committee.

**BACKGROUND**

From time to time, Board members are needed to engage with Staff on a variety of issues. This ensures that staff implements the Board's goals and objectives. An Ad Hoc Committee is defined as a committee gathered to address a particular issue, task, or objective and is dissolved upon completion of the purpose. These are not Brown Act bodies.

It is requested that the Board create a temporary ad-hoc advisory committee to work with staff on development of the FY2023/24 Budget and 5-Year Projection.

**FISCAL IMPACT**

There is no fiscal impact.

**ATTACHMENT**

None.

**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 10.6**

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To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer

Subject: WEIGHTED VOTING UNDER THE JOINT POWERS AGREEMENT

Date: April 19, 2023

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**RECOMMENDED ACTION**

Discuss weighted voting under the OCPA Joint Powers Agreement and, if desired by the Board, potential alternative approaches.

**BACKGROUND**

Under OCPA’s Joint Powers Agreement, weighted voting allows Directors to vote in accordance with the proportion of electricity use by users within their respective jurisdictions. This type of voting can be invoked by two or more Directors in limited circumstances, such as when there is a tie vote by the Board for Directors or to immediately nullify an action that was passed by an “equal vote” of the Board.

Weighted voting is governed by Section 3.9.3 of the Joint Powers Agreement. This section provided a formula for the first two years of OCPA’s existence (during which time OCPA was beginning operations and not serving load directly) and provides a separate formula following the second anniversary of OCPA (which is based on actual electrical use served by OCPA to accounts within each member’s jurisdiction). The exhibits for weighted voting are required to be updated each year no later than March 1 based on prior calendar year numbers.

At its February 15, 2023 meeting, the Board of Directors voted to update the exhibits for weighted voting in accordance with the strict language of the Joint Powers Agreement. As part of the approved motion, the Board provided direction for staff to return at the April meeting to discuss potential amendments to the weighted voting provisions of the Joint Powers Agreement.

Existing Language

The existing language of Section 3.9.3 is as follows:

3.9.3 Voting Shares Formula. When a Voting Shares Vote is requested by two or more Directors, voting shares of each Director shall be determined by the following formula:

$$(\text{Annual Energy Use} / \text{Total Annual Energy}) \times 100$$

For purposes of this formula (a) “Annual Energy Use” means (i) for the first two years following the Effective Date, the annual electricity usage, expressed in kilowatt hours (“kWh”), within the jurisdiction of the Party appointing the Director(s) and (ii) *following the second anniversary of the Effective Date, the annual electricity usage, expressed in kWh, of accounts within the jurisdiction of*

***the Party appointing the Director(s) that are served by the Authority***, and (b) “Total Annual Energy” means the sum of all Parties’ Annual Energy Use. The initial values for Annual Energy use are designated in Exhibit B and the initial voting shares are designated in Exhibit C. Both Exhibit B and Exhibit C shall be adjusted annually as soon as reasonably practicable after January 1 of each year, but no later than March 1 of each year, subject to the approval of the Board. Voting shares attributable to Irvine shall be divided equally between the Irvine Directors.

The aspect of Section 3.9.3 that was discussed at the February Board meeting is emphasized above.

#### Issues Raised Relating to Current Weighted Voting Calculations

As discussed at the February Board meeting, the existing language of Section 3.9.3 raised two points of discussion:

1. Data reported by SCE can be delayed, as it was for 2022. Depending on whether SCE data continues to be delayed in future years, these data issues could affect OCPA’s ability to timely calculate weighted voting shares based on prior calendar year data within each member agency’s service area.
2. Now that more than two years have passed since OCPA was created, the now-effective weighted voting language has an adverse impact on the weighted voting of new members, as the calculation is based on actual electrical use by accounts served by OCPA. As there will be a period during which any new member is not actually being served by OCPA, a strict application of Section 3.9.3 results in new members having a 0% share for weighted votes. This means that new members would have a vote during regular “equal votes” of the Board, but would have a 0% voting share during weighted votes.

#### Potential Alternative Approaches to Weighted Voting

In February, OCPA staff reached out to various other community choice energy (CCE) joint powers agencies and requested information on how their weighting votes were calculated. OCPA received a small number of responses with varying alternative approaches, summarized below:

##### ***Alternative #1: Use Actual Load for Existing Members, Projected Load for New Members Not Yet Receiving Service***

This approach uses actual load within existing members’ jurisdictions who are receiving OCPA service, while using projected load within new members’ jurisdictions based on the most recent annual data from the IOU. This approach is currently used by MCE Clean Energy.

##### ***Alternative #2: Use Previous Fiscal Year’s Percentage of Load for Each Member***

This approach uses the agency’s end-of-fiscal-year load for each member. This approach addresses potential issues with IOU data lag, but could still adversely affect new members not yet receiving CCE service. This approach is currently used by Clean Power Alliance, which updates its weighted voting shares each September based on the previous fiscal year.

##### ***Alternative #3: Eliminate Weighted Voting***

At least one CCE joint powers agency (Pioneer Community Energy) has eliminated weighted voting provisions in its joint powers agreement.

**FISCAL IMPACT**

There is no fiscal impact.

**ATTACHMENT**

N/A

**ORANGE COUNTY POWER AUTHORITY**  
**Staff Report – Item 10.7**

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To: Orange County Power Authority Board of Directors

From: Joe Mosca, Director of Communications and External Affairs

Subject: COMMUNITY ADVISORY COMMITTEE UPDATE

Date: April 19, 2023

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**RECOMMENDED ACTION**

Receive and file.

**BACKGROUND**

The Community Advisory Committee (CAC) met on Monday, April 17, 2023. Staff or a member of the CAC will provide an update on the schedule of the CAC and other topics discussed by the CAC.

**FISCAL IMPACT**

None

**ATTACHMENT**

None