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ADVICE LETTER 2547-E
 (San Diego Gas & Electric Company ID U 902-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SUBJECT: REQUEST FOR APPROVAL OF STANDARD RENEWABLE AUCTION MECHANISM; POWER PURCHASE AGREEMENTS WITH AES TEHACHAPI WIND LLC, RUGRAW LLC, SUNEDISON ORIGINATION3 LLC, AND VICTORVILLE LANDFILL SOLAR LP.

I. PURPOSE OF THE ADVICE LETTER

In Compliance with Decision (“D.”)10-12-048¹, Resolution E-4144,² Resolution E-4489³, Resolution E-4546⁴, and Resolution E-4582⁵, San Diego Gas and Electric Company (“SDG&E”) respectfully submits this advice letter for California Public Utilities Commission (“CPUC” or “Commission”) approval of four Power Purchase Agreements (“Proposed Agreements”), with the following: AES Tehachapi Wind LLC, Rugraw LLC, SunEdison Origination3 LLC, and Victorville Landfill Solar LP. SDG&E selected these projects through the fourth of its Renewable Auction Mechanism (“RAM”) procurement program solicitations.

The Proposed Agreements are as follows:

Offer Type	Company Name	Project Name	Technology	Contract Capacity, MW (AC)	Annual GWh	Project Location	In SDG&E's Territory	Term (yrs.)	COD
Non-Peaking	AES	AES Tehachapi Wind LLC	Wind	5.5	33.3	Kern County	No	10	11/14/15
Baseload	Sustainable Through Innovation, Lassen Lodge Hydro	Rugraw LLC	Hydro	5	23.0	Tehama County	No	20	12/15/2015

¹ D.10-12-048, *mimeo*, Ordering Paragraph 3, (“[e]ach corporation named herein shall file and serve one Tier 2 advice letter with the Commission including all executed contracts resulting from each auction up to the approved capacity limits.”).

² Resolution E-4114 at Ordering Paragraph 4 (“[t]he investor-owned utilities shall submit the executed RAM contracts through a Tier 2 advice letter within 45 days of contract execution.”).

³ Resolution E-4489, Ordering Paragraph 5, at p. 19.

⁴ Resolution E-4546, Ordering Paragraph 2, at p. 40.

⁵ Resolution E-4582 Ordering Paragraph 4 at p. 12.

Peaking	SunEdison	SunEdison Origination 3 LLC (Brown Field)	Solar PV	5	14.1	San Diego County	Yes	20	11/28/15
Peaking	SunEdison	Victorville Landfill Solar LP	Solar PV	10	29.0	San Bernardino County	No	20	12/15/15

The projects will advance and diversify SDG&E's renewable resource portfolio and will help SDG&E meet its RAM procurement goals.

II. BACKGROUND

On December 18, 2010, the CPUC approved the RAM program in Decision 10-12-048 (the "RAM Decision"). The RAM Decision directed the IOUs to hold four auctions over a two year period⁶ and to submit bidding protocols and standard contracts through a Tier 3 advice letter. In August 2011, the IOUs' advice letters were approved with modification in Resolution E-4114 which adopted program implementation details, bidding protocols, and a standard RAM contract. The CPUC further refined the program based on lessons learned from the first, second, and third RAM solicitations through Resolution E-4489, Resolution E-4546, and Resolution E-4582 respectively.

A. Purpose of RAM Procurement Process

The RAM Decision adopted a program with the purpose of lowering transaction costs and promoting the development of system-side renewable distributed generation ("DG") for individual projects up to 20 MW in size. The RAM is the primary procurement tool for this segment of the renewable market and was designed to reduce transaction costs by providing a streamlined contracting mechanism utilizing a standard contract while at the same time relying on market-based pricing. The RAM is intended to complement the RPS Program by providing a procurement opportunity for smaller RPS-eligible projects which have not been able to effectively participate in the RPS solicitations.

B. IOU Procurement Obligations Under RAM Decision and RAM Resolution

The RAM Decision established a procurement target of 1000 MW and distributed this capacity among the three IOUs in proportion to load share. The RAM Decision established SDG&E's target capacity at 81 MW. SDG&E then filed a petition for modification of Decision 10-09-016 requesting the Commission's permission to combine the solicitation of 74 MW of local solar photovoltaic ("PV") capacity from the power purchase agreement ("PPA") with independent power producers ("IPP") portion of its Solar Energy Program ("SEP") with its RAM procurement obligations. The Commission approved this request through Decision 12-02-002, which adjusted SDG&E's RAM Procurement Target to 155 MW. This additional capacity is reflected in SDG&E's 2012, 2013, and 2014 RAM procurement targets. Table 1 summarizes SDG&E's RAM procurement from the first four RAM solicitations, and estimated targets for RAM V.

⁶ Resolution E-4582, dated May 9, 2013, has since amended the RAM program to include a fifth RAM solicitation to be closed by June 27, 2014.

Table 1: SDG&E's RAM Procurement and Procurement Targets⁷

Product	2011 RAM I (procured)	2012 RAM II (procured)	2012 RAM III (procured)	2013 RAM IV (procured)	2014 RAM V (target)	Total
Baseload	0	4.5*	0	5*	10.5	20
Peaking As-Available	15	18.4	27	15	36.4	111.8
Non-Peaking-As Available	0	0	14.7	5.5	3	23.2
Total (MW)	15	22.9	41.7	25.5	49.9	155

*Note: the RAM II procurement amount has been adjusted to reflect the termination of the Lassen Lodge Hydro project RAM II PPA upon CPUC approval of the Lassen Lodge Hydro Project RAM IV PPA.

As a result of its first RAM Solicitation, SDG&E procured a total of 15 MW of Peaking As-Available product. As a result of its second RAM Solicitation, SDG&E procured a total of approximately 23 MW of diverse product which included: Peaking As-Available solar PV (18.4 MW), and Baseload landfill gas (4.5 MW). As a result of its third RAM Solicitation, SDG&E procured a total of approximately 42 MW of diverse product which included: Peaking As-Available solar PV (27 MW) and Non-Peaking As-Available wind (14.7 MW). As a result of its fourth RAM Solicitation, SDG&E executed four RAM PPAs with AES Tehachapi Wind LLC, Rugraw LLC, SunEdison Origination3 LLC, and Victorville Landfill Solar LP for a total of 25.5 MW of diverse product which includes: Peaking As-Available solar PV (15 MW), Baseload hydroelectric (5 MW), and Non-Peaking As-Available wind (5.5 MW). Once the CPUC approves procurement from the fourth RAM solicitation, SDG&E will have procured a total of 105.1 MW under the RAM program, and will have a total of 49.9 MW left to procure.

III. RAMS SOLICITATION SUMMARY

A. Solicitation Process

1. Process Overview

SDG&E established an open, transparent and competitive process for the procurement effort, which included the following protocols:

- a. SDG&E created an RFO website allowing respondents to download solicitation documents, participate in a Question and Answer forum, and see updates or revisions associated with the process;
- b. SDG&E established an email address to accept electronic offers;
- c. The Independent Evaluator participated in the RFO design, direct evaluation of bids, and the selection process;

⁷ Pursuant to Resolution E-4582, dated May 9, 2013, the capacity allocation targets for RAM 4 have been modified to accommodate a RAM 5 auction. The procurement targets have been modified such that, SDG&E reserves two-thirds of the remaining previously authorized, yet unsubscribed RAM capacity for RAM 4, and one-third of the remaining previously authorized, yet unsubscribed RAM capacity for RAM 5.

SDG&E adhered to the following RFO schedule:

Table 2: SDG&E's RAM III Solicitation Process and Schedule.

NO.	ITEM	DATE
1.	RFO Issued	May 20, 2013
2.	Pre-Bidder's Conference	May 29, 2013
3.	SDG&E begins accepting bids	June 3, 2013
4.	DEADLINE TO SUBMIT QUESTIONS Question submittal cut-off date. Answers to all questions will be posted on SDG&E's website no later than 6/14/13.	June 6, 2013
6.	DEADLINE TO SUBMIT RAM OFFERS/CLOSING DATE Offers must be received via email at RAMSolicitation@semprautilities.com no later than NOON Pacific Standard Time	June 28, 2013
7.	NOTIFICATION TO WINNING BIDDERS	September 6, 2013
8.	BIDDERS ACCEPTANCE/WITHDRAWAL LETTER due from Winning Bidders indicating: a) Withdrawal from SDG&E's solicitation; OR b) Acceptance of standing as a winning bid; withdrawal from participating in any other solicitation and evidence of withdrawal notice to all other solicitors	September 13, 2013
9.	SDG&E issues appreciation notices to unsuccessful Respondents	October 25, 2013
10.	Execute PPAs for targeted 25.5 MW	October 23, 2013
11.	SDG&E submits Tier 2 Advice Letter with PPAs to CPUC for approval	November 22, 2013
12.	Anticipated CPUC approval (prior to any appeal and/or suspension)	December 23, 2013

2. Auction Design

a. Outreach, Pre-Bid Conference and Communication

On May 20, 2013, SDG&E advertised the May 2013 RAM solicitation on its website and by email to a sizable email list of approximately 1,154 email addresses, associated with more than 650 separate organizations, to which it sent the RFO announcement and link to the designated RAM website. In addition, SDG&E publicized the RFO with a notice in Platt's MW Daily and California Energy Markets. SDG&E also contacted various trade groups, including: Bay Area Clean Water Agencies, Biomass Power Association, California Wastewater Climate Change Group, Cal WEA, Central Valley Clean Water Association, Geothermal Energy Association, Geothermal Resources Council, Northwest Hydroelectric Association, and Southern California Alliance of Publicly Owned Treatment Works to email information about the RAM solicitation to its members.

SDG&E held a pre-bid conference on May 29, 2013. SDG&E invited participation via WebEx and posted questions and answers ("Q&A") from the webinar on its RAM website. SDG&E also solicited questions via email through its RAM RFO inbox and posted this Q&A on its website as well.

SDG&E's fourth RAM solicitation produced a robust response, with similar numbers overall as compared to the third RAM solicitation. Twenty-nine separate organizations responded to the solicitation with a total of 69 project proposals (for a total of 80 conforming bids), compared to 28 separate organizations and 57 project proposals (for a total of 78 conforming bids) received during the third RAM.

b. Procurement Review Group (PRG) Participation and Feedback

PRG Participants (by Organization/Company):

SDG&E's PRG is comprised of over fifty representatives from the following organizations:

- California Department of Water Resources
- California Public Utilities Commission – Energy Division
- California Public Utilities Commission – Division of Ratepayers Advocates
- The Utility Reform Network
- Union of Concerned Scientists
- Coalition of California Utility Employees

SDG&E provided information about the Solicitation and Proposed Shortlist to the PRG:

SDG&E provided details regarding schedule, solicitation results, evaluation process and shortlisted projects during the May 17, 2013, June 21, 2013, July 19, 2013, August 16, 2013, September 20, 2013, October 18, 2013, and November 15, 2013 PRG meetings. In addition, an email was sent out to PRG members on September 3, 2013 to provide the then final shortlist.

SDG&E consulted with the PRG regarding this Solicitation and Contracts:

SDG&E consulted with the PRG regarding the RAM solicitation and the shortlisted projects. The PRG provided useful feedback regarding SDG&E's specific bid results. SDG&E shared its initial shortlist with the PRG before notifying bidders to make sure that the PRG agreed with the results. SDG&E also informed the PRG when shortlisted projects declined to move forward with the process to address whether SDG&E should shortlist additional resources or carry forward the capacity to future RAM solicitations. The process of keeping the PRG informed of the status of the RAM solicitation on a monthly basis helped to inform SDG&E's decisions at every step.

c. Independent Evaluator (IE)

PA Consulting Group has been involved in all aspects of SDG&E's May 2013 RAM RFO process including, but not limited to: reviewing RFO document development and creation of evaluation criteria, reviewing and monitoring of all received bids, involvement in bid evaluation for conformance and ranking, conducting the evaluation analysis, and participating at the pre-bid conference. The IE's report on the RAM Solicitation is attached as Appendix E.

The RAM Contract

Table 3: Summary of Key Terms from SDG&E's RAM PPA

KEY TERMS RAM Non-Modifiable Power Purchase Agreement	
Delivery Term	10, 15 or 20 years.
Product Type	Baseload, Peaking As-Available or Non-Peaking As-Available
Price	Based on Seller offer and adjusted by Time of Delivery ("TOD") factors as set forth in the RAM PPA.
Project Capacity	Minimum project size shall be 3MW. Maximum project size shall be no more than 20MW installed.
Annual Deliveries	Respondents to the solicitation are asked to provide a best estimate of annual deliveries as part of their offer. The expected annual deliveries are used in the calculation of Guaranteed Energy.
Online Date	Full capacity must be online within 24 months of CPUC approval of the PPA, with a onetime 6 month extension for certain delays.
Guaranteed Energy	Depending on the technology type, the minimum energy delivery is as follows: 140% of expected two-year generation for As-Available Non-Peaking; 160% of expected two-year generation for As-Available Peaking; and 90% of expected one-year generation for Baseload.
Deliveries in Excess of Contracted Quantities	Zero payment for a project's output during any settlement interval or TOD period where the energy deliveries are in excess of 110% of the project's contracted capacity. In addition, a reduced payment at 75% of the PPA price for delivered energy from a project in excess of 115% of the project's expected annual generation deliveries.
Scheduling Coordinator	In its offer, bidder shall make a one-time election: either SDG&E or bidder shall be responsible for scheduling coordinator responsibilities for the project.
EIRP	All intermittent projects (wind or solar) are required to qualify and register for the Eligible Intermittent Resource Program.
Resource Adequacy	Seller must obtain Full Capacity Deliverability Status ("FCDS") by January 1, 2022 if the project was bid as a fully deliverable project. The project will receive a lower price until it achieves FCDS.

KEY TERMS RAM Non-Modifiable Power Purchase Agreement	
CAISO PGA, CAISO MSA Metering and WREGIS	All projects must: <ol style="list-style-type: none"> 1. obtain RPS certification for the project from the CEC, 2. execute a Participating Generator Agreement with the CAISO, 3. execute a Meter Service Agreement with the CAISO, 4. install a CAISO meter, 5. register the project with the WREGIS and pay all associated fees so that monthly generation can be tracked and automatically reported for purposes of meeting the requirements of the RPS and automatically transferred to SDG&E, and 6. execute a CAISO Qualified Reporting Entity Service Agreement to allow CAISO, on the Respondent's behalf, to upload generation information directly into WREGIS.
Delivery Point	The point of interconnection at the CAISO Grid (PNODE).
Credit Terms	The following Development Period Security is due on the execution date: \$60 per kW for intermittent resources and \$90 per kW for baseload resources. The Development Period Security is refundable upon achieving commercial operation or may be applied to the Delivery Term Security (performance deposit). The following Delivery Term Security (performance deposit) is required at commercial operation: 5% of the expected total project revenues over the PPA term. Credit support may be in the form of a Letter of Credit or cash. A proforma Letter of Credit is contained within the RAM PPA.

See Appendix B for a copy of the standard contract.

B. Valuation Process

SDG&E used a quantitative price measure, the Bid Ranking Price, to rank and select from the proposed projects. The Bid Ranking Price is comprised of the Levelized Contract Cost, as adjusted by the Time of Day Adjustment, the Transmission Network Upgrade Cost Adder and the Deliverability Adder. Elements of the Bid Ranking Price are described below.

Levelized Contract Cost: Bid Prices (provided by the Respondent in the Pricing Form) shall be for each MWh generated by the Project over the term of the PPA. The Levelized Contract Cost was computed as follows:

The Bid Cost for each year is computed by multiplying the Bid Price in that year by the Expected Energy Delivery for that year. Bid Costs are then summed for each year and divided by the Discount Factor for the year, where the Discount Factor is equal to 1 plus the Discount Rate (SDG&E's regulated rate of return of 8.4%), raised to the power of the original

Contract Year. These discounted Bid Costs were then summed to produce the present value of the Bid Cost.

The same present value method was then applied to the Expected Energy Deliveries to produce a present value of Expected Energy Deliveries. The Levelized Contract Cost is the present value of Bid Costs divided by the present value of Expected Energy Deliveries.

Time-of-day Value Adjustment. SDG&E accounted for differences in the value of various delivery profiles in its evaluation. This was done through the use of a Time-of-day (“TOD”) Adjustment. This adjustment was for evaluation purposes and distinct from the energy price that was calculated in the PPA. Energy deliveries were allocated to TOD Periods based upon the Respondent’s Delivery Profile, as submitted with the offer, or calculated by SDG&E in accordance with reasonable industry practice. Bid Prices for each year were multiplied by the TOD Factors for each TOD Period to produce a TOD Price.

TOD Adjustment for FCDS Bids:

Bids submitted as fully deliverable projects had their Bid Prices for each year multiplied by the TOD Factors that are adjusted for FCDS value (“FCDS TOD Factors”) for each TOD Period to produce a FCDS TOD Price.

Note Regarding PPA Pricing for FCDS Bids: for purposes of determining the PPA price for FCDS projects, for years in which the project has not yet achieved FCDS, the FCDS TOD Price for each TOD period will be reduced by the Deliverability Value as calculated in Section 5.D below to reflect the fact that the project will not provide such value until it has achieved FCDS. Once the project achieves FCDS value, the Deliverability Value will be added back to the FCDS TOD Price.

TOD Adjustment for Energy Only Bids:

Bids submitted as energy-only projects had their Bid Prices for each year multiplied by the Energy Only TOD Factors for each TOD Period to produce an Energy-Only TOD Price.

Table 4: SDG&E’s TOD Periods and Factors

TOD Period	Period Days and Hours	FCDS Time-of-day Factor	Energy Only Time-of-day Factor
Winter On-Peak	Nov 1 - Jun 30 Weekdays 1 pm to 9 pm PST (HE 14 to HE 21)	1.089	1.192
Winter Semi-Peak	Nov 1 - Jun 30 Weekdays 6 am to 1 pm PST (HE 7 to HE 13) Weekdays 9 pm to 10 pm PST (HE 22)	0.947	1.078
Winter Off-Peak	Nov 1 - Jun 30 All Weekend Hours NERC Holiday Hours and Weekday Hours not already considered On-Peak or Semi-Peak	0.679	0.774
Summer On-Peak	Jul 1 - Oct 31 Weekdays 11 am to 7 pm PST (HE 12 to HE 19)	2.501	1.531

Summer Semi-Peak	Jul 1 - Oct 31 Weekdays 6 am to 11 am PST (HE 7 to HE 11) Weekdays 7 pm to 10 pm PST (HE 20 to HE 22)	1.342	1.181
Summer Off-Peak	Jul 1 - Oct 31 All Weekend Hours, NERC Holiday Hours and Weekday Hours not already considered On-Peak or Semi-Peak	0.801	0.900

Transmission Network Cost Adder. SDG&E calculated the impact to ratepayers of any reimbursable network upgrade costs that the CAISO indicated will be necessary pursuant to the most recent interconnection study results provided with the offer package.⁸

Any non-reimbursable interconnection costs should be incorporated in the offer price.⁹ Reimbursable network upgrade costs from the relevant CAISO study were then divided by the project's total output in MWhs. The resulting \$/MWh number was then added to the Levelized Contract Cost, as adjusted by the Time-of-Day Adjustment, to determine the Bid Ranking Price.

Deliverability Value and Deliverability Adder. SDG&E used the following process to establish the value of achieving FCDS ("Deliverability Value").

1. Determine MPR

SDG&E determined the MPR applicable to each project based on the project's start date and contract term. SDG&E used the most recent MPR value available in its evaluation process. 2011 MPR values used were provided in CPUC Resolution E-4442 at http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/154753.PDF.

2. Establish Energy Only and FCDS Payment Streams Using MPR as Base Price

Step 1: SDG&E established the FCDS TOD adjusted payment streams for each year of the project's term by multiplying the applicable MPR by the total MWhs to be delivered in each TOD Period by the applicable FCDS TOD Factor. For example:

$$\text{FCDS Payment Stream} = (\text{MPR}) \times (\text{Annual MWhs delivered in each TOD Period}) \times (\text{applicable FCDS TOD Factor})$$

Step 2: SDG&E established the Energy Only Payment Stream by multiplying the applicable MPR by the total MWhs to be delivered in each TOD Period by the applicable Energy Only TOD Factor. For example:

$$\text{Energy Only Payment Stream} = (\text{MPR}) \times (\text{Annual MWhs delivered in each TOD Period}) \times (\text{applicable Energy Only TOD Factor})$$

⁸ SDG&E's Transmission Network Cost Adder is intended to capture the cost of any upgrades that will ultimately be paid for by ratepayers rather than those paid for by the Seller/Respondent.

⁹ The Seller's/Respondent's offer price should capture the costs of any interconnection/upgrade cost that will be paid for by the Seller/Respondent (and that will not be reimbursed).

3. Establish Present Value of Energy Only and FCDS Payment Streams

Step 1: SDG&E determined the Total FCDS Payment Stream for the project by calculating the sum of the FCDS Payment Streams for each TOD Period for each year of the project's term, and then calculated a present value of the total. For example:

$$\text{Total FCDS Payment Stream} = (\text{Year 1 FCDS Payment Stream}) + (\text{Year 2 FCDS Payment Stream}) + (\text{Year 3 Payment Stream}) + (\text{continue through project term})$$

$$\text{PV of Total FCDS Payment Stream} = (\text{Year 1 FCDS Payment Stream}) + (\text{Year 2 FCDS Payment Stream}) \text{ divided by } (1.084) + (\text{Year 3 FCDS Payment Stream}) \text{ divided by } (1.084^2) + (\text{continue through project term})$$

Step 2: SDG&E determined the Total Energy Only Payment Stream for the project by calculating the sum of the Energy Only Payment Streams for each TOD Period for each year of the project's term, and then calculated a present value of the total. For example:

$$\text{Total Energy Only Payment Stream} = (\text{Year 1 Energy Only Payment Stream}) + (\text{Year 2 Energy Only Payment Stream}) + (\text{Year 3 Energy Only Payment Stream}) + (\text{continue through project term})$$

$$\text{PV of Total Energy Only Payment Stream} = (\text{Year 1 Energy Only Payment Stream}) + (\text{Year 2 Energy Only Payment Stream}) \text{ divided by } (1.084) + (\text{Year 3 Energy Only Payment Stream}) \text{ divided by } (1.084^2) + (\text{continue through project term})$$

4. Establish FCDS Payment Premium for Each TOD Period

In order to determine the additional payments required for FCDS projects ("FCDS Payment Premium"), SDG&E calculated the difference between the PV of Total FCDS Payment Stream and PV of Energy Only Payment Stream for each TOD Period. For example:

$$\text{FCDS Payment Premium for Summer On Peak TOD Period} = (\text{PV of Total FCDS Payment Stream for Summer On Peak TOD Period}) - (\text{PV of Total Energy Only Payment Stream for Summer On Peak TOD Period}). \text{ Repeat this step for each TOD Period.}$$

Note: if the result of this calculation is less than zero, the FCDS Payment Premium for that TOD Period will be zero.

5. Establish Total FCDS Payment Premium

SDG&E established a Total FCDS Payment Premium by calculating the sum of the FCDS Payment Premiums for each TOD Period. For example:

$$\text{Total FCDS Payment Premium} = (\text{Summer On Peak FCDS Payment Premium}) + (\text{Summer Semi-Peak FCDS Payment Premium}) + (\text{Summer Off Peak FCDS Payment Premium}) + (\text{Winter On Peak FCDS Payment Premium}) + (\text{Winter Semi-Peak FCDS Payment Premium}) + (\text{Winter Off Peak FCDS Payment Premium})$$

6. Establish Deliverability Value

SDG&E used the following steps to calculate the Deliverability Value for each project based on the Total FCDS Payment Premium:

Step 1: SDG&E divided the Total FCDS Payment Premium by the PV of the total deliveries for the project over the term.

$$\text{Deliverability Value} = (\text{Total FCDS Payment Premium}) / (\text{PV of total MWhs over project term})$$

Note: For evaluation purposes only, SDG&E assumed that for any FCDS bid, the project would achieve FCDS at the Guaranteed Commercial Operation Date. Delays in achieving FCDS would not impact the Deliverability Adder, but would impact the price paid under the RAM PPA as discussed in the Valuation Process above.

7. Establish Deliverability Adder Based on Deliverability Value

In order to determine the Bid Ranking Price for each project, SDG&E adjusted the Bid Price based on the Deliverability Value. The table below indicates the type of Deliverability Adder that would be applied to various project types. Projects bid as FCDS within SDG&E's local area were assigned 100% of the Deliverability Value. Projects bid as FCDS outside of SDG&E's local area were assigned 60% of the Deliverability Value.

INTERCONNECTION TYPE	IN SDG&E AREA	IN CALIFORNIA ISO; OUTSIDE SDG&E AREA
FCDS	Deliverability Adder = 0	Deliverability Adder = 40% of Deliverability Value
ENERGY-ONLY	Deliverability Adder = 100% of Deliverability Value	Deliverability Adder = 60% of Deliverability Value

A map of SDG&E's local area is provided below.



Bid Selection Process

Once SDG&E had established a Bid Ranking Price for each offer, it chose the projects with the least expensive Bid Ranking Price within each product category in an effort to procure the capacity targeted for each product category. SDG&E distinguished between similarly priced bids by:

- 1) Choosing a project owned by a DBE; or
- 2) if neither project was owned by a DBE, selecting projects from smallest to largest

Bid Conformance Evaluation

In addition to the quantitative elements described above, SDG&E also rejected an offer if:

- 1) SDG&E uncovered evidence of market manipulation in the auction process;
- 2) SDG&E determined the offer was not competitive with known market prices;
- 3) a lack of bids, or a lack of suppliers, indicated that the market for a specific product is not sufficiently broad and diverse to constitute a competitive solicitation (e.g. the offer is the only offer made within the product category to which it is assigned, or the offer is provided by the same bidder or bidder parent entity as other offers within the product category to which it is assigned, and there are no other bidders or bidder parent entities making offers within the same product category);
- 4) SDG&E could not confirm the projected deliveries;
- 5) the Respondent did not provide adequate evidence that it met minimum participation criteria;
- 6) there was a question as to whether or not the projects met minimum resource criteria;
- 7) acceptance of the offer would cause excessive reliance upon a single provider in the solicitation, or in SDG&E's overall renewable energy portfolio. (SDG&E shall provide any details of such seller concentration limit in the Tier 2 advice letter containing the executed contracts);
- 8) the Respondent could not fulfill the terms and conditions of the RAM PPA; and/or,
- 9) the Respondent was unable to comply with RFO timing and other solicitation requirements.

C. Solicitation Results**1. Summary of Solicitation Participation and Summary of Solicitation Selections**

Tables 5-9 and the Map of RAM RFO summarize SDG&E's May 2013 RAM Solicitation participants as required by Ordering Paragraph 21 of the RAM Resolution. SDG&E ultimately ended up shortlisting seven bids. However, one bid, Maricopa East Solar PV 2 LLC, did not accept its position on SDG&E's shortlist, and the next best bid (a 20 MW as-available peaking project) had begun negotiations with another party. Accordingly, the bid was replaced with the two next best available low cost bids, A82 LLC and G18 LLC. These two bids accepted their position on SDG&E's shortlist, however just prior to SDG&E's scheduled RAM PPA execution date, the two bids withdrew. Due to time constraints in attempting to execute and file the RAM IV PPAs as scheduled, SDG&E did not shortlist any further bids and rolled the remaining capacity amounts to the RAM V target.

Table 5: Overview of the RAM RFO

#	Seller's Name	Number of bids submitted	Number of bids shortlisted	Number of contracts
1	8minutenergy Renewables / saferay	2		
2	EDF Renewable Energy	9		
3	EC&R NA Solar PV, LLC	2		
4	Cielo Del Sol, LLC	2		
5	Kingbird Solar, LLC	4		
6	Portal Ridge Solar, LLC	4		
7	("GASNA" or "Gestamp Solar")	5		
8	Hanwha Q Cells USA	1		
9	Rio Bravo Solar I, LLC	1		
10	Wildwood Solar II, LLC	1		
11	Native American Energy Resources, LLC	1		
12	NextEra Energy Resources, LLC	4		
13	Solar Projects Solutions, LLC	1		
14	NorthLightPower, LLC	2		
15	NRG Solar LLC	1		
16	NRG Solar LLC with Volt Energy as DBE partner	1		
17	OCI Solar Power LLC	1		
18	Adera Solar, LLC	1		
19	Pristine Sun, LLC	4		
20	Recurrent Energy	2		
21	Sempra U.S. Gas & Power	1		
22	Silverado Power LLC	21		
23	GCL-SR Solar Energy, LLC	2		
24	SRPV, LLC	1		
25	SolarReserve, LLC	1		
26	SunEdison	3	2	2
27	Terra-Gen Power, LLC	2		
28	SKIC Solar, LLC	1		
29	AES Tehachapi Wind, LLC	1	1	1
30	Altamont Winds Inc.	2		
31	Brookfield Energy Marketing, LP	2		
32	Bull Moose Energy, LLC	1		
33	ENERGY DEVELOPMENT & CONSTRUCTION CORPORATION	2		
34	New Dimension Energy Company	2		
35	Sustainable through Innovation, LLC	1	1	1
36	Montauk Energy Holdings, LLC	1		
37	TGP Development Company, LLC	4		

Table 6: Overview of the RAM RFO by Capacity

Contract Size (MW)	# of Bids Submitted	# of Bids Shortlisted	# of contracts
1-3	0	0	0
>3-5	14	2	2
>5-10	19	2	2
>10-15	14	0	0
>15-20	50	0	0
Total	97	4	4

Table 7: Overview of the RAM RFO by Technology

Participating Technology	# of bids submitted	# of bids shortlisted	# of contracts
Solar PV	78	2	2
Wind	16	1	1
Geothermal	0	0	0
Biogas	1		
Biomass	1		
Small Hydro	1	1	1
Total	97	4	4

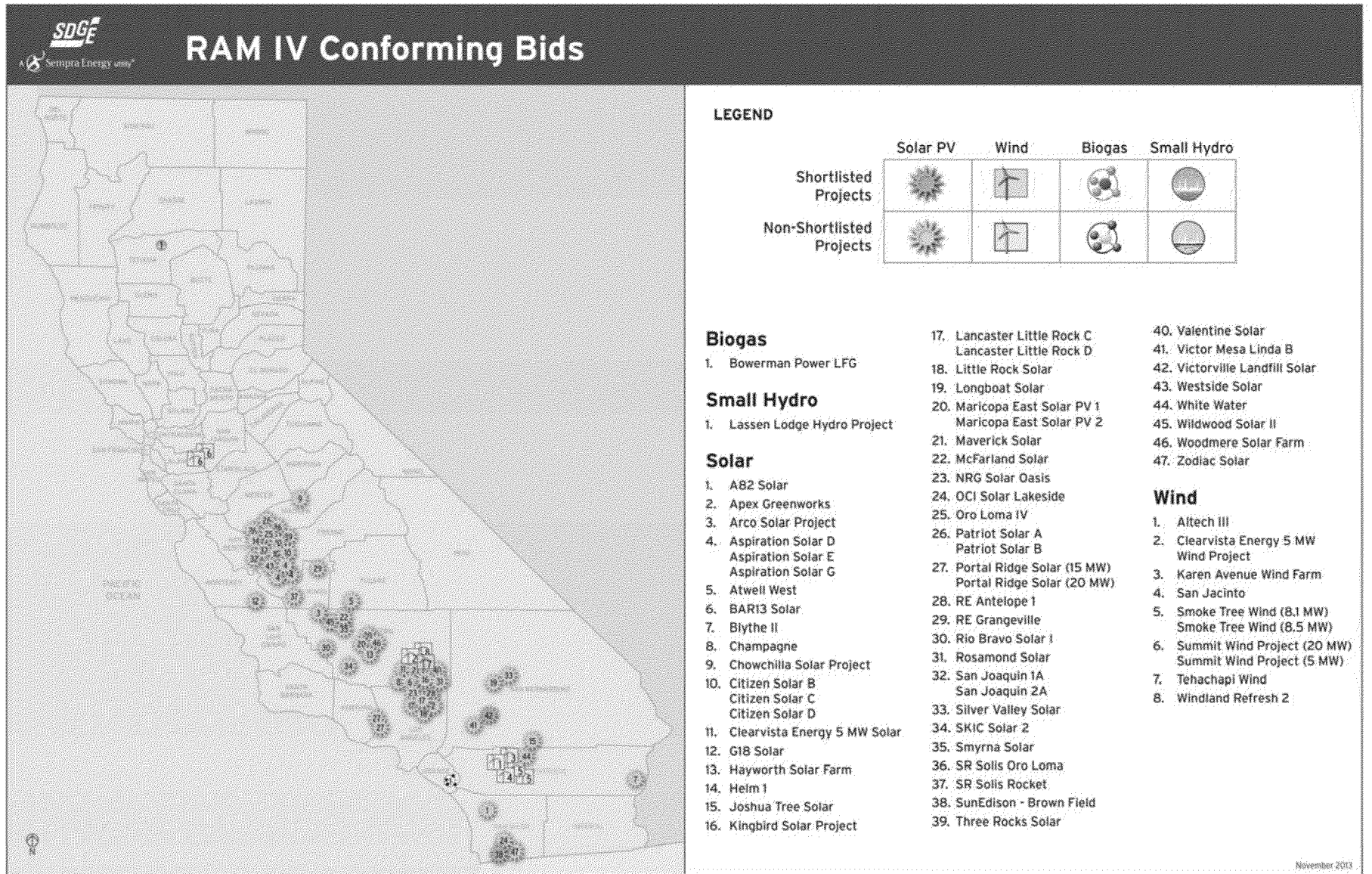
Table 8: Detailed Summary of the RAM RFO Short-list by Technology Type

Technology Type	Total # of Bids into RFO	Total # of Eligible Bids	Total # of Bids Shortlisted	Total # of Executed Contracts	Mean RFO Bid Size (MW) All including non-conforming	Mean Shortlist Bid Size (MW)	Mean Contract Size (MW)	No. of RFO Bids that Failed Each Viability Screen				
								Dev. Exp.	Site Control	Commercialized Tech.	Interconnection	COD <18mos
Solar PV	78	64	2	2	16.0	9.65	7.5					
Wind	16	14	1	1	22.0	5.5	5.5					
Geothermal	0	0	0	0	0.0	0	0					
Biomass	1	0	0	0	20.0	0	0					
Biogas	1	1	0	0	20.0	0	0					
Small Hydro	1	1	1	1	5.0	0	0					

Table 9: Project Development Milestones for Executed RAM Contracts

Project Overview										Regulatory			Commercial Operation Date			Necessary Permitting and Government Approvals				Interconnection (IC) Status		
Project Name	Company Name	Project Status (Delayed/ On Schedule)	Product Category	Technology Type	Location (City / County)	RAM RFO Number	Original Bid Capacity (MW)	Installed Capacity (MW)	Full Buy/Sell or Excess Sales	CPUC Non-Appellable Approval Date	6-Month Regulatory Delay (Yes/No)	Reason for Reg. Delay	Contract GCOD	Actual COD	Construction Started (Y/N)	Necessary Permits/Govt Approvals Received (Y/N)	Necessary Permits/Govt Approvals Filed (Y/N)	If Filed, Expected Date for Permits/Govt Approval	If not Filed, Expected File Date	IC Agreement Signed (Y/N)	IC Application Deemed Complete (Y/N)	Stage in IC Process (Study/Agreement/ Construction)
AES Tehachapi Wind LLC	AES	Existing	Non-Peaking	Wind	Kern County	2013 (IV)	5.5	5.5	Full Buy	1 month after PPA submittal	No	N/A	24 months after CPUC Approval	11/14/2015	N/A Existing	N/A Existing	N/A Existing	N/A Existing	N/A Existing	N/A Existing	N/A Existing	N/A Existing
Sustainable Through Innovation, Lassen Lodge Hydro	Rugraw LLC	Delayed	Baseload	Hydro	Tehama County	2012 (III) and 2013 (IV)	5	N/A	Full Buy	1 month after PPA submittal	No	N/A	24 months after CPUC Approval	12/15/2015	N	N	Y	4/30/2015	N/A	Y	Y	Agreement
SunEdison Origination 3 LLC (Brown Field)	SunEdison	On Schedule	Peaking	Solar PV	San Diego County	2013 (IV)	6	N/A	Full Buy	1 month after PPA submittal	No	N/A	24 months after CPUC Approval	11/28/2015	N	N	Y	10/31/2014	N/A	Y	Y	Agreement
Victorville Landfill Solar LP	SunEdison	On Schedule	Peaking	Solar PV	San Bernardino County	2013 (IV)	10	N/A	Full Buy	1 month after PPA submittal	No	N/A	24 months after CPUC Approval	12/15/2015	N	N	N	N/A	3/30/2014	N	Y	Agreement

Map of the RAM RFO:



D. IOU Observations and Lessons Learned from RAM Solicitation

SDG&E's fourth RAM solicitation produced 80 bids that offered, for the most part, very competitive prices. However, SDG&E believes that the solicitation process could be improved, especially in the following areas:

- Greater emphasis on RAM solicitation compliance
- Utilization of a "wait" or "contingent" shortlist
- RAM contracting matters
- Evaluation of eligibility criteria

SDG&E's fourth RAM solicitation identified the need to properly account for the following:

1. RAM Solicitation Compliance

SDG&E received 97 bids from 31 counterparties for 83 projects prior to conformance checking. After conformance checking, the number of conforming bids decreased to 54 bids from 24 counterparties. Several bids were non-conforming for failure to meet RAM eligibility criteria (e.g. failure to meet RAM locational or size requirements), however many bids were non-conforming for failure to submit all the required materials (e.g. failure to provide proof of site control, failure to provide interconnection studies, etc.). To improve the competitiveness and robustness of its RAM solicitation, for those bids that could be made conforming by providing additional information, on July 16, 2013 SDG&E reached out to those Respondents. Respondents had until close of business on July 18, 2013 to provide additional information. SDG&E sought additional information on 23 bids, which ultimately resulted in 80 conforming bids from 29 counterparties for 69 projects (SDG&E's largest RAM participation to date).

It is unclear why there were more non-conforming bids in RAM IV as compared to other RAM solicitations. The same conformance requirements were emphasized in both the RAM RFO document, as well as the web conference. Perhaps the market's familiarity with the RAM program led to some sloppy submittals. Regardless, the need to submit all the necessary materials for conformance will be a point of emphasis to Respondents in SDG&E's next RAM solicitation.

2. Utilization of a "Wait" or "Contingent" Shortlist

SDG&E's initial shortlist included five bids for a combined capacity of 43.5 MW. However, the Maricopa East Solar PV 2 LLC bid did not accept its position on SDG&E's shortlist, and the next best bid (a 20 MW as-available peaking project) had begun negotiations with another party. Accordingly, SDG&E shortlisted the two next best available low cost bids, A82 LLC and G18 LLC. These bids accepted their position on SDG&E's shortlist, thus SDG&E did not shortlist any additional bids. The combined capacity of this updated shortlist totaled 36.5 MW. Just prior to SDG&E's scheduled RAM PPA execution date, the two bids unexpectedly withdrew. SDG&E reached out to the next best low cost bids, however due to time constraints in attempting to execute and file the RAM IV PPAs as scheduled, SDG&E did not shortlist any further bids and rolled the remaining capacity amounts to the RAM V target.

Moving forward, SDG&E will utilize a "wait" or "contingent" shortlist to help prevent such a scenario from occurring in the future. While it was certainly unexpected to have bids accept their shortlisted position to only later withdraw it at the last moment, a "wait" or "contingent" shortlist may have allowed sufficient time to execute a RAM PPA with the next best low cost bid.

The utilization of a “wait” or “contingent” shortlist would put the counterparty on notice of the possibility that their bid could be ultimately selected, give SDG&E timely feedback as to whether the bid was available or not, and allow for the RAM PPA to be put in near executable form (along with the required credit posting) should the bid ultimately be selected.

3. CAISO Distributed Generation (DG) Deliverability

The CAISO is proposing a new annual assessment methodology for determining and allocating resource adequacy deliverability for distributed generation resources. Currently, the CAISO determines distributed generation deliverability through assessments in the CAISO generator interconnection cluster study process. The new assessment would run parallel to the generation interconnection procedures and be coordinated with the interconnection procedures and the transmission planning process. Distributed generation facilities interconnected, or seeking interconnection, to the distribution system of an IOU Participating Transmission Owner may apply to the applicable IOU Participating Transmission Owner to be eligible to receive a Deliverability Status assignment in the current DG Deliverability Assessment cycle. The distributed generation facility could then be eligible to receive Partial Capacity Deliverability Status or Full Capacity Deliverability Status.

Accordingly, a RAM project that has been studied (or is being studied) as energy-only, bid into RAM as an energy-only project, and executes a RAM PPA at an energy-only price could receive some measure of deliverability should they apply to the DG Deliverability Assessment cycle. However, the current RAM rules do not allow for the RAM PPA to be modified to account for the increased deliverability benefit, nor does the RAM PPA allow the Seller to sell deliverability attributes to a third party, therefore there is little incentive for the Seller to enter into the CAISO’s new DG Deliverability Assessment cycle. SDG&E suggests that the CPUC consider this issue in preparation for RAM V.

4. Further Clarity With Respect to Project Splitting

The RAM Decision directed the IOUs to propose in their bid protocols how to prevent sellers from breaking up or subdividing larger projects to circumvent the 20 MW project size limit. SDG&E utilized a holistic approach in determining whether developers were bidding projects that had been split or subdivided. For each bid, SDG&E looked at interconnection queue size and assignment, LGIA size and assignment, land lease acreage, project maps and project names to determine whether projects had been split or subdivided. A considerable amount of time and effort was spent on this process with questionable benefit. SDG&E believes that the intent of this rule was to create a program where large scale developers were not able to compete and to promote new distribution level project development. SDG&E recommends that the Energy Division come up with a bright line approach with respect to the RAM and project splitting to ensure the rules are equally applied by the IOUs and send a clear message to the market, or do away with this restriction. SDG&E suggests that this issue be addressed in preparation for RAM V.

5. Importance of Project Description Form

In order to achieve the RAM program goal of providing an efficient, streamlined process, SDG&E must be able to quickly assess the eligibility of each bid. This is done by reviewing the project description forms that each bidder is required to provide. SDG&E’s improvements to this form between the first, second, third and fourth solicitations greatly enhanced its ability to determine project eligibility. SDG&E continues to focus on this form as the key to its bid

evaluation process and intends to make additional changes to the form in order to improve the bid selection process during the fifth RAM solicitation.

IV. REQUEST FOR COMMISSION APPROVAL

SDG&E respectfully requests that the Commission review and approve the Proposed Agreements by December 23, 2013, which is 31 days from the filing date of this Tier 2 Advice Letter pursuant to the RAM Resolution.

As detailed in this Advice Letter, SDG&E's entry into the Proposed Agreements and the terms of such agreements are reasonable; therefore, all costs associated with the Proposed Agreements, including energy, green attributes, and resource adequacy should be fully recoverable in rates.

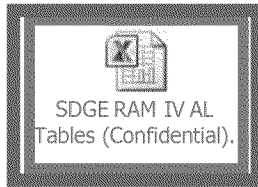
The Proposed Agreements are conditioned upon "CPUC Approval." SDG&E, therefore, requests that the Commission consider including the following findings in approving the Advice Letter:

- A. The Proposed Agreements are consistent with SDG&E's CPUC-approved RPS Plan and procurement from the Proposed Agreements will contribute towards SDG&E's RPS procurement obligation.
- B. SDG&E's entry into the Proposed Agreements and the terms of such agreements are reasonable; therefore, the Proposed Agreements are approved in their entirety and all administrative and procurement costs associated with the Proposed Agreements, including for energy, green attributes, and resource adequacy, are fully recoverable in rates over the life of the Proposed Agreements, subject to Commission review of SDG&E's administration of the Proposed Agreements.
- C. Generation procured pursuant to the Proposed Agreements constitutes generation from an eligible renewable energy resource for purposes of determining SDG&E's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewable Portfolio Standard program (Public Utilities Code §§ 399.11, et seq. and/or other applicable law) and relevant Commission decisions.
- D. Deliveries made pursuant to the Proposed Agreements will contribute to SDG&E's minimum quantity requirement established in D.07-05-028.
- E. Expected project deliveries are eligible for any applicable RPS flexible compliance mechanisms.
- F. The electricity product received pursuant to the Proposed Agreements is an eligible renewable energy resource electricity product that meets the requirements of Public Utilities Code §399.16(b)(1) ("RPS portfolio content Category 1").
- G. The 25.5 MWs from the Proposed Agreements count towards SDG&E's RAM capacity requirements.

V. LIST OF APPENDICES

A. Solicitation Data and Project Development Milestones for Executed Contracts (Public and Confidential)

See tables 5-9 and the map of the RAM RFO of this AL.

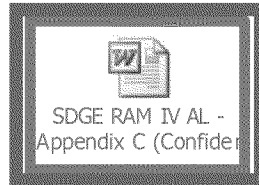


B. IOU's RAM Standard Contract (Public)

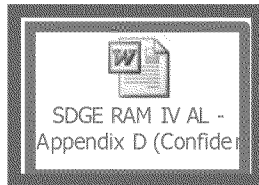


AttachmentB - May 2013 RAM PPA (Final).pdf

C. Valuation Process Summary (Confidential)



D. Analysis of Customer Benefits (Confidential)



E. Independent Evaluator Report (Confidential and Public)



F. Executed Contracts (Confidential)



G. Up Front Showing Requirements for Category 1 Products (Confidential)



VI. CONFIDENTIALITY

CONFIDENTIAL TREATMENT OF SPECIFIC MATERIAL IS BEING REQUESTED. THE INFORMATION AND REASON(S) FOR CONFIDENTIAL TREATMENT IS CONSISTENT WITH THE SHOWING REQUIRED BY D.06-06-066, AS MODIFIED.

As directed by the CPUC’s Energy Division, confidential information in support of the Proposed Agreements is provided in Confidential Appendices C through G, as listed below:

- Appendix C: Valuation Process Summary
- Appendix D: Analysis of Customer Benefits
- Appendix E: Independent Evaluator Report
- Appendix F: Executed Contracts
- Appendix G: Up Front Showing for Category 1 Products

These appendices contain market sensitive information protected pursuant to Commission Decision (“D.”) 06-06-066, et seq., as detailed in the concurrently-filed declaration. The following table presents the type of information within the confidential appendices and the matrix category under which D.06-06-066 permits the data to be protected.

Type of Information	D.06-06-066 Confidential Matrix Category	Confidentiality Key
Contract Terms and Conditions and Up Front Showing	VII.G	Red Font
Analysis and Evaluation of Proposed RAM PPAs and Raw Bid Information	VIII.A	Green Font
Analysis and Evaluation of Proposed RAM PPAs and Quantitative Analysis	VIII.B	Blue Font

VII. EFFECTIVE DATE

This filing is subject to Energy Division disposition and should be classified as Tier 2 (effective pending disposition) pursuant to the RAM Resolution. Since this filing is being

made in compliance with Resolution E-4414 SDG&E respectfully requests that it become effective on December 23, 2013, which is 31 days after the filing date of this advice letter.

VIII. PROTEST

Anyone may protest this advice letter to the California Public Utilities Commission. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. The protest must be made in writing and received by December 12, 2013 which is 20 days after the date this advice letter was filed with the Commission. There is no restriction on who may file a protest. The address for mailing or delivering a protest to the Commission is:

CPUC Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

Copies should also be sent via e-mail to the attention of the Energy Division at EDTariffUnit@cpuc.ca.gov. It is also requested that a copy of the protest be sent via electronic mail and facsimile to SDG&E on the same date it is mailed or delivered to the Commission (at the addresses shown below).

Attn: Megan Caulson
Regulatory Tariff Manager
8330 Century Park Court, Room 32C
San Diego, CA 92123-1548
Facsimile No. 858-654-1879
E-Mail: MCaulson@semprautilities.com

IX. NOTICE

In accordance with General Order No. 96-B, a copy of this filing has been served on the utilities and interested parties shown on the attached list, including interested parties in A.08-07-017 and R.11-05-005, by either providing them a copy electronically or by mailing them a copy hereof, properly stamped and addressed.

Address changes should be directed to SDG&E Tariffs by facsimile at (858) 654-1879 or by e-mail to SDG&ETariffs@semprautilities.com.

CLAY FABER
Director – Regulatory Affairs

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

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

Company name/CPUC Utility No. **SAN DIEGO GAS & ELECTRIC (U 902)**

Utility type:

ELC GAS
 PLC HEAT WATER

Contact Person: Joff Morales

Phone #: (858) 650-4098

E-mail: jmorales@semprautilities.com

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas
PLC = Pipeline HEAT = Heat WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 2547-E

Subject of AL: Request for Approval of Standard RAM Renewable Power Purchase Agreements with Aestehachapi Wind LLC, Rugraw LLC, SunEdison Origination3 LLC and Victorville Landfill Solar LP.

Keywords (choose from CPUC listing): Renewable Auction Mechanism, RAM

AL filing type: Monthly Quarterly Annual One-Time Other

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:
Decision 10-12-048, Resolution E-4144, E-4489, E-4546 and E-4582

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: None

Summarize differences between the AL and the prior withdrawn or rejected AL: N/A

Does AL request confidential treatment? If so, provide explanation: _____

See confidential declaration

Resolution Required? Yes No

Tier Designation: 1 2 3

Requested effective date: 12/23/2013

No. of tariff sheets: 0

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

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

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

Tariff schedules affected: N/A

Service affected and changes proposed¹: N/A

Pending advice letters that revise the same tariff sheets: None

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

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Ave.,
San Francisco, CA 94102
EDTariffUnit@cpuc.ca.gov

San Diego Gas & Electric
Attention: Megan Caulson
8330 Century Park Ct, Room 32C
San Diego, CA 92123
mcaulson@semprautilities.com

¹ Discuss in AL if more space is needed.

General Order No. 96-B
ADVICE LETTER FILING MAILING LIST

cc: (w/enclosures)

Public Utilities Commission

DRA

Y. Schmidt
W. Scott

Energy Division

P. Clanon
S. Gallagher
H. Gatchalian
D. Lafrenz
M. Salinas

CA. Energy Commission

F. DeLeon
R. Tavares

Alcantar & Kahl LLP

K. Harteloo

American Energy Institute

C. King

APS Energy Services

J. Schenk

BP Energy Company

J. Zaiontz

Barkovich & Yap, Inc.

B. Barkovich

Bartle Wells Associates

R. Schmidt

Braun & Blaising, P.C.

S. Blaising

California Energy Markets

S. O'Donnell
C. Sweet

California Farm Bureau Federation

K. Mills

California Wind Energy

N. Rader

CCSE

S. Freedman
J. Porter

Children's Hospital & Health Center

T. Jacoby

City of Chula Vista

M. Meacham
E. Hull

City of Poway

R. Willcox

City of San Diego

J. Cervantes
G. Lonergan
M. Valerio

Commerce Energy Group

V. Gan

Constellation New Energy

W. Chen

CP Kelco

A. Friedl

Davis Wright Tremaine, LLP

E. O'Neill
J. Pau

Dept. of General Services

H. Nanjo
M. Clark

Douglass & Liddell

D. Douglass
D. Liddell
G. Klatt

Duke Energy North America

M. Gillette

Dynegy, Inc.

J. Paul

Ellison Schneider & Harris LLP

E. Janssen

Energy Policy Initiatives Center (USD)

S. Anders

Energy Price Solutions

A. Scott

Energy Strategies, Inc.

K. Campbell
M. Scanlan

Goodin, MacBride, Squeri, Ritchie & Day

B. Cragg
J. Heather Patrick

J. Squeri

Goodrich Aerostructures Group

M. Harrington

Hanna and Morton LLP

N. Pedersen

Itsa-North America

L. Belew

J.B.S. Energy

J. Nahigian

Luce, Forward, Hamilton & Scripps LLP

J. Leslie

Manatt, Phelps & Phillips LLP

D. Huard
R. Keen

Matthew V. Brady & Associates

M. Brady

Modesto Irrigation District

C. Mayer

Morrison & Foerster LLP

P. Hanschen

MRW & Associates

D. Richardson

OnGrid Solar

Andy Black

Pacific Gas & Electric Co.

J. Clark
M. Huffman
S. Lawrie
E. Lucha

Pacific Utility Audit, Inc.

E. Kelly

R. W. Beck, Inc.

C. Elder

School Project for Utility Rate
Reduction

M. Rochman

Shute, Mihaly & Weinberger LLP

O. Armi

Solar Turbines

F. Chiang

Sutherland Asbill & Brennan LLP

K. McCrea

Southern California Edison Co.

M. Alexander

K. Cini

K. Gansecki

H. Romero

TransCanada

R. Hunter

D. White

TURN

M. Florio
M. Hawiger

UCAN

M. Shames

U.S. Dept. of the Navy

K. Davoodi

N. Furuta

L. DeLacruz

Utility Specialists, Southwest, Inc.

D. Koser

Western Manufactured Housing
Communities Association

S. Dey

White & Case LLP

L. Cottle

Interested Parties

A.08-07-017

R.11-05-005

San Diego Gas & Electric Advice Letter 2547-E
November 22, 2013

CONFIDENTIAL DECLARATION

**BEFORE THE PUBLIC UTILITIES
COMMISSION OF THE STATE OF CALIFORNIA
DECLARATION OF FERNANDO VALERO REGARDING CONFIDENTIALITY
OF CERTAIN DATA**

I, Fernando Valero, do declare as follows:

1. I am an Energy Contracts Originator for San Diego Gas & Electric Company (“SDG&E”). I have reviewed Advice Letter 2547-E, requesting approval of Power Purchase Agreements (PPAs) with AES Tehachapi Wind LLC, Rugraw LLC, SunEdison Origination³ LLC, and Victorville Landfill Solar LP (with attached confidential and public appendices), dated November 22, 2013 (“Advice Letter”). All projects were selected as a result of SDG&E’s fourth Renewable Auction Mechanism (“RAM”) procurement program solicitation. I am personally familiar with the facts and representations in this Declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or belief.

2. I hereby provide this Declaration in accordance with D.06-06-066, as modified by D.07-05-032, and D.08-04-023, to demonstrate that the confidential information (“Protected Information”) provided in the Advice Letter submitted concurrently herewith, falls within the scope of data protected pursuant to the IOU Matrix attached to D.06-06-066 (the “IOU Matrix”).^{1/} In addition, the Commission has made

^{1/} The Matrix is derived from the statutory protections extended to non-public market sensitive and trade secret information. (See D.06-06-066, *mimeo*, note 1, Ordering Paragraph 1). The Commission is obligated to act in a manner consistent with applicable law. The analysis of protection afforded under the Matrix must always produce a result that is consistent with the relevant underlying statutes; if information is eligible for statutory protection, it must be protected under the Matrix. (See *Southern California Edison Co. v. Public Utilities Comm.* 2000 Cal. App. LEXIS 995, *38-39) Thus, by claiming applicability of the Matrix, SDG&E relies upon and simultaneously claims the protection of Public Utilities Code §§ 454.5(g) and 583, Govt. Code § 6254(k) and General Order 66-C.

clear that information must be protected where “it matches a Matrix category exactly . . . or consists of information from which that information may be easily derived.”^{2/}

3. I address below each of the following five features of Ordering Paragraph 2 in D.06-06-066:

- That the material constitutes a particular type of data listed in the Matrix,
- The category or categories in the Matrix to which the data corresponds,
- That it is complying with the limitations on confidentiality specified in the Matrix for that type of data,
- That the information is not already public, and
- That the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.^{3/}

4. SDG&E’s Protected Information: As directed by the Commission, SDG&E demonstrates in table form below that the instant confidentiality request satisfies the requirements of D.06-06-066.^{4/}

Data at issue	D.06-06-066 Matrix Requirements	How moving party meets requirements
<p><i>Bid Information</i>⁵</p> <p><i>Locations:</i></p> <p><i>1. Confidential Appendix A – embedded Solicitation Data and Project Development</i></p>	<p>Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix</p>	<p>The data provided are non-public bid data from SDG&E’s May 2013 RAM Solicitation.</p>
	<p>Identify the Matrix</p>	<p>This information is</p>

^{2/} See, *Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s April 3, 2007 Motion to File Data Under Seal*, issued May 4, 2007 in R.06-05-027, p. 2 (emphasis added).

^{3/} D.06-06-066, as amended by D.07-05-032, *mimeo*, p. 81, Ordering Paragraph 2.

^{4/} See, *Administrative Law Judge’s Ruling on San Diego Gas & Electric Company’s Motions to File Data Under Seal*, issued April 30 in R.06-05-027, p. 7, Ordering Paragraph 3 (“In all future filings, SDG&E shall include with any request for confidentiality a table that lists the five D.06-06-066 Matrix requirements, and explains how each item of data meets the matrix”).

⁵ The confidential information referenced has a GREEN font color / has a green box around it in the confidential appendices.

<p><i>Milestones for Executed Contracts, tab labeled 5_6NMW, Tables, “Net Market Value Overview” on p. 22.</i></p> <p><i>2. Confidential Appendix C – embedded RAM Valuation Process Summary on p.22.</i></p> <p><i>3. Confidential Appendix D embedded Analysis of Customer Benefits on p.22.</i></p> <p><i>4. Confidential Appendix E – embedded RAM specific IE Report on p. 22.</i></p>	category or categories to which the data corresponds	protected under IOU Matrix category VIII.A.
	Affirm that the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data	In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that this information be kept confidential until the final contracts from each of the Solicitations have been submitted to the CPUC for approval.
	Affirm that the information is not already public	SDG&E has not publicly disclosed this information and is not aware that it has been disclosed by any other party.
	Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.	SDG&E cannot summarize or aggregate the bid data while still providing project-specific details. SDG&E cannot provide redacted or masked versions of these data points while maintaining the format requested by the CPUC.
<p><i>Specific Quantitative Analysis⁶</i></p> <p><i>Location:</i></p> <p><i>1. Confidential Appendix A – embedded Solicitation Data and Project Development Milestones for Executed Contract, tab labeled 5_6NMW, Tables “Net Market Value Overview” on p. 22.</i></p> <p><i>2. Confidential Appendix C – embedded RAM Valuation Process Summary on p.22.</i></p>	Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix	These data are from SDG&E’s specific quantitative analysis involved in scoring and evaluating renewable bids. Some of the data also involve analysis/evaluation of proposed RAM projects.
	Identify the Matrix category or categories to which the data corresponds	This information is protected under IOU Matrix categories VII.G and/or VIII.B.
	Affirm that the IOU is	In accordance with the

⁶ The confidential information referenced has a **BLUE** font color / has a blue box around it in the confidential appendices

<p>3. <i>Confidential Appendix D embedded Analysis of Customer Benefits on p.22.</i></p> <p>4. <i>Confidential Appendix E – embedded RAM specific IE Report on p. 22.</i></p>	<p>complying with the limitations on confidentiality specified in the Matrix for that type of data</p>	<p>limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that this information be kept confidential for three years.</p>
	<p>Affirm that the information is not already public</p>	<p>SDG&E has not publicly disclosed this information and is not aware that it has been disclosed by any other party.</p>
	<p>Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.</p>	<p>SDG&E cannot summarize or aggregate the evaluation data while still providing project-specific details. SDG&E cannot provide redacted or masked versions of these data points while maintaining the format requested by the CPUC.</p>
<p><i>Contract Terms⁷</i></p> <p><i>Locations:</i></p> <p>1. <i>Confidential Appendix F- Embedded files –Executed Versions of Proposed RAM Power Purchase Agreements on p.23.</i></p> <p>2. <i>Confidential Appendix G Embedded file – Up Front Showing Requirements for Category 1 Products on p. 23.</i></p>	<p>Demonstrate that the material submitted constitutes a particular type of data listed in the IOU Matrix</p>	<p>The data include specific contract terms.</p>
	<p>Identify the Matrix category or categories to which the data corresponds</p>	<p>This information is protected under IOU Matrix category VII.G.</p>
	<p>Affirm that the IOU is complying with the limitations on confidentiality specified in the Matrix for that type of data</p>	<p>In accordance with the limitations on confidentiality set forth in the IOU Matrix, SDG&E requests that this information be kept confidential for three years.</p>
	<p>Affirm that the information is not already public</p>	<p>SDG&E has not publicly disclosed this information and is not aware that it has been</p>

⁷ The confidential information referenced has a **RED** font color / has a red box around it in the confidential appendices

		disclosed by any other party.
	Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.	In order to include as much detail as possible, SDG&E has provided specific contract terms instead of summaries. SDG&E has provided summaries of certain contract terms in public portions of the testimony.
	Affirm that the data cannot be aggregated, redacted, summarized, masked or otherwise protected in a way that allows partial disclosure.	It is not possible to provide these data points in an aggregated, redacted, summarized or masked fashion.

5. As an alternative basis for requesting confidential treatment, SDG&E submits that the Power Purchase Agreements enclosed in the Advice Letter are material, market sensitive, electric procurement-related information protected under §§ 454.5(g) and 583, as well as trade secret information protected under Govt. Code § 6254(k). Disclosure of this information would place SDG&E at an unfair business disadvantage, thus triggering the protection of G.O. 66-C.¹³⁷

6. Public Utilities Code § 454.5(g) provides:

The Commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed

¹³⁷ This argument is offered in the alternative, not as a supplement to the claim that the data is protected under the IOU Matrix. California law supports the offering of arguments in the alternative. *See, Brandolino v. Lindsay*, 269 Cal. App. 2d 319, 324 (1969) (concluding that a plaintiff may plead inconsistent, mutually exclusive remedies, such as breach of contract and specific performance, in the same complaint); *Tanforan v. Tanforan*, 173 Cal. 270, 274 (1916) ("Since . . . inconsistent causes of action may be pleaded, it is not proper for the judge to force upon the plaintiff an election between those causes which he has a right to plead.")

procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

7. General Order 66-C protects “[r]eports, records and information requested or required by the Commission which, if revealed, would place the regulated company at an unfair business disadvantage.”

8. Under the Public Records Act, Govt. Code § 6254(k), records subject to the privileges established in the Evidence Code are not required to be disclosed.^{8/} Evidence Code § 1060 provides a privilege for trade secrets, which Civil Code § 3426.1 defines, in pertinent part, as information that derives independent economic value from not being generally known to the public or to other persons who could obtain value from its disclosure.

9. Public Utilities Code § 583 establishes a right to confidential treatment of information otherwise protected by law.^{9/}

10. If disclosed, the Protected Information could provide parties, with whom SDG&E is currently negotiating, insight into SDG&E’s procurement needs, which would unfairly undermine SDG&E’s negotiation position and could ultimately result in increased cost to ratepayers. In addition, if developers mistakenly perceive that SDG&E

^{8/} See also Govt. Code § 6254.7(d).

^{9/} See, D.06-06-066, *mimeo*, pp. 26-28.

is not committed to assisting their projects, disclosure of the Protected Information could act as a disincentive to developers. Accordingly, pursuant to P.U. Code § 583, SDG&E seeks confidential treatment of this data, which falls within the scope of P.U. Code § 454.5(g), Evidence Code § 1060 and General Order 66-C.

11. Developers' Protected Information: The Protected Information also constitutes confidential trade secret information of the developers listed therein. SDG&E is required pursuant to the terms of its Power Purchase Agreements to protect non-public information. Some of the Protected Information in the Power Purchase Agreements and related confidential appendices relates directly to viability of the respective projects. Disclosure of this extremely sensitive information could harm the developers' ability to negotiate necessary contracts and/or could invite interference with project development by competitors.

12. In accordance with its obligations under its Power Purchase and Sale Agreement and pursuant to the relevant statutory provisions described herein, SDG&E hereby requests that the Protected Information be protected from public disclosure.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 22nd day of November, 2013 at San Diego, California.



Fernando Valero
Energy Contracts Originator
Electric and Fuel Procurement
San Diego Gas & Electric

San Diego Gas & Electric Advice Letter 2547-E
November 22, 2013

PUBLIC APPENDIX A

Table 1. Overview of RAM RFO IV

#	Seller's Name	Number of bids submitted	Number of bids shortlisted	Number of contracts
1	8minutenergy Renewables / saferay	2		
2	EDF Renewable Energy	9		
3	EC&R NA Solar PV, LLC	2		
4	Cielo Del Sol, LLC	2		
5	Kingbird Solar, LLC	4		
6	Portal Ridge Solar, LLC	4		
7	("GASNA" or "Gestamp Solar")	5		
8	Hanwha Q Cells USA	1		
9	Rio Bravo Solar I, LLC	1		
10	Wildwood Solar II, LLC	1		
11	Native American Energy Resources, LLC	1		
12	NextEra Energy Resources, LLC	4		
13	Solar Projects Solutions, LLC	1		
14	NorthLight Power, LLC	2		
15	NRG Solar LLC	1		
16	NRG Solar LLC with Volt Energy as DBE partner	1		
17	OCI Solar Power LLC	1		
18	Adera Solar, LLC	1		
19	Pristine Sun, LLC	4		
20	Recurrent Energy	2		
21	Sempra U.S. Gas & Power	1		
22	Silverado Power LLC	21		
23	GCL-SR Solar Energy, LLC	2		
24	SRPV, LLC	1		
25	SolarReserve, LLC	1		
26	SunEdison	3	2	2
27	Terra-Gen Power, LLC	2		
28	SKIC Solar, LLC	1		
29	AES Tehachapi Wind, LLC	1	1	1
30	Altamont Winds Inc.	2		
31	Brookfield Energy Marketing, LP	2		
32	Bull Moose Energy, LLC	1		
33	ENERGY DEVELOPMENT & CONSTRUCTION CORPORATION	2		
34	New Dimension Energy Company	2		
35	Sustainable through Innovation, LLC	1	1	1
36	Montauk Energy Holdings, LLC	1		
37	TGP Development Company, LLC	4		

97

4

4

Table 2. Overview of RAM RFO IV by Capacity

	Contract Size (MW)	# of Bids Submitted	# of Bids Shortlisted	# of contracts
1	1-3	0	0	0
2	>3-5	14	2	2
3	>5-10	19	2	2
4	>10-15	14	0	0
5	>15-20	50	0	0
	Total	97	4	4

Table 3. Overview of second RAM RFO IV by Technology

	Participating Technology	# of bids submitted	# of bids shortlisted	# of contracts
1	Solar PV	78	2	2
2	Wind	16	1	1
3	Geothermal	0	0	0
4	Biogas	1		
5	Biomass	1		
6	Small Hydro	1	1	1
	Total	97	4	4

Table 4. Detailed Summary of RAM RFO IV Short-list by Technology Type

Technology Type	Total # of Bids into RFO	Total # of Eligible Bids	Total # of Bids Shortlisted	Total # of Executed Contracts	Mean RFO Bid Size (MW) All including non-conforming	Mean Shortlist Bid Size (MW)	Mean Contract Size (MW)	No. of RFO Bids that Failed Each Viability Screen				
								Dev. Exp.	Site Control	Commercialized Tech.	Interconnection	COD <18mos
1 Solar PV	78	64	2	2	16.0	9.65	7.5					
2 Wind	16	14	1	1	22.0	5.5	5.5					
3 Geothermal	0	0	0	0	0.0	0	0					
4 Biomass	1	0	0	0	20.0	0	0					
5 Biogas	1	1	0	0	20.0	0	0					
6 Small Hydro	1	1	1	1	5.0	0	0					
	97	80	4	4								

CONFIDENTIAL -Review restricted pursuant to PU Code 583, GO 66-C, D.06-06-066 and
PRG NDA

Project Overview																						
Project Name	Company Name	Project Status (On/Off/Cancelled)	Project Category	Technology Type	Location (City/County)	IRAM RTO Number	Proposed Net Capacity (MW)	Existing Net Capacity (MW)	Full Buy/Sell/Partial/Sale	Electricity Available (Approximate)	Months Suspended (12/6/0)	Business (MS/Other)	Contract (PPA/Other)	Actual CIP	Construction Start (Y/N)	New/Existing (N/A)	Necessity (Y/N/Other)	Final Review Date (Approval)	Final Review (Approval)	Agreement Signed (Y/N)	Agreement Completed (Y/N)	Case in Study/Agreement (Committed)
AES T. Hill West LLC	AES	Existing	Non-Peaking	Wind	Ken County	2013 (R)	5.5	5.5	Full Buy	1 month after PPA subtotal	No	N/A	24 months after CPUC Approval	11/14/2015	N/A Existing	N/A Existing	N/A Existing	N/A Existing	N/A Existing	N/A Existing	N/A Existing	N/A Existing
Stratagor through innovation, Lassen Lodge, Sun Edition	Rugrav LLC	Delayed	Base load	Hydro	Tahoe County	2013 (R) and 2013 (IV)	5	N/A	Full Buy	1 month after PPA subtotal	No	N/A	24 months after CPUC Approval	12/15/2015	N	N	Y	4/22/2015	N/A	Y	Y	Agreement
Origination 3 LLC, Brown Ventures	SunEdison	On Schedule	Peaking	Solar PV	San Diego County	2013 (IV)	5	N/A	Full Buy	1 month after PPA subtotal	No	N/A	24 months after CPUC Approval	11/28/2015	N	N	Y	10/31/2014	N/A	Y	Y	Agreement
Victarize Landfill Solar LP	SunEdison	On Schedule	Peaking	Solar PV	San Bernardino County	2013 (IV)	10	N/A	Full Buy	1 month after PPA subtotal	No	N/A	24 months after CPUC Approval	12/15/2015	N	N	N	N/A	3/22/2014	N	Y	Agreement

San Diego Gas & Electric Advice Letter 2547-E
November 22, 2013

PUBLIC APPENDIX B



A  Sempra Energy utility[®]

**RAMP PROGRAM
ADVICE LETTER 2481-E**

**ATTACHMENT B
MAY2013
RAM POWER PURCHASE AGREEMENT**

RAM POWER PURCHASE AGREEMENT

Between

SAN DIEGO GAS & ELECTRIC COMPANY
(as “Buyer”)

and

(as “Seller”)

POWER PURCHASE AGREEMENT

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COVER SHEET

This RAM Power Purchase Agreement is made as of the following date: [_____]. This Power Purchase Agreement and all exhibits, schedules, appendices, and any written supplements hereto, any designated collateral, credit support or margin agreement or similar arrangement between the Parties as well as all written and signed amendments and modifications thereto shall be a part of, and shall be referred to as, the "Agreement." The Parties to this Agreement (hereinafter individually a "Party" and collectively the "Parties") are the following:

Name: _____ ("Seller")

All Notices:

Street: _____

City: _____ Zip: _____

Attn: Contract Administration

Phone: _____

Facsimile: _____

Duns: _____

Federal Tax ID Number: _____

Invoices:

Attn: _____

Phone: _____

Facsimile: _____

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Payments:

Attn: _____

Phone: _____

Facsimile: _____

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

FAX: _____

Credit and Collections:

Attn: _____

Phone: _____

Facsimile: _____

Name: San Diego Gas & Electric Company ("Buyer")

All Notices:

Street: 8315 Century Park Court

City: San Diego, CA Zip: 92123

Attn: Electric & Fuel Procurement - Contract Administration

Phone: (858) 636-5536

Facsimile: (858) 650-6190

Duns: 006911457

Federal Tax ID Number: 95-1184800

Invoices:

San Diego Gas & Electric Company

8315 Century Park Ct.

San Diego, California 92123-1593

Attn: Energy Accounting Manager

Phone: (858) 650-6177

Facsimile: (858) 650-6190

Scheduling:

San Diego Gas & Electric Company

8315 Century Park Ct.

San Diego, California 92123-1593

Attn: Transaction Scheduling Manager

Phone: (858) 650-6160

Facsimile: (858) 650-6191

Payments:

San Diego Gas & Electric Company

PO Box 25110

Santa Ana, CA 92799-5110

Attn: Mail Payments

Phone: (619) 696-4521

Facsimile: (619) 696-4899

Wire Transfer:

BNK: Union Bank of California

for: San Diego Gas & Electric Company

ABA: Routing # 122000496

ACCT: #4430000352

FAX: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company, Major Markets

555 W. Fifth Street, ML 18A3

Los Angeles, CA 90013-1011

Attn.: Major Markets, Credit and Collections

Manager

Fax No.: (213) 244-8316

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

Attn:

Phone: _____

Facsimile:

Phone: (213) 244-4343
With additional Notices of an Event of Default or
Potential Event of Default to:

San Diego Gas & Electric Company

8330 Century Park Ct.

San Diego, California 92123

Attn: General Counsel

Phone: (858) 650-6141

Facsimile: (858) 650-6106

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 General. The following terms shall have the following meaning for purposes of this Agreement.

“AAA” means the American Arbitration Association.

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

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

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

“As-Available” means a Product for which, subject to the terms of this Agreement, Seller is excused from selling and delivering the Product to Buyer, and Seller shall not be liable to Buyer for any damages determined pursuant to Section 3.1(h) of the Agreement, in the event that Seller fails to deliver the Product to Buyer for any of the following reasons:

- (a) if the Project is unavailable as a result of a Forced Outage and such Forced Outage is not the result of Seller’s negligence or willful misconduct;
- (b) Force Majeure;
- (c) by the Buyer’s failure to perform;
- (d) by a Planned Outage of the Project;
- (e) a reduction in output as ordered under Dispatch Down Periods; or
- (f) [the unavailability of landfill gas which was not anticipated as of the Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such landfill gas to the Project, and which by the exercise of reasonable due diligence, Seller is unable to overcome or avoid or causes to be avoided.] OR [insufficient wind power for the Project to generate energy as determined by the best wind speed and direction standards utilized by other wind producers or purchasers in the vicinity of the Project or if wind speeds exceed the Project’s technical specifications.] OR [the unavailability of water or the unavailability of sufficient pressure required for operation of the hydroelectric turbine-generator as reasonably determined by Seller within its operating procedures, neither of which was anticipated as of the

Execution Date, which is not within the reasonable control of, or the result of negligence of, Seller or the party supplying such water to the Project, and which by the exercise of due diligence, such Seller or the party supplying the water is unable to overcome or avoid or causes to be avoided.] OR [insufficient solar power for the Project to generate energy as determined by the best solar standards utilized by other solar producers or purchasers in the vicinity of the Project.]

“Availability Incentive Payments” shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

“Availability Standards” shall mean Availability Standards as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) 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.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.

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

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

[When SDG&E is the SC for the Project: “CAISO Charges Invoice” has the meaning set forth in Section 3.3([a/b])(iv).]

“CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

“CAISO Tariff” means the CAISO Operating Agreement and Tariff, 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” means the Renewables Portfolio Standard of California under California Senate Bills 1078 and 107, as codified in California Public Utilities Code Sections 387, 390.1, and 399.25 and Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1 of Division 1, as such provisions are amended or supplemented from time to time.

[For FCDS bids: “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including but not limited to any accounting construct so that the Contract Capacity of the Project may be counted toward a Resource Adequacy obligation or similar measure in respect to the capacity of the Project to generate Energy by the CPUC, the CAISO, the FERC, or any other entity vested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other similar products.]

“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 Project has been constructed, that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Agreement.

“Claims” has the meaning set forth in Section 11.2(a).

[Delete and replace with “Reserved” for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement: “Commercial Operation” means that (a) the Project is operating and able to produce and deliver Energy to Buyer pursuant to the terms of this Agreement; (b) Seller shall have satisfied the requirements set forth in the Commercial Operation Certificate in the form attached as Exhibit D; (c) Seller shall have delivered true, correct, and complete Commercial Operation Certificates from Seller, the Renewable Generation Equipment Supplier, the EPC Contractor, and a Licensed Professional Engineer; (d) Seller shall have delivered to Buyer the Delivery Term Security required under Article 8; (e) Seller has received all local, state and federal Governmental Approvals and other approvals as may be required by Law for the construction, operation and maintenance of the Project, including approvals, if any, required under the California Environmental Quality Act for the Project and related interconnection facilities;]

“Commercial Operation Date” means the date on which Seller achieves Commercial Operation for the Project.*[For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement, delete and insert: “Commercial Operation Date” means the later of (a) thirty (30) days after the CP Satisfaction Date or (b) [insert date].]*

“Condition Precedent” has the meaning set forth in Section 2.3.

“Contract Capacity” has the meaning set forth in Section 3.1(f).

[When Seller is SC for the Project or when Buyer is SC but Project is not PIRP eligible (PIRP eligible projects are wind and solar projects): “Contract Energy” means the lower of Delivered Energy or Scheduled Energy for any given period in each case net of all Electrical Losses.]

“Contract Quantity” has the meaning set forth in Section 3.1(e).

“Contract Year” means a period of twelve (12) consecutive months (except in the case of the first Contract Year which may be longer) with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the first day of the month following 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 such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with such Terminated Transaction.

“Cover Sheet” means the document that precedes Article 1: General Definitions to this Agreement.

“CP Satisfaction Date” shall mean the date on which the Condition Precedent has been satisfied (or waived in writing by the Parties described in Section 2.4).

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

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement; and

(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable Law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

“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) by S&P or Moody’s.

“Day-Ahead Forecast” has the meaning set forth in Section 3.3([d/e]).

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

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

“Deliverability Value” means the amount stated in Section 4.1(c).

“Delivered Energy” means all Energy produced from the Project and delivered to Buyer at the Delivery Point as measured in MWh at the CAISO revenue meter of the Project based on a power factor of precisely one (1) and net of all Electrical Losses.

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

“Delivery Term” has the meaning set forth in Section 3.1(c).

“Delivery Term Security” shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.3(a)(ii) to secure performance of its obligations hereunder.

“Development Period Security” shall mean the Performance Assurance that Seller is required to maintain during the period and as otherwise specified in Section 8.3(a)(i) to secure performance of its obligations hereunder.

“Disclosing Party” has the meaning set forth in Section 13.1(a).

“Disclosure Order” has the meaning set forth in Section 13.1(a).

“Dispatch Down Period” means the period of curtailment of delivery of Product from the Project resulting from (a) curtailment ordered by the CAISO (whether directly or through the Scheduling Coordinator or the Participating Transmission Owner), for any reason, including, but not limited to, any system emergency as defined in the CAISO Tariff (“System Emergency”), any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO’s or Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the CAISO or Participating Transmission Owner is connected; (b) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) 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, (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; (c) curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-

transmission system) as a result of scheduled or unscheduled maintenance or construction on the Participating Transmission Owner's transmission facilities or distribution operator's facilities (if interconnected to distribution or sub-transmission system) that prevents the delivery or receipt of Delivered Energy to or at the Delivery Point, or (d) curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator; *[When SDG&E is the SC:* provided, however, Dispatch Down Periods shall not include periods of curtailment of delivery of Product from the Project resulting from economic curtailment where Buyer (as the Scheduling Coordinator) submits an economic bid in the applicable CAISO market that results in an otherwise available Product not being scheduled or awarded in such CAISO market].

"Distribution Upgrades" has the meaning set forth in the CAISO Tariff.

"DUNS" means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun and Bradstreet.

"Early Termination Date" has the meaning set forth in Section 5.2.

"Electrical Losses" means all electrical losses associated with the transmission of Product to the Delivery Point, including if applicable, but not limited to, any transmission or transformation losses between the CAISO revenue meter and the Delivery Point.

"Electrical Interconnection Upgrades" means the facilities that allow Seller to interconnect and deliver Energy from the Project to and at the Delivery Point and Buyer to transmit Energy from the Delivery Point and the facilities that protect the Participating Transmission Owner's, Transmission Provider's, or distribution operator's, as applicable, electric system (or other systems to which such electric systems are connected, including the CAISO Grid) and the Participating Transmission Owner's, Transmission Provider's, or distribution operator's, as applicable, customers from faults occurring at the Project, including, but not limited to, all network, distribution, connection, transformation, switching, metering, communications, control, and safety equipment, as such equipment may be required pursuant to Good Industry Practices or in accordance with the Participating Transmission Owner's, Transmission Provider's, or distribution operator's, as applicable, facility connection requirements. Such Electrical Interconnection Upgrades include all Network Upgrades, Distribution Upgrades, and Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Project to the Participating Transmission Owner's electric system so as to allow Seller to deliver Energy from the Project to the Delivery Point and Buyer to be able to transmit Energy from the Delivery Point.

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

"Eligible Renewable Energy Resource" or "ERR" has the meaning set forth in California Public Utilities Code Section 399.11, *et seq.*, as amended or supplemented from time to time.

"Energy" means electric energy measured in MWh and net of Station Service (unless otherwise specified).

“Energy Price” has the meaning set forth in Section 4.1(a).

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

“EPC Contractor” means an engineering, procurement, and construction contractor, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as Seller’s.

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

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

“Execution Date” means the date hereof as set forth in the preamble of the Cover Sheet.

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

“FCDS” has the meaning set forth in Section 4.1(c).

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

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement but only to the extent (1) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (2) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (3) such event is not the direct or indirect result of the fault or negligence of the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include, but are not limited to the following:

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

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

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

(b) Force Majeure shall not be based on:

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

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

(iii) Seller's inability to obtain Governmental Approvals or other approvals of any type for the construction, operation, or maintenance of the Project;

(iv) a lack of wind, sun or other fuel source of an inherently intermittent nature;

(v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project, except to the extent Seller's inability to obtain sufficient labor, equipment, materials, or other resources is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above;

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

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

(viii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iii) above.

"Forced Outage" means any unplanned reduction or suspension of production of Product from the Project or unavailability of the Project in whole or in part that is not a Planned Outage or a willful withholding of Product when the Project is otherwise capable of delivering Product under Good Industry Practices.

"GAAP" has the meaning set forth in Section 13.4.

"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 Delivery Term, determined in a commercially reasonable manner, subject to Section 5.2 hereof. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant

rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets market referent prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Capacity Attributes, and Green Attributes.

“Good Industry Practice” means those practices, methods and acts that would be implemented and followed by prudent operators of electric transmission facilities (with respect to Buyer) or prudent operators of electric generation facilities similar to the Project (with respect to Seller) in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers’ warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and applicable Law. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

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

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

“Governmental Charges” has the meaning set forth in Section 9.2.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ and (3) the reporting rights to these avoided emissions, such as Green Tag

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

[Delete this definition for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of this Agreement. "Guaranteed Commercial Operation Date" or "GCOD" is the date that is twenty four (24) months after the CP Satisfaction Date, as may be extended pursuant to Section 3.9(c)(ii).]

[Delete this definition for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement "Guaranteed Energy Production" has the meaning set forth in Section 3.1(e).]

"Imbalance Energy" means the amount of Energy, in any given settlement interval, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

[For As-Available Product PIRP Participants only and only when Seller is SC for the Project: "Imbalance Price" has the meaning set forth in Section 4.[2/3](b).]

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

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

"Interest Amount" means, with respect to an Interest Period, the amount of interest derived from the product of (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; multiplied by (b) the Interest Rate in effect on the first day of the Interest Period; multiplied by (c) the number of days in that Interest Period; divided by (d) 360.

“Interest Payment Date” means the date on which cash held as Performance Assurance is returned pursuant to the terms of this Agreement.

“Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month or the shorter period during which Performance Assurance in the form of cash is held by Buyer.

“Interest Rate” means for any date the rate per annum equal to the Commercial Paper (non-financial, 3 months) rate as published the prior month in the Federal Reserve Statistical Release, H.15. Should publication of the interest rate on Commercial Paper (non-financial, 3 months) be discontinued, then the interest rate on commercial paper, which most closely approximates the discontinued rate, published the prior month in the Federal Reserve Statistical Release, H.15, or its successor publication.

[“Investment Tax Credit” or “ITC” means the tax credit for property described in Section 48(a)(3)(A)(i) [solar energy property] or 48(a)(5)(ii) [hydroelectric] of the Internal Revenue Code of 1986, as it may be amended from time to time.] *[Delete if not currently applicable to technology type.]*

“Law” means any statute, law, treaty, rule, regulation, ordinance, code, Governmental Approval, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective prior to the end of the Delivery Term; or any binding interpretation of the foregoing by a Governmental Authority.

“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 with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, in substantially the form as contained in Exhibit C to this Agreement.

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

“Losses” means with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from a Terminated Transaction for the remaining term of this Agreement, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market referent

prices for renewable power set by the CPUC, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remaining term of this Agreement and include the value, if any, of Capacity Attributes, and Green Attributes.

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

~~***[Delete this definition for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement]***~~ “Milestones” has the meaning set forth in Section 3.9(b)(i).]

“Monthly Energy Payment” has the meaning set forth in Section 4.1([b/c]).

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

“MWh” means megawatt-hour.

“Negative Imbalance Energy” has the meaning set forth in Section 4.[2/3].

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

“NERC Holiday” means any of the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day, occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the fourth (4th) Thursday in November. New Year’s Day, Independence Day, and Christmas Day occur on the same date each year, but in the event any of these holidays occur on a Sunday, the “NERC Holiday” is celebrated on the Monday immediately following that Sunday; and if any of these holidays occur on a Saturday, the “NERC Holiday” remains on that Saturday.

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

“Non-Availability Charges” shall mean Non-Availability Charges as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the CAISO Tariff or otherwise applicable to CAISO.

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

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

“Notice to Proceed” or “NTP” means the notice provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions precedent to performance of such contract, by which Seller

authorizes such EPC Contractor to commence and complete full performance of the work under the EPC Contract without any delay or waiting periods.

“Outage Notification Form” means the completed document from Seller notifying Buyer of an outage of the Project in a form reasonably acceptable to Buyer. Buyer reserves the right to reasonably revise or change the form upon Notice to Seller.

[For intermittent As-Available Product: “Participating Intermittent Resource” shall have the meaning set forth in the CAISO Tariff.]

[For an intermittent As-Available Product only: “Participating Intermittent Resource Program” or “PIRP” means the rules, protocols, procedures and standards for Participating Intermittent Resources under the CAISO’s Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.]

“Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. As of the Execution Date, the Participating Transmission Owner is ***[insert name]***.

“Party” or “Parties” means the Buyer or Seller individually, or to both collectively.

“Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Development Period Security and Delivery Term Security.

“Performance Measurement Period” has the meaning set forth in Section 3.1(e).

“Performance Tolerance Band” for each CAISO settlement interval means 5% of the Contract Capacity divided by the number of CAISO settlement intervals per hour.

“Planned Outage” means any planned reduction or suspension of the electrical output from the Project or unavailability of the Project in whole or in part as a result of the inspection, maintenance, or repair of equipment that is scheduled in accordance with Section 3.7(a).

“Positive Imbalance Energy” has the meaning set forth in Section 4.[2/3].

“Product” has the meaning set forth in Section 3.1(a).

[“Production Tax Credit” or “PTC” means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended from time to time.] ***[Delete if not currently applicable to the technology type.]***

“Project” means all of the ***[insert technology]*** electric generating units, the Site at which the generating facility is located, the utility interconnection facilities up to the point of change in ownership to the applicable utility’s facilities, and the other assets, tangible and intangible, that compose the generation facility as more particularly described on Exhibit A.

“Project Cure Period” has the meaning set forth in Section 3.9(c)(ii).

“Recording” has the meaning set forth in Section 13.6.

“Reductions” has the meaning set forth in Section 3.2(c).

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

[Delete this definition for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement “Remedial Action Plan” has the meaning provided in Section 3.9(b)(ii).J

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(f) and CPUC Decision 08-08-028, as each may be amended from time to time or as further defined or supplemented by Law.

“Renewable Generation Equipment Supplier” means the supplier of the electric generating [[wind] [gas] [steam] turbine(s)] ***for, for solar projects:*** solar electric generating equipment/ for the Project, selected by Seller.

“Replacement Price” means the price (in dollars per megawatt hour) at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point (or any other reasonably equivalent delivery point for Buyer) a replacement for any Product (including its associated Green Attributes) that was not Scheduled and delivered by Seller, plus (a) costs (calculated in dollars per megawatt hour) reasonably incurred by Buyer in purchasing such replacement Product and (b) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Buyer for such replacement Product, or absent a purchase, the market price at the Delivery Point (or any other reasonably equivalent delivery point for Buyer) for such replacement Product for the hours impacted by such failure to Schedule or deliver such Product as determined by Buyer in a commercially reasonable manner. The Replacement Price also shall include all CAISO and other charges and penalties calculated in dollars per megawatt hour with respect to the deviation from the Scheduled supply resulting from Seller’s failure to Schedule or deliver; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party. If for any reason a Replacement Price is unavailable when Seller fails to deliver or Schedule Product, then the Replacement Price for the hours when a Replacement Price is unavailable shall be the last available Replacement Price together with any charges and penalties allocated to Buyer during such time.

[For FCDS bids: “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy

Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO./

“Sales Price” means the price (in dollars per megawatt hour) at which Seller, acting in a commercially reasonable manner, resells any Product not Scheduled and received by Buyer, deducting from such proceeds any (a) costs (calculated in dollars per megawatt hour) reasonably incurred by Seller in reselling such Product including all costs charged by CAISO to Schedule and deliver the Product into the CAISO System, and (b) additional transmission charges (calculated in dollars per megawatt hour), if any, reasonably incurred by Seller in Scheduling and delivering such Product to the third party purchasers, or absent a sale despite commercially reasonable efforts to resell the Product, zero. The Sales Price shall also be reduced by all CAISO and other costs, charges and penalties with respect to the deviation from the Scheduled supply, in each case, resulting from Buyer’s failure to take Product and calculated in dollars per megawatt hour; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. The Sales Price may be less than zero.

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

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

“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.

“Scheduled Energy” means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 3.10, and the applicable CAISO Tariff, protocols and Scheduling practices.

“SEC” means the U.S. Securities and Exchange Commission.

“Seller” shall have the meaning set forth on the Cover Sheet.

“Semiannual Progress Report” means the completed documents from Seller notifying Buyer of the progress of the development of the Project in a format reasonably acceptable to Buyer, as may be modified from time to time to meet applicable CPUC requirements.

“Settlement Amount” means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of a Terminated Transaction pursuant to Sections 5.2 and 5.3.

“Site” shall mean the location of the Project as described in Exhibit A.

“Station Service” means the electric energy produced by the Project that is used within the Project to power the lights, motors, control systems and other auxiliary electrical loads that are necessary for operation of the Project *[For Excess Sales bids: and electric energy produced by the Project that is used to service onsite load which is subtracted from the CAISO revenue meter]*.

“Terminated Transaction” means the termination of this Agreement in accordance with Section 5.2 of this Agreement.

“Termination Payment” has the meaning set forth in Section 5.2.

“TOD Delivery Cap” has the meaning set forth in Section 4.1(d)(iii).

“TOD Factors” has the meaning set forth in Section 4.1(b).

“TOD Period” has the meaning set forth in Section 4.1(b).

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

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

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

1.2 Interpretation. The following rules of interpretation shall apply:

- (a) Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Article 1, unless otherwise specified.
- (b) Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions.
- (c) All references to dollars are to U.S. dollars.

ARTICLE TWO: EFFECTIVENESS OF AGREEMENT; CONDITION PRECEDENT

2.1 Effectiveness of Agreement Prior to CP Satisfaction Date. Commencing on the Execution Date until the CP Satisfaction Date, this Agreement shall be in full force and effect, enforceable and binding only to the extent required to give full effect to, and enforce, the rights

and obligations of the Parties under this Article 2, including, as it relates to Article 2, the rights and obligations under Articles 1, 5, 7, 8, 9, 10, 11, 12, and 13.

2.2 Obligations of the Parties. The Parties shall cooperate with each other to cause the Condition Precedent to be satisfied as soon as reasonably practical.

- (a) Seller's Obligations. Prior to the CP Satisfaction Date, Seller shall (i) use commercially reasonable efforts to pursue satisfaction of the Condition Precedent set forth in Section 2.3(a), [~~***Delete for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement***~~] (ii) diligently pursue development of the Project in accordance with Section 3.9, (iii) comply with Section 3.9(b) in achieving the applicable Milestones, reporting completion of such Milestones, and delivering Remedial Action Plans in respect of missed Milestones as more fully described therein, (iv) deliver the Semiannual Progress Report in accordance with Section 3.9(a),] and (v) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. Upon an Event of Default of Seller prior to the CP Satisfaction Date, Buyer may terminate this Agreement in which case Seller shall owe Buyer liquidated damages in the amount of the Development Period Security. Buyer may retain such Performance Assurances to pay such liquidated damages. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to an Event of Default of Seller prior to the CP Satisfaction Date would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for an Event of Default of Seller prior to the CP Satisfaction Date.

- (b) Buyer's Obligations. Prior to the CP Satisfaction Date, Buyer shall (i) use commercially reasonable efforts to pursue satisfaction of the Condition Precedent set forth in Section 2.3(a), and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Articles 7-13. Upon an Event of Default of Buyer prior to the CP Satisfaction Date, Seller may terminate this Agreement in which case Buyer shall owe Seller liquidated damages in the amount of the Development Period Security. Each Party agrees and acknowledges that (a) the actual damages that Seller would incur due to an Event of Default of Buyer prior to the CP Satisfaction Date would be difficult or impossible to predict with certainty, (b) the liquidated damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the liquidated damages set forth in this section are the exclusive remedy for an Event of Default of Buyer prior to the CP Satisfaction Date.

2.3 Condition Precedent. Subject to Section 2.1, the effectiveness of the remainder of this Agreement is conditioned upon the satisfaction (or waiver by the Party described in Section 2.4) of the following condition precedent (“Condition Precedent”) by the deadline date set forth below for the Condition Precedent without extension for Force Majeure or any other reason:

- (a) CPUC Approval. No later than three (3) months after the Execution Date, Buyer shall have obtained CPUC Approval. Prior to this deadline, should the CPUC issue an order approving this Agreement with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties agree to use good faith efforts to renegotiate this Agreement and file the amended agreement with the CPUC seeking approval thereof. If, within thirty (30) days, no agreement is reached, either Party may terminate this Agreement upon delivery of Notice to the other Party.

2.4 Failure to Meet The Condition Precedent.

- (a) Beneficiary Party.

(i) Both of the Parties are the beneficiaries of the Condition Precedent set forth in Section 2.3(a), and in order for a waiver of non-satisfaction of such Condition Precedent to be effective, both of the Parties must waive (in their sole discretion) non-satisfaction by the deadline date therefor.

- (b) Termination. If the Condition Precedent is not satisfied or waived in writing by the beneficiary Parties thereto on or before the applicable deadline date therefor, then either of the Parties may terminate this Agreement with no further obligation to either Party (other than any payment obligations which are accrued and payable at the time of termination) by delivery of Notice to the other Party within fifteen days after the applicable deadline date. If a Party has the right to terminate this Agreement pursuant to this Section 2.4, but fails to deliver Notice of termination within such fifteen day period after such deadline date, then such Party’s termination right per this Section 2.4 for such deadline date shall be deemed waived in its entirety. Upon a termination of this Agreement by either Party as a result of the failure of the Condition Precedent set forth in Section 2.3(a) to be satisfied or waived by Buyer, Buyer shall return to Seller the Development Period Security.

2.5 Effectiveness of Agreement on and after CP Satisfaction Date. This Agreement shall be in full force and effect, enforceable and binding in all respects as of the CP Satisfaction Date until the conclusion of the Delivery Term or earlier termination pursuant to the terms of this Agreement; provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations under this Agreement, including payment in full of amounts due for

the Product delivered prior to the end of the Delivery Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Development Period Security or Delivery Term Security, as applicable, is released and/or returned as applicable (if any is due). All indemnity rights shall survive the termination or expiration of this Agreement for the longer of twelve (12) months or the expiration of the statute of limitations period of the claim underlying the indemnity obligation.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Transaction.

- (a) Product. The “Product” to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is As-Available Energy, *[Delete for Energy Only Bids: Capacity Attributes,]* Green Attributes, and other ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Project (net of Station Service) in accordance with the terms hereof.
- (b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, and Buyer shall pay Seller for the Product in accordance with the terms hereof. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement.
- (c) Delivery Term. The Parties agree that the period of Product delivery is *[insert: “ten (10)”, “fifteen (15), or “twenty (20)”]* Contract Years. As used herein, “Delivery Term” shall mean the period of Contract Years specified above beginning on the Commercial Operation Date and continuing until the end of the last Contract Year unless terminated earlier as provided by the terms of this Agreement.
- (d) Delivery Point. *[For Project with transmission level interconnection, insert: “The Delivery Point shall be the point of interconnection of the Project to the CAISO Grid (and, for payment purposes, the corresponding PNode).] [For Project with distribution level interconnection, insert: “The Delivery Point shall be the point on the CAISO Grid where the Participating Transmission Owner’s distribution system interconnects to the CAISO Grid as set forth in their Meter Services Agreement, as may be acceptable to Buyer in its reasonable discretion (and, for payment purposes, the corresponding PNode).”]*
- (e) Contract Quantity and Guaranteed Energy Production. The quantity of Delivered Energy that Seller expects to be able to deliver to Buyer

during each Contract Year is [_____] MWh *[For solar facilities, insert: to be degraded each Contract Year by [insert manufacturer's degradation factor]* (“Contract Quantity”). *[For all facilities other than hydro facilities, insert: Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any [For baseload facilities insert: “twelve (12)”] [For all facilities other than baseload facilities insert: “twenty-four (24)”] consecutive calendar month period during the Delivery Term (“Performance Measurement Period”). “Guaranteed Energy Production” means an amount of Energy, as measured in MWh, equal to [For wind facilities, insert “one hundred and forty percent (140%)”, [for solar facilities, insert “one hundred and sixty percent (160%)”] [for baseload facilities, insert “ninety percent (90%)” of the weighted average of the Contract Quantity for such Performance Measurement Period.] Notwithstanding the excuses to performance set forth in the definition of the Product type (as such Product type is specified in Section 3.1(a)), Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure events, Buyer’s failure to perform, or Dispatch Down Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure events, Buyer’s failure to perform, or Dispatch Down Periods.*

- (f) Contract Capacity. The “Contract Capacity” is the full generation capacity of the Project net of all Station Service which shall be [___MWac] and [___MWdc]. Throughout the Delivery Term, Seller shall sell and Schedule all Product associated with the Contract Capacity of the Project *[For FCDS bids insert: “,including Capacity Attributes,”]* solely to Buyer, except in the case of an Event of Default of Buyer or during Dispatch Down Periods.
- (g) Project. All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Other than maintenance in accordance with Good Industry Practices, Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity of the Project without Buyer’s prior written consent. The Project is further described in Exhibit A.
- (h) Performance Excuses.
 - (i) Seller Excuses. The performance of Seller to Schedule, deliver, and sell the Product shall be excused only for the reasons set forth in the definition of “As-Available”. If Seller fails to Schedule, deliver, or sell all or part of the Product, and such failure is not excused as described above, then Seller shall pay Buyer, on the date payment would

otherwise be due in respect of the month in which the failure occurred an amount for such Product deficiency equal to the positive difference, if any, obtained by subtracting (A) the product of the Energy Price times the weighted average TOD Factor for such period of Product deficiency times the Product deficiency, from (B) the product of the Replacement Price times the Product deficiency. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

(ii) Buyer Excuses. The performance of Buyer to Schedule, receive, and pay for the Product shall be excused only (A) during periods of Force Majeure, (B) by Seller's failure to perform or (C) during Dispatch Down Periods. If Buyer fails to Schedule, receive, or purchase all or part of the Product and such failure is not excused as described above, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred an amount for such Product deficiency equal to the positive difference, if any, obtained by subtracting (Y) the product of the Sales Price times the Product deficiency from (Z) the product of the Energy Price times the weighted average TOD Factor for such period of Product deficiency times the Product deficiency. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

- (i) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
- (j) ~~Delete and replace with "Reserved" for Energy Only Bids:~~ Resource Adequacy. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes, from the Project for Buyer to use in meeting its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe. Seller agrees that it shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use all of the Contract Capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement for the Resource Adequacy requirements of Buyer, including for necessary deliverability Network Upgrades. If the *[For Transmission Level interconnections add: Phase II Interconnection Study Report][For Distribution Level Interconnections add: interconnection facilities study report or equivalent final study report]* determines that there are deliverability Network Upgrades, Buyer can request that Seller elect to fund or elect not to fund all deliverability Network Upgrades. However, if Seller elects to fund all deliverability Network Upgrades after Buyer's request that Seller not fund such deliverability Network Upgrades, Buyer shall have the right to declare a termination, and Seller shall owe Buyer a Termination Payment. If Buyer requests that

Seller fund certain deliverability Network Upgrades and Seller elects to fund, but the Project does not obtain Full Capacity Deliverability Status on or before January 1, 2022, Buyer shall have the right to declare a termination, and Seller shall owe Buyer a Termination Payment. If the Seller is required to provide Resource Adequacy hereunder, Seller agrees that the Project is subject to the terms of the Availability Standards./

- (k) Reserved.
- (l) WREGIS. Prior to the initial delivery of Energy to Buyer, Seller shall register the Project in WREGIS, and take all other actions necessary to ensure that the Energy or Green Attributes produced from the Project are issued and tracked for purposes of satisfying the requirements of the California Renewable Portfolio Standard and transferred to Buyer, including payment of all fees required to register the facility in WREGIS, issue WREGIS certificates, and transfer such certificates to Buyer. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the Agreement, including executing a CAISO Qualified Reporting Entity Service Agreement to allow CAISO, on the Seller's behalf, to upload generation information directly into WREGIS.

3.2 Transmission.

- (a) Seller's Transmission Service Obligations. During the Delivery Term, Seller shall arrange and be responsible for transmission service for delivery of the Product to and at the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, all Transmission Provider costs and charges, electric transmission and distribution losses, and any transmission or distribution level outages or curtailment, except as provided otherwise in this Agreement in respect of Dispatch Down Periods. Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, including, but not limited to, executing applicable interconnection agreements, Participating Generator Agreement and Meter Service Agreement so as to be able to deliver Energy to the CAISO Grid. Seller shall arrange for any interconnection agreement with the CAISO (or the Participating Transmission Owner, for distribution level interconnections) and such interconnection agreement is separate and not a part of this Agreement.
- (b) Buyer's Transmission Service Obligations. During the Delivery Term, Buyer shall arrange and be responsible for transmission service for

delivery of the Product from the Delivery Point and bear all risks and costs associated with such transmission service, including, but not limited to, all Transmission Provider costs and charges, electric transmission losses, and any transmission outages or curtailment, except as provided otherwise in this Agreement in respect of Dispatch Down Periods.

- (c) Congestion Charges. Seller shall be responsible for all costs of congestion for transmission of the Product up to and at the Delivery Point. Buyer shall be responsible for all costs of congestion for transmission of the Product from the Delivery Point. To the extent that Seller is reimbursed for or receives any refunds, credits, or benefits from the CAISO for congestion charges or losses in respect of transmission of the Product from the Delivery Point, whether due to differences between the locational marginal pricing at the Delivery Point and Buyer's load aggregation point or any other point downstream of the Delivery Point, congestion revenue rights associated with any transmission path downstream of the Delivery Point, or any other hedging instruments associated with the transmission of the Product from the Delivery Point (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and Seller shall retain the Reductions.

3.3 Scheduling.

- (a) *[For As-Available intermittent Product only: PIRP Requirements.*

Seller shall cause the Project to become a Participating Intermittent Resource including executing all necessary documents to become a Participating Intermittent Resource. Seller shall be responsible for all CAISO forecasting fees and related charges associated with the Project becoming a Participating Intermittent Resource and participating in PIRP. Seller and Buyer shall comply with PIRP, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources, including the PIRP, for the Delivery Term. Seller shall provide Buyer with a copy of the notice from the CAISO certifying the Project as a Participating Intermittent Resource as close to the Commercial Operation Date as possible. In the event that PIRP or the CAISO Tariff and/or any protocols relating thereto are changed, amended, modified replaced or terminated, Seller and Buyer agree to comply with such revisions and, to the extent practical, to implement such revisions in a manner that maintains the relative economic positions of the parties as of the date of this Agreement.]

- (b) Scheduling Coordinator.

[NOTE TO BIDDERS: See RFO details relating to Seller's election of SC services][When Seller is SC for the Project, include the following two paragraphs:

(i) Seller as Scheduling Coordinator for the Project. During the Delivery Term, Seller shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with its Transmission Provider to Schedule and deliver the Product to the Delivery Point and Buyer shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with its Transmission Provider to Schedule and receive the Product at the Delivery Point. Throughout the Delivery Term, Buyer and Seller shall submit inter-SC trades for scheduling all Product from the Project at the Delivery Point (including Energy, Integrated Forward Market Load Uplift Obligations in respect of self-scheduled Energy, and other Product from time to time contemplated under the CAISO Tariff to be subject to inter-SC trades), based on a final Schedule developed in compliance with this Agreement. During the Delivery Term, each Party or each Party's SC shall conduct all Scheduling in accordance with the operating procedures developed by the Parties pursuant to Section 3.10 and in full compliance with the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, or real time basis, as determined by Buyer. *[For As-Available intermittent Product only:* Whenever PIRP is applicable, Seller shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with PIRP.] It is the intent of the Parties that neither Party be subject to a double payment or a double charge for Product from the Project through this Agreement and CAISO settlement process and that the more detailed Scheduling and operating procedures developed pursuant to Section 3.10 complement the CAISO settlement process to produce a final economic result between them that is consistent with the fundamental transaction of this Agreement.

(ii) CAISO Costs and Revenues. Seller shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments) as the Scheduling Coordinator for the Project, in each case, associated with Imbalance Energy, including all CAISO charges or penalties incurred as a consequence of the Project not being available, the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7), any other failure by Seller to abide by the CAISO Tariff, and any other deviations between Delivered Energy and Scheduled Energy that are attributable to Seller, the Project, or any event, circumstance, act, or incident occurring prior to or at the Delivery Point, including without limitation uninstructed deviation penalties. The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of the sanctions or penalties shall be the Seller's responsibility. Buyer shall be entitled to all credits, payments, or revenues from the CAISO in respect of the Product Scheduled or delivered from the Project, including revenues associated with CAISO dispatches, inter-SC trade credits, and bid cost recovery.]

[When SDG&E is SC for the Project, include the following seven paragraphs:

(iii) Buyer as Scheduling Coordinator for the Project. Upon initial synchronization of the Project to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Project for both the delivery and the receipt of the Product at the Delivery Point. At least

thirty (30) days prior to the initial synchronization of the Project to the CAISO Grid, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Project effective as of initial synchronization of the Project to the CAISO Grid. On and after initial synchronization of the Project to the CAISO Grid, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to Section 3.10, and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, or real time basis, as determined by Buyer. ***[For As-Available intermittent Product only:*** Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with PIRP whenever PIRP is applicable, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever PIRP is not applicable.]

(iv) **Notices.** Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Project's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. In accordance with Section 3.7 and this Section 3.2, Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(v) **CAISO Costs and Revenues.** Except as otherwise set forth below and elsewhere in this Agreement, Buyer (as Seller's SC) shall be responsible for CAISO costs (including penalties, ***[For As-Available Product PIRP Participants only:*** Negative Imbalance Energy costs,] and other charges) and shall be entitled to all CAISO revenues (including credits, ***[For As-Available Product PIRP Participants only:*** Positive Imbalance Energy revenues,] and other payments) as the Scheduling Coordinator for the Project, including revenues associated with CAISO dispatches, bid cost recovery, inter-SC trade credits, or other credits in respect of the Product Scheduled or delivered from the Project. ***[For As-Available Product PIRP Participants only:*** Seller shall be responsible for all CAISO charges or penalties net of credits and payments, in each case, resulting from the Seller not notifying the CAISO and Buyer (as Seller's SC) of outages or other unavailability of Project capacity in a timely manner (in accordance with the CAISO Tariff and as set forth in Section 3.7) or any other failure by Seller to abide by the CAISO Tariff, including without limitation uninstructed deviation penalties resulting therefrom.] ***[For As-Available Product non-PIRP Participants only:*** Seller shall be responsible for all CAISO costs and penalties and other charges (and not revenues, credits or payment) in connection with Imbalance Energy during any CAISO settlement interval that the Performance Tolerance Band has been exceeded for any reason, other than Buyer's failure to perform.] The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account. In addition, 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 the Project or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.

(vi) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Project. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Seller shall pay the amount of CAISO Charges Invoices within ten Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(vii) Dispute Costs. Buyer (as Seller's SC) may be required to dispute CAISO settlements in respect of the Project. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees, including reasonably allocated costs of in-house counsel of the Buyer) associated with its involvement with such CAISO disputes.

(viii) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Project as of 11:59 p.m. on such expiration date.

(ix) 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 this Project consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.]

- (c) Annual Delivery Schedules. No later than forty-five (45) days before (A) the first day of the first Contract Year of the Delivery Term and (B) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year.
- (d) Monthly Delivery Schedules. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide a non-binding forecast of each day's average expected Delivered

Energy, by hour, for the following month (“Monthly Delivery Forecast”).

- (e) Daily Delivery Schedules. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall *[When Seller is SC for the Project: cause its Scheduling Coordinator to] provide Buyer with a [For As-Available intermittent Product only: non-binding forecast of the Project’s available capacity (or if PIRP is not available for any reason, the expected Delivered Energy)] [For all Products other than As-Available intermittent: binding forecast of the expected Delivered Energy] for each hour of the immediately succeeding day (“Day-Ahead Forecast”) [For all Products other than As-Available intermittent: [When Seller is SC for the Project: concurrent with delivery to the CAISO] [When SDGE is SC for the Project: and Buyer shall submit a Schedule to the CAISO consistent with such Day-Ahead Forecast]]. A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include Schedules for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s best estimate of [For As-Available intermittent Product only: the Project’s available capacity (or if PIRP is not available for any reason, the expected Delivered Energy)] [For all Products other than As-Available intermittent: the expected Delivered Energy]. Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer’s on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer’s best estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer’s best estimate.*
- (f) Hourly Delivery Schedules. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer’s on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages in accordance with Section 3.7. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Project during or after the end of the outage.

3.4 Dispatch Down/Curtailment. Seller shall reduce delivery amounts as directed by the CAISO, the Participating Transmission Owner, Buyer, or a Transmission Provider during any Dispatch Down Period.

3.5 Standards of Care.

- (a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including those related to construction, ownership and/or operation of the Project).
- (b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices and (iii) Good Industry Practices.
- (c) Reliability Standard. Seller agrees to abide by all (i) NERC, WECC and CAISO reliability requirements, including all such reliability requirements for generator owners and generator operators, and, if applicable, CPUC General Order No.167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities," and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Transmission Provider.

3.6 Metering.

- (a) CAISO Revenue Meter. All output from the Project per the terms of this Agreement must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Project described herein. All Product purchased under this Agreement must be measured by the Project's CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment reasonably necessary to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO meter reporting website and/or directly from the CAISO meter(s) at the Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than

thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

(i) Testing and Calibration. Seller shall perform or cause to be performed, at its expense, annual testing and calibration of the electric meters in accordance with Good Industry Practice and the CAISO Tariff. Seller shall give Buyer reasonable advance notice of any inspection, testing or calibration of the electric meters. Buyer shall have the right to have a representative or designee present at such inspection, test or calibration of the electric meters. Buyer shall have the right to require, at Buyer's expense, except as required below, a test of any of the electric meters not more often than two (2) times every twelve (12) months.

(ii) Inaccurate Meters. If any of the electric meters is deemed to be inaccurate under the Meter Service Agreement, deliveries shall be measured by reference to Seller's check-meters, if any are installed and registering accurately, or the meter readings for the period of inaccuracy shall be adjusted as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-half of the time elapsed since the preceding test by applying the percentage of inaccuracy so found. Seller shall promptly cause such electric meters to be corrected and, where such inaccuracy was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.

(iii) Delivered MWh Adjustments. In the event that, due to correction for inaccurate electric meters deemed to be inaccurate under the Meter Service Agreement, the Delivered Energy is increased or decreased, the revised Delivered Energy shall be used for purposes of calculating payments. If any of such amounts for any period have already been calculated using the previous amount of Delivered Energy, they shall be recalculated using the revised amount of Delivered Energy. If the recalculation changes the amount payable for the period in question, revised payments shall be made by Buyer or Seller, as applicable, in accordance with Section 6.2.

(b) Real Time Telemetry. Seller shall install, activate and maintain metering, communication and telemetry equipment for the Project in a centralized system to which Buyer shall have real time access. Seller shall link its system to Buyer via an approved Buyer communication network, utilizing existing industry standard network protocol, as reasonably approved by Buyer. Seller shall correct any problems with such equipment as soon as practicable.

(c) *[The following section is for PIRP Participants when SDG&E is the SC for the Project]* Meteorological Station. Seller, at its own expense, shall install and maintain such stand-alone meteorological stations at the Project (and, for Aggregate Projects, at each site) as may be required under PIRP and the CAISO Tariff to monitor and report weather data to both the CAISO and Buyer's weather station data collection system. Each station shall be equipped with instruments and equipment that meet the specifications of PIRP and shall measure, collect, record, format, and communicate the data required under PIRP.

Seller shall submit to Buyer for review and approval, which shall not be unreasonably withheld, its technical specifications for the meteorological station along with a site plan showing the location of the station within the Project. Seller shall correct any problems with such equipment as soon as practicable.

3.7 Outage Notification.

- (a) Planned Outages. Seller shall schedule Planned Outages for the Project in accordance with Good Industry Practices and with the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. The Parties acknowledge that in all circumstances, Good Industry Practices shall dictate when Planned Outages should occur. Seller shall notify Buyer of its proposed Planned Outage schedule for the Project for the following calendar year by submitting a written Planned Outage schedule no later than October^{1st} of each year during the Delivery Term. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Buyer shall promptly respond with its approval or with reasonable modifications to the Planned Outage schedule and Seller shall use its best efforts in accordance with Good Industry Practices to accommodate Buyer's requested modifications. Notwithstanding the submission of the Planned Outage schedule described above, Seller shall also submit a completed Outage Notification Form to Buyer no later than fourteen (14) days prior to each Planned Outage and all appropriate outage information or requests to the CAISO in accordance with the CAISO Tariff. Seller shall contact Buyer with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Industry Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall use its best efforts in accordance with Good Industry Practices not to schedule Planned Outages during the months of July, August, September and October. At Buyer's request, Seller shall use commercially reasonable efforts to reschedule Planned Outage so that it may deliver Product during CAISO declared or threatened emergency periods. Seller shall not substitute Energy from any other source for the output of the Project during a Planned Outage.
- (b) Forced Outages. Within *[When Seller is the SC for the Project: Within two hours of any Forced Outage,] [When SDG&E is the SC for the Project: Within one-half of the notification time prescribed under the CAISO Tariff for Forced Outages,]* Seller shall submit a completed Outage Notification Form to the Buyer in accordance with the instructions shown on the form and shall submit outage information to the CAISO in accordance with the CAISO Tariff *[When SDG&E is the*

SC for the Project: and Section 3.3(b)(ii) above]. Seller shall not substitute Energy from any other source for the output of the Project during a Forced Outage.

- (c) Coordination with CAISO. Seller shall be responsible [*When SDG&E is SC for the Project:* in accordance with Section 3.3(b)(ii)] for all outage coordination communications with the CAISO. Buyer shall cooperate with Seller in arranging and coordinating all Project outages with the CAISO.

3.8 Operations Logs and Access Rights.

- (a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, fuel consumption, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall maintain this information for at least two (2) years and shall provide this information electronically to Buyer within one day of Buyer's request.
- (b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project during normal business hours upon reasonable advance Notice and for any purposes reasonably connected with this Agreement.

3.9 [*For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement delete Section 3.9 and replace with "Reserved"*]
New Generation Facility.

- (a) Project Development. Seller, at no cost to Buyer, shall:
 - (i) Design and construct the Project.
 - (ii) Perform all studies, [*For FCDS bids, insert: "including [For Transmission Level Interconnections: "Phase II Interconnection Study Report" [or for Distribution Level Interconnections: "interconnection facilities study report or equivalent final study report"] pay all fees, obtain all necessary approvals and execute all necessary agreements with the CAISO and the Participating Transmission Owner for the Electrical Interconnection Upgrades to Schedule and deliver the Product from the Project [For FCDS bids, insert: "under "Full Capacity Deliverability Status" (as defined in the CAISO Tariff), except when construction of deliverability Network Upgrades is not required under Section 3.1(j)"]*].
 - (iii) Acquire all Governmental Approvals and other approvals necessary for the construction, operation, and maintenance of the Project.

(iv) Complete all environmental impact studies necessary for the construction, operation, and maintenance of the Project, including all environmental analysis required under the California Environmental Quality Act for the Project and related interconnection facilities.

(v) At Buyer's request, provide to Buyer Seller's electrical specifications and design drawings pertaining to the Project.

(vi) Within fifteen (15) days after each semi-anniversary of the Execution Date until the Commercial Operation Date, provide to Buyer a Semiannual Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The Semiannual Progress Report shall identify the Milestones and indicate whether Seller has met or is on target to meet such Milestones.

(vii) Provide access to Buyer, its authorized agents, employees and inspectors for purpose of inspecting the Project's construction site or on-site Seller data and information pertaining to the Project during normal business hours upon reasonable advance Notice.

(b) Construction Milestones.

(i) The Parties agree time is of the essence in regards to this Agreement. As such, the Parties also agree certain milestones for the construction of the Project as set forth in the Milestone schedule attached hereto as Exhibit B ("Milestones") must be achieved in a timely fashion.

(ii) Within seven (7) days after completion of each Milestone, Seller shall provide Buyer with Notice along with accompanying documentation (including reasonably redacted copies of applicable agreements, Governmental Approvals, and certificates) to reasonably demonstrate the achievement of such Milestone. If Seller misses the deadline date for three (3) or more Milestones or misses the deadline date for any one Milestone by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan") that describes in detail a reasonable course of action and plan (including accelerating the work, for example, by using additional shifts, overtime, additional crews or resequencing of the work, as applicable) to achieve the missed Milestones and all subsequent Milestones no later than the end of the Project Cure Period; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date.

(c) Guaranteed Commercial Operation.

(i) COD. Seller shall cause the Project to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, unless extended in accordance with Section 3.9(c)(ii).

(ii) Extensions. The Guaranteed Commercial Operation Date may be extended one time for no more than a six (6) month period (the "Project Cure Period") for

cumulative delays if Seller demonstrates to Buyer's reasonable satisfaction after giving written notice as soon as reasonably possible but at least at sixty (60) days prior to the original Guaranteed Commercial Operation Date, which includes a feasible remedial action plan, that:

(A) if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to obtain permits necessary for the construction and operation of the Project, but is unable to obtain such permits due to delays beyond Seller's reasonable control;

(B) if Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to have the Project physically interconnected to the CAISO Grid, or to the Participating Transmission Owner's distribution system, as applicable, and to complete all Electrical Interconnection Upgrades needed, if any, in order to interconnect the Project, as required herein, to the CAISO Grid, but fails to secure any necessary commitments from CAISO or the Participating Transmission Owner for such interconnection and upgrades due to delays beyond Seller's reasonable control; or

(C) in the event of Force Majeure without regard to delays described in Section (A) or (B) above; provided that Seller works diligently to resolve the effect of the Force Majeure and provides evidence of its efforts promptly to Buyer upon Buyer's written request.

3.10 Operating Procedures. No later than forty-five (45) days before the Commercial Operation Date, and from time to time as reasonably determined necessary by the Parties, the Parties shall meet to address how each Party will perform its respective obligations under this Agreement; provided, that the failure to agree on these operating procedures will not relieve the Parties of their respective obligations under this Agreement, and any failure to agree shall be resolved in accordance with the dispute resolution procedures in Article 12.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Energy Payment.

- (a) Energy Price. The price for each MWh of *[When Seller is SC for the Project or when Buyer is SC but Project is not PIRP eligible: Contract Energy] [When SDG&E is SC for the Project and Project is PIRP eligible: Delivered Energy]* in each Contract Year shall be as follows ("Energy Price"):

<u>Contract Year</u>	<u>Energy Price (\$/MWh)</u>
1	
2	

3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

(b) *[For FCDS bids only: TOD Factors and TOD Periods.* In accordance with all other terms of this Article 4, the Energy Price shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified Time of Delivery Periods listed in the first column (“TOD Periods”) in which Energy is delivered.]

TOD Period	Period Days and Hours	TOD Factor
Winter On-Peak	Nov 1 - Jun 30 Weekdays 1 pm to 9 pm PST (HE 14 to HE 21)	1.089
Winter Semi-Peak	Nov 1 - Jun 30 Weekdays 6 am to 1 pm PST (HE 7 to HE 13) Weekdays 9 pm to 10 pm PST (HE 22)	0.947
Winter Off-Peak	Nov 1 - Jun 30 All Weekend Hours NERC Holiday Hours and Weekday Hours not already considered On-Peak or Semi-Peak	0.679
Summer	Jul 1 - Oct 31	2.501

On-Peak	Weekdays 11 am to 7 pm PST (HE 12 to HE 19)	
Summer Semi-Peak	Jul 1 - Oct 31 Weekdays 6 am to 11 am PST (HE 7 to HE 11) Weekdays 7 pm to 10 pm PST (HE 20 to HE 22)	1.342
Summer Off-Peak	Jul 1 - Oct 31 All Weekend Hours, NERC Holiday Hours and Weekday Hours not already considered On-Peak or Semi-Peak	0.801

[For Energy Only bids: TOD Factors and TOD Periods. In accordance with all other terms of this Article 4, the Energy Price shall be adjusted by the following Time of Delivery Factors (“TOD Factors”) for each of the specified Time of Delivery Periods listed in the first column (“TOD Periods”) in which Energy is delivered:]

TOD Period	Period Days and Hours	Energy Only TOD Factor
Winter On-Peak	Nov 1 - Jun 30 Weekdays 1 pm to 9 pm PST (HE 14 to HE 21)	1.192
Winter Semi-Peak	Nov 1 - Jun 30 Weekdays 6 am to 1 pm PST (HE 7 to HE 13) Weekdays 9 pm to 10 pm PST (HE 22)	1.078
Winter Off-Peak	Nov 1 - Jun 30 All Weekend Hours NERC Holiday Hours and Weekday Hours not already considered On-Peak or Semi-Peak	0.774
Summer On-Peak	Jul 1 - Oct 31 Weekdays 11 am to 7 pm PST (HE 12 to HE 19)	1.531
Summer Semi-Peak	Jul 1 - Oct 31 Weekdays 6 am to 11 am PST (HE 7 to HE 11) Weekdays 7 pm to 10 pm PST (HE 20 to HE 22)	1.181
Summer Off-Peak	Jul 1 - Oct 31 All Weekend Hours, NERC Holiday Hours and Weekday Hours not already considered On-Peak or Semi-Peak	0.900

- (c) *[For FCDS bids: Monthly Energy Payment. For each month during which Seller has achieved “Full Capacity Deliverability Status”, as defined in the CAISO Tariff (“FCDS”) as determined by the CAISO, Buyer shall pay Seller for the Product an amount equal to the sum for each hour in the month of the product of the Energy Price times the*

TOD Factor for the applicable TOD Period times the *[When Seller is SC for the Project or when Buyer is SC but Project is not in PIRP: Contract Energy]* *[When SDG&E is SC for the Project and Project is PIRP eligible: Delivered Energy]* in each hour (“Monthly Energy Payment”). For each month during which Seller has not achieved FCDS as determined by the CAISO, Buyer shall pay Seller for the Product an amount equal to the sum for each hour in the month of the product of the Energy Price minus the \$/MWh equal to the Deliverability Value as defined in the RAM RFO document (“Deliverability Value”) times the TOD Factor for the applicable TOD Period times the *[When Seller is SC for the Project or when Buyer is SC but Project is not PIRP eligible: Contract Energy]* *[When SDG&E is SC for the Project and Project is PIRP eligible: Delivered Energy]* (together, the “Monthly Energy Payment”).

[When Seller is SC for the Project and the Project has achieved FCDS or when Buyer is SC but Project is not PIRP eligible: Monthly Energy Payment for months that Seller has obtained FCDS $\frac{1}{24} \times ([Energy\ Price - Deliverability\ Value] \times TOD\ Factor \times Contract\ Energy)$ *Energy]*

[When Seller is SC for the Project and the project has not achieved FCDS or when Buyer is SC but Project is not in PIRP: Monthly Energy Payment for months that Seller has not obtained FCDS $\frac{1}{24} \times ([Energy\ Price - Deliverability\ Value] \times TOD\ Factor \times Contract\ Energy)$ *]*

[When SDG&E is SC for the Project and Project is PIRP eligible and the Project has achieved FCDS: Monthly Energy Payment for months that Seller has obtained FCDS $\frac{1}{24} \times ([Energy\ Price - Deliverability\ Value] \times TOD\ Factor \times Delivered\ Energy)$ *]*

[When SDG&E is SC for the Project and Project is PIRP eligible and the Project has not achieved FCDS: Monthly Energy Payment for months that Seller has not obtained FCDS $\frac{1}{24} \times ([Energy\ Price - Deliverability\ Value] \times TOD\ Factor \times Delivered\ Energy)$ *]*

[For Energy Only bids: Monthly Energy Payment. For each month, Buyer shall pay Seller for the Product an amount equal to the sum for each hour in the month of the product of the Energy Price times the TOD Factor for the applicable TOD Period times the *[When Seller is SC for the Project or when Buyer is SC but Project is not PIRP eligible: Contract Energy]* *[When SDG&E is SC for the Project and Project is PIRP eligible: Delivered Energy]* in each hour (“Monthly Energy Payment”).

[When Seller is SC for the Project or when Buyer is SC but Project is not PIRP eligible: Monthly Energy]

[When SDG&E is SC for the Project and Project is PIRP eligible: Monthly Energy]

(d) Excess Delivered Energy:

(i) If, during any hour during the Delivery Period, Seller delivers Delivered Energy in excess of one hundred ten percent (110%) of the Contract Capacity, then the Energy Price applicable to all such excess MWh in such hour shall be zero dollars (\$0).

(ii) For all deliveries during the Delivery Period, Delivered Energy amounts in any Contract Year that exceed one hundred and fifteen percent (115%) of the annual Contract Quantity amount for that Contract Year, shall be paid at a rate which is seventy-five percent (75%) of the Energy Price.

(iii) For all deliveries during the Delivery Period, Delivered Energy amounts in any TOD Period that exceed one hundred and fifteen percent (115%) of the TOD Delivery Cap listed herein for that TOD Period shall be paid at a rate which is seventy-five percent (75%) of the Energy Price.

TOD Period	TOD Delivery Cap
Winter On-Peak: Nov 1 - Jun 30 Weekdays 1 pm to 9 pm PST (HE 14 to HE 21)	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained bid form]
Winter Semi-Peak: Nov 1 - Jun 30 Weekdays 6 am to 1 pm PST (HE 7 to HE 13) Weekdays 9 pm to 10 pm PST (HE 22)	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained bid form]
Winter Off-Peak: Nov 1 - Jun 30 All weekend hours, NERC holiday hours and weekday hours not already considered On-Peak or Semi-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD

	delivery profile ratio contained bid form]
Summer On-Peak: Jul 1 - Oct 31 Weekdays 11 am to 7 pm PST (HE 12 to HE 19)	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained bid form]
Summer Semi-Peak: Jul 1 - Oct 31 Weekdays 6 am to 11 am PST (HE 7 to HE 11) Weekdays 7 pm to 10 pm PST (HE 20 to HE 22)	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained bid form]
Summer Off-Peak: Jul 1 - Oct 31 All weekend hours, NERC holiday hours and weekday hours not already considered On-Peak or Semi-Peak	[Insert number which is derived from multiplying annual Contract Quantity times the TOD delivery profile ratio contained bid form]

(iv) In relation to Section 4.1(d)(i)-4.1(d)(iii), the Energy Price shall never be less than zero dollars (\$0), and, if the Energy Price is reduced by seventy five percent (75%) pursuant to Section 4.1(d), it cannot get reduced by an additional seventy five percent (75%).

4.2 Imbalance Energy. Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. When Delivered Energy minus Scheduled Energy is a positive amount, it shall be considered “Positive Imbalance Energy;” when Delivered Energy minus Scheduled Energy is a negative amount, the absolute (i.e., positive) value of that amount shall be considered the “Negative Imbalance Energy.” *[When Seller is SC for the Project or when Buyer is SC but Project is not PIRP eligible:* Seller shall be responsible for settlement of Imbalance Energy with the CAISO and all fees, liabilities, assessments, or similar charges assessed by the CAISO in connection with Imbalance Energy. Seller shall also reimburse Buyer for any and all fees, liabilities, assessments, or similar charges assessed by the CAISO, incurred by Buyer as a result of any imbalance in Seller’s scheduling and deliveries from the Project or any other failure by Seller to abide by the CAISO Tariff and all applicable protocols.] Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring

or has occurred. *[When SDG&E is SC for the Project and Project is PIRP eligible: Buyer shall receive all Green Attributes for the Positive Imbalance Energy in all settlement intervals regardless as to whether it was sold into the CAISO.]*

[When Seller is SC for the Project or when Buyer is SC but Project is not PIRP eligible, include the following three paragraphs:

- (a) Positive Imbalance Energy (Over Deliveries). *[For As-Available Product PIRP Participants only:* In the event that Delivered Energy for such month is equal to or greater than Scheduled Energy for such month, Buyer shall have no payment obligation in respect of the Positive Imbalance Energy. Buyer shall receive all Green Attributes for the Positive Imbalance Energy in such month regardless as to whether it was sold into the CAISO. Seller shall be entitled to all payments or credits from the CAISO to Seller's SC in respect of the Positive Imbalance Energy.] *[For all Non-PIRP Participants:* In the event that Delivered Energy for any CAISO settlement interval is equal to or greater than Scheduled Energy for such CAISO settlement interval, Buyer shall have no payment obligation in respect of the Positive Imbalance Energy. Buyer shall receive all Green Attributes for the Positive Imbalance Energy in such CAISO settlement interval regardless as to whether it was sold into the CAISO. Seller shall be entitled to all payments or credits from the CAISO to Seller's SC in respect of the Positive Imbalance Energy.]
- (b) Negative Imbalance Energy (Under Deliveries). *[For As-Available Product PIRP Participants only:* In the event that Delivered Energy for such month is less than Scheduled Energy for such month, Buyer shall pay Seller, in addition to the Monthly Energy Payment, an amount equal to the product of (i) the Negative Imbalance Energy for the month, times (ii) the lower of the Energy Price (without any TOD Factor correction) or the Imbalance Price (defined below) for the month. Seller shall make all payments to the CAISO in respect of the Negative Imbalance Energy required under the CAISO Tariff. The "Imbalance Price" shall be the monthly average imbalance price applied by the CAISO and paid by the Seller with respect to imbalance charges for participants in PIRP]. *[For all Non-PIRP Participants:* In the event that Delivered Energy for any CAISO settlement interval is less than Scheduled Energy for such CAISO settlement interval, Buyer shall have no payment obligation in respect of the Negative Imbalance Energy. Seller shall make all payments to the CAISO in respect of the Negative Imbalance Energy required under the CAISO Tariff.]
- (c) *[For As-Available Product PIRP Participants only:* Invoicing for Imbalance Energy. For monthly invoicing, Seller and Buyer agree to use the last available Imbalance Price. Beginning with the first months' invoice following the month in which the actual Imbalance Price

becomes available for the applicable month, there shall be a true-up adjustment in the next monthly invoice for the Imbalance Price payable in respect of the Imbalance Energy for the applicable month./

4.3 Additional Compensation. To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Product produced by the Project, including, but not limited to, compensation for *[For FCDS bids: Resource Adequacy or/ Green Attributes,* Seller shall remit all such compensation directly to Buyer; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to transmission upgrades funded by Seller.

4.4 *[Delete and replace with “Reserved” for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement: Energy Sales Prior to Commercial Operation Date.* Prior to Commercial Operation and Seller obtaining EIRP certification for the Project, Buyer shall pay Seller an amount equal to the sum for each hour of the product of 75% of the Monthly Energy Payment in Contract Year 1 multiplied by the TOD Factor multiplied by the test energy delivered by Seller and received by Buyer in each hour at the Delivery Point, so long as such amount is 1MW or more./

ARTICLE FIVE: EVENTS OF DEFAULT; FORCE MAJEURE

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

- (a) with respect to a Party that is subject to the Event of Default the occurrence of any of the following
 - (i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) 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;
 - (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, and except for such Party’s obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 3.1(h)) and such failure is not remedied within thirty (30) days after Notice thereof;
 - (iv) such Party becomes Bankrupt;
 - (v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 13.2; or
 - (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.

(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 to the Delivery Point for sale under this Agreement Energy that was not generated by the Project;

(ii) the failure by Seller to achieve the Commercial Operation Date *[For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement, delete: no later than the end of the Project Cure Period;]*

(iii) the failure by Seller to achieve the Guaranteed Energy Production requirement during any Performance Measurement Period as set forth in Section 3.1(e) of this Agreement;

(iv) the failure by Seller to deliver a Remedial Action Plan that reasonably demonstrates in detail how Seller will achieve the Commercial Operation Date [within the Project Cure Period, if such failure is not remedied within ten (10) days after Notice; *[For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement, delete and replace with "Reserved."]*

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.2 or 8.3 of this Agreement; or

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (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, in each case, in the amount required hereunder within five (5) Business Days after Seller 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) Seller 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.

5.2 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 right (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 and ends the Delivery Term effective as of the Early Termination Date, to accelerate all amounts owing between the Parties, and to collect liquidated damages calculated in accordance with Section 5.3 below (“Termination Payment”); (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) 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.

5.3 Termination Payment. The Termination Payment for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. Except in the case of a termination of this Agreement by the Non-Defaulting Party solely as a result of an Event of Default by the Defaulting Party under Section 5.1(a)(iv) [Bankruptcy], if the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. 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; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. 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 (a) 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, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section 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.

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 12.

5.6 Rights And Remedies Are Cumulative. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 5 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.7 Mitigation. Any Non-Defaulting Party shall be obligated to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

5.8 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party gives Notice and details of the Force Majeure to the other Party as detailed below, then, the Party impacted by Force Majeure shall be excused from the performance of its obligations to the extent impacted. Within forty-eight (48) hours of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Seller shall not substitute Product from any other source for the output of the Project during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Product that Seller fails to Schedule, deliver or provide as a result of Force Majeure during the term of a Force Majeure. This Agreement may be terminated by the non-claiming Party with no further obligation to the Party impacted by Force Majeure if a Force Majeure event prevents the performance of a material portion of the obligations hereunder and such Force Majeure event is not resolved within eight (8) months after the commencement of such Force Majeure event.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment. On or about the tenth (10th) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Buyer shall provide to Seller an invoice covering the services provided in the preceding month determined in accordance with Article 4 (which may include preceding months), with all component charges and unit prices identified and all calculations used to arrive at invoiced amounts described in reasonable detail. Buyer shall pay the undisputed amount of such invoices on or before thirty (30) days after date of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. 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 two (2) Business Days of such resolution along with interest accrued at the Default Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 6.2 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.

6.3 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, including any related damages calculated pursuant to Section 3.1(h), 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.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATION IN RESPECT OF THIRD PARTY CLAIMS OR AS OTHERWISE EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 11.2 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: INSURANCE/ CREDIT AND COLLATERAL REQUIREMENTS

8.1 Insurance. In connection with Seller's performance of its duties and obligations under this Agreement, Producer shall maintain, from the CP Satisfaction date until the end of the term of this Agreement, insurance in accordance with Exhibit E.

8.2 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers Performance Assurance hereunder, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Buyer's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence and during the continuation of an Event of Default by Seller or an Early Termination Date as a result thereof,

Buyer may do any one or more of the following: (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under Law then in effect; (ii) exercise its rights of setoff against such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all or any portion of any Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.3 Performance Assurance.

- (a) Development Period Security and Delivery Term Security. To secure its obligations under this Agreement Seller agrees to deliver to Buyer and maintain in full force and effect for the period set forth below, the following Performance Assurance:

(i) Development Period Security in the amount of *[\$60/kW for intermittent projects , and \$90/kW for baseload projects]* in the form of cash or a Letter of Credit from the Execution Date of this Agreement until the return date specified in Section 8.3(b)(i) below; and

(ii) Delivery Term Security in the amount of *[Insert amount which is 5% of expected total project revenues over the Delivery Term]* in the form of cash or a Letter of Credit from the commencement of the Delivery Term until the return date specified in Section 8.3(b)[(i)/(ii)] below.

Except as set forth in Section 2.2 as it pertains to the Development Period Security, any such Performance Assurance shall not be deemed a limitation of damages.

- (b) Return of Performance Assurance.

(i) Buyer shall promptly return to Seller the unused portion of the Development Period Security after the earlier of (A) the date on which Seller has delivered the Delivery Term Security, and (B) termination of the Agreement by either Party under Section 2.4(b).

(ii) Buyer shall promptly return to Seller the unused portion of the Delivery Term Security after the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

8.4 Interest on Cash. If Seller provides Performance Assurance in the form of cash, Buyer shall pay interest on such cash held as Development Period Security or Delivery Term Security, as applicable, at the Interest Rate. On or before each Interest Payment Date, Buyer

shall transfer the sum of all accrued and unpaid Interest Amounts due to Seller for such security in the form of cash by wire transfer to the bank account specified under “Wire Transfer” in the Cover Sheet.

8.5 Costs of Letter of Credit. If Seller provides Performance Assurance in the form of a Letter of Credit, in all cases, the reasonable costs and expenses of (including but not limited to the reasonable costs, expenses, and attorneys’ fees, including reasonably allocated costs of in-house counsel of the Buyer) establishing, renewing, substituting, canceling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Seller.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any governmental authority (“Governmental Charges”) on or with respect to the Product or the transaction under this Agreement arising prior to and at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the transaction under this Agreement from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller’s payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law.

ARTICLE TEN: REPRESENTATIONS AND WARRANTIES; COVENANTS

10.1 General Representations and Warranties. On the Execution Date and the CP Satisfaction Date, each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
- (b) it has all Governmental Approvals necessary for it to perform its obligations under this Agreement, except for as of the Execution Date (i) CPUC Approval in the case of Buyer, and (ii) all Governmental Approvals necessary to construct, operate and maintain the Project and related interconnection facilities in the case of Seller;
- (c) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not

violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Law;

- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;
- (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (f) except as may be set forth in its reports filed with the SEC, there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and
- (i) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement.

10.2 Seller Representations and Warranties.

- (a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law.

- (b) 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 CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC 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.

10.3 Covenants.

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

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

- (ii) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

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

- (iv) it shall not dispute its status as a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

- (b) Seller Covenants.

- (i) Seller covenants throughout the Delivery Term that it, or its permitted successors or assigns, shall maintain ownership of a fee, easement, long-term leasehold interest, or other similar asset ownership interest in the Project.

- (ii) Seller covenants throughout the Delivery Term that it shall maintain market based rate authority from FERC to sell Product to Buyer under the terms of this Agreement.

- (iii) If at any time during the Delivery Term, Seller’s representations and warranties set forth in Section 10.2 become materially false or misleading, Seller covenants that it shall provide prompt Notice to Buyer describing such default along with a description of its efforts to cure such default.

ARTICLE ELEVEN: TITLE, RISK OF LOSS, INDEMNITIES

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

11.2 Indemnities.

- (a) Indemnity by Seller. Seller shall release, indemnify, defend, and hold harmless Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all actions, suits, losses, costs, damages, injuries, liabilities, claims, demands, penalties and interest, including reasonable costs and attorneys' fees ("Claims") resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product delivered under this Agreement up to and at the Delivery Point, (ii) Seller's development, permitting, construction, ownership, operation and/or maintenance of the Project, (iii) the failure by Seller or the failure of the Project to comply with applicable Law, including without limitation the CAISO Tariff, (iv) any Governmental Charges for which Seller is responsible hereunder, or (v) any liens, security interests, encumbrances, or other adverse claims against the Product delivered hereunder made by, under, or through Seller, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Buyer, its Affiliates, and its and their directors, officers, employees, agents, and representatives.
- (b) Indemnity by Buyer. Buyer shall release, indemnify, defend, and hold harmless Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives against and from any and all Claims resulting from, or arising out of or in any way connected with (i) any event, circumstance, act, or incident relating to the Product received by Buyer under this Agreement after the Delivery Point, (ii) the failure by Buyer to comply with applicable Law, including without limitation the CAISO Tariff, or (iii) any Governmental Charges for which Buyer is responsible hereunder, in all cases including, without limitation, any Claim for or on account of injury, bodily or otherwise, to or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such Claim to the extent caused by the willful misconduct or gross negligence of Seller, its Affiliates, and its and their directors, officers, employees, agents, and representatives.

ARTICLE TWELVE: DISPUTE RESOLUTION

12.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Article 12. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of the dispute resolution procedure set forth in this Article 12.

12.2 Management Negotiations.

- (a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "Manager"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies that have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.
- (b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) days from the Referral Date, to meet. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.
- (c) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.
- (d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 12.2(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a) above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

12.3 Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 12.2 above shall be resolved through binding arbitration by a retired judge or justice from the AAA panel conducted in San Diego, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration").

- (a) Any arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable arbitrator, the arbitrator shall be appointed as provided for in AAA's Commercial Arbitration Rules.
- (b) At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.
- (c) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.
- (d) The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.
- (e) The arbitrator's award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.
- (f) Judgment on the award may be entered in any court having jurisdiction.

- (g) The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.
- (h) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before the arbitrator.
- (i) The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.
- (j) The existence, content, and results of any Arbitration hereunder is confidential information that is subject to the provisions of Section 13.1.

ARTICLE THIRTEEN: MISCELLANEOUS

13.1 Confidentiality.

- (a) General. Neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party's Affiliates and its and their officers, directors, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 13.1(b) of this Agreement; (v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 13.1(a) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts to prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, 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.

- (b) RPS Confidentiality. Notwithstanding Section 13.1(a) of this Agreement, at any time on or after the Execution Date, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, Delivery Term, Project location, Contract Capacity, anticipated Commercial Operation Date, Contract Quantity, *[For existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement, delete: progress of each Milestone]*, and Delivery Point.
- (c) Publicity. Except as otherwise agreed to in this Section 13.1 above, no announcement, publicity, advertising, press release, promotional or marketing materials regarding the arrangement contemplated under this Agreement, including the existence hereof, shall be made by either Party without the prior written approval of the other Party which approval shall not be unreasonably withheld or delayed.

13.2 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld. For purposes hereof, the transfer of more than fifty percent (50%) of the equity ownership or voting interest of Seller (or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or voting interest of Seller if such interest constitutes more than twenty percent (20%) of the fair market value of the assets of such parent entity) to a person that is not an Affiliate of Seller shall also constitute an assignment of this Agreement requiring Buyer's prior written consent. Notwithstanding the foregoing, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers. In connection with any financing or refinancing of the Project by Seller, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement in substantially the same form as Exhibit F.

13.3 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy or Scheduled Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Default Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived except to the extent any misinformation was from a third party not Affiliated with any Party and such third party corrects its information after such twelve-month period. In addition, Buyer shall have the right, at its sole expense and during normal working hours, to examine the records of Seller to the extent reasonably necessary to verify Seller's compliance with its representations and warranties set forth in Section 10.2.

13.4 Sarbanes-Oxley and SEC Requirements. The Parties acknowledge that accounting principles generally accepted in the United States of America ("GAAP") and SEC

rules require Buyer and its independent auditor to evaluate whether Buyer must consolidate Seller's financial information (but not financial information of Seller's constituent members unless deemed to be included in the entity under GAAP). Buyer will require access to certain records, including but not limited to financial records, and personnel of Seller to determine if consolidated financial reporting is required. If Buyer and its independent auditor determine at any time that the Buyer must consolidate the Seller's financial statements to comply with GAAP and/or SEC rules regarding consolidated financial reporting, then:

(a) Buyer shall require from Seller and Seller agrees to provide to Buyer the following during the Term of this Agreement:

(i) Unaudited financial statements of the Seller prepared in accordance with GAAP as of the end of the quarterly period. The financial statements should include quarter to date and year to date information and are to be provided within fifteen (15) calendar days of the end of the applicable reporting period (or the Business Day thereafter);

(ii) Unaudited financial schedules of the Seller, as deemed necessary for Buyer to prepare its consolidated financial statements and related footnotes to the financial statements in accordance with GAAP as of the end of the quarterly period. The financial schedules should include quarter to date and year to date information underlying the financial statements and footnotes to the financial statements and are to be provided within fifteen (15) calendar days of the end of the applicable reporting period (or the Business Day thereafter);

(iii) Access to Seller's accounting and other records, and accounting and management personnel as reasonably determined by both Buyer and Seller so that (A) Buyer's independent auditor or its internal auditors may conduct financial audits (in accordance with the standards of the Public Company Accounting Oversight Board (United States)) as well as internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002) and (B) Buyer can be provided analytical information, as needed, to enable Buyer to meet its SEC filing requirements, including but not limited to those under Item 2 on Form 10-Q, and Item 7 on Form 10-K, "Management's Discussion and Analysis of Financial Condition and Results of Operations;"

(iv) Upon the request of Buyer, such certifications by a duly authorized representative(s) of Seller as may be reasonably requested by Buyer (which certifications shall presumptively be reasonable if the certifications are substantially identical to those required by Buyer or its parent of business units of Buyer or its parent); and

(v) As reasonably requested by Buyer, such information or schedules, similar to the items noted in clauses (i)-(iv) above, to enable Buyer to prepare consolidated financial statements and schedules as may be required for Buyer to obtain financing or to prepare other reports as required by regulatory bodies, such as the SEC, for periods other than as of the end of the monthly, quarterly or year to date periods then ended.

(b) If Buyer (i) in its sole discretion determines that the financial statements of the Seller would be considered material to the Buyer or its parent company's financial statements, financial condition, or

internal controls over financial reporting, and (ii) reasonably determines Seller's internal controls over financial reporting are not operating effectively or have resulted in a control deficiency, Buyer shall provide Notice to Seller. Upon receipt of such Notice, Seller will have thirty (30) days to remediate any deficiency in Seller's internal controls over financial reporting identified by the Buyer, which Buyer and Buyer's independent auditor deem to be necessary to ensure Seller's internal controls over financial reporting are adequate, during or as a result of the audits permitted under Section 13.4(a)(iii) or any other.

- (c) As soon as possible, but in no event later than two (2) Business Days following any occurrence that would affect Seller in any material way, Seller shall provide to Buyer a Notice describing such occurrence in sufficient detail to permit the Buyer to file a report on SEC Form 8-K. Such occurrences include all reportable events on the then current Form 8-K that applies to Buyer and its parent company at such time, including but not limited to a material acquisition or disposition of assets, a material direct financial obligation or off-balance sheet financing arrangement, material litigation, and the execution or termination of a material contract.
- (d) Any information provided to Buyer shall be treated as confidential except that it may be disclosed in connection with the preparation, review, certification and publication of Buyer's financial statements.
- (e) Seller shall notify Buyer at any time during the term of this Agreement of any services provided or proposed to be provided to Seller by Buyer's independent auditor. Seller, and any of Seller's Affiliates, are prohibited from engaging Buyer's independent auditor for any services or in any consulting agreement without the express written consent of partner in charge of Buyer's independent audit.

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

13.6 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

13.7 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

13.8 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.

13.9 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.

13.10 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent provided for herein, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party's successors and permitted assigns.

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

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

13.13 Notices. Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified in herein; provided, however, that notices of Outages or other Scheduling or dispatch information or requests, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Invoices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or

such earlier time as is confirmed by the receiving Party. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a Schedule or Dispatch Order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

13.14 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in 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 agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956).

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

[_____]
a [_____]

SAN DIEGO GAS & ELECTRIC COMPANY
a California corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit A

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

PROJECT DESCRIPTION [Project shall have no shared facilities, including interconnections, generation interties, or meters, with any other projects.]

Project name: _____

Project Site name: _____

Project physical address: _____

Longitude: _____ **Latitude:** _____

Total number of electric generating units at the Project (all must be committed to Buyer): _____

Technology Type: _____

Point of Interconnection of the Project (Substation and PNode): _____

The term “Site” as defined in the Agreement means the following parcel description upon which the Project is located:

[INSERT MAP]

The nameplate capacity of the Project is: _____.

[For Excess Sales bids: include details on onsite load estimates and meter configuration (if CAISO meter reflects subtraction of customer onsite load from Project output.)

[For solar, please include the following information. For other technologies, similar project specifications as applicable] The electric generating units utilized as generation assets as part of the Project are described below:

Project Specifications	
<u>Project Size (MWdc)</u>	
<u>Mounting technology</u>	
<u>Module model</u>	
<u>Module size (W)</u>	
<u>Number of modules</u>	
<u>Inverter model</u>	
<u>Inverter size (kW)</u>	
<u>Number of inverters</u>	
<u>Medium voltage transformer (M.V.T.) size</u>	
<u>Number of M.V.T.s</u>	
<u>Step-up transformer (S.T.) size</u>	
<u>Number of S.T.s</u>	

Exhibit B [Delete and replace with “Reserved” for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement.]

MILESTONE SCHEDULE

<i>No.</i>	<i>Date</i>	<i>Project Name</i>
1.		Obtains control of all lands and rights-of-way comprising the Site.
2.		Files a CEC Pre-Certification and Verification application.
3.		Receives a completed [Phase II Interconnection Study Report] [interconnection system impact study]
4.		Completes a comprehensive resource assessment.
5.		Files permitting application with appropriate agency(ies).
6.		Executes interconnection agreement and/or transmission agreement.
7.		Receives permitting approval(s)
8.		Receives FERC acceptance of interconnection agreement and transmission agreement(s).
9.		Executes a supply contract.
10.		Executes an Engineering, Procurement and Construction (“EPC”) contract.
11.		Completes financing.
12.		Delivers full NTP under EPC contract and begins construction of the Project.
13.		Executes Meter Service Agreement and Participating Generator Agreement.
14.		Achieves initial operation.
15.		Receives all Governmental Approvals necessary to achieve Commercial Operation.
16.		Receives CEC Certification and Verification.

Exhibit C

FORM OF LETTER OF CREDIT

[DATE]

To: [Name and Address of Secured Party]

Re: Our Irrevocable Standby Letter of Credit No. _____
In the Amount of US _____

Gentlemen:

We hereby open our irrevocable standby Letter of Credit Number _____ in favor of [name of Secured Party] (“Secured Party”), by order and for account of [name of Account Party] (“Account Party”), [address of Account Party], available at sight upon demand at our counters, at [location] for an amount of US\$ _____ [amount spelled out and xx/100 U.S. Dollars] against presentation one of the following documents:

1- Statement signed by a person purported to be an authorized representative of Secured Party stating that: “San Diego Gas & Electric Company (“Secured Party”) is entitled to draw under this Letter of Credit under the terms of the Power Purchase Agreement between Secured Party and [insert name] (“Account Party”) dated _____, as may be amended (the “PPA”) or Account Party is in default under the terms of the PPA (whether by failure to perform or pay any obligation thereunder or by occurrence of a “default”, “event of default” or similar term as defined in such agreement, any other agreement between Secured Party and Account Party, or otherwise). The amount due to Secured Party is U.S. \$ _____.”

or

2- Statement signed by a person purported to be an authorized representative of Secured Party stating that: “[name of Account Party] (“Account Party”) has forfeited all or part of its Development Period Security as set forth and defined in the Power Purchase Agreement between Secured Party and Account Party dated _____. The amount due to Secured Party, whether or not a default has occurred, is U.S. \$ _____.”

or

3- Statement signed by a person purported to be an authorized representative of Secured Party stating that: “as of the close of business on [insert date, which is less than 60 days prior to the expiration date of the Letter of Credit] you have provided written notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Secured Party, whether or not a default has occurred, is U.S. \$ _____.”

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Account Party.
- Partial and multiple drawings are permitted.
- Fax of Document 1 or 2 above acceptable.

This Letter of Credit expires on _____ at our counters.

We hereby engage with Secured Party that upon presentation of a document as specified under and in compliance with the terms of this Letter of Credit, this Letter of Credit will be duly honored in the amount stated in Document 1 or 2 above. If a document is so presented by 1:00 pm on any New York banking day, we will honor the same in full in immediately available New York funds on that day and, if so presented after 1:00 pm on a New York banking day, we will honor the same in full in immediately available New York funds by noon on the following New York banking day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication No. 600 ("UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

[Name of Bank]

Authorized Signature(s)

Exhibit D *Delete and replace with "Reserved" for existing Project in operation for which CPUC Approval is all that is needed for effectiveness of the Agreement*

COMMERCIAL OPERATION CERTIFICATE

The undersigned, _____ (“EPC Contractor”), _____ (“[] Renewable Generation Equipment Supplier”), _____ (“Licensed Professional Engineer”) and [] (“Owner”) make the following certifications to San Diego Gas & Electric Company (“SDG&E”), dated as of _____. All capitalized terms not otherwise defined herein shall have the meaning given to them in the Power Purchase Agreement dated _____ between Owner and SDG&E (the “Agreement”).

[Renewable Generation Equipment] Supplier hereby certifies that:

1. The [] comprising the Project have been erected and installed at the project site and have been commissioned as required under the Supply and Installation Agreement (“[] Supply Agreement”) dated as of _____, by and between [] Supplier and Owner and each such [] has passed the performance testing required to be performed pursuant to the [] Supply Agreement.
2. The Warranty Period under the Warranty Agreement (“Warranty Agreement”) dated as of _____, by and between [] Supplier and Owner has commenced.

EPC Contractor hereby certifies that:

All requirements necessary to achieve [Commercial Operation/Substantial Completion] as set forth in the agreement between the EPC Contractor and Owner dated _____ (“EPC Contract”) have been completed and the Project has successfully passed all performance tests at a level that demonstrates satisfaction of at least the [minimum performance guarantees].

Owner hereby certifies that:

1. Except for punch list items that would not materially affect the performance, reliability or safe operation of the Project, the Project has been completed in accordance with all applicable specifications and is ready for continuous commercial operation in compliance with all applicable laws and governmental approvals. The Project has successfully passed all performance tests at a level that demonstrates satisfaction of at least the [insert minimum performance guarantees], and complete test reports have been submitted to Buyer.
2. The Operation and Maintenance Agreement (O&M Agreement), by and between Owner and _____ dated as of _____ has commenced.

3. Owner has a valid leasehold or real property interest in the Project Site for a term of at least [] years from the Commercial Operation date.
4. The interconnection facilities have been completed in accordance with applicable specifications, tariffs, laws and governmental approvals to enable power generated by the Project to be received at the Delivery Point.
5. Owner has obtained all governmental approvals necessary for the continuous commercial operation of the Project and the Project is in compliance with all such governmental approvals and all other applicable laws.

Licensed Professional Engineer certifies that:

1. We have read the Agreement, the [] Supply Contract, and the EPC Contract and we understand the requirements for Commercial Operation under the Agreement, the specifications and performance testing requirements under the [] Supply Contract, and the requirements for [Commercial Operation/Substantial Completion] under the EPC Contract.
2. We have reviewed the material and data made available to us by the Owner, the [] Supplier, and the EPC Contractor for the Project.
3. To the extent practical, we have reviewed the engineering, procurement, construction and performance testing for the Project and in the course of this review we have not discovered any material errors or omissions in the work performed to date.
4. We have reviewed the certificates of Owner, [] Supplier, and EPC Contractor above, and find the representations provided to be correct in all material respects.
5. We have reviewed all Governmental Approvals and permits identified by the Owner as being required for the construction and operation of the Project and are of the opinion that the Project as completed is in compliance in all material respects with the environmental and technical requirements contained therein.
6. Based on our review of the aforementioned information and of information provided to us by others which we have not independently verified, we are of the opinion that, as of, Commercial Operation has occurred as defined in the Agreement.
7. The Project is the Contract Capacity as stated in Section 3.1(f).

Executed this ___ day of ___, 200_

[_____] **RENEWABLE
GENERATION EQUIPMENT SUPPLIER**
*[Name of [_____] Renewable Generation
Equipment Supplier]*
a _____ corporation

By: _____
Name:
Title:

EPC CONTRACTOR
[Name of EPC Contractor]
a _____ corporation

By: _____
Name:
Title:

OWNER
[Name of Owner]
a _____ limited liability company

By: _____
Name:
Title:

LICENSED PROFESSIONAL ENGINEER:
[Name of Licensed Professional Engineer]
a _____

By: _____
Name:
Title:

ACCEPTED BY SAN DIEGO GAS & ELECTRIC COMPANY

By: _____
Name: _____
Title: _____
Date: _____

Exhibit E

INSURANCE

In connection with Seller's performance of its duties and obligations under this Agreement, Seller shall maintain, from the CP Satisfaction Date until the end of the term of this Agreement, general liability insurance with a combined single limit of not less than Two million dollars (\$2,000,000) for each occurrence.

Such general liability insurance shall include coverage for "Premises-Operations, Owners and Contractors Protective, Products/Completed Operations Hazard, Explosion, Collapse, Underground, Contractual Liability, and Broad Form Property Damage including Completed Operations."

The general liability insurance required herein shall, by endorsement to the policy or policies, (a) include Buyer as an additional insured; (b) contain a severability of interest clause or cross-liability clause; (c) provide that Buyer shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for payment of premium for such insurance; and (d) provide for thirty (30) calendar days' written notice to Buyer prior to cancellation, termination, alteration, or material change of such insurance.

Evidence of the insurance required herein shall state that coverage provided is primary and is not in excess to or contributing with any insurance or self-insurance maintained by Buyer.

Seller agrees to furnish the required certificates and endorsements to Buyer prior to initial deliveries of test energy. Buyer shall have the right to inspect or obtain a copy of the original policy or policies of insurance.

If Seller is self-insured with an established record of self-insurance, Seller may comply with the following in lieu of the third party insurance if:

- (a) Seller shall provide to Buyer, at least thirty (30) calendar days prior to the date of initial deliveries of test energy, evidence of an acceptable plan to self-insure to a level of coverage equivalent to that required by third party insurance providers as stated herein.
- (b) If Seller ceases to self-insure to the level required hereunder, or if Seller is unable to provide continuing evidence of Seller's ability to self-insure, Seller agrees to immediately obtain the third party insurance coverage required hereunder.

All insurance certificates, statements of self insurance, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued, clearly labeled with agreement ID number and submitted to the following:

San Diego Gas & Electric Company
Attention: Director, Procurement and Portfolio Design
Address: 8315 Century Park Court, CP21D
City: San Diego, CA 92123

Exhibit F

CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent”) is entered into as of [Date] among San Diego Gas & Electric Company (“SDG&E”), [_____] (the “Assignor”), and [Name of Lender/Agent for the Financing Parties] (the “Assignee”).

RECITALS

WHEREAS, pursuant to the RAM Power Purchase Agreement made as of [Date] (the “Assigned Agreement”), between the Assignor and SDG&E, SDG&E has agreed to purchase output from the Assignor’s [_____] MW [_____] electric generating facility] (the “Project”) as further specified in therein;

WHEREAS, pursuant to a [Security Agreement] dated as of [Date] (the “Security Agreement”), the Assignor has granted to the Assignee a lien on and a security interest in, to and under all of its right, title and interest in the Assigned Agreement, as collateral security for the Assignor’s obligations under that certain [Credit Agreement] dated as of the date of the Security Agreement among the Assignor, [_____] (“Lenders”) and the related financing documents (the “Credit Agreement” and collectively, the “Financing Documents”) pursuant to which the Lenders have agreed to loan funds to the Assignor in connection with the Project.

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

Section 1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

Section 2. Consent to Assignment.

(a) Under the terms and conditions set forth in this Consent, SDG&E hereby consents to (i) the assignment by the Assignor of all its right, title and interest in, to and under the Assigned Agreement to the Assignee, as collateral security for the obligations as and to the extent provided in the Security Agreement, and (ii) the assignment by the Assignor to any transferee or assignee of, or successor to, the Assignee (provided that any transferee or nominee satisfies the requirements of Article 8 (*credit support*) of the Assigned Agreement and is otherwise a Qualified Transferee. “Qualified Transferee” shall mean any transferee or assignee of, or successor to, the Assignee that (x) has (or has entered into contracts for the provision of services with an entity that has) substantial experience in the construction and/or operation of [wind/geothermal/solar generating facilities] of a type similar to the Project and (y) has the financial capability to perform under the Assigned Agreement (taking into account the fact that such transferee or nominee may be a special purpose vehicle whose sole asset may be the Project), in each case as reasonably determined by SDG&E.

(b) The Assignor agrees that it shall remain liable to SDG&E for all obligations of the Assignor under the Assigned Agreement, notwithstanding the collateral assignment contemplated in the Security Agreement.

(c) If the Assignee elects to exercise its remedies under the Security Agreement to foreclose on its lien in the Assigned Agreement, the Assignee shall notify SDG&E pursuant to Section 6(f) of this Consent. Upon completion of such foreclosure, the Assignee (or its permitted assignee or transferee or successor thereof) (i) shall be entitled to all of the benefits of the Assigned Agreement, (ii) shall assume in writing and be liable for each and every duty, obligation and liability of the Assignor under the Assigned Agreement, including but not limited to the duties and obligations that arose or accrued prior to the date of execution of this Consent, and (iii) shall cure any and all then existing Seller Events of Default that have arisen prior to the date of the assumption of the Assigned Agreement by Assignee (or its permitted assignee or transferee or successor thereof) except for any Seller Events of Default that, by their nature, are not capable of being cured by Assignee (or its permitted assignee or transferee or successor thereof).

Section 3. Representations and Warranties. SDG&E hereby represents and warrants to the Assignee that, as of the date of this Consent:

(a) The execution and delivery by SDG&E of the Assigned Agreement and this Consent, and the performance by SDG&E of its obligations under the Assigned Agreement and this Consent, have been duly authorized by all necessary corporate action, and do not and will not require any further consents or approvals which have not been obtained, or violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any material agreement presently in effect with respect to or binding upon SDG&E.

(b) All government approvals necessary for the execution and delivery by SDG&E of the Assigned Agreement and this Consent, and the performance by SDG&E of its obligations under the Assigned Agreement and this Consent, have been obtained and are in full force and effect.

(c) This Consent and the Assigned Agreement have been duly executed and constitute legal, valid and binding obligations of SDG&E, enforceable against it in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency or similar laws of general application relating to the enforcement of creditors' rights generally or by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law, or by principles of public policy.

(d) To the knowledge of SDG&E, the Assignor is not in default under any material covenant or obligation under the Assigned Agreement, and no events have occurred that, with the giving of notice or the passage of time, would constitute a default by the Assignor under the Assigned Agreement, and the Assigned Agreement is in full force and effect and has not been amended.

Section 4. Consent and Agreement.

SDG&E and the Assignor hereby agree that, so long as any obligations of the Assignor under the Credit Agreement and the Security Agreement remain outstanding:

(a) No Material Amendments. SDG&E and the Assignor will not enter into any material amendment, supplement or other modification of the Assigned Agreement (an “Amendment”) until after the Assignee has been given at least fifteen (15) Business Days’ prior written notice of the proposed Amendment by the Assignor (a copy of which notice will be provided to SDG&E by the Assignor), and will not then enter into such Amendment if SDG&E has, within such fifteen (15) Business Day period, received a copy of (a) the Assignee’s objection to such Amendment or (b) the Assignee’s request to the Assignor for additional information with respect to such Amendment.

(b) Notices of Default and Right to Cure.

(i) SDG&E shall deliver to the Assignee at the address set forth on the signature pages hereof, or at such other address as the Assignee may designate in writing from time to time to SDG&E, concurrently with the delivery thereof to the Assignor, a copy of each notice of default under the Assigned Agreement. Notwithstanding anything to the contrary contained in the Assigned Agreement, such notice shall be coupled with an opportunity to cure any such default within the longer of the cure period available to the Assignor in the Assigned Agreement or thirty (30) days after notice thereof (except with respect to payment defaults, which cure must be made within five (5) Business Days after the last day of the cure period available to the Assignor in the Assigned Agreement with respect to payment defaults), such cure period shall commence upon receipt of notice by the Assignee). If possession of the Facility is necessary to cure any Default by the Assignor under the Assigned Agreement, and the Assignee commences foreclosure proceedings against the Assignor, the Assignee will be allowed an additional sixty (60) days to complete such proceedings. In order for the Assignee to cure a default under Section 5.1(d) of the Assigned Agreement, the Assignee shall secure, as soon as reasonably practical after such default, an order from the court (the “Bankruptcy Court”) administering the proceeding under which the Assignor is a debtor in a proceeding under Title 11 of the United States Code, as amended (the “Bankruptcy Code”) in a form reasonably acceptable to SDG&E which authorizes (a) the Assignor to pledge collateral to secure the Assignor’s obligations under the Assigned Agreement (whether by the maintenance or provision of a Letter of Credit or otherwise) whether such obligations arose prior or following the Section 5.1(d) default of the Assigned Agreement, (b) the right of SDG&E to terminate the Assigned Agreement upon a subsequent default and expiration of cure periods described herein with respect to the Assignor (including, without limitation, the conversion of a case under Chapter 11 of the Bankruptcy Code to a case under Chapter 7 of the Bankruptcy Code), and to exercise rights of netting or setoff of obligations upon such termination, in each case without regard to Section 362 of the Bankruptcy Code and without regard to whether the amounts to be netted or setoff were incurred pre-petition or post-petition, (c) that the rights of SDG&E specified in the foregoing clause (b) not be subject to being modified, stayed, avoided or otherwise limited by any further order of the Bankruptcy Court or any court proceeding under the Bankruptcy Code, and (d) the assumption by Assignor of the Assigned Agreement (a “Bankruptcy Order”). It being further understood that if such Bankruptcy Order is not timely obtained, Buyer shall have

the right to declare an Early Termination Date in accordance with Article 5 of the Assigned Agreement.

(ii) Except to the extent that automatic cancellation, suspension or termination occurs pursuant to the Assigned Agreement, no cancellation, suspension or termination of the Assigned Agreement by SDG&E, shall be binding upon the Assignee without such notice and the opportunity to cure during the applicable extended cure periods specified in this Section 4(b). If the Assignee fails to cure or rectify the effect of a default within the extended cure periods specified in this Section 4(b), SDG&E shall have all its rights and remedies with respect to such default, action or omission as set forth in the Assigned Agreement.

(c) Payments to Designated Account. The Assignor and SDG&E acknowledge and agree that all payments to be made by SDG&E to the Assignor (if any) under the Assigned Agreement shall be made in lawful money of the United States of America in immediately available funds, to the following account:

[name and details for account designated by the Assignee]

or to such other person or entity and/or at such other address as the Assignee may from time to time specify in writing to SDG&E. In making such payments, SDG&E shall be entitled to rely conclusively on instructions that it may receive from time to time from the Assignee without any duty to make inquiry into the authority of the Assignee to give such instructions or the authenticity of any signatures placed upon such instructions.

Section 5. Damages Limitation. **NO PARTY SHALL BE LIABLE TO ANY OTHER PARTY UNDER THIS CONSENT FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, REMOTE, OR SPECULATIVE DAMAGES OR LOST PROFITS.**

Section 6. Miscellaneous.

(a) This Consent shall be binding upon the successors and permitted assigns of each party and shall inure, together with the rights and remedies of the Assignee hereunder, to the benefit of the successors and permitted assigns of the parties hereto, including the Financing Parties and their respective permitted successors, transferees and assigns.

(b) No amendment or waiver of any provisions of this Consent or consent to any departure by any party hereto from any provisions of this Consent shall in any event be effective unless the same shall be in writing and signed by the Assignee and SDG&E.

(c) This Consent shall be governed by, and construed under, the laws of the State of California applicable to contracts made and to be performed in such State and without reference to conflicts of laws. The parties hereto agree that any legal action or proceeding arising out of this Consent may be brought in the courts of the State of California, in and for the County of San Diego, or of the United States of America for the Southern District of California. By execution and delivery of this Consent, the parties hereto accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. The parties hereto irrevocably consent 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 airmail, postage prepaid, to the Assignee, SDG&E and the Assignor, as the case may be, at their respective addresses for notices as specified herein and that such service shall be effective five (5) business days after such mailing. Nothing herein shall affect the right to serve process in any other manner permitted by law or the right of the Assignee or SDG&E to bring legal action or proceedings in any other competent jurisdiction. The parties hereto hereby waive any right to stay or dismiss any action or proceeding under or in connection with any or all of this Consent or the transactions contemplated hereby brought before the foregoing courts on the basis of *forum non-conveniens*.

(d) EACH OF SDG&E, THE ASSIGNEE AND THE ASSIGNOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CONSENT AND AGREEMENT.

(e) This Consent may be executed in one or more counterparts with the same effect as if such signatures were upon the same instrument. This Consent may be delivered by facsimile transmission.

(f) All notices to be given under this Consent shall be in writing and shall be delivered personally, sent by certified mail return receipt requested or registered first-class mail, postage prepaid, or sent by facsimile, or courier to the intended recipient at its address as set forth on the signature pages below, and all payments to be made under this Consent shall be made by wire transfer of immediately available funds or check representing immediately collectible funds to the account or address of the intended recipient as set forth on the signature pages hereto, unless the recipient has given notice of another address or account for receipt of notices or payments.

(g) This Consent shall terminate in its entirety upon the earlier of (i) the indefeasible payment in full in cash of all obligations of the Assignor under the Credit Agreement, and (ii) the termination of the Credit Agreement in accordance with the terms thereof and the terms of this Consent. The Assignee agrees to give prompt written notice to the Assignor and SDG&E of the occurrence of either such event.

(h) The captions or headings at the beginning of each Section of this Consent are for convenience only and are not a part of this Consent.

IN WITNESS WHEREOF, each of SDG&E, the Assignee and the Assignor has duly executed this Consent and Agreement as of the date first above written.

SAN DIEGO GAS & ELECTRIC
COMPANY

By: _____
Name:
Title:

[Address for Notices:]

[ASSIGNOR]

By: _____
Name:
Title:

[Address for Notices:]

[ASSIGNEE]

By: _____
Name:
Title:

[Address for Notices:]

San Diego Gas & Electric Advice Letter 2547-E
November 22, 2013

PUBLIC APPENDIX E

SAN DIEGO GAS & ELECTRIC

Independent Evaluator Report on the
May 2013 Renewable Auction
Mechanism

November 12, 2013

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FOREWORD

PA Consulting Group, Inc. ("PA") served as the Independent Evaluator ("IE") for the San Diego Gas & Electric ("SDG&E") May 2013 Renewable Auction Mechanism ("RAM") solicitation. This report provides PA's evaluation of the process from the drafting of the Request for Offers ("RFO") through to the recommendation of selected bids to the California Public Utilities Commission ("CPUC" or "Commission").

This report contains confidential and/or privileged materials. Review and access are restricted subject to PUC Sections 454.5(g), 583, d.06-06-066, GO 66-C and the Confidentiality Agreement with the CPUC.

This report addresses the CPUC Independent Evaluator Report Template as summarized below:

Item	CPUC Independent Evaluator Report Template (Short Form)	PA Report Section
1	Describe in detail the role of the IE throughout the solicitation and negotiation process.	Section 2
2	How did the IOU conduct outreach to bidders, and was the solicitation robust?	Section 3.1
3	Was the outreach sufficient and materials clear such that the bids received met the needs the solicitation was intending to fill?	Section 3.2
4	Please evaluate the fairness of the IOU's bidding and selection process. (i.e., quantitative and qualitative methodology used to evaluate bids, consistency of evaluation methods with criteria specified in bid documents, etc.)	Section 4
5	If applicable, describe safeguards and methodologies employed by the IOU to compare affiliate bids or UOG ownership proposals. If a utility selected a bid from an affiliate or a bid that would result in utility asset ownership, explain and analyze whether the IOU's selection of such bid(s) was appropriate.	Section 5
6	Based on the complete bid process, are the IOU contracts the best overall offers received by the IOU?	Section 6
7	If the contract does not directly reflect a product solicited and bid in an RFO, is the contract superior to the bids received on the products solicited in the RFO? Explain.	Section 7
8	Is the contract a reasonable way of achieving the need identified in the RFO?	Section 8
9	Based on your analysis of the RFO bids, the bid process, and the overall market, does the contract merit Commission approval? Explain.	Section 9
10	Based on the complete bid process, should some component(s) be changed to ensure future RFOs are fairer or provide a more efficient, lower cost option?	Section 10

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1 INTRODUCTION

SDG&E launched its May 2013 RAM solicitation with the RFO issued May 20, 2013 and bids due June 28, 2013. This RAM RFO represents SDG&E's fourth simplified auction style RFO. Background on the RAM program as well as SDG&E's specific RAM RFO process is provided in this section.

1.1 RAM Background

To promote small-scale renewable development (i.e., 20 MW or less) and supplement California's Renewable Portfolio Standard ("RPS") as well as other related factors, the CPUC in Decision (D.) 10-12-048 ("RAM Decision") issued on December 17, 2010 and Resolution E-4414 ("RAM Resolution") issued on August 22, 2011 approved and implemented RAM, a new auction based procurement mechanism for the three investor-owned utilities ("IOUs"): Pacific Gas and Electric Company ("PG&E"), Southern California Edison ("SCE"), and SDG&E.

The RAM Decision authorized the IOUs to procure eligible renewable resources located in the service territories of PG&E, SCE and SDG&E for the following three product categories:

☐☐☐ **Baseload products:** generation resources that produce energy around-the-clock

☐☐☐ **Peaking As-Available products:** generation resources whose energy production follows the IOU's hourly load profile during daytime hours

☐☐☐ **Non-peaking As-Available products:** generation resources whose energy production follows IOU's off peak hours, usually during the evening hours

Each of the three IOUs filed advice letters with the CPUC to implement the RAM program details that the CPUC approved, with several modifications regarding generators' eligibility as well as the overall RAM process. Some of these requirements are listed below:

☐☐☐ IOUs shall hold auctions every six months, with the first auction closing no later than November 15, 2011 and the second auction closing no later than May 31, 2012.

☐☐☐ IOUs shall solicit capacity from each product category: baseload, peaking as-available, and non-peaking as-available; SDG&E shall solicit a minimum of three MW from each product category.

☐☐☐ IOUs may procure plus or minus 20 MW of the capacity required in each product category as long as the total capacity procured in each auction is plus or minus 20 MW.

☐☐☐ IOUs shall allow contract term lengths of 10, 15, and 20 years.

1.2 Changes for the May 2012 RAM

Pursuant to Resolution E-4489 and Decision D.12-02-022¹, the CPUC required certain changes to SDG&E's May 2012 RAM RFO and RAM Power Purchase Agreement (PPA) as compared to SDG&E's

¹ Resolution E-4489 issued on April 19, 2012 approved proposed changes to the RAM for PG&E, SCE, and SDG&E. Specifically, this resolution modified the Buyer's termination right related to commercial operation deadlines and created an option for either bids with energy-only or full capacity deliverability status; Decision 12-02-022 approved SDG&E's request to merge its Solar Energy Program ("SEP") obligation to procure 74 MWs of solar photovoltaic generation pursuant to power purchase agreements, with its RAM obligation to procure 81 MWs of renewable generation. As a result, SDG&E filed Advice Letter 2232-E-D which officially increased SDG&E's total RAM obligation from 81 to 155 MWs in order to incorporate the SEP capacity into its RAM program.

2011 RAM solicitation. In compliance, SDG&E incorporated the following specific changes as well as other non-substantive changes to the RAM RFO materials²:

- ☐☐☐ Increased the deadline by which producers must bring their projects online from 18 months to 24 months after the date of Commission approval
- ☐☐☐ Revised the RAM PPA to include optional provisions that can be tailored for either energy only or Full Capacity Deliverability Status ("FCDS") projects. The PPA does not require the seller to achieve FCDS as a condition precedent to the effectiveness of the contract, but it does provide a deadline by which FCDS projects must obtain FCDS. SDG&E will pay the seller a price that is discounted by the value of FCDS until the project achieves FCDS, which shall be no later than January 1, 2022. Once the seller achieves FCDS, it will receive a price that includes the value of FCDS
- ☐☐☐ Included a methodology to consider the resource adequacy benefits and the cost of deliverability upgrades in its RAM RFO
- ☐☐☐ Increased the total obligation to 155 MW, which reflects the merging of SDG&E Solar Energy Program ("SEP") obligation to procure 74 MW of solar photovoltaic generation pursuant to power purchase agreements with its RAM obligation to procure 81 MW of renewable generation

1.3 Changes for the November 2012 RAM

Pursuant to Resolution E-4546³, the CPUC required certain changes to SDG&E's November 2012 RAM RFO and RAM Power Purchase Agreement (PPA) as compared to SDG&E's previous RAM solicitations. In compliance, SDG&E incorporated the following specific changes as well as other non-substantive changes to the RAM RFO materials⁴:

- ☐☐☐ An existing facility may participate in RAM without restriction if the existing facility is not currently delivering energy pursuant to an existing contractual agreement with SDG&E, PG&E or SCE, or if such an agreement exists but it is scheduled to terminate within 24 months of the proposed effective date of the utility's PPA from that RAM auction, as estimated by that utility's RAM Bidding Protocol (e.g., April 12, 2013)
- ☐☐☐ Zero payment for a project's output during any hour in excess of 110% of the maximum possible output from the project's contracted capacity and reduced payment at 75% of the PPA price for each MWh of delivered energy from a RAM project in excess of 115% of the annual generation of the project's contracted annual generation deliveries
- ☐☐☐ Sellers may not procure resource adequacy benefits from a third-party to meet their obligations under the RAM PPA, nor may their resource adequacy benefits be greater than the Net Qualifying Capacity (NQC) of their facility

1.4 Changes for the May 2013 RAM

Pursuant to Resolution E-4582, the CPUC required certain changes to SDG&E's May 2013 RAM RFO and RAM PPA as compared to previous solicitations. In compliance, SDG&E incorporated the following changes as well as other non-substantive changes to the RAM RFO and RAM PPA:

- ☐☐☐ This RAM solicitation was set to close by June 28, 2013.

² SDG&E Advice Letter 2349-E, April 26, 2012.

³ Resolution E-4546 issued on November 8, 2012 approved proposed changes to the RAM for PG&E, SCE, and SDG&E.

⁴ SDG&E Advice Letter 2421-E, November 19, 2012.

SDG&E reserved one-third of the previously authorized but unsubscribed RAM capacity allocation for the fifth RAM solicitation.

SDG&E set the target for the fourth RAM solicitation at two-thirds of the previously authorized but unsubscribed RAM capacity allocation.

1.5 SDG&E RAM Process

SDG&E's RAM program is designed to procure a total of 155 MW over the course of five solicitations. The amount procured for the first three solicitations and the amounts planned to be procured in the last two solicitations are summarized in Table 1 by product category.

Table 1: SDG&E RAM Procurement Capacity Obligation (MW)

Product	RAM I Nov 2011 (procured)	RAM II May 2012 (procured)	RAM III Nov 2012 (procured)	RAM IV May 2013 (planned)	RAM V 2014 (planned)	Total RAM Obligation
Baseload	0.0	9.5	0.0	7.0	3.5	20.0
Peaking As-Available	15.0	18.4	27.0	35.0	16.9	112.3
Non-Peaking As-Available	0.0	0.0	14.7	5.0	3.0	22.7
Total	15.0	27.9	41.7	47.0	23.4	155.0

SDG&E established the schedule for its May 2013 RAM program as summarized in Table 2.

Table 2: SDG&E May 2013 RAM Schedule

Activity	Date
RFO issued	May 20, 2013
Pre-bidders conference	May 29, 2013
SDG&E began accepting bids	June 3, 2013
Deadline for questions	June 6, 2013
Deadline for submitting offers	June 28, 2013, noon PST
Notification for winning bidders	September 6, 2013
Deadline for bidders acceptance/withdrawal	September 13, 2013
Appreciation letters sent to unsuccessful bidders	October 18, 2013
PPA execution	October 18, 2013
SDG&E Submits Tier 2 Advice letter with PPAs to CPUC for approval	November 22, 2013
Anticipated CPUC approval (prior to any appeal and/or suspension)	December 23, 2013

SDG&E identified several resource requirements in its RAM program to be compliant with the CPUC's RAM Decision and RAM Resolution. In addition to a maximum size of 20 MW, resources must meet these primary resource eligibility requirements:

California Energy Commission (CEC) certifiable as an eligible renewable resource

☐☐☐ Utilize a commercially-proven technology (at least 1 installation worldwide)

☐☐☐ New or existing facility⁵

☐☐☐ Sell entire output to SDG&E; sale of partial output from a large system shall not be permitted

Other requirements regarding project capacity, location, and site control, interconnection status, developer experience, project start date, and other factors were included in SDG&E's RAM RFO, as well as a non-negotiable RAM PPA for selected projects to sign.

SDG&E designed a RAM bid assessment methodology and process to ensure that the bid selection process is transparent, does not favor any technology or counterparty, and is aligned with the RAM requirements. In this process, SDG&E would receive the bids up to the deadline and provide PA access to these bids in a timely manner, similar to procedures for previous renewable RFOs. Once the bids were received, SDG&E would prepare a quick conformance check based on forms submission and a quick review of eligibility. SDG&E would then produce a shortlist of the lowest preliminary bid ranking price⁶ to determine if the overall auction results were in a competitive market range. The shortlist would then be screened further for conformance with RAM eligibility requirements.

For each of the conforming shortlisted bids, SDG&E would determine the network upgrade cost adder based on the interconnection study provided by the bidder.⁷ The network cost adder would be added to the preliminary bid ranking price to determine the Bid Ranking Price used to evaluate the bids. For FCDS bids, the deliverability cost adder would also be determined based on the interconnection study provided by the bidder.⁸

The least expensive bids for each product category would be selected first based on the lowest Bid Ranking prices. SDG&E would examine the remaining bids to determine if any additional bids should be selected so the total selected would be within 20 MW of the target capacity. To the extent that the selection process resulted in either more or less than the targeted level of capacity in each product category, SDG&E would adjust the target levels accordingly in the next RAM RFO process.

⁵ Existing facilities are subject to an additional restriction regarding existing contracts as identified in E-4546.

⁶ Levelized contract cost adjusted for time-of-day as defined in SDG&E's RAM RFO adjusted for resource adequacy value.

⁷ Bidders must have completed a System Impact Study, a Phase I interconnection study, or have passed WDAT Fast Track screens. Evidence of the most recent completed study or equivalent results from the Fast Track process must be included in the offer.

⁸ Ibid.

2 ROLE OF THE INDEPENDENT EVALUATOR

This section provides a description of the role of the IE throughout the solicitation and bid selection process, including PA's specific activities for SDG&E's May 2013 RAM RFO.

2.1 The IE role

Per CPUC (D.) 04-12-084, the CPUC requires an IE for IOU long-term resource procurement RFOs. The role of the IE is to provide advice to the utility on the design, administration, and evaluation aspects of the RFO. The CPUC clarified that the role of the IE is not to conduct or administer the solicitation, but to "separately evaluate and report on the IOU's entire solicitation, evaluation, and selection process."⁹

Additionally, the IE is to ensure that SDG&E treats all bidders fairly and equitably and that no technology or counterparty is favored. In particular, the IE is expected to assure that affiliate bids are not favored. The IE also ensures that the bid selection process is transparent and is aligned with the procurement requirements. SDG&E can also call on the IE's advice as to various evaluation issues that may arise during the RFO process.

2.2 PA's role as IE

PA performed the role of IE for SDG&E's four RAM RFOs. For each solicitation, PA was involved from SDG&E's development of the process and submittal of advice letter through to the selection of the bids. PA ensured that the procedure that SDG&E followed aligned with the process SDG&E established in its RFO and provided fair and equitable treatment of all bids. PA was in regular contact with SDG&E staff throughout the process, addressing SDG&E's questions and providing recommendations where there were potential issues.

2.2.1 SDG&E process advice letter and RFO

PA reviewed drafts of SDG&E's Advice Letter for the May 2013 RAM RFO implementation as well as associated documents (RFO, bid forms, PPA). PA concentrated in particular on language describing the bid evaluation and the detailed information to be provided by bidders.

SDG&E and PA reviewed the steps that SDG&E identified would be taken in the RFO evaluation process prior to the bid deadline to ensure that there would be a smooth, clear and jointly understood process in place to efficiently and effectively review the bids.

2.2.2 Pre-bid Conference

PA participated in the pre-bid conference call, on May 29, 2013 and presented a description of the IE role as well as responded to questions. SDG&E presented the overall RAM RFO process and procedures, including a discussion of the distribution and transmission interconnection processes. SDG&E also provided a detailed review of the way in which the FCDS bids and energy only bids would be evaluated as

⁹ CPUC D.06-05-039, p. 46.

well as a review of the appropriate way for the bidders to fill out the bid forms for FCDS and energy only bids. As part of this, SDG&E provided a detailed review of the way in which it would consider the value of resource adequacy in evaluation of both FCDS and energy only bids as well as the locational value of the resource (either inside or outside of SDG&E's local area). SDG&E provided several examples and walked through them on a step-by-step basis to ensure that bidders understood the definitions and evaluation methodology.

To help minimize invalid bid submissions, SDG&E also provided examples of common errors to avoid in submitting bids.

After the pre-bid conference, SDG&E received questions on the RAM RFO process. PA reviewed SDG&E's responses to these questions and provided comments to ensure that the responses were clear and accurate.

2.2.3 Bid submittal process

SDG&E began accepting bids on June 3, 2013 with a deadline at noon Pacific Standard Time on June 28, 2013. PA arranged for access to the bids as they were received by SDG&E. Through this process, SDG&E provided a complete copy of all of the bids to PA.

SDG&E received a total of 97 bids summarized in Table 3 below.

Table 3: SDG&E May 2013 RAM RFO Total Bids Received

	Baseload	Peaking As-Available	Non-Peaking As-Available	Total
Number of bids	3	78	16	97

2.2.4 Initial bid review and conformance check

Once the bids were received, SDG&E completed an initial conformance check and identified 43 non-conforming bids from 14 counterparties. The primary reasons for nonconformance included the following:

- ☐☐☐ Failure to provide pricing form or pricing form was invalid
- ☐☐☐ Failure to provide complete interconnection agreement or interconnection study
- ☐☐☐ Failure to provide all site control documentation
- ☐☐☐ Project size did not meet RAM requirements
- ☐☐☐ Project location did not meet RAM locational requirements (4 projects located in Imperial Irrigation District)

Due to the large number of non-conforming bids, on July 16, 2013 SDG&E sought additional information on 23 bids to be provided by COB on July 18, 2013. Based on these responses, the number of conforming bids was increased to 80. A summary of the number of conforming bids by product category is provided in Table 4 below.

Table 4: SDG&E May 2013 RAM RFO Conforming Bids Received

	Baseload	Peaking As-Available	Non-Peaking As-Available	Total
Number of bids	2	64	14	80

SDG&E then compiled an initial list of the key components for each of the 80 conforming bids and provided a copy of the file to PA to compare and review. PA independently reviewed each bid and verified SDG&E's summary.

2.2.5 Bid selection

After the initial conformance check, SDG&E identified a shortlist of bids to review for further conformance checking. PA and SDG&E discussed the findings on a bid-by-bid basis. To the extent differences were identified, additional review and investigation was prepared by both SDG&E and PA to resolve any inconsistencies.

SDG&E initially selected one baseload bid (5 MW), three peaking as-available bids (33 MW), and one non-peaking as-available bid (5.5 MW). However, the selected baseload bid had previously been selected in RAM II. [REDACTED]

[REDACTED] Because of this, the selected baseload amount is not incremental to what SDG&E has previously procured and the incremental amount for this RAM RFO is 38.5 MW as summarized in Table 5 below, which is within the 20 MW of the 47 MW target for this RAM RFO.

Table 5: SDG&E May 2013 RAM RFO Initial Short-list

	Baseload*	Peaking As-Available	Non-Peaking As-Available	Total
Contract MW	0	33	5.5	38.5

*Excludes the 5 MW baseload bid that was selected in RAM II

SDG&E reviewed this shortlist with the Procurement Review Group (PRG) and discussed the challenge of selecting additional baseload bids as only two conforming baseload bids were submitted for this RFO.

[REDACTED] SD&E recommended waiting for RAM V to fulfill the additional baseload obligation.

SDG&E sent notifications to the five selected bids on September 6, 2013. SDG&E received acceptance e-mails from four projects and one project (an 18 MW peaking as-available project) did not accept.

SDG&E replaced the non-accepted bid with the next lowest price bid of 20 MW of peaking as-available capacity, but the developer indicated they were in negotiations with another party. SDG&E then selected the next two lowest priced bids for a total capacity of 11 MW of peaking as-available. Because of the delays in selecting the bids SDG&E extended the PPA execution from October 18, 2013 to October 23, 2013.

On October 17, 2013, SDG&E received notice from the bidder of two bids totaling 11 MW of peaking as-available capacity that they were withdrawing their bids. This left SDG&E with little time to select a replacement bid and SDG&E proposed to push the required capacity to RAM V. As discussed below, SDG&E discussed this with the PRG and followed up with a call with CPUC staff to further discuss the situation.

Table 6 below provides a summary of the revised selected bids (excluding the 5 MW baseload bid that is a replacement for a RAM II baseload bid). The total of 20.5 MW is 26.5 MW short of the target for this RFO and therefore not within the 20 MW range. SDG&E did attempt to meet the target but with the challenges in terms of withdrawal bids and timing of the withdrawal of bids SDG&E was unable to do so and will push the additional required capacity to RAM V.

Table 6: SDG&E May 2013 RAM RFO Selected bids

	Baseload*	Peaking As-Available	Non-Peaking As-Available	Total
Contract MW	0.0	15.0	5.5	20.5

*Excludes the 5 MW baseload bid that was selected in RAM II

2.2.6 SDG&E's Procurement Review Group meetings

PA reviewed and provided comments for the RAM RFO related information presented by SDG&E at the PRG meetings for the period May 2013 through October 2013, and participated in these meetings as appropriate. The PRG meetings alternated monthly between conference calls and meetings held in-person in San Francisco. Several of SDG&E's overall procurement activities are discussed at these meetings and only activities related to SDG&E's RAM RFO process are addressed in this report.

The following provides a summary of the key highlights, for each of the meetings, related to SDG&E's RAM RFO.

May 17, 2013

SDG&E discussed the RAM RFO schedule as well as the target amount of capacity by product category for RAM IV.

June 21, 2013

SDG&E provided an update of the RAM IV process. The pre-bidder's conference was held on May 29, 2013. There were a total of 40 participants for the web conference and SDG&E answered the bidders' questions during the conference as well as additional questions submitted after the conference.

July 19, 2013

SDG&E provided an initial summary of the results of the bidding process in terms of the number of bids received as well as the results of the initial review of conforming bids. Of the 97 bids received, 43 of them were determined to be non-conforming for various reasons. Because of the large number of non-conforming bids, SDG&E reached out to the bids that were non-conforming due to completeness of filing (i.e., missing document, etc.) and SDG&E was still receiving the additional information as of this meeting.

August 16, 2013

With the additional outreach to bidders, SDG&E was able to increase the total number of conforming bids to 80. SDG&E presented the initial short listed bids that included three peaking as-available bids (33 MW), one non-peaking as-available bid (5.5 MW) and a baseload bid (5 MW) for a total of 43.5 MW. However, the selected baseload bid had previously been selected in RAM II. [REDACTED]

[REDACTED] Because of this, the selected baseload amount is not incremental to what SDG&E has previously procured and the incremental amount from the initial shortlist of 38.5 MW is within the total 27/67 MW range (i.e., 47 MW minus/plus 20 MW) for this RAM RFO.

SDG&E reviewed the shortlist with the PRG and discussed the challenge of selecting additional baseload bids as only two conforming baseload bids were submitted for this RFO. [REDACTED]

[REDACTED] Therefore, SDG&E recommended waiting for RAM V to fulfill the required baseload obligation.

September 20, 2013

SDG&E presented an update on the RAM IV process including an updated short-list. SDG&E sent notifications to the five selected bids on September 6, 2013. SDG&E received acceptance e-mails from four projects and one project (an 18 MW peaking as-available project) did not accept. SDG&E replaced this bid with the next lowest price bid of 20 MW of peaking as-available capacity, but the developer indicated they were in negotiations with another party. SDG&E then selected the next two lowest priced bids for a total capacity of 11 MW of peaking as-available. Because of the delays in selecting the bids SDG&E extended the PPA execution from October 18, 2013 to October 23, 2013. On October 17, 2013, the updated short list included the same baseload and non-peaking projects as presented in the previous meeting. For the peaking as-available projects, the 18 MW bid was replaced with two bids for a total of 11 MW. This resulted in a total capacity of 31.5 MW which is within the total 27/67 MW range (i.e., 47 MW minus/plus 20 MW) for this RAM RFO.

October 18, 2013

SDG&E provided the final shortlist at this meeting. The day before the PRG meeting SDG&E received notice from the bidders of the 11 MW of peaking as-available capacity that they were withdrawing their bids, resulting in a total RAM IV capacity of 20.5 MW. This left SDG&E with little time to select a replacement bid and meet the overall RAM IV schedule. SDG&E proposed to push the required capacity to RAM V. This issue was discussed at the PRG meeting and although the resulting capacity was short of the 27/67 MW range, there was general agreement there was not sufficient time for SDG&E to replace the bid and the additional capacity could be pushed to RAM V.

3 ADEQUACY OF OUTREACH AND ROBUSTNESS OF SOLICITATION

This section addresses the adequacy of SDG&E's outreach as well as the solicitation materials.

3.1 Adequacy of outreach

SDG&E expanded its outreach for previous RAM RFO's to include trade groups and continued to reach out to that expanded list for this RFO. Additionally, SDG&E sent an e-mail announcing the May 2013 RAM RFO to its list serve (which includes the e-mail addresses of all of the entities that have responded to SDG&E's previous RFOs). SDG&E also posted a notice in Megawatt Daily.

PA believes that SDG&E extended appropriate outreach for this RAM RFO.

3.2 Solicitation materials

As part of its review of drafts of the Implementation Advice Letter, PA reviewed SDG&E's RFO, model PPA and supporting forms. The bid forms used in this solicitation were similar to those SDG&E used in the previous RAM process.

SDG&E held a pre-bid web-based conference and posted all materials on its website including the answers to questions submitted by the bidders.

In PA's opinion, SDG&E provided appropriate RFO solicitation materials and provided prompt response to any questions received by potential bidders.

4 FAIRNESS OF BIDDING AND SELECTION PROCESS

This section reviews the fairness of SDG&E's bidding and selection process. This auction based RFO process is different from SDG&E's other renewable RFO processes, so some of the review parameters used for other RFOs are not relevant for this one.

4.1 Principles used to determine fairness of process

PA used principles originally codified in PA's report on SDG&E's 2006 RPS RFO, adjusted appropriately for the RAM RFO Process:¹⁰

- ☐☐ Were affiliate bids treated the same as non-affiliate ones?
- ☐☐ Were bidder questions answered fairly and consistently and the answers made available to all?
- ☐☐ Did the utility ask for "clarifications" that provided any one bidder an advantage over others?
- ☐☐ Were bids given equal credibility in the economic evaluation?
- ☐☐ Was there a reasonable justification for any fixed parameters that enter into the methodology (e.g., resource adequacy value; debt equivalence parameters)?
- ☐☐ Were qualitative factors used only to distinguish among substantially equal bids?

4.2 Administration and bid processing

SDG&E addressed the administrative related activities appropriately:

- ☐☐ There were no affiliate bids included in this RFO.
- ☐☐ Bidder questions were answered fairly and consistently.
- ☐☐ SDG&E did not ask for clarifications in such a way as to advantage any bidder.

4.3 Conformance check

SDG&E and PA first independently reviewed the bids for conformance. Over 40 percent of the bids (43 out of 97) were found to be non-conforming. Because of this large number, SDG&E and PA investigated further why so many bids were non-conforming. Some of the bids were clearly non-conforming (e.g., IID location) and others could potentially be conforming if additional or clarified information was provided. For those bids that were found to be non-conforming because of lack of information or a question with the information provided, SDG&E reached out for additional information. With the additional information provided, a total of 80 bids were found to be conforming.

SDG&E and PA reviewed the conforming bids together, on a bid-by-bid basis, and discussed the findings. To the extent differences were identified, additional review and investigation was prepared by both SDG&E and PA to resolve any inconsistencies. Non-conforming bids were not evaluated further.

¹⁰ Jacobs, op. cit., p. 3-1.

PA believes that SDG&E's treatment of non-conforming bids was fair and reasonable.

4.4 SDG&E's analysis

Quantitative bid analysis was conducted by SDG&E. PA prepared an independent analysis of the bids, and, through this process PA confirmed and verified SDG&E's findings.

SDG&E addressed the analytic requirements appropriately:

☐☐☐ The bids were give equal credibility in the economic evaluation.

☐☐☐ There were no fixed parameters that entered into the economic evaluation.

☐☐☐ There were no qualitative factors used to distinguish among substantially equal bids.

4.5 Transmission analysis

SDG&E's model incorporated the costs of required transmission network upgrades or additions, using the information provided from the interconnection study (or equivalent) provided by the bidder. For FCDS bids, SDG&E included the cost for deliverability upgrades. The methodology used to incorporate transmission costs was consistent with the methodology described in the RFO documents.

5 TREATMENT OF AFFILIATE BIDS

There were no affiliate bids or bids that would result in utility asset ownership submitted as part of this RFO.

6 BEST OVERALL OFFERS SELECTED

Through the bid evaluation and selection process, PA believes that SDG&E selected the best offers submitted for SDG&E's May 2013 RAM RFO. The final selected bids provided a total of 25.5 MW of contracted capacity of which 20.5 MW is incremental. The level selected is not within 20 MW of the 47 MW target capacity. But as discussed in Sections 2.2.5 and 2.2.6, this outcome is reasonable given the number and timing of the withdrawal of selected bids.

7 ALTERNATIVE BID PRODUCTS

There were no alternative bid products offered as part of this RFO.

8 EFFECTIVENESS OF ACHIEVING RAM RFO OBLIGATION

The final selected bids provide a total of 20.5 MW of incremental capacity and the resubmittal of 5 MW of capacity. Although PA believes that these bids provide SDG&E economic renewable power, the total incremental capacity is not within 20 MW of SDG&E's 47 MW target for RAM IV. As discussed in Section 10, PA recommends that SDG&E look to increase the success of the number of selected bids through increasing the number of bids selected for the shortlist as well as looking into adding a refundable bid fee that would become non-refundable if the bidder withdraws more than a week after being short listed.

9 BID SELECTION RECOMMENDATION

PA believes the final selected bids provide SDG&E economic renewable power. PA recommends that the CPUC approve these contracts.

PA was involved throughout SDG&E's RAM RFO process, starting with the design, implementation, and selection of the bids as described in Section 2 of this report. PA believes that SDG&E's RAM bid assessment methodology and process provided a reasonable means to attain the RAM goals. The final selected bids provide a total of 20.5 MW of incremental capacity and the resubmittal of 5 MW of capacity.

10 RECOMMENDED CHANGES TO BID PROCESS

As noted in the initial RAM RFO documents, SDG&E planned to learn from previous RAM RFO auctions and SDG&E identified and incorporated changes in the May 2013 RAM process. Overall, the RAM IV process worked well and ran smoothly, but there were a large number of nonconforming projects and complications related to the number and timing of selected projects being withdrawn.

Although there was no clear indication as to why there was a sharp increase in the number of non-conforming bids during this RAM process, SDG&E should consider ways to reduce the number of non-conforming bids. SDG&E may be able to add some additional language in the RFO documents or spend more time at the pre-bidder's conference on how to submit a conforming bid and the importance of providing complete documentation.

SDG&E may also want to consider including more capacity in the shortlist so sufficient capacity would remain if some of the selected bids withdraw. Additionally, SDG&E could potentially add a fee for bidders with the fee becoming non-refundable if the bidder withdraws more than a week after being short-listed. This type of a fee could be designed so that it would not prevent bidders from bidding in all three RAMs as long as they withdraw after being shortlisted from one of the RAM processes.

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