

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of SAN DIEGO GAS & ELECTRIC
COMPANY (U 902 M) for Approval of its Energy Storage
Procurement Framework and Program As Required by
Decision 13-10-040.

Application No. 14-02-____
(Filed February 28, 2014)

**APPLICATION OF
SAN DIEGO GAS & ELECTRIC COMPANY**

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February 28, 2014

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**APPLICATION OF
SAN DIEGO GAS & ELECTRIC COMPANY**

Pursuant to Sections 2836 *et seq.* of the California Public Utilities Code (“P.U. Code”) and Rules 2.1 *et seq.* of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), San Diego Gas & Electric Company (“SDG&E”) requests review and approval of its Energy Storage Procurement Framework and Program. This Application is in response to, and consistent with the direction provided in Commission Decision (“D.”) 13-10-040 (“Energy Storage Decision”).

INTRODUCTION

On December 16th, 2010, the Commission opened Rulemaking (“R”) 10-12-007 to implement the provisions of Assembly Bill (“AB”) 2514 (Stats. 2010, ch. 469), to determine appropriate targets, if any, to procure viable and cost-effective energy storage systems.¹

¹ Energy storage systems are defined in P.U. Code Section 2835(a) : (1) “Energy storage system” means commercially available technology that is capable of absorbing energy, storing it for a period of time, and thereafter dispatching the energy. An “energy storage system” may have any of the characteristics in paragraph (2), shall accomplish one of the purposes in paragraph (3), and shall meet at least one of the characteristics in paragraph (4).

(2) An “energy storage system” may have any of the following characteristics:

(A) Be either centralized or distributed.

(B) Be either owned by a load-serving entity or local publicly owned electric utility, a customer of a load-serving entity or local publicly owned electric utility, or a third party, or is jointly owned by two or more of the above.

(3) An “energy storage system” shall be cost effective and either reduce emissions of greenhouse gases, reduce demand for peak electrical generation, defer or substitute for an investment in generation, transmission, or distribution assets, or improve the reliable operation of the electrical transmission or distribution grid.

(4) An “energy storage system” shall do one or more of the following:

(A) Use mechanical, chemical, or thermal processes to store energy that was generated at one time for use at a later time.

On October 17, 2013, the Commission issued the Energy Storage Decision adopting procurement targets for SDG&E to procure energy storage systems during 2014-2020. SDG&E's procurement target is indicated in Table LK-1 of SDG&E witness Lee Krevat's testimony and in Table 1 below. The Energy Storage Decision also adopted a procurement framework and design program to achieve procurement targets, and ordered the utilities to file procurement applications containing a proposal for procuring energy storage resources, as described in Section 3.d of Appendix A of the Energy Storage Decision.² Pursuant to the Commission's Order, SDG&E's proposal is set forth in this Application and its supporting documentation.

I. OVERALL STRATEGY AND 2014 – 2020 PLAN

The Energy Storage Decision directs SDG&E to solicit and target procurement of 165 MW of energy storage capacity by 2020. The procurement of energy storage systems will be conducted for three different domains: transmission, distribution and customer. The targets (as set by D.13-10-040) and the timing of the procurement is as follows:

Table 1. SDG&E's Procurement Schedule Based on the Energy Storage Decision

	2014	2016	2018	2020	2014-20
Transmission	10 MW	15 MW	22 MW	33 MW	80 MW
Distribution	7 MW	10 MW	15 MW	23 MW	55 MW
Customers	<u>3 MW</u>	<u>5 MW</u>	<u>8 MW</u>	<u>14 MW</u>	<u>30 MW</u>
Total	<u>20 MW</u>	<u>30 MW</u>	<u>45 MW</u>	<u>70 MW</u>	<u>165 MW</u>

(B) Store thermal energy for direct use for heating or cooling at a later time in a manner that avoids the need to use electricity at that later time.

(C) Use mechanical, chemical, or thermal processes to store energy generated from renewable resources for use at a later time.

(D) Use mechanical, chemical, or thermal processes to store energy generated from mechanical processes that would otherwise be wasted for delivery at a later time.

² See D.13-10-040 at 77, Ordering Paragraph 3.

The energy storage capacity to be procured by SDG&E is required to be in-service by the end of 2024.³

The 2014 solicitation and solicitations thereafter will seek to identify projects consistent with the guiding principles established in AB 2514 and P.U. Code § 2835(a)(3). These guiding principles include:

- 1) The optimization of the grid, including peak reduction, contribution to reliability needs, or deferment of transmission and distribution upgrade investments;
- 2) The integration of renewable energy, and
- 3) The reduction of greenhouse gas emissions to 80 percent below 1990 levels by 2050, per California's goals.

SDG&E intends to count existing projects towards 2014 and ongoing procurement cycle targets as appropriate. As expanded upon in Mr. Krevat's testimony SDG&E will count projects explicitly called out in the Energy Storage Decision as well as projects which SDG&E believes meet the counting requirements.

II. PROPOSED 2014 PROCUREMENT PLAN OVERVIEW

SDG&E's energy storage optimization strategy is designed to allow SDG&E to meet its energy storage procurement targets established in the Energy Storage Decision while minimizing ratepayer costs and maximizing portfolio value and managing risk. Through this strategy, SDG&E will contribute to the achievement of the market transformation envisioned in AB 2514 and the Energy Storage Decision.

Based on existing projects described in this Application and accompanying testimony, SDG&E is in compliance with the 2014 procurement target for the transmission and customer domains and is in compliance for the distribution domain if it elects to transfer between buckets and/or takes advantage of deferment.

However, for two of the domains (transmission and distribution), SDG&E is still planning to conduct the following solicitations for the 2014 cycle in order to capture any cost-effective, viable storage that may be available. SDG&E meets its 2014 procurement cycle targets if it elects to transfer between buckets and/or take advantage of deferment. Therefore SDG&E is not required to procure storage in the near term but recognizes that there may be real

³ D.13-10-040, Appendix A at 1.

opportunities to procure storage now and is looking at all timing and quantity options. The quantities in Table LK-8 of Mr. Krevat's testimony represent the amounts which SDG&E is interested in procuring but may procure more or less based on the bids received.

In this Application and testimony SDG&E indicates target quantities of additional storage which will be sought. The actual quantity procured may be less or more depending on cost, viability and other factors. SDG&E wants to take advantage of timing issues such as tax credits and other incentives which are available now but are due to expire soon.

SDG&E foresees soliciting energy storage for 2014 procurement cycle as expressed in this Application via one transmission program and two distribution programs. The transmission program is a program for Local and Flexible Capacity Requirements – Transmission Connected. A similar program will be implemented at the distribution level known as the Local and Flexible Capacity Requirements – Distribution Connected. The second distribution program will be for utility owned devices for distribution reliability/power quality. SDG&E does not include a new program for customer side procurement. This, as well as the proposed programs, is discussed in more detail in the accompanying testimony of Mr. Krevat and SDG&E witness Mr. Pat Charles. For future procurement cycles, SDG&E may seek utility or third party owned energy storage systems in any of all of the three domains.

III. PROCUREMENT METHODOLOGY FOR PROPOSED 2014 PROCUREMENT

SDG&E will procure energy storage systems in the 2014 procurement cycle via established procurement methodologies. For the Local and Flexible Capacity – Transmission Connected program SDG&E will use a methodology significantly similar to SDG&E's Long Term Procurement Plan ("LTPP") methodology. The LTPP process is described in Mr. Charles' testimony.

The Local and Flexible Capacity – Distribution Connected program is similar to the corresponding transmission program and will also utilize the LTPP process. These distribution and transmission programs may be procured in the same solicitation.

In the third proposed program, the distribution program for Distribution Reliability and Power Quality, SDG&E is seeking to procure utility owned energy storage systems for the 2014 procurement cycle. This program will utilize the standard process that SDG&E has in place for the procurement of distribution reliability assets.

SDG&E does not intend to issue a solicitation for energy storage within the customer domain for the 2014 solicitation cycle. Due to energy storage system acquisition associated with existing programs (the Self Generation Incentive Program and Permanent Load Shifting programs), SDG&E will not issue a solicitation for the 2014 cycle. SDG&E will continue to investigate customer side programs.

IV. EVALUATION PROTOCOL

Energy storage is a nascent technology therefore evaluation of storage presents new and unique challenges. When evaluating energy storage SDG&E will look at quantitative and qualitative factors. The factors examined for each proposed program is detailed in the testimony of SDG&E witness Mr. Armando Infanzon.

The utilities were directed to work with each other and Energy Division in order to create a Common Evaluation Protocol (“CEP”). This protocol is presented and discussed in Mr. Infanzon’s testimony.

V. COST RECOVERY

SDG&E does not propose any new recovery mechanisms as part of this proceeding; rather SDG&E proposes to utilize existing cost recovery mechanisms. The appropriate cost recovery mechanism to be applied to any given storage project should be determined by the service/function provided by the project. SDG&E’s proposal follows Commission precedent that costs should be recovered from all benefitting customers, which in this instance would tie cost recovery to the type of function and not necessarily domain.

VI. OTHER ISSUES

SDG&E will comply with the reporting requirements defined in D.13-10-040. This application also includes the following information which is incorporated by reference.

- Appendix A – Report on all storage resources procured to date in all Commission Proceedings
- Appendix B – Pro Forma Power Purchase Agreements (“PPAs”)
- Appendix C – Applicable statutes

VII. SUMMARY OF TESTIMONY

This Application is supported by the testimonies of 4 witnesses, which are being separately served, concurrently with the filing of this Application.

- The Prepared Direct Testimony of Lee Krevat provides information concerning SDG&E's policy and SDG&E's existing projects and plan.
- The Prepared Direct Testimony of Pat Charles provides information concerning SDG&E's proposed Procurement Methodology.
- The Prepared Direct Testimony of Armando Infanzon provides information concerning SDG&E's proposed Evaluation Protocol.
- The Prepared Direct Testimony of Cynthia Fang provides information concerning SDG&E's cost recovery/memorandum account proposal.

VIII. STATUTORY AND PROCEDURAL REQUIREMENTS

A. Compliance with Rule 2.1

In accordance with Rule 2.1 of the Commission's Rules of Practice and Procedure, SDG&E provides the following information concerning the proposed category for the proceeding, the need for hearing, the issues to be considered, and a proposed schedule.

1. Proposed Category of Proceeding

SDG&E proposes to categorize this Application as a "ratesetting" proceeding within the meaning of Commission Rules 1.3(e) and 7.1.

2. Need for Hearing and Proposed Schedule

SDG&E does not believe that approval of this Application will require hearings and respectfully requests that the Commission find that no hearing is necessary in respect of this Application. If, however, the Commission finds that an evidentiary hearing is necessary, SDG&E requests that such hearing be conducted as soon as practicable. SDG&E proposes the following procedural schedule, which includes hearings in the event hearings are deemed to be necessary.

<u>ACTION</u>	<u>DATE</u>
Application filed	February 28, 2014
Responses/Protests filed, if any	30 days after notice of filing in Daily Calendar (estimated March 5, 2014)

Reply to Responses/Protests	April 7, 2014
Prehearing Conference	May 2, 2014
Scoping Memo Issues	May 9, 2014
Hearings	(if needed)
Concurrent Opening Briefs	May 23, 2014
Concurrent Reply Briefs	June 4, 2014
ALJ Proposed Decision	August 2014
Comments on Proposed Decision	20 Days After Proposed Decision
Final Commission Decision	September 2014

The issues in this proceeding are: whether SDG&E’s Energy Storage Procurement Framework should be authorized, pursuant to and consistent with D.13-10-040, with the features described in this Application and supporting documents, and 2) whether SDG&E’s cost recovery proposals should be authorized. SDG&E is unaware of any specific objections any party might raise to any of these issues.

B. Statutory Authority - Rule 2.1

This Application is filed pursuant to D.13-10-040 and statutes identified in Appendix C to this application, and complies with the applicable orders of the Commission and the Commission’s Rules of Practice and Procedure.

C. Legal Name and Correspondence

San Diego Gas & Electric Company is a public utility organized and existing under the laws of the State of California. SDG&E is engaged in the business of providing electric service in a portion of Orange County and electric and gas service in San Diego County. SDG&E’s principal place of business is 8330 Century Park Court, San Diego, California 92123.

The attorney representing SDG&E in this matter is Keith W. Melville. Correspondence or communications regarding this Application should be addressed to:

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D. Articles of Incorporation - Rule 2.2

A copy of SDG&E's Restated Articles of Incorporation as last amended, presently in effect and certified by the California Secretary of State, was previously filed with the Commission on August 31, 2009 in connection with Application 09-08-019, and is incorporated herein by reference.

E. Balance Sheet, Income Statement, Financial Statement and Summary of Earnings

Although SDG&E is not seeking a rate change in this Application, and therefore Commission Rule 3.2 is not applicable, SDG&E provides a copy of its Balance Sheet, Income Statement, Financial Statement and Summary of Earnings for the nine-month period ending September 30, 2013 in Attachment A, for informational purposes only.

F. Service

This is a new application and no service list has been established. Accordingly, SDG&E will serve this Application on the parties to the service list for R.10-12-007. Hard copies will be sent by overnight mail to the Assigned Commissioner in R.10-12-007, Carla Peterman, the Assigned Administrative Law Judges in R.10-12-007, Amy C. Yip-Kikugawa and Colette Kersten and Chief Administrative Law Judge, Karen V. Clopton.

IX. ATTACHMENTS AND APPENDICES

Attachments A and Appendices A through C, described below, are a part of, and incorporated into, this Application:

Attachment A – SDG&E’s Balance Sheet, Income Statement, Financial Statement and Summary of Earnings

Appendix A – Report on all storage resources procured to date in all Commission Proceedings

Appendix B – Pro Forma Agreements

Appendix C – List of Applicable Statutes

X. CONCLUSION

WHEREFORE, SDG&E respectfully requests that the Commission issue its Order herein, approve SDG&E’s storage procurement plan and proposals as set forth in this Application and supporting documents (including testimony, appendices and attachments) and take all necessary and related actions, including granting such additional authorizations as this Commission may deem appropriate.

DATED at San Diego, California, this 28th day of February 2014

Respectfully submitted,

/s/ Keith W. Melville

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/s/ James P. Avery

James P. Avery
Senior Vice President, Power Supply
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Attachment A
(Balance Sheet, Income Statement,
Financial Statement and
Summary of Earnings)

**SAN DIEGO GAS & ELECTRIC COMPANY
BALANCE SHEET
ASSETS AND OTHER DEBITS
SEPTEMBER 30, 2013**

	1. UTILITY PLANT	<u>2013</u>
101	UTILITY PLANT IN SERVICE	\$12,482,421,645
102	UTILITY PLANT PURCHASED OR SOLD	-
104	UTILITY PLANT LEASED TO OTHERS	85,194,000
105	PLANT HELD FOR FUTURE USE	13,092,995
106	COMPLETED CONSTRUCTION NOT CLASSIFIED	-
107	CONSTRUCTION WORK IN PROGRESS	746,397,331
108	ACCUMULATED PROVISION FOR DEPRECIATION OF UTILITY PLANT	(3,953,170,111)
111	ACCUMULATED PROVISION FOR AMORTIZATION OF UTILITY PLANT	(327,386,191)
114	ELEC PLANT ACQUISITION ADJ	3,750,722
115	ACCUM PROVISION FOR AMORT OF ELECTRIC PLANT ACQUIS ADJ	(437,584)
118	OTHER UTILITY PLANT	779,269,082
119	ACCUMULATED PROVISION FOR DEPRECIATION AND AMORTIZATION OF OTHER UTILITY PLANT	(223,465,621)
120	NUCLEAR FUEL - NET	<u>0</u>
	TOTAL NET UTILITY PLANT	<u>9,605,666,268</u>
	2. OTHER PROPERTY AND INVESTMENTS	
121	NONUTILITY PROPERTY	5,948,352
122	ACCUMULATED PROVISION FOR DEPRECIATION AND AMORTIZATION OF NONUTILITY PROPERTY	(364,300)
123	INVESTMENTS IN SUBSIDIARY COMPANIES	-
124	OTHER INVESTMENTS	-
125	SINKING FUNDS	-
128	OTHER SPECIAL FUNDS	<u>981,444,173</u>
	TOTAL OTHER PROPERTY AND INVESTMENTS	<u>987,028,225</u>

Data from SPL as of December 11, 2013

**SAN DIEGO GAS & ELECTRIC COMPANY
BALANCE SHEET
ASSETS AND OTHER DEBITS
SEPTEMBER 30, 2013**

3. CURRENT AND ACCRUED ASSETS		2013
131	CASH	10,618,888
132	INTEREST SPECIAL DEPOSITS	-
134	OTHER SPECIAL DEPOSITS	-
135	WORKING FUNDS	500
136	TEMPORARY CASH INVESTMENTS	137,900,000
141	NOTES RECEIVABLE	-
142	CUSTOMER ACCOUNTS RECEIVABLE	262,889,801
143	OTHER ACCOUNTS RECEIVABLE	36,027,172
144	ACCUMULATED PROVISION FOR UNCOLLECTIBLE ACCOUNTS	(2,770,391)
145	NOTES RECEIVABLE FROM ASSOCIATED COMPANIES	-
146	ACCOUNTS RECEIVABLE FROM ASSOCIATED COMPANIES	5,771,905
151	FUEL STOCK	4,322,163
152	FUEL STOCK EXPENSE UNDISTRIBUTED	-
154	PLANT MATERIALS AND OPERATING SUPPLIES	71,264,347
156	OTHER MATERIALS AND SUPPLIES	-
163	STORES EXPENSE UNDISTRIBUTED	-
164	GAS STORED	346,520
165	PREPAYMENTS	73,501,714
171	INTEREST AND DIVIDENDS RECEIVABLE	8,036
173	ACCRUED UTILITY REVENUES	74,865,000
174	MISCELLANEOUS CURRENT AND ACCRUED ASSETS	1,925,326
175	DERIVATIVE INSTRUMENT ASSETS	71,596,485
TOTAL CURRENT AND ACCRUED ASSETS		748,267,466
4. DEFERRED DEBITS		
181	UNAMORTIZED DEBT EXPENSE	35,935,632
182	UNRECOVERED PLANT AND OTHER REGULATORY ASSETS	3,526,594,367
183	PRELIMINARY SURVEY & INVESTIGATION CHARGES	6,702,522
184	CLEARING ACCOUNTS	(97,997)
185	TEMPORARY FACILITIES	-
186	MISCELLANEOUS DEFERRED DEBITS	36,269,368
188	RESEARCH AND DEVELOPMENT	-
189	UNAMORTIZED LOSS ON REACQUIRED DEBT	15,021,995
190	ACCUMULATED DEFERRED INCOME TAXES	674,266,639
TOTAL DEFERRED DEBITS		4,294,692,526
TOTAL ASSETS AND OTHER DEBITS		15,635,654,485

Data from SPL as of December 11, 2013

SAN DIEGO GAS & ELECTRIC COMPANY
BALANCE SHEET
LIABILITIES AND OTHER CREDITS
SEPTEMBER 30, 2013

5. PROPRIETARY CAPITAL

		2013
201	COMMON STOCK ISSUED	(\$291,458,395)
204	PREFERRED STOCK ISSUED	\$0
207	PREMIUM ON CAPITAL STOCK	(\$591,282,978)
210	GAIN ON RETIRED CAPITAL STOCK	-
211	MISCELLANEOUS PAID-IN CAPITAL	(479,665,368)
214	CAPITAL STOCK EXPENSE	24,605,640
216	UNAPPROPRIATED RETAINED EARNINGS	(3,181,473,876)
219	ACCUMULATED OTHER COMPREHENSIVE INCOME	9,409,978
	TOTAL PROPRIETARY CAPITAL	(4,509,864,999)

6. LONG-TERM DEBT

221	BONDS	(3,941,255,000)
223	ADVANCES FROM ASSOCIATED COMPANIES	-
224	OTHER LONG-TERM DEBT	(123,900,000)
225	UNAMORTIZED PREMIUM ON LONG-TERM DEBT	-
226	UNAMORTIZED DISCOUNT ON LONG-TERM DEBT	11,115,283
	TOTAL LONG-TERM DEBT	(4,054,039,717)

7. OTHER NONCURRENT LIABILITIES

227	OBLIGATIONS UNDER CAPITAL LEASES - NONCURRENT	(641,911,713)
228.2	ACCUMULATED PROVISION FOR INJURIES AND DAMAGES	(39,640,093)
228.3	ACCUMULATED PROVISION FOR PENSIONS AND BENEFITS	(332,580,517)
228.4	ACCUMULATED MISCELLANEOUS OPERATING PROVISIONS	0
230	ASSET RETIREMENT OBLIGATIONS	(951,767,167)
	TOTAL OTHER NONCURRENT LIABILITIES	(1,965,899,490)

Data from SPL as of December 11, 2013

**SAN DIEGO GAS & ELECTRIC COMPANY
BALANCE SHEET
LIABILITIES AND OTHER CREDITS
SEPTEMBER 30, 2013**

8. CURRENT AND ACCRUED LIABILITES		2013
231	NOTES PAYABLE	-
232	ACCOUNTS PAYABLE	(354,386,949)
233	NOTES PAYABLE TO ASSOCIATED COMPANIES	-
234	ACCOUNTS PAYABLE TO ASSOCIATED COMPANIES	(18,190,303)
235	CUSTOMER DEPOSITS	(71,150,344)
236	TAXES ACCRUED	(82,309,217)
237	INTEREST ACCRUED	(56,209,259)
238	DIVIDENDS DECLARED	(1,204,917)
241	TAX COLLECTIONS PAYABLE	(5,531,563)
242	MISCELLANEOUS CURRENT AND ACCRUED LIABILITIES	(361,356,009)
243	OBLIGATIONS UNDER CAPITAL LEASES - CURRENT	(36,211,069)
244	DERIVATIVE INSTRUMENT LIABILITIES	(171,044,181)
245	DERIVATIVE INSTRUMENT LIABILITIES - HEDGES	-
TOTAL CURRENT AND ACCRUED LIABILITIES		(1,157,593,811)
9. DEFERRED CREDITS		
252	CUSTOMER ADVANCES FOR CONSTRUCTION	(35,251,061)
253	OTHER DEFERRED CREDITS	(346,875,925)
254	OTHER REGULATORY LIABILITIES	(1,112,320,594)
255	ACCUMULATED DEFERRED INVESTMENT TAX CREDITS	(24,492,338)
257	UNAMORTIZED GAIN ON REACQUIRED DEBT	-
281	ACCUMULATED DEFERRED INCOME TAXES - ACCELERATED	(5,201,256)
282	ACCUMULATED DEFERRED INCOME TAXES - PROPERTY	(1,922,847,185)
283	ACCUMULATED DEFERRED INCOME TAXES - OTHER	(501,268,109)
TOTAL DEFERRED CREDITS		(3,948,256,468)
TOTAL LIABILITIES AND OTHER CREDITS		(\$15,635,654,485)

Data from SPL as of December 11, 2013

SAN DIEGO GAS & ELECTRIC COMPANY
STATEMENT OF INCOME AND RETAINED EARNINGS
NINE MONTHS ENDED SEPTEMBER 30, 2013

1. UTILITY OPERATING INCOME

400	OPERATING REVENUES		\$3,717,316,232
401	OPERATING EXPENSES	\$2,612,385,729	
402	MAINTENANCE EXPENSES	136,829,439	
403-7	DEPRECIATION AND AMORTIZATION EXPENSES	346,057,206	
408.1	TAXES OTHER THAN INCOME TAXES	77,811,402	
409.1	INCOME TAXES	47,917,723	
410.1	PROVISION FOR DEFERRED INCOME TAXES	259,859,873	
411.1	PROVISION FOR DEFERRED INCOME TAXES - CREDIT	(78,732,775)	
411.4	INVESTMENT TAX CREDIT ADJUSTMENTS	(999,150)	
411.6	GAIN FROM DISPOSITION OF UTILITY PLANT	-	
	TOTAL OPERATING REVENUE DEDUCTIONS		3,401,129,447
	NET OPERATING INCOME		316,186,785

2. OTHER INCOME AND DEDUCTIONS

415	REVENUE FROM MERCHANDISING, JOBBING AND CONTRACT WORK	-	
417.1	EXPENSES OF NONUTILITY OPERATIONS	1,367	
418	NONOPERATING RENTAL INCOME	287,017	
418.1	EQUITY IN EARNINGS OF SUBSIDIARIES	-	
419	INTEREST AND DIVIDEND INCOME	4,044,852	
419.1	ALLOWANCE FOR OTHER FUNDS USED DURING CONSTRUCTION	29,667,867	
421	MISCELLANEOUS NONOPERATING INCOME	(178,581)	
421.1	GAIN ON DISPOSITION OF PROPERTY	-	
	TOTAL OTHER INCOME	33,822,522	
421.2	LOSS ON DISPOSITION OF PROPERTY	-	
425	MISCELLANEOUS AMORTIZATION	187,536	
426	MISCELLANEOUS OTHER INCOME DEDUCTIONS	2,558,146	
	TOTAL OTHER INCOME DEDUCTIONS	2,745,682	
408.2	TAXES OTHER THAN INCOME TAXES	383,626	
409.2	INCOME TAXES	(1,150,483)	
410.2	PROVISION FOR DEFERRED INCOME TAXES	16,175,440	
411.2	PROVISION FOR DEFERRED INCOME TAXES - CREDIT	(96,521,141)	
	TOTAL TAXES ON OTHER INCOME AND DEDUCTIONS	(81,112,558)	
	TOTAL OTHER INCOME AND DEDUCTIONS		112,189,398
	INCOME BEFORE INTEREST CHARGES		428,376,183
	NET INTEREST CHARGES*		136,795,691
	NET INCOME		\$291,580,492

*NET OF ALLOWANCE FOR BORROWED FUNDS USED DURING CONSTRUCTION, (\$12,284,335)

Data from SPL as of December 11, 2013

**SAN DIEGO GAS & ELECTRIC COMPANY
STATEMENT OF INCOME AND RETAINED EARNINGS
NINE MONTHS ENDED SEPTEMBER 30, 2013**

3. RETAINED EARNINGS

RETAINED EARNINGS AT BEGINNING OF PERIOD, AS PREVIOUSLY REPORTED	\$2,896,569,733
NET INCOME (FROM PRECEDING PAGE)	291,580,492
DIVIDEND TO PARENT COMPANY	-
DIVIDENDS DECLARED - PREFERRED STOCK	(3,614,751)
OTHER RETAINED EARNINGS ADJUSTMENTS	(3,061,598)
RETAINED EARNINGS AT END OF PERIOD	<u>\$3,181,473,876</u>

SAN DIEGO GAS & ELECTRIC COMPANY
FINANCIAL STATEMENT
SEPTEMBER 30, 2013

(a) Amounts and Kinds of Stock Authorized:

Preferred Stock	1,375,000	shares	Par Value \$27,500,000
Preferred Stock	10,000,000	shares	Without Par Value
Preferred Stock	Amount of shares not specified		\$80,000,000
Common Stock	255,000,000	shares	Without Par Value

Amounts and Kinds of Stock Outstanding:

PREFERRED STOCK

5.0%	375,000	shares	\$7,500,000
4.50%	300,000	shares	6,000,000
4.40%	325,000	shares	6,500,000
4.60%	373,770	shares	7,475,400
\$1.70	1,400,000	shares	35,000,000
\$1.82	640,000	shares	16,000,000

COMMON STOCK

116,583,358	shares	291,458,395
-------------	--------	-------------

(b) Terms of Preferred Stock:

Full information as to this item is given in connection with Application Nos. 93-09-069, 04-01-009, 06-05-015 and 10-10-023 to which references are hereby made.

(c) Brief Description of Mortgage:

Full information as to this item is given in Application Nos. 08-07-029, 10-10-023 and 12-03-005 to which references are hereby made.

(d) Number and Amount of Bonds Authorized and Issued:

	Nominal Date of Issue	Par Value Authorized and Issued	Outstanding	Interest Paid in 2012
<u>First Mortgage Bonds:</u>				
6.80% Series KK, due 2015	12-01-91	14,400,000	14,400,000	979,200
Var% Series OO, due 2027	12-01-92	250,000,000	150,000,000	7,612,500
5.85% Series RR, due 2021	06-29-93	60,000,000	60,000,000	3,510,000
5.875% Series VV, due 2034	06-17-04	43,615,000	43,615,000	2,562,378
5.875% Series WW, due 2034	06-17-04	40,000,000	40,000,000	2,350,000
5.875% Series XX, due 2034	06-17-04	35,000,000	35,000,000	2,056,250
5.875% Series YY, due 2034	06-17-04	24,000,000	24,000,000	1,410,000
5.875% Series ZZ, due 2034	06-17-04	33,650,000	33,650,000	1,976,936
4.00% Series AAA, due 2039	06-17-04	75,000,000	75,000,000	172,498
5.35% Series BBB, due 2035	05-19-05	250,000,000	250,000,000	13,375,000
5.30% Series CCG, due 2015	11-17-05	250,000,000	250,000,000	13,250,000
6.00% Series DDD, due 2026	06-08-06	250,000,000	250,000,000	15,000,000
1.65% Series EEE, due 2018	09-21-06	161,240,000	161,240,000	349,305
6.125% Series FFF, due 2037	09-20-07	250,000,000	250,000,000	15,312,500
6.00% Series GGG, due 2039	05-14-09	300,000,000	300,000,000	18,000,000
5.35% Series HHH, due 2040	05-13-10	250,000,000	250,000,000	13,375,000
4.50% Series III, due 2040	08-15-10	500,000,000	500,000,000	22,500,000
3.00% Series JJJ, due 2021	08-18-11	350,000,000	350,000,000	10,412,500
3.95% Series LLL, due 2041	11-17-11	250,000,000	250,000,000	9,820,139
4.30% Series MMM, due 2042	03-22-12	250,000,000	250,000,000	5,643,750
<u>Unsecured Bonds:</u>				
5.90% CPCFA96A, due 2014	06-01-96	129,820,000	129,820,000	7,659,380
5.30% CV96A, due 2021	08-02-96	38,900,000	38,900,000	2,061,700
5.50% CV96B, due 2021	11-21-96	60,000,000	60,000,000	3,300,000
4.90% CV97A, due 2023	10-31-97	25,000,000	25,000,000	1,225,000

SAN DIEGO GAS & ELECTRIC COMPANY
FINANCIAL STATEMENT
SEPTEMBER 30, 2013

<u>Other Indebtedness:</u>	<u>Date of Issue</u>	<u>Date of Maturity</u>	<u>Interest Rate</u>	<u>Outstanding</u>	<u>Interest Paid 2012</u>
Commercial Paper & ST Bank Loans	Various	Various	Various	0	\$71,644

Amounts and Rates of Dividends Declared:

The amounts and rates of dividends during the past five fiscal years are as follows:

<u>Preferred Stock</u>	<u>Shares Outstanding</u>	<u>Dividends Declared</u>				
	<u>12-31-12</u>	2008	2009	2010	2011	2012
5.0%	375,000	\$375,000	\$375,000	\$375,000	\$375,000	\$375,000
4.50%	300,000	270,000	270,000	270,000	270,000	270,000
4.40%	325,000	286,000	286,000	286,000	286,000	286,000
4.60%	373,770	343,868	343,868	343,868	343,868	343,868
\$ 1.7625	0	242,344	0	0	0	0
\$ 1.70	1,400,000	2,380,000	2,380,000	2,380,000	2,380,000	2,380,000
\$ 1.82	640,000	1,164,800	1,164,800	1,164,800	1,164,800	1,164,800
	<u>3,413,770</u>	<u>\$5,062,012 [1]</u>	<u>\$4,819,668</u>	<u>\$4,819,668</u>	<u>\$4,819,668</u>	<u>\$4,819,668</u>

Common Stock

Dividend to Parent	\$0	\$150,000,000 [2]	\$0	\$0	\$0
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A balance sheet and a statement of income and retained earnings of Applicant for the nine months ended September 30, 2013 are attached hereto.

[1] Includes \$242,344 of interest expense related to redeemable preferred stock.

[2] San Diego Gas & Electric Company dividend to parent.

**SAN DIEGO GAS & ELECTRIC COMPANY
SUMMARY OF EARNINGS
NINE MONTHS ENDED SEPTEMBER 30, 2013
(DOLLARS IN MILLIONS)**

<u>Line No.</u>	<u>Item</u>	<u>Amount</u>
1	Operating Revenue	\$3,717
2	Operating Expenses	<u>3,401</u>
3	Net Operating Income	<u><u>\$316</u></u>
4	Weighted Average Rate Base	\$6,774
5	Rate of Return*	7.79%

*Authorized Cost of Capital

Appendix A

Existing Storage Projects

<i>Project name</i>	<i>Internal Name</i>	<i>Eligible biennial procurement cycle</i>	<i>Online date (expected or actual)</i>	<i>Project type</i>	<i>Point of interconnection</i>	<i>Capacity (MW)</i>	<i>Energy content (MWh)</i>	<i>Location (city)</i>	<i>Location (zip code)</i>	<i>Procurement proceeding</i>	<i>Procurement mechanism</i>
Lake Hodges Pumped Hydro	Lake Hodges PPA	2014 Cycle	Q3 2011	Pumped Hydro	Transmission	<u>40,000</u> 40,000	240,000	Escondido	92025	D.04-08-028	Bilateral
Borrego Springs Unit 1	Microgrid SES	2014 Cycle	Q3 2012	Battery - Li Ion	Distribution	0.500	1,500	Borrego Springs	92004	D.13-05-010	RFP
Borrego Springs Unit 2	Borrego CES	2014 Cycle	Q2 2013	Battery - Li Ion	Distribution	0.025	0.050	Borrego Springs	92004	D.13-05-010	RFP
Borrego Springs Unit 3	Borrego CES	2014 Cycle	Q2 2013	Battery - Li Ion	Distribution	0.025	0.050	Borrego Springs	92004	D.13-05-010	RFP
Borrego Springs Unit 4	Borrego CES	2014 Cycle	Q2 2013	Battery - Li Ion	Distribution	0.025	0.050	Borrego Springs	92004	D.13-05-010	RFP
GRC Energy Storage Program Unit 1	Pala SES	2014 Cycle	Q3 2012	Battery - Li Ion	Distribution	0.500	1,500	Pala	92059	D.13-05-010	RFP
GRC Energy Storage Program Unit 2	Skills CES	2014 Cycle	Q4 2012	Battery - Li Ion	Distribution	0.025	0.072	San Diego	92108	D.13-05-010	RFP
GRC Energy Storage Program Unit 3	Clairmont CES	2014 Cycle	Q4 2012	Battery - Li Ion	Distribution	0.025	0.072	San Diego	92111	D.13-05-010	RFP
GRC Energy Storage Program Unit 4	Poway CES	2014 Cycle	Q4 2012	Battery - Li Ion	Distribution	0.025	0.072	Poway	92064	D.13-05-010	RFP
GRC Energy Storage Program Unit 5	Borrego SES	2014 Cycle	Q2 2014	Battery - Li Ion	Distribution	1.000	3.000	Borrego Springs	92004	D.13-05-010	RFP
GRC Energy Storage Program Unit 6	C 1243 Ortega Hwy	2014 Cycle	Q2 2014	Battery - Li Ion	Distribution	1.000	3.000	San Juan Capistrano	92675	D.13-05-010	RFP
GRC Energy Storage Program Unit 7	C75 Mt San Miguel	2014 Cycle	Q3 2014	Battery - Li Ion	Distribution	1.000	3.000	El Cajon	97941	D.13-05-010	RFP
GRC Energy Storage Program Unit 8	Julian	2014 Cycle	Q3 2014	Battery - Li Ion	Distribution	1.000	3.000	Julian	92036	D.13-05-010	RFP
GRC Energy Storage Program Unit 9	Canyon Crest Academy	2014 Cycle	Q3 2014	Battery - Li Ion	Distribution	<u>1,000</u> 6,150	3,000	San Diego	92130	D.13-05-010	RFP
SGIP - In Service	SGIP - In-Service	2014 Cycle	Various	Various	Customer Sited	0.005	Various	SDG&E Service Territory	Various	D.11-12-030	SGIP Rules
SGIP - Proposed	SGIP - Proposed	2014 Cycle	Various	Various	Customer Sited	3.652	Various	SDG&E Service Territory	Various	D.11-12-030	SGIP Rules
PLS - Proposed	PLS - Proposed	2014 Cycle	Various	Thermal	Customer Sited	<u>1,000</u> 4,656	7.000	SDG&E Service Territory	Various	D.12-04-045	RFP
						50.81					

Existing Storage Projects

<i>Project name</i>	<i>Status of project</i>	<i>Expected operational life (years)</i>	<i>Primary application of project</i>	<i>Secondary application of project</i>	<i>Technology manufacturer</i>	<i>Project owner</i>	<i>Project operator</i>
Lake Hodges Pumped Hydro	Installed	25	Grid Optimization			SDWCA	SDG&E
Borrego Springs Unit 1	Installed	15	Islanding	Power Quality	Saft, Parker Hanifin	SDG&E	SDG&E
Borrego Springs Unit 2	Installed	15	Power Quality	Islanding	S&C, Kokam	SDG&E	SDG&E
Borrego Springs Unit 3	Installed	15	Power Quality	Islanding	S&C, Kokam	SDG&E	SDG&E
Borrego Springs Unit 4	Installed	15	Power Quality	Islanding	S&C, Kokam	SDG&E	SDG&E
GRC Energy Storage Program Unit 1	Installed	15	Power Quality		Greensmith, Satcom, Wilson	SDG&E	SDG&E
GRC Energy Storage Program Unit 2	In Progress	15	Power Quality		Saft, PowerHub	SDG&E	SDG&E
GRC Energy Storage Program Unit 3	In Progress	15	Power Quality		Saft, PowerHub	SDG&E	SDG&E
GRC Energy Storage Program Unit 4	In Progress	15	Power Quality		Saft, PowerHub	SDG&E	SDG&E
GRC Energy Storage Program Unit 5	In Progress	15	Power Quality	Capacity/Infrastructure Deferral	Saft, ABB	SDG&E	SDG&E
GRC Energy Storage Program Unit 6	In Progress	15	Capacity/Infrastructure Deferral	Power Quality	Greensmith, ABB, Samsung	SDG&E	SDG&E
GRC Energy Storage Program Unit 7	In Progress	15	Islanding	Capacity/Infrastructure Deferral	Greensmith, ABB, Samsung	SDG&E	SDG&E
GRC Energy Storage Program Unit 8	In Progress	15	Islanding	Capacity/Infrastructure Deferral	S&C, Kokam	SDG&E	SDG&E
GRC Energy Storage Program Unit 9	In Progress	15	Power Quality	Islanding	Saft, ABB	SDG&E	SDG&E
SGIP - In Service	Installed	Various	Demand Side Management		Various	Various	Various
SGIP - Proposed	In Progress	Various	Demand Side Management		Various	Various	Various
PLS - Proposed	In Progress	Various	Demand Side Management		Various	Various	Various

Appendix B

ENERGY STORAGE SYSTEM POWER PURCHASE TOLLING AGREEMENT

between

**SAN DIEGO GAS & ELECTRIC COMPANY
as Buyer**

and

**[INSERT NAME OF SELLER]
as Seller**

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ENERGY STORAGE SYSTEM POWER PURCHASE TOLLING AGREEMENT

This Energy Storage System Power Purchase Tolling Agreement (“Agreement”) is made and entered into as of this _____ day of _____, 2014 (“Effective Date”) by SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation (“Buyer”), and [insert name and type of legal entity] (“Seller”). Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Appendix A to this Agreement.

RECITALS

This Agreement is made with reference to the following facts, among others:

- A. Buyer is an investor-owned electric utility serving customers in San Diego and Orange counties.
- B. [Seller will develop, permit, design, procure, construct, commission, test, own, operate and maintain [insert description of facility] (“Project”), consisting of [insert number] [insert type: ”] turbine generating unit(s) (each a “Energy Storage System”) to be constructed on an approximately [insert number] acre parcel of land (the “Site”) located adjacent to [insert name of substation] in [enter city and state]. **[NOTE to Bidders: conforming changes needed if multiple Energy Storage Systems.] [NOTE to Bidders: for existing facilities, there will be a fixed start date and all facility construction related terms shall be removed.]**
- C. Seller wishes to generate, sell and deliver to Buyer, [and Buyer wishes to [provide the electricity to recharge] the Energy Storage System and purchase from Seller, Capacity, Energy, Resource Adequacy Benefits, Ancillary Services and other products from the Project, under the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows.

ARTICLE 1. PURCHASE AND SALE OF PRODUCT

1.1 Product. During the Delivery Period, Seller shall operate the Project and make available, generate, deliver, and sell the Product therefrom to Buyer, [and Buyer shall provide to Seller all electricity required to operate the Project] and purchase and receive the Product therefrom, when and as the Project is available, subject to the terms and conditions of this Agreement, including the Operating Restrictions set forth in Appendix 1.1. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any Capacity, Energy, Ancillary Services or Resource Adequacy Benefits from any other generating resource or the market for delivery hereunder, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or CAISO pursuant to this Agreement.

1.1.1 Capacity. Buyer shall have the exclusive right to the Contract Capacity from the Project. As of the Effective Date, the Contract Capacity shall equal the Expected Contract Capacity of the Project, without adjustment for temperature, pressure, humidity or other adjustment factors. The actual Contract Capacity and Efficiency Rate of the Project and each Energy Storage System will be determined upon the completion of the Commercial Operation Test for the Project and each year of the Delivery Period in accordance with the testing procedures of Sections 7.2 and 7.3, as applicable. Such tests will demonstrate the Capacity and Efficiency Rate of the Project at the actual ambient conditions existing at the time of each such test and those test results will be adjusted to reflect the equivalent Capacity and Efficiency Rate that would occur at Contract Conditions, and this adjusted Capacity shall be the Contract Capacity; provided, that in no event shall the Contract Capacity of [the Project] (i) exceed PMAX for [the Project/each Energy Storage System (i.e. the Contract Capacity shall be limited to PMAX until such time as Seller gets PMAX increased to the tested Contract Capacity), (ii) exceed the Net Qualifying Capacity (as such term is defined by the CAISO Tariff) for the Project and (iii) exceed 105% of the Energy Storage System's Expected Contract Capacity as identified in Appendix 1.1.1. Upon the completion of the Commercial Operation Test or the periodic Contract Capacity Tests for the Project, as applicable, Appendix 1.1.1 shall be automatically amended to reflect the Contract Capacity as achieved by that test and adjusted to Contract Conditions, subject to the limitations in this Section. In addition, Seller shall cause the PMIN for the Project to be no greater than the Minimum Operating Level. Seller agrees that each Energy Storage System is subject to the terms of the Availability Standards.

1.1.2 Energy. Except for Energy resulting from a Non-Buyer Dispatch, Seller commits to make available and sell the Energy of the Project (net of Station Use) to Buyer, and Buyer shall have the exclusive rights to purchase and receive all Energy produced by the Project (net of Station Use), subject to the Operating Restrictions set forth in Appendix 1.1, including pursuant to a forward schedule or a Supplemental Energy instruction from CAISO.

1.1.3 Ancillary Services. Buyer shall have the exclusive rights to all Ancillary Services Capacity and Associated Ancillary Services Energy, with characteristics determined in accordance with the Tariff, in the amounts set forth in the following table(s): **[NOTE TO BIDDERS: include all bid ancillary services only.]**

Ancillary Service Type	Ancillary Service Amount (MW or MW range, as applicable)
Spinning Reserve	Minimum Operating Level (PMIN) to Contract Capacity (PMAX)
Non-Spinning Reserve	Minimum Operating Level (PMIN) to Contract Capacity (PMAX)
Regulation Up	
Regulation Down	
Black Start	
[Voltage Support]	

1.1.4 Resource Adequacy Benefits. Seller shall maintain ownership of and demonstrable exclusive rights to the Project throughout the Term. Seller grants, pledges, assigns and otherwise commits to Buyer the full Capacity of the Project for use by Buyer in meeting its

resource adequacy obligations under any Resource Adequacy Rulings. The Parties shall cooperate and take commercially reasonable actions (including amending this Agreement, executing such documents or instruments as is reasonably necessary, and complying with all applicable Tariff provisions and applicable decisions of the CPUC and/or any other Governmental Authority that address Resource Adequacy performance obligations and penalties hereunder) to effect the use of the Resource Adequacy Benefits of the Project for Buyer’s sole benefit through the Delivery Period.**[NOTE TO BIDDERS: SDG&E to update all RA provisions to address Flex RA.]**

1.1.5 Exclusive Rights. Buyer shall have exclusive rights to the Product and all benefits derived therefrom, including the exclusive right to use, market or sell the Product and the right to all revenues generated from the use, resale or remarketing of the Product.

1.2 Project.

1.2.1 Delivery of Energy. Delivered Energy from the Project shall be delivered to the Energy Delivery Point at a nominal voltage of [_____] Volts line-to-line.

1.2.2 Energy Storage Systems. The following table is a description of the Energy Storage Systems:

Unit		
Site		
Unit Description		
Unit Serial Number		

Seller will provide all CAISO certification test results for each Energy Storage System within three (3) Business Days of Seller’s receipt for any initial or subsequent test throughout the Term of this Agreement.

1.2.3 Station Use. The Project [will/will not] serve Station Use and all Product delivered hereunder will be net of Station Use.

1.3 Delivery Points.

1.3.1 Energy Delivery Point. The Energy Delivery Point shall be [the point of interconnection of the Project to the CAISO Grid at _____] (as described and set forth in the single-line diagram of grid interconnection attached hereto as Appendix 1.3.1). Title and risk of loss related to Energy shall transfer from Seller to Buyer at the Energy Delivery Point. Notwithstanding the above, Seller acknowledges and agrees that any other agreement between it and Buyer, including any interconnection agreement, is separate and apart from this Agreement such that no other agreement shall modify or add to the Parties’ obligations under this Agreement.

1.3.2 Electric Retail Delivery Point. [INSERT]

ARTICLE 2.
TERM; [CONDITIONS PRECEDENT] AND DELIVERY PERIOD

2.1 Term. The “Term” of this Agreement shall commence upon the Effective Date and shall continue, unless terminated earlier in accordance with the terms of this Agreement, until the expiration of the Delivery Period.

2.2 Effectiveness of Agreement Prior to CP Satisfaction Date. Commencing on the Effective 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 Section 2, including, as it relates to Section 2, the rights and obligations under Sections 3, 5, 6, 10, 11, 12, 13, 21, 22, 23, 24, 25, 26, 27 and 28, Appendix A and the other appendices referenced in the foregoing Sections.

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

2.3.1 Seller’s Obligations. Prior to the CP Satisfaction Date, Seller shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Sections [____], (ii) use commercially reasonable efforts to pursue development of the Project in accordance with Sections 5 and 6, (iii) comply with Section 6 in achieving the applicable milestones in the Milestone Schedule that have due dates occurring prior to the CP Satisfaction Date, (iv) deliver the Monthly Progress Report in accordance with Section 6, and (v) otherwise comply with its obligations, covenants, representations, and warranties under Sections 3, 5, 6, 10-13, and 21-28. 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 Pre-Construction 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.

2.3.2 Buyer’s Obligations. Prior to the CP Satisfaction Date, Buyer shall (i) use commercially reasonable efforts to pursue satisfaction of the Conditions Precedent set forth in Section 2.4.1, and (ii) otherwise comply with its obligations, covenants, representations, and warranties under Sections 3, 5, 6, 10-13, and 21-28. Upon an Event of Default of Buyer prior to the CP Satisfaction Date, Seller may exercise remedies in accordance with Section 3.3.

2.4 Conditions Precedent. Subject to Section 2.2, the effectiveness of the remainder of this Agreement is conditioned upon the satisfaction (or waiver by the Party described in Section 2.5) of all of the following conditions precedent (“Conditions Precedent”) by the deadline dates set forth below for each Condition Precedent without extension for Force Majeure or any other reason:

2.4.1 CPUC Approval. No later than [_____], 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 sixty (60) days, no agreement is reached, either Party may terminate this Agreement upon delivery of Notice to the other Party.

2.4.2 Electrical Interconnection.

No later than [insert date], Buyer shall have agreed to and approved of (in its sole discretion) the deliverability of the Product, the in-service interconnection date and the costs to be incurred by Buyer for any required transmission network upgrades and interconnection facilities reasonably necessary to enable the cost-effective and reliable delivery of Energy from the Project to Buyer's load consistent with FERC's then current orders and rulemakings.

2.4.3 [INSERT OTHERS]

2.5 Failure to Meet All Conditions Precedent.

2.5.1 Beneficiary Party.

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

(b) Buyer shall be the sole beneficiary of the Conditions Precedents set forth in Sections 2.4.1 and 2.4.2, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Buyer alone must waive (in its sole discretion) non-satisfaction by the deadline date therefor.

(c) Seller shall be the sole beneficiary of the Conditions Precedents set forth in Section 2.4.3, and in order for a waiver of non-satisfaction of such Conditions Precedent to be effective, Seller alone must waive (in its sole discretion) non-satisfaction by the deadline date therefor.

2.5.2 Termination. If any of the Conditions Precedent is not satisfied or waived in writing by the beneficiary Party or Parties thereto on or before the applicable deadline date therefor, without extension for Force Majeure or any other reason, then either of the Parties may terminate this Agreement with no further obligation to either Party (other than as set forth in Sections 2.5.2(a)-(b) below and any other 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 2.5.2, but fails to deliver Notice of termination within each fifteen day period after each deadline date, then such Party's termination right per this Section 2.5.2 for such deadline date shall be deemed waived in its entirety.

(a) Upon a termination of this Agreement by either Party for any reason under Section 2.5 other than the failure of the Conditions Precedent set forth in Sections 2.4.1 or 2.4.2 to be satisfied or waived by Buyer, Seller shall pay to Buyer an amount

equal to the Pre-Construction Security. Buyer may retain the Pre-Construction Security to pay such amount.

(b) Upon a termination of this Agreement by either Party as a result of the failure of the Conditions Precedent set forth in Sections 2.4.1 or 2.4.2 to be satisfied or waived by Buyer, Buyer shall return to Seller the Pre-Construction Security.

2.6 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 Period 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 Period, the Termination Payment, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Pre-Construction Security, Construction Period Security, or Delivery Period Security, as applicable, is released and/or returned as applicable (if any is due).

2.7 Guaranteed Initial Delivery Date. The Guaranteed Initial Delivery Date for the Project is [insert date] (“Guaranteed Initial Delivery Date”). **[NOTE to Bidders: for existing facilities, there will be a fixed start date and all facility construction related terms shall be removed.]**

2.8 Delivery Period. The “Delivery Period” shall be the period during which the Product is available to Buyer, and will commence at 12:01 a.m. PPT on the Initial Delivery Date, and shall continue until midnight on [Insert Date] of the year in which the [XX] anniversary of the Initial Delivery Date occurs. The “Initial Delivery Date” shall be the date upon which all the following conditions have been satisfied:

(a) Seller has completed, to Buyer’s satisfaction, Seller’s obligations set forth in Articles 5, 6, and 7 in order to bring the Project into full operation as contemplated by this Agreement;

(b) The Project has achieved Commercial Operation;

(c) Seller has received its market based rate authority from FERC to sell Product to Buyer under the terms of this Agreement, and has received all other approvals and authorizations required for Seller to perform its obligations under this Agreement;

(d) Seller has executed the Participating Generator Agreement, Meter Service Agreement, and any other forms or agreements required by the CAISO, and [insert electric retail service contract] with respect to the Project (and delivered true and complete copies of all such forms and agreements to Buyer);

(e) Seller has taken all actions, including executing all documents and instruments, required to authorize Buyer to act as Scheduling Coordinator;

(f) Seller has entered into and complied with all obligations under all interconnection agreements required to enable parallel operation of the Project with the Participating Transmission Owner's electric system and CAISO Grid;

(g) Seller has established a Letter of Credit or deposited with Buyer the required Performance Assurance and related documents and instruments as set forth in Article 11; and

(h) The Priority Security Interest required under Section 11.5 and the Subordinated Security Interest required under Section 11.6 shall continue to be perfected and in full force and effect.

The Parties agree that, in order for Buyer to dispatch the Energy Storage Systems for its Initial Delivery Date, the Parties may have to perform certain of their Delivery Period obligations in advance of the Initial Delivery Date, including, without limitation, Seller's delivering an Availability Notice for the Initial Delivery Date, and Buyer's delivering a Dispatch Notice and nominating and scheduling the Energy Storage System's Storage Requirements for the Initial Delivery Date, in advance of the Initial Delivery Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch each Energy Storage System for the Initial Delivery Date. Seller shall give Buyer at least [x] days Notice before the Initial Delivery Date.

2.9 Early Initial Delivery Date. If Seller satisfies the conditions precedent for the Initial Delivery Date prior to the applicable Guaranteed Initial Delivery Date, then such earlier date shall be the Initial Delivery Date under this Agreement.

2.10 Delayed Initial Delivery Date.

2.10.1 Daily Delay Damages. If Seller has not satisfied the conditions precedent for the Initial Delivery Date of the Project by the applicable Guaranteed Initial Delivery Date, Seller shall owe to Buyer the applicable Daily Delay Damages for each day of delay, up to a maximum of one hundred and eighty (180) days of delay (the "Cure Period"). Buyer shall be entitled to recover the Daily Delay Damages owed by Seller from the Construction Period Security held by Buyer. Each Party agrees and acknowledges that (a) the actual damages that Buyer would incur due to a delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date would be difficult or impossible to predict with certainty, (b) the Daily Delay Damages set forth in this section are a reasonable and appropriate approximation of such damages, and (c) the Daily Delay Damages set forth in this section are the exclusive remedy for Seller's delay in achieving the Initial Delivery Date on or before the Guaranteed Initial Delivery Date but shall not otherwise act to limit any of Buyer's rights or remedies arising from any other Event of Default by Seller, including, without limitation, the failure by Seller to achieve the Initial Delivery Date altogether.

2.10.2 Excused Delays. For all purposes under this Agreement, the Guaranteed Initial Delivery Date will be extended on a day for day basis without imposition of any Daily Delay Damages to the extent that Seller is delayed in its critical path to achieving the Initial Delivery Date by the Guaranteed Initial Delivery Date due to any of the following events:

(a) Force Majeure, provided that all extensions of the Guaranteed Initial Delivery Date for the Project due to Force Majeure shall not exceed 90 calendar days in the aggregate (“Maximum Force Majeure Delay”) and any delay by Seller in excess of the Maximum Force Majeure Delay shall be subject to Daily Delay Damages in accordance with Section 2.10.1.

(b) Delay by the Participating Transmission Owner or the CAISO in installing the Electrical Interconnection Upgrades for which it is responsible in accordance with the schedule set forth in the electrical interconnection agreement among Seller, the CAISO, and the Participating Transmission Owner. Seller acknowledges and agrees that nothing in this Agreement is intended to abrogate, amend or modify the terms of any electrical interconnection agreement between it and the Participating Transmission Owner. Except as may be set forth in such electrical interconnection agreements, the Participating Transmission Owner has not made and makes no, and Seller is not relying on any, representations or warranties of any kind or nature, express or implied, with respect to the electrical interconnection, including, but not limited to, any representations or warranties concerning the costs, construction schedule, or permitting of, or any other matter related to, the electric interconnection for the Project. Seller’s sole and exclusive remedy against Buyer under this Agreement for any delay by the Participating Transmission Owner or the CAISO in completing the Electrical Interconnection Upgrades for which it is responsible is an extension of the Guaranteed Initial Delivery Date in accordance with this Section.

(c) Reserved.

(d) Buyer’s delay or other failure to perform any of its material obligations under this Agreement which are to be performed prior to the Initial Delivery Date in a manner that directly delays the Initial Delivery Date.

ARTICLE 3. EVENTS OF DEFAULT; REMEDIES; TERMINATION

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

(a) The failure to make, when due, any payment in a material amount required under this Agreement if such failure is not remedied within three (3) Business Days after receipt of Notice;

(b) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such failure is not cured within 10 days after receipt of Notice;

(c) The failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within 10 days of receipt of Notice (or such longer period not to exceed 60 days if the failure is not capable of being cured within such 10 days with the exercise of reasonable diligence), so long as the Defaulting Party has commenced and is diligently pursuing a cure during such initial 10-day period and thereafter up to 60 days;

(d) Such Party becomes Bankrupt; or

(e) Such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 28.5.

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

(a) Seller fails to comply with any of its covenants under Section 22.4;

(b) Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity without Buyer’s written consent, which consent may be granted or withheld in Buyer’s sole discretion;

(c) Seller fails to comply with its obligations under Article 11, including without limitation failing to post or maintain the Construction Period Security or applicable Performance Assurance, within three (3) Business Days of receipt of Notice of such failure;

(d) Seller makes any material misrepresentation or omission in any report, including status and metering report, or any Milestone Schedule or Availability Notice (including without limitation the log, records and reports required under Sections 8.1.2, 8.1.3, 8.1.4, 20.1, and Appendices 6.1(a) and (b), 18.1, and 18.2) required to be made or furnished by Seller pursuant to this Agreement;

(e) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, for delivery during the Delivery Period, the Product, or any portion thereof, to any party other than Buyer or CAISO;

(f) During the Delivery Period, the Default Equivalent Availability Factor is below [ninety percent (90%)] (the “Minimum Guaranteed Availability”) [each month for twelve (12) or more consecutive months] [on average for a period of twelve (12) consecutive months];

(g) Seller fails to achieve an Initial Delivery Date for the Project within the Cure Period following the Guaranteed Initial Delivery Date;

(h) Seller starts-up or operates, or permits or causes any third party to start-up or operate, the Project other than as expressly permitted under this Agreement;

(i) The ownership interest in Seller is pledged or assigned or caused or permitted to be pledged or assigned as collateral to any party other than pursuant to a Permitted Lien or in accordance with Section 28.5;

(j) Seller fails to remediate any deficiency in internal controls over financial reporting in accordance with Section 24.2;

(k) Seller defaults under any Security Document in any material respect and such default is not cured within the applicable cure period, if any, set forth in the Security Document, or Seller repudiates, disaffirms, disclaims or rejects, in whole or in part, or challenges the validity of, any Security Document;

(l) With respect to Guarantor, if there is one:

(i) Any representation or warranty made by Guarantor in the Guaranty Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such failure shall not be cured within 10 days after receipt of Notice;

(ii) The failure of Guarantor to make, when due, any payment required or to perform any other material covenant or obligation in the Guaranty Agreement, if such failure is not remedied within one (1) Business Day (in the case of a failure to pay) and three (3) Business Days (in all other cases) after receipt of Notice;

(iii) Guarantor becomes Bankrupt;

(iv) The failure by Guarantor to maintain a Credit Rating of at least ["BBB-"] by S&P or ["Baa3"] by Moody's and a tangible net worth of at least [\$XX] Billion; **[Note to Bidders: subject to credit review]**

(v) The Guaranty Agreement fails to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the indefeasible satisfaction of all of Seller's obligations hereunder to which such Guaranty Agreement relates; or

(vi) Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its Guaranty Agreement; or

(m) 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:

(i) 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;

(ii) 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;

- (iii) 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;
- (iv) such Letter of Credit fails or ceases to be in full force and effect at any time;
- (v) the issuer of such Letter of Credit becomes Bankrupt; or
- (vi) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit.

3.3 Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right to (a) terminate this Agreement by providing Notice of such termination to the Defaulting Party, which termination shall be effective on a day no later than 20 days after such Notice is effective (“Early Termination Date”), and the Defaulting Party shall pay the Non-Defaulting Party a Termination Payment as set forth below, (b) require immediate payment of all amounts owed but not yet paid by the Defaulting Party under this Agreement, (c) withhold any payments due to the Defaulting Party under this Agreement, (d) suspend performance, and (e) pursue any other remedies available at law or in equity, including where appropriate, specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement. If the Non-Defaulting Party elects to terminate this Agreement under clause (a), then the sole and exclusive remedy available to the Non-Defaulting Party shall be the Termination Payment as set forth below.

3.4 Calculation of Termination Payment. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, the amounts owing between the Parties under this Agreement as of the Early Termination Date (the “Termination Payment”) in accordance with this Section. The Non-Defaulting Party shall determine its Gains and Losses by determining the Market Quotation Average Price for the Product from the Project. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain the Market Quotation Average Price for the Product from the Project, then the Non-Defaulting Party shall calculate its Costs, and its Gains or Losses with respect to the Product from the Project in a commercially reasonable manner by calculating the arithmetic mean of at least three (3) Forward Price Assessments for products substantially similar to the Product from the Project. Such Forward Price Assessments must be obtained assuming that the Party obtaining the quote will provide and obtain the same or substantially similar credit collateral terms as the credit and collateral terms in this Agreement. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain at least three (3) Forward Price Assessments for products substantially similar to the Product from the Project, then the Non-Defaulting Party shall calculate its Gains and Losses in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, index prices, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the

relevant product, information vendors and other sources of market information, provided that such third parties shall not be Affiliates of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third party information, then the Non-Defaulting Party may calculate its Gains and Losses in a commercially reasonable manner using relevant market data it has available to it. The Termination Payment shall equal (a) in the case where Non-Defaulting Party has Losses, the aggregate Losses of the Non-Defaulting Party plus Costs of the Non-Defaulting Party plus any or all other amounts due to the Non-Defaulting Party netted into a single amount, and the Defaulting Party shall owe such Termination Payment calculated under this clause (a) to the Non-Defaulting Party; or (b) in the case where the Non-Defaulting Party has Gains, the aggregate Gains of the Non-Defaulting Party less Costs of the Non-Defaulting Party less any or all other amounts due to the Non-Defaulting Party netted into a single amount. If the net amount calculated under clause (b) is negative, the Defaulting Party shall owe the absolute value of such amount to the Non-Defaulting Party. If the net amount calculated under clause (b) is positive, the Termination Payment shall be zero (0) except in the case where the Non-Defaulting Party elects to terminate this Agreement solely as a result of an Event of Default by the Defaulting Party under Section 3.1(d) [Bankruptcy], in which case the Non-Defaulting Party shall owe the positive amount calculated under clause (b) to the Defaulting Party.

3.5 Notice of Payment of Termination Payment. As soon as practicable, but in no event later than fifteen (15) Business Days following the Early Termination Date, the Non-Defaulting Party shall give the Defaulting Party Notice of the amount of the aggregate Termination Payment, if any. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount. The aggregate Termination Payment, if any, shall be made by the Defaulting Party to the Non-Defaulting Party within two (2) Business Days after receipt of such Notice.

3.6 Disputes Regarding 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 aggregate Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute, provided that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral in the form of a Letter of Credit, Guaranty Agreement, or other security (acceptable to the Non-Defaulting Party in its sole discretion) to the Non-Defaulting Party in an amount equal to the aggregate Termination Payment, as calculated by the Non-Defaulting Party.

3.7 Suspension of Performance. If an Event of Default occurs and shall be continuing, the Non-Defaulting Party shall have the right to suspend performance under this Agreement upon Notice to the Defaulting Party. At any time prior to or after the receipt of such Notice by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or in equity, including without limitation the right to seek damages or injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

3.8 Bankruptcy Without Early Termination. In the event that Guarantor becomes Bankrupt, but Buyer does not declare an Early Termination Date, the bankruptcy shall not extinguish the Parties' obligations under this Agreement.

3.9 Effect of Termination. Termination of this Agreement shall not operate to discharge any liability which has been incurred by either Party prior to the effective date of such termination.

ARTICLE 4. INSURANCE

4.1 Required Insurance. From the CP Satisfaction Date and thereafter throughout the Term, Seller shall, at its own expense, maintain in force throughout the remaining Term of this Agreement and until released by Buyer the following minimum insurance coverages:

4.1.1 Workers' Compensation insurance or self-insurance in accordance with the laws and regulations of the State of California, providing statutory benefits and covering loss resulting from injury, sickness, disability or death of employees of Seller.

4.1.2 Employer's liability insurance with minimum limits of \$1,000,000 per accident.

4.1.3 Commercial General Liability Insurance against claims for personal injury (including bodily injury and death) and property damage. Such insurance shall provide premises/operations, products-completed operations, blanket contractual liability, explosion, collapse and underground coverage, broad form property damage, independent contractor's and personal injury insurance, punitive damages to the extent insurable under the laws of the State of California, with a minimum limit of \$1,000,000 per occurrence and in the annual aggregate for combined bodily injury and property damage.

4.1.4 Commercial or Business Automobile Liability Insurance for coverage of owned, non-owned and hired vehicles, with a minimum limit of \$1,000,000 combined single limit for bodily injury and property damage.

4.1.5 Excess or Umbrella Liability Insurance over and above the insurance required above, except for Workers' Compensation coverage specified in Section 4.1.1, with a minimum limit of Twenty-Five Million Dollars (\$25,000,000.00) per occurrence/Twenty-Five Million Dollars (\$25,000,000.00) aggregate.

The amounts of insurance required in Sections 4.1.2 through 4.1.4, may be satisfied by Seller purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

4.1.6 Builder's Risk Insurance. During the construction period for the Project, Builder's Risk insurance on an "all risk of physical loss or damage" basis, including coverage against damage or loss caused by earthquake, flood, windstorm, boiler, engine, and machinery accidents and performance testing and "Delay in Start-up" coverage. The Builder's Risk coverage shall include (i) coverage for the buildings, structures, boiler, machinery, equipment, facilities, fixtures, supplies, and other properties constituting a part of the Project, with an overall limit sufficient to cover repair or replacement; (ii) inland transit coverage for property and equipment that has been off-loaded from a vessel or aircraft until delivered to the Site; (iii) off-site coverage to insure any property or equipment described in (i) above not stored on the Site;

(iv) removal of debris; (v) coverage for foundations and other property below the surface of the ground; (vi) expediting expenses; and (vii) hazardous substance cleanup. The Builder's Risk coverage shall modify the standard exclusion for damage caused by faulty workmanship, design or materials so as to insure resulting damage to property free of defective conditions.

4.1.7 Operational Property Insurance. After construction has been completed, All Risk property insurance coverage in the amount not less than the full replacement value of the Project, including a full replacement cost endorsement (no co-insurance) with no deduction for depreciation if property is actually replaced, providing, without limitation, (i) coverages against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, other risks from time to time included under "all risk" or "extended coverage" policies, earthquake, flood, collapse, sinkhole, subsidence and such other perils, (ii) off-site coverage as is sufficient to cover off-site equipment for which there have been progress payments, (iii) transit coverage (including ocean cargo where ocean transit will be required) as is sufficient to cover property in transit, and (iv) boiler and machinery coverage on a "comprehensive" basis including breakdown and repair with limits not less than the full replacement cost of the insured objects. The policy/policies shall include increased cost of construction coverage, debris removable, and building ordinance coverage to pay for loss of "undamaged" property which may be required to be replaced due to enforcement of local, state, or federal ordinances.

4.1.8 If applicable to the scope of work during construction phase of the term of this Agreement, Aircraft/Watercraft Insurance, for all owned, non-owned and hired aircraft or watercraft used in connection with the operation of the Project, with a \$10,000,000 limit per occurrence for property damage and bodily injury, including passengers and crew; provided, such insurance may be provided by the provider of the non-owned or hired aircraft or watercraft.

4.1.9 Pollution Liability Insurance insuring against liability arising out of activities contemplated hereunder or as might be required by federal, state, regional, municipal and local laws, with minimum limits of Two Million Dollars (\$2,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate. Seller may satisfy this requirement under Commercial General Liability insurance and Excess or Umbrella Liability insurance policies if such policies provide coverage as is provided for under a Pollution Liability insurance policy. The Buyer shall have the right to review such coverage within such policy and accept the terms or require additional coverage in Buyer's reasonable discretion.

4.2 Additional Terms and Conditions.

4.2.1 All required insurance policies shall name Buyer, its parent, associated and affiliated companies and their respective directors, officers, agents, servants and employees as loss payees under the policy required in Section 4.1.6 and 4.1.7, and as additional insureds under the policies required in Sections 4.1.3, 4.1.5, and 4.1.9.

4.2.2 All policies required under Sections 4.1.1, 4.1.2, 4.1.5, and 4.1.9 shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this Agreement against Buyer.

4.2.3 All policies shall provide thirty (30) days' advance written notice to Buyer for cancellation or any material change in coverage or condition, ten (10) days' notice for non-payment.

4.2.4 All policies required under Sections 4.1.3 and 4.1.5 shall contain provisions that specify that the policies are primary and are not excess to or contributing with any insurance or self-insurance maintained by Buyer, and shall contain a severability of interest or cross-indemnity clause.

4.2.5 Seller shall be responsible for its respective deductibles or retentions.

4.2.6 If any of the required insurance policies are written on a "claims made" basis, such policies shall be maintained in full force and effect for two (2) years after termination of this Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

4.2.7 Certificates of insurance and summaries of all such insurance documents shall be sent to Buyer.

4.2.8 Buyer's agent may inspect the original policies or require complete certified copies, at any time.

4.2.9 Seller shall require, and shall furnish Buyer with evidence of, the same insurance for its agents or contractors as Buyer requires of Seller.

4.2.10 The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Parties under this Agreement.

4.3 Market Practicability.

4.3.1 In the event any insurance required to be maintained hereunder shall not be reasonably available and commercially feasible in the commercial insurance market, Buyer shall waive such requirement to the extent the maintenance thereof is not so available and feasible; provided, however, that (a) Seller shall first request any such waiver in writing, which request shall be accompanied by written reports prepared by an independent insurance broker, or an insurance consultant selected by Seller and reasonably acceptable to Buyer, explaining the extent to which such insurance is not reasonably available and commercially feasible (and, in any case where the required amount is not so available, certifying as to the maximum amount which is so available) and explaining in detail the basis for such conclusions, the form and substance of such reports to be reasonably acceptable to Buyer; (b) at any time after the granting of any such waiver, but not more often than once a year, Buyer may request, and Seller shall furnish to Buyer supplemental reports reasonably acceptable to Buyer from such insurance broker updating its prior reports and reaffirming such conclusion; and (c) any such waiver shall be effective only so long as such insurance shall not be reasonably available and commercially feasible in the commercial insurance market.

4.3.2 If Buyer determines that the types or amounts of any insurance required to be maintained hereunder shall no longer be reasonably adequate, then Buyer may require revisions to the types or amounts of any insurance required hereunder but only if such revisions are commercially reasonable.

4.4 Application of Proceeds. Subject to the requirements of the Lenders' financing documents and the rights or remedies of the Lenders thereunder, Seller shall apply any and all insurance proceeds received in connection with the damage or destruction of the Project toward the repair, reconstruction or replacement of the Project; provided, however, that if the Project is damaged or destroyed due to an event of Force Majeure to an extent that results, or could reasonably be expected to result, in a repair schedule exceeding twelve (12) months, then, notwithstanding anything in this Agreement to the contrary, Seller shall not be obligated to repair, reconstruct or restore the Project unless and until Buyer waives termination under Section 21.3 for the reasonable duration of the repair. Seller shall use commercially reasonable efforts to include in the Lenders' financing documents an obligation on the part of Seller and the Lenders to apply the proceeds of physical damage, and similar insurance obtained by Seller in connection with the Project to repair and maintain the Project in order to effectuate Seller's obligations under this Agreement. In no event shall Seller enter into an agreement with the Lenders respecting the use of insurance proceeds that is not consistent with generally accepted practices in similar financings within the electric industry.

ARTICLE 5. DESIGN AND CONSTRUCTION OF PROJECT

5.1 Seller's Obligations. At no cost to Buyer, Seller shall:

- (a) Develop, design procure, construct commission, test, own, operate and maintain the Project as required for Seller to perform its obligations under this Agreement;
- (b) Acquire and maintain all entitlements, permits, licenses and approvals necessary for the design, development, construction, installation, testing, operation, maintenance, and ownership of the Project, (the "Required Permits")
- (c) Pay all costs allocated to the Project related to acquiring and/or maintaining rights of way and upgrades to, and construction of, facilities required to interconnect the Project to the electric retail system and the Participating Transmission Owner's electric system and CAISO Grid under Full Capacity Deliverability Status (as defined in the Tariff), consistent with Applicable Laws.

5.2 Design Review.

5.2.1 In the event that construction of the Project has not commenced by the Effective Date, at Buyer's request, Seller shall provide to Buyer information related solely to operational characteristics of the Project for Buyer's review prior to finalizing design of the Project and before beginning construction work.

5.2.2 Seller shall provide to Buyer Notice of any changes Seller proposes to make to the Project which will materially impact its operational characteristics and the operational characteristics of such changes, for Buyer's review as far in advance as practicable, but in no event less than 30 days before the changes are to be made.

5.2.3 Buyer may notify Seller in writing of the results of Buyer's review of the information provided by Seller pursuant to Section 5.2.1 or 5.2.2, within 30 days of Buyer's receipt of the specifications for the Project or the change, as appropriate, including a description of any flaws perceived by Buyer in the design.

5.2.4 Seller shall in good faith consider any of Buyer's proposed revisions to Seller's design provided, however, that Seller shall be solely responsible for the final design and shall have no obligation to implement any of Buyer's proposed revisions to Seller's design.

ARTICLE 6. CONSTRUCTION PERIOD AND MILESTONES

6.1 Milestone Schedule. In order to meet each Guaranteed Initial Delivery Date, Seller shall use reasonable efforts to meet the construction milestones set forth on Appendix 6.1(a) ("Milestone Schedule") and avoid or minimize any delays in meeting such Milestone Schedule. No later than the 10th day of each month while the Project has not yet met its Initial Delivery Date, Seller shall deliver to Buyer a monthly progress report, substantially in the form set forth in Appendix 6.1(b) ("Monthly Progress Report"), describing its compliance with the Milestone Schedule, including projected time to completion of any milestones, for the Project. Seller shall include in any Monthly Progress Report a list of all letters, notices, applications, approvals, authorizations and filings referring or relating to Required Permits, and shall provide any such documents as may be reasonably requested by Buyer. In addition, Seller shall advise Buyer as soon as reasonably practicable of any problems or issues of which it is aware which could materially impact its ability to meet the Milestone Schedule.

6.2 Inspection Rights. Buyer shall have the right, upon reasonable prior notice to Seller, during the Term to enter onto the Site, inspect the Project and otherwise inspect or audit Seller's EPC Contracts and its books and records in order to verify Seller's compliance with the Milestone Schedule.

ARTICLE 7. COMMISSIONING; TESTING; PERFORMANCE GUARANTEES

7.1 Testing Costs. Seller will, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Project is functioning properly and each Energy Storage System is on an individual basis able to respond to Buyer or CAISO dispatch instructions. Such tests shall include (i) the Commercial Operation Test pursuant to Section 7.2, (ii) the annual Contract Capacity, Efficiency Rate & Ancillary Services Tests pursuant to Section 7.3, and (iii) the operational readiness tests pursuant to Section 7.4. Such tests are required under this Agreement and shall be deemed Buyer instructed dispatches of the applicable Energy Storage System. Seller may also conduct other discretionary tests, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating the

Project or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest). If such discretionary testing is conducted during a day in which Buyer has dispatched the Energy Storage System being tested (“Buyer Dispatched Test”), Seller shall not be obligated to pay for the electricity required to charge the Energy Storage System relating to such Buyer Dispatched Test of such Energy Storage System, and Energy from such Energy Storage System shall be treated as dispatched by Buyer hereunder. If discretionary testing is conducted during a day in which Buyer has not dispatched the Energy Storage System being tested (“Seller Initiated Test”), Seller shall pay for all electricity required to charge the Energy Storage System relating to such Seller Initiated Test of such Energy Storage System and Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Article 10, the applicable CAISO real-time hourly average energy price (or successor price) and other revenues associated with the Energy generated and delivered from such Energy Storage System during such Seller Initiated Test. Moreover, there shall be no Efficiency Rate Payment for any period during which a Seller Initiated Test takes place. To the extent a Seller Initiated Test prevents Buyer from dispatching a Energy Storage System as it would have absent such test, then, in accordance with Article 9, such Energy Storage System will be deemed unavailable; provided, however Buyer shall not dispatch or otherwise schedule such Energy Storage System during such Seller Initiated Test. Except as otherwise provided in Sections 7.2 and 7.3 and Appendix 7, Seller shall notify Buyer of any Seller Initiated Test no later than 24 hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices). For purposes of clarification, any test performed before the Initial Delivery Date, other than the Commercial Operation Test pursuant to Section 7.2, is a Seller Initiated Test.

7.2 Commercial Operation Test. At least seven (7) Business Days prior to its Initial Delivery Date, Seller shall schedule and complete a Commercial Operation test for each Energy Storage System (“Commercial Operation Test”). Such Commercial Operation Test shall be scheduled and conducted in accordance with Appendix 7 hereto. Seller shall use commercially reasonable efforts to undertake such activities in sufficient time to achieve Commercial Operation by the Guaranteed Initial Delivery Date and Buyer will reasonably cooperate with Seller to meet such deadline. The Commercial Operation Test shall establish the initial level of Contract Capacity for purposes of calculating the Monthly Capacity Payment under Section 9.2 and Appendix 1.1.1 shall be automatically amended to reflect the Contract Capacity achieved during such test, subject to the limitations in Section 1.1.1.

7.3 Contract Capacity, Efficiency Rate & Ancillary Services Testing. At least once per Contract Year after the initial Contract Year, upon seven (7) days prior Notice to Buyer, Seller shall schedule and complete a Contract Capacity, Efficiency Rate & Ancillary Services Test in accordance with Appendix 7. In addition, Buyer shall have the right to require a retest of the Contract Capacity, Efficiency Rate & Ancillary Services Test at any time upon two (2) days prior written Notice to Seller if Buyer reasonably believes that the actual Contract Capacity, Efficiency Rate, or Ancillary Services has varied materially from the results of the most recent tests. Such Buyer requested test shall be deemed a Buyer Dispatched Test unless the results of such test demonstrate that the actual Contract Capacity, Efficiency Rate, or Ancillary Services has varied by more than two percent (2%) from the results of the most recent tests, in which case such Buyer requested test shall be deemed a Seller Initiated Test. Seller shall have the right to run a retest of the Contract Capacity, Efficiency Rate & Ancillary Services Test at any time upon

24 hours prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices). Such Seller requested test shall be deemed a Seller Initiated Test. For all purposes of this Agreement, including Sections 1.1.1, 1.1.3, 1.2.2 and Appendices 7.6 and 9.2, the Contract Capacity and Efficiency Rate determined pursuant to a Contract Capacity, Efficiency Rate & Ancillary Services Test shall become the new Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test, subject to the limitations in Section 1.1.1.

7.4 Operational Readiness Testing. From time to time but generally no less than every six weeks if the Project has not been operated at full power within such six week period, Seller shall demonstrate operational readiness of each Energy Storage System to ensure that it is ready to respond to a Buyer or CAISO dispatch instruction. Such testing will include start-up, ramp to normal power output, stabilization, and shut down.

7.5 Independent Witness. Buyer shall be entitled to have an independent third party witness any testing under this Article 7, provided that (a) such third party enters into a confidentiality agreement reasonably satisfactory to Seller, and (b) Buyer is responsible for all costs, expenses and fees payable or reimbursable to such third party.

7.6 Performance Guarantees. Seller will operate and maintain the Project so as to achieve the Minimum Guaranteed Availability, the Guaranteed Efficiency Rate, Guaranteed Start-Up Time, and Guaranteed Ramp Rate in accordance with the provisions of Appendix 7.6 (collectively, the “Performance Guarantees”). The sole remedies and consequences of any failure by Seller to fulfill its obligations under this Section 7.6 are set forth in Section 8.2, Section 9.2, Appendix 7.6 and Appendix 9.2 (except to the extent any failure to achieve the Performance Guarantees results in a separate Event of Default under this Agreement, including Sections 3.2(f), 3.2(g), or 8.2).

ARTICLE 8.

SELLER’S OPERATION, MAINTENANCE AND REPAIR OBLIGATIONS

8.1 Seller’s Operation Obligations.

8.1.1 When notified of a dispatch by Buyer (or the CAISO), Seller shall operate the Project in accordance with Accepted Electrical Practices, Applicable Laws, Permit Requirements and applicable California utility industry standards, including without limitation the standards established by the California Electricity Generation Facilities Standards Committee, pursuant to Public Utilities Code Section 761.3, and enforced by the CPUC, and CAISO-mandated standards, as set forth in Section 5 of the Tariff (collectively, “Industry Standards”). In addition, Seller shall at all times maintain and operate the Energy Storage System in a safe manner as required by Accepted Electrical Practices, Industry Standards, statutes, regulations or other Applicable Law.

8.1.2 Seller shall maintain a daily operations log for the Project and each Energy Storage System which shall include but not be limited to information on power production, electricity consumption and efficiency (if applicable), availability, maintenance performed, outages, changes in operating status, inspections and any other significant events related to the

maintenance or operation of the Project. In addition, Seller shall maintain all records applicable to the Project, including the electrical characteristics of the generators and settings or adjustments of the generator control equipment and protective devices. Information maintained pursuant to this Section 8.1.2 shall be provided to Buyer, within 15 days of Buyer's request.

8.1.3 Seller shall maintain accurate records with respect to the Project's Commercial Operation Test and annual Contract Capacity, Efficiency Rate & Ancillary Services Tests; including the outcomes of such Tests.

8.1.4 Seller shall maintain and make available to Buyer and the CPUC, or any division thereof, records including logbooks, demonstrating that the Project is operated and maintained in accordance with Accepted Electrical Practices, Applicable Law and Industry Standards, including those related to safety. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Industry Standards or Applicable Laws.

8.1.5 Buyer or the CAISO may require Seller, at Seller's expense, to demonstrate to Buyer's commercially reasonable satisfaction the correct calibration and operation of Seller's Protective Apparatus at any time Buyer or the CAISO has reason to believe that said Protective Apparatus may impair the integrity of the Participating Transmission Owner's electric system or CAISO Grid. Buyer will reimburse Seller for all costs Seller incurs in such demonstration if the demonstration shows that the Protective Apparatus was functioning properly.

8.1.6 Seller shall inform Buyer on a daily basis of the generation capacity of the Project for the following day and any limitations, restrictions, deratings or outages affecting the Project.

8.1.7 Seller shall, during the Term, only employ appropriately qualified (determined in Seller's reasonable opinion consistent with Accepted Electrical Practices) personnel for the purposes of operating and maintaining the Project. Seller shall at all times require such personnel to adhere to all applicable safety standards in accordance with Accepted Electrical Practices, Applicable Law and Industry Standards.

8.2 Seller's Maintenance and Repair Obligations.

8.2.1 Seller shall inspect, maintain and repair the Project, and any portion thereof, in accordance with applicable Industry Standards and Accepted Electrical Practices. Seller shall maintain and deliver maintenance and repair records of the Project to Buyer's scheduling representative upon request.

8.2.2 Seller shall promptly make all necessary repairs to the Project, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Performance Guarantees).

ARTICLE 9.
CONTRACT CAPACITY, ASSOCIATED ENERGY AND ANCILLARY SERVICES

9.1 Compensation. Compensation to Seller shall consist of (a) a Monthly Capacity Payment calculated in accordance with Section 9.2, (b) a Variable O&M Charge calculated in accordance with Section 9.3, and (c) a Start-Up Charge calculated in accordance with Section 9.4. The Monthly Capacity Payment, Variable O&M Charge, and Start-Up Charge will be paid each month, in arrears in accordance with Article 10, for each month of the Delivery Period.

9.2 Monthly Capacity Payment. Once the Project has achieved its Initial Delivery Date, Buyer shall pay Seller a monthly capacity payment (the “Monthly Capacity Payment”), except that Buyer shall not be required to pay the Monthly Capacity Payment for any month in which the Equivalent Availability Factor is less than [ninety percent (90%)]. The Monthly Capacity Payment for the Project payable each month of the Delivery Period shall be determined in accordance with the calculation set forth in Appendix 9.2. For the month in which the Initial Delivery Date occurs, the Monthly Capacity Payment will be prorated for the remaining days of that month. For the last month of the Term, the Monthly Capacity Payment will be prorated for the number of days remaining in the Term.

9.3 Variable O&M Charge. Buyer shall pay Seller a Variable O&M Charge in accordance with the calculations set forth in Appendix 9.3.

9.4 Start-Up Costs. For each Buyer or CAISO dispatch of an Energy Storage System, Buyer is required to provide electricity to recharge the Energy Storage System as provided in Appendix 9.4 [**NOTE: TO BIDDERS: Bidders to insert**] (“Start-Up Costs”). All Delivered Energy produced prior to a Energy Storage System achieving a Start-Up during the respective start-up cycle shall be for Buyer’s account. If Buyer aborts a start-up before such Energy Storage System is released to Buyer for dispatch, then Buyer shall provide any electricity needed to recharge the Energy Storage System in connection with such aborted start-up, up to [INSERT]. If a Energy Storage System is unable to generate or deliver Energy to the Energy Delivery Point after a Start-Up, but before the next scheduled shutdown of such Energy Storage System for any reason other than a Force Majeure or a Delivery Excuse, Buyer shall not be responsible for any electricity costs under this Section 9.4 for the next Start-Up.

ARTICLE 10.
PAYMENT AND BILLING

10.1 Billing Period. The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month (but no later than ten (10) Business Days after the end of each month), each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month, together with all supporting documentation and calculation necessary to evidence all amounts charged thereunder.

10.2 Timeliness of Payment. All undisputed amounts in invoices under this Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the 20th day of each month, or the 10th day after receipt of the invoice, or, if

such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable methods, to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the 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.

10.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice, or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error, within 24 months of the date of invoice or adjustment. Any dispute with respect to an invoice is waived unless the other Party receives Notice under this Section 10.3 within 24 months after the invoice is rendered or any specific adjustment to the invoice is made. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Default Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Default Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment.

10.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date 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, 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.

10.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, interest and payments or credits, that Party shall pay such sum in full when due.

ARTICLE 11. CREDIT AND COLLATERAL

11.1 Financial Information. If requested by one Party, the other Party shall deliver:

(a) Within 120 days following the end of each fiscal year, a copy of its (and, if applicable, its Guarantor's) annual report containing audited consolidated financial statements for such fiscal year;

(b) Within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its (and, if applicable, its Guarantor's) quarterly report containing unaudited consolidated financial statements for such fiscal quarter.

A Party shall have satisfied this requirement if such statements are posted and publicly available within the time frames specified above on a Party or its Guarantor's corporate website or the U.S. Securities and Exchange Commission website (<http://www.sec.gov/>). In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the producing Party diligently pursues the preparation, certification and delivery of the statements.

11.2 Seller's Credit Requirements.

11.2.1 Credit Requirement During Pre-Construction Period. From the Effective Date to the CP Satisfaction Date, Seller shall provide Performance Assurance in an amount equal to \$[] (the "Pre-Construction Security") in order to secure Seller's obligations hereunder. Except to the extent Seller elects to apply the Pre-Construction Security to the Construction Period Security, Buyer shall promptly return to Seller the unused portion of the Pre-Construction Security after the earlier of (A) the date on which Seller has delivered the Construction Period Security, and (B) termination of the Agreement by either Party under Section 2.5.2(b).

11.2.2 Credit Requirement During Construction Period. From the CP Satisfaction Date to the Initial Delivery Date, Seller shall provide additional Performance Assurance so that the total amount of Performance Assurance is equal to \$[insert] **[NOTE to Bidders: Please see RFO document for collateral requirements.]** (the "Construction Period Security") in order to secure Seller's obligations hereunder. Except to the extent Seller elects to apply the Construction Period Security to the Delivery Period Security, Buyer shall promptly return to Seller the unused portion of the Construction Period Security after the earlier of (A) the date on which Seller has delivered the Delivery Period Security, and (B) the date that 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) after an Early Termination Date.

11.2.3 Credit Requirements During Delivery Period. Throughout the Delivery Period, Seller shall provide Performance Assurance to Buyer in an amount equal to \$[insert] **[NOTE to Bidders: Please see RFO document for collateral requirements]** to secure Seller's obligations hereunder ("Delivery Period Security"). Buyer shall promptly return to Seller the unused portion of the Delivery Period Security after the following have occurred: (A) the Delivery Period 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).

11.3 Form of Performance Assurance.

11.3.1 Cash. In the event that Seller elects to provide cash as the applicable Performance Assurance, such cash shall be deposited in an account bearing interest at the rate per annum equal to the Interest Rate. Interest shall be compounded monthly at a monthly rate of 1/12 of such Interest Rate, shall be retained in such account, and shall be applied toward the amount of the applicable Performance Assurance, and any amount in excess of the required amount of applicable Performance Assurance on the last Business Day of each calendar year shall be returned to Seller.

11.3.2 Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(a) Each Letter of Credit shall be maintained for the benefit of Buyer. Seller shall 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. If Seller fails to renew or cause the renewal of any outstanding Letter of Credit on a timely basis as provided in this Section 11.3.1, Buyer shall have the right to draw the entire amount of such Letter of Credit.

(b) Upon, or at any time after it has been determined that Seller has forfeited all or part of its Pre-Construction Security, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that Seller has forfeited all or part of its Pre-Construction Security in the amount set forth in Section 2.3.1 or 2.5.2 as applicable. Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be for the account of Buyer.

(c) Upon, or at any time after, the occurrence and continuation of an Event of Default by Seller, then Buyer may draw on the entire undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default has occurred and is continuing. Cash proceeds received by Buyer from drawing upon the Letter of Credit shall be used to offset Buyer's damages and to the extent in excess of Buyer's damages shall be deemed Performance Assurance as security for the Seller's obligations to Buyer and Buyer shall at all times have the exclusive dominion and control of, and at no time shall Seller have any rights or powers to direct or control such cash proceeds. Notwithstanding Buyer's receipt of cash proceeds of a drawing under the Letter of Credit, Seller shall remain liable (a) for any failure to provide sufficient Performance Assurance or (b) for any amounts owing to Buyer and remaining unpaid after the application of the amounts so drawn by Buyer.

(d) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, amending and increasing the amount of a Letter of Credit shall be borne by Seller.

11.3.3 Guaranty. Performance Assurance provided in the form of a Guaranty Agreement, if offered from Seller, shall be from a Guarantor reasonably acceptable to Buyer and satisfying the following: (i) the Guarantor shall maintain a Credit Rating of at least [“BBB-”] by S&P or [“Baa3”] by Moody’s and (ii) a tangible net worth of at least \$[XX] Billion. **[NOTE to Bidders: subject to credit review.]**

11.4 First Priority Security Interest. To secure Seller’s performance of its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Priority Security Interest”) in, and lien on (and right of setoff against), and assignment of, Seller’s rights in respect of the Performance Assurance, 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 Seller agrees to take such action and execute all such documents, instruments, agreements and certifications (to be effective as the same time as such Performance Assurance is required to be provided) as Buyer reasonably requires in order to perfect Buyer’s Priority Security Interest in, and lien on (and right of setoff against), such collateral, any and all amounts deposited therein, and any and all proceeds resulting therefrom or from the liquidation thereof. In addition, Seller authorizes Buyer to file such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by Buyer to confirm and continue the validity, priority, and perfection of the Priority Security Interests. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer may do any one or more of the following:

- (a) Exercise any of its rights and remedies with respect to all Performance Assurance, including any such rights and remedies under law then in effect;
- (b) Exercise its rights of setoff against any and all property of Seller in Buyer’s possession;
- (c) Draw on any outstanding Letter of Credit issued for its benefit; or
- (d) Liquidate all 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 Seller’s obligations under this 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.

11.5 Subordinated Security Interest and Mortgage.

11.5.1 Grant of Subordinated Security Interest. To secure Seller’s performance of its obligations under this Agreement, Seller and Buyer, as the case may be, shall no later than the CP Satisfaction Date each execute, deliver, file and, record, as appropriate, and maintain in full force and effect throughout the period from the CP Satisfaction Date until the expiration of the Term and satisfaction by Seller of all of its obligations hereunder, separate agreements,

documents, or instruments under which Seller will grant to Buyer, in a form reasonably acceptable to Buyer, fully perfected security interests and/or mortgage liens in the Project and in any and all real and personal property rights, contractual rights, or other rights that Seller requires in order to construct or operate the Project (collectively the “Subordinated Security Interest”). The Subordinated Security Interest shall be subordinate only to the security interests of Lenders except as set forth below. The Parties shall reasonably promptly execute when requested, a lien subordination agreement (the “Subordination Agreement”) by and among each Lender, (or an agent on behalf of the Lenders), Buyer and Seller relating to the Subordinated Security Interest, in form and substance reasonably requested by the Lender and reasonably acceptable to Buyer. Among other provisions, the Subordination Agreement shall include provisions whereby

(a) until all debt and other obligations owing to the Lenders have been paid in full (i) the Subordinated Security Interest shall be fully subordinate to the security interests of the Lenders, (ii) Buyer shall not exercise any remedies in respect of the Subordinated Security Interest, (iii) Buyer shall not take any action to contest the validity or to diminish the priority position of the Lender’s security interests; and

(b) the Lenders shall provide Buyer with (i) an option to purchase from the Lenders at full value the debt (at 100% of the principal balance thereof, plus all accrued interest thereon) and other obligations owing to the Lenders within a period reasonably acceptable to the Lenders (such period to be specified in the Subordination Agreement) prior to the time the Lenders commence any right or remedy to foreclose on their collateral, and (ii) the right to exercise remedies in respect of the Subordinated Security Interest if (A) Buyer shall have guaranteed the debt and other obligations owing to the Lenders in a form acceptable to the Lenders and Buyer satisfies the creditworthiness standards established by the Lenders (all on such terms and conditions to be specified in the Subordination Agreement) or (B) the Lenders shall not have commenced foreclosure under the Lenders’ liens for such period or periods as are specified (along with related conditions) in the Subordination Agreement and are acceptable to the Lenders, after Buyer’s notice of its intention to exercise its remedies, provided, however, that in either case (ii)(A) or (ii)(B) under this clause (b), any exercise of any remedies to enforce the Subordinated Security Interest shall be subject to the continued priority of the Lenders’ liens; provided, however, that nothing contained therein shall limit Buyer’s rights and remedies in respect of the Priority Security Interest or Buyer’s right to receive the payment of money or other performance in accordance with this Agreement and Buyer may exercise its rights and remedies in accordance with the terms hereof (other than through the exercise of any remedy relating to any Subordinated Security Interest). The Subordinated Security Interest shall not include the pledge or assignment of any ownership interest in Seller.

11.5.2 Other Actions By Seller. All title insurance policy costs and all costs of executing, delivering, filing, and recording the Security Documents (other than state fees and taxes which shall be at Buyer’s expense) in respect of the Subordinated Security Interest shall be at Seller’s expense, which in any event shall not include any legal fees of Buyer. The Security Documents in respect of the Subordinated Security Interest shall contain financial and operating covenants (“Covenants”) reasonably necessary to preserve and maintain the value of the Subordinated Security Interest and substantially similar to those in favor of Lender in Lender’s security documents (“Lender’s Security Documents”). In addition, Seller authorizes Buyer to

file such Uniform Commercial Code financing statements and to take such further action and execute such further instruments as shall reasonably be required by Buyer to confirm and continue the validity, priority, and perfection of the Subordinated Security Interest. The granting of the Subordinated Security Interest shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to Buyer by reason of any Event of Default by Seller or Early Termination Date. The Subordinated Security Interest shall be discharged and released, and Buyer shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration of the Term and satisfaction by Seller of all of its obligations hereunder. Seller shall reimburse Buyer for its reasonable costs associated with the discharge and release of the Subordinated Security Interest.

11.5.3 Transfer of Required Permits. The Security Documents in respect of the Subordinated Security Interest shall provide that if Buyer acts to obtain title to the Project pursuant to the exercise of remedies thereunder, Seller shall take all steps necessary to legally transfer all authority to dispatch the operations of the Project as provided in its Required Permits to Buyer as necessary for Buyer to operate the Project, and shall diligently prosecute and cooperate in such transfers.

ARTICLE 12. COLLATERAL ASSIGNMENT

12.1 Consent to Collateral Assignment. Subject to the provisions of this Article, Seller shall have the right to assign all its rights, title and interests in the Project, Site, other real, personal and other of its properties, and this Agreement as collateral for any financing or refinancing of the Project. Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”). The Collateral Assignment Agreement shall be in form and substance customary in the industry and reasonably agreed to by Buyer, Seller and Lender.

ARTICLE 13. GOVERNMENTAL AND ENVIRONMENTAL CHARGES

13.1 Governmental Charges. Seller shall pay or cause to be paid all taxes, charges or fees imposed by a Government Authority (“Governmental Charges”) on or with respect to the Product prior to the Energy Delivery Point. For the avoidance of doubt, such Governmental Charges shall include ad valorem taxes of Seller that are related to the Project, and franchise or income taxes that are related to the sale of the Product to Buyer and which arise or are imposed prior to the Energy Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to Product which arise or are imposed at and from the Energy Delivery Point. In the event Seller is required by Applicable Laws 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 Applicable Laws to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charge from the sum due to Seller under Article 10 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law. This Section shall not apply to CAISO charges,

penalties, costs, or revenues associated with operation of the Project or transmission of the Product allocated pursuant to Section 17.3.

13.2 Compliance with Laws and Indemnification. Seller shall be responsible for obtaining and maintaining all Required Permits, and shall construct and operate the Project in compliance with all Applicable Laws and Permit Requirements for the Term of the Agreement, including without limitation any Applicable Law related to safety, and any new or revised Required Permits or Applicable Laws that become effective during the Term. Seller shall be solely responsible for any fines, penalties or other charges which result from Seller's failure to obtain or maintain such Required Permits and/or operate the Project in accordance with Applicable Laws and Permit Requirements. No such fines, penalties or charges shall be passed through to Buyer.

13.3 Environmental Costs. Seller shall be solely responsible for all Environmental Costs with respect to the Project other than those encompassed in Section 13.4 which are the responsibility of Buyer.

13.4 Greenhouse Gas Emissions Charges. Notwithstanding anything to the contrary in Sections 13.1 through 13.3, inclusive and subject to the limitations and qualifications set forth below in this Section 13.4, Buyer shall reimburse Seller for any taxes, charges, or fees for Greenhouse Gas emissions (x) imposed under California Assembly Bill 32, the Global Warming Solutions Act of 2006, or (y) newly enacted after the Execution Date ("GHG Charges") and attributable to Buyer's dispatch of the Project, within forty-five (45) days of Buyer's receipt from Seller of documentation reasonably establishing: (a) that Seller is actually liable for such GHG Charges during the Delivery Period; (b) that such GHG Charge was not effective or scheduled to become effective as of the Effective Date; (c) the specific amount of such GHG Charge; (d) that such GHG Charge was imposed upon Seller by an authorized Governmental Authority in whose jurisdiction the Project is located, or which otherwise has jurisdiction over Seller or the Project; (e) that Seller has paid the agency identified under (d) the full amount of such GHG Charge for which Seller seeks reimbursement from Buyer under this Section 13.4, and (f) that Seller took all reasonable steps to mitigate the cost or amount of such GHG Charges, provided, the reasonable steps shall not be deemed to require Seller to make capital improvements to the Project. For avoidance of doubt, the phrase "newly enacted" shall include new interpretations or requirements under pre-existing law (such as the Clean Air Act).

13.4.1 If Seller has the right to obtain allowances or credits attributed to the Project to offset the GHG Charges for the Project, then Seller shall utilize such allowances or credits to mitigate any GHG Charge hereunder resulting from Buyer's dispatch of the Project. Furthermore, if allowances or credits are not allocated to or otherwise provided for specific generating units but Seller has the right to obtain allowances or credits attributed to its portfolio of generating units (all or some of the generating units owned, managed, or controlled by Seller), then Seller shall utilize a proportional amount of such allowances or credits to mitigate any GHG Charge hereunder resulting from Buyer's dispatch of each Energy Storage System. If Seller is allocated or receives revenues, whether specific to each Energy Storage System or to Seller's portfolio of generating units, associated with any allowance or credit associated with Greenhouse Gas emissions attributable to Buyer's dispatch of the Project, then Seller shall remit any such revenue or, if allocated to Seller's portfolio of generating units, the proportional amount of such

revenue, to Buyer to mitigate any GHG Charge that Buyer is responsible for hereunder. For the purposes of this Section 13.4.1, the proportional amount of allowances, credits, or revenues, as applicable, shall be calculated based on the historical annual Greenhouse Gas emissions (in terms of tons of CO₂-equivalent) of each Energy Storage System under this Agreement that would be subject to GHG Charges compared to the sum of the historical annual Greenhouse Gas emissions (in terms of tons of CO₂-equivalent) of all generating units within Seller's portfolio that would be subject to GHG Charges.

13.4.2 Reserved.

13.4.3 Notwithstanding the foregoing, in no event shall Buyer be responsible for GHG Charges that exceed the GHG Limit or for GHG Charges that are attributable to any dispatch of the Project that is not a Buyer dispatch.

ARTICLE 14. CHARGING

14.1 Buyer as Manager. Except as set forth in Section 14.3 or as expressly set forth in this Agreement, during the Delivery Period, Buyer shall be responsible for managing, purchasing, scheduling, and transporting all of the Charging Energy Requirements of each Energy Storage System to the Energy Delivery Point.

14.2 Seller Charging Energy Responsibilities. Seller shall take any and all action necessary to deliver the Charging Energy Requirements to the Energy Storage System(s) in order to deliver the Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy Requirements to the Energy Storage System(s).

14.3 Charging Energy Costs, Charges, and Payments

14.4 Charging Notice. Buyer will have the right to charge each Energy Storage System, seven days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement. Each Charging Notice will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice. If an electronic submittal is not possible for reasons beyond Buyer's control, Buyer may provide Charging Notices by (in order or preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to Seller's personnel designated in Appendix [XX] to receive such communications.

ARTICLE 15. TOLLING

15.1 Tolling. Seller's obligation to deliver any Product dispatched from the Project by Buyer or CAISO shall be contingent upon Buyer complying with its obligations as charging manager under this Agreement.

15.2 Reserved.

ARTICLE 16.
CAISO AND NON-BUYER DISPATCHES

16.1 CAISO Dispatch. Any dispatch by the CAISO for any reason, whether pursuant to an RMR Contract or in connection with any Seller's must-offer obligations, Energy dispatches, Ancillary Services dispatches or otherwise shall be deemed to be dispatches by Buyer, and the Energy dispatched is for Buyer's benefit hereunder, and Buyer shall pay all associated costs for such CAISO dispatches (including but not limited to the required electric recharge quantities, Transport Costs, Variable O&M Charges, and Start-Up Charges) in accordance with the terms of this Agreement as if such dispatches were directed by Buyer. Buyer shall be entitled to receive and retain for its own account any and all CAISO revenue for such dispatches, including without limitation any availability payments under an RMR Contract for the Project. Charging Energy Costs shall be included in any costs recoverable from the CAISO associated with a CAISO dispatch. In no event shall a dispatch by the CAISO be considered a Non-Buyer Dispatch pursuant to this Agreement.

16.2 Non-Buyer Dispatch. During the Term, Seller shall not start-up or operate the Project other than (a) as dispatched by Buyer or CAISO or (b) pursuant to a Non-Buyer Dispatch. Seller shall, to the extent possible, notify Buyer at least 24 hours (or any shorter period reasonably acceptable to Buyer consistent with Accepted Electrical Practices) in advance of any start-up or operation pursuant to a Non-Buyer Dispatch, and shall, except as otherwise required by Applicable Law, Accepted Electrical Practices, delay such start-up or operation for a reasonable period of time if requested by Buyer. If Seller or any third party starts-up or operates any Energy Storage System other than as permitted hereunder, it shall be an Event of Default under Article 3. Seller shall hold Buyer harmless and indemnify Buyer against the actual costs or losses of Buyer resulting from a Non-Buyer Dispatch, including, without limitation, all CAISO Charges and all Charging Energy Costs incurred pursuant to such start-up or operation.

ARTICLE 17.
SCHEDULING COORDINATOR

17.1 Buyer Scheduling Coordinator. At least thirty (30) days prior to the beginning of testing, 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 the start-up, testing and commissioning of the Project. During the Delivery Period, 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 shall submit schedules to the CAISO in accordance with Tariff protocols for Day-Ahead and Hour-Ahead Schedules and Supplemental Energy and Ancillary Service bids for each Energy Storage System, and provide such other services described in this Article. Buyer will submit bids to the CAISO that are in accordance with the Operating Restrictions of the Project as specified in Appendix 1.1. Buyer may withhold all Monthly Capacity Payments that would otherwise be due to Seller until Buyer is fully authorized as the Scheduling Coordinator for the Project. Upon Buyer's reasonable determination that it is fully authorized to act as Scheduling Coordinator for each Energy Storage System, Buyer shall pay any withheld Monthly Capacity Payments on the next applicable

payment date for Monthly Capacity Payments. **[NOTE to Bidders: parties to discuss SC duties during pre-commercial operation testing.]**

17.2 Notices. Buyer shall submit all notices and updates required under the Tariff regarding the Project's status to the CAISO, including, but not limited to, all Scheduling Logging ISO California ("SLIC") Outage Requests, SLIC Forced Outages, or CAISO Forced Outage Reports. In accordance with this Article and Article 18, Seller will cooperate with Buyer to provide such notices and updates.

17.3 CAISO Costs and Revenues. Except as otherwise set forth below or in this Agreement, Seller shall be responsible for all CAISO charges and penalties associated with the operation of the Project and transmission of Energy to the Energy Delivery Point, and Buyer shall be responsible for all CAISO charges and penalties associated with receiving Energy at, and transmitting Energy from, the Energy Delivery Point. Buyer shall be responsible for CAISO costs (including penalties and other charges) and receive all CAISO revenues (including credits and other payments) incurred as a result of providing Scheduling Coordinator services, including costs and revenues associated with CAISO dispatches. Seller shall be responsible for all CAISO charges or payments (in each case, net of Buyer's electricity costs or avoided electricity costs) incurred as a consequence of the Project not being available, the Seller not notifying Buyer of outages in a timely manner (as set forth in Section 20.3), or deviations from Scheduled Energy that are attributable to the operation of the Project, including, but not limited to Uninstructed Imbalance Energy charges, Uninstructed Deviation Penalties and Ancillary Services No-Pay. Furthermore, 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.

17.4 CAISO Settlements. Buyer shall be responsible for all settlement functions with the CAISO related to the Project. Buyer shall render a separate invoice to Seller for all CAISO charges or payments (in each case, net of Buyer's electricity costs or avoided electricity costs) ("CAISO Charges Invoice") for which Seller is responsible under this Agreement in accordance with the applicable billing and payment methodologies utilized for the specific CAISO charge type as set forth in the Tariff and/or related CAISO procedure. CAISO Charges Invoices shall be rendered after final settlement information becomes available from the CAISO (approximately 90 days after each month in the Delivery Period) 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 (10) 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.

17.5 Terminating Buyer's Designation as Scheduling Coordinator. At least 30 days prior to the earlier of the expiration of the Term or as of an Early Termination Date, regardless of which Party designated it, 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 date ("SC

Replacement Date”). The necessary actions include the following: (a) Seller shall (i) submit to the CAISO a designation of a new Scheduling Coordinator for the Project to replace Buyer effective as of the SC Replacement Date and (ii) cause its newly designated Scheduling Coordinator to submit a letter to the CAISO accepting the designation; and (b) Buyer shall submit a letter to the CAISO resigning as Scheduling Coordinator for the Project effective as of the SC Replacement Date. Seller bears sole responsibility for locating, selecting and reaching agreement about terms with any replacement Scheduling Coordinator.

17.6 CAISO Sanctions. If during the Delivery Period, 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.

17.7 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. Buyer, as Scheduling Coordinator, shall not change such data without Seller’s prior written consent.

ARTICLE 18. DISPATCH NOTICES AND OPERATING RESTRICTIONS

18.1 Availability Notice. During the Delivery Period, no later than two (2) Business Days before each schedule day for the Day-Ahead Market in accordance with WECC scheduling practices, Seller shall provide Buyer with an hourly schedule of the Available Capacity (for both Energy and Ancillary Services) that each Energy Storage System is expected to have for each hour of such schedule day (the “Availability Notice”). Seller will notify Buyer immediately if the Available Capacity of any Energy Storage System may change after Buyer’s receipt of an Availability Notice. Seller shall accommodate Buyer’s reasonable requests for changes in the time of delivery of Availability Notices. Seller shall provide Availability Notices using the form attached in Appendix 18.1 by (in order of preference) electronic mail, facsimile transmission or, telephonically to Buyer personnel designated to receive such communications.

18.2 Dispatch Notices. Buyer will have the right to dispatch the Energy Storage System seven days per week and 24 hours per day (including holidays), by providing Dispatch Notices and Updated Dispatch Notices to Seller electronically (in the forms attached to this Agreement in Appendix 18.2) or as directed by CAISO via ADS, and subject to the requirements and limitations set forth in this Agreement. Subject to Section 18.4, each Dispatch Notice will be effective unless and until Buyer modifies such Dispatch Notice by providing Seller with an Updated Dispatch Notice. If an electronic submittal is not possible for reasons beyond Buyer’s control, Buyer may provide Dispatch Notices by (in order or preference) electronic mail, telephonically, or facsimile transmission to Seller’s personnel designated to receive such communications, as provided by Seller in writing. In addition to any other requirements set forth or referred to in this Agreement, all Dispatch Notices and Updated Dispatch Notices will be made in accordance with Market Notice Timelines as specified in the Tariff.

18.3 Start-Up Notices. If a Dispatch Notice or Updated Dispatch Notice includes a Start-Up, Seller shall notify Buyer's real time contact in Appendix 18.7 by telephone when each applicable Energy Storage System is synchronized. When a Dispatch Notice requires a Start-Up or shutdown, Seller will be responsible for coordinating all required switchyard switching with the Buyer Grid Control Center or the Grid Control Center, if applicable.

18.4 Operating Restrictions. All Operating Restrictions associated with the Product are specified on Appendix 1.1, and are subject to change from time to time based on changes in Applicable Laws or Required Permits, in each case, occurring after the CP Satisfaction Date. In providing a Dispatch Notice or an Updated Dispatch Notice, Buyer shall use reasonable efforts to comply with the applicable Operating Restrictions. If Buyer submits a Dispatch Notice or an Updated Dispatch Notice that does not conform with the Operating Restrictions, then Seller shall notify Buyer of the non-conformity and Buyer will modify its Dispatch Notice or Updated Dispatch Notice to conform to the applicable Operating Restrictions. Until such time as Buyer submits a modified Dispatch Notice or Updated Dispatch Notice, Seller shall deliver the Product in accordance with the Operating Restrictions.

18.5 Daily Operating Report. Seller shall provide Buyer the Daily Operating Report, as attached in Appendix 18.5, the day immediately after each operating day, for all Energy Storage Systems.

18.6 Writing Requirements. In documenting and confirming Dispatch Notices and Updated Dispatch Notices, conversations between the Parties' personnel and contractors may be recorded by tape or other electronic means and any such recording will satisfy any "writing" requirements under Applicable Law.

18.7 Communication Protocols. Parties shall agree to the communication protocols outlined in Appendix 18.7 to facilitate exchange of information between the parties.

ARTICLE 19. METERING, COMMUNICATIONS, AND TELEMETRY

19.1 Electric Metering, Communication, Telemetry, and Access. Seller shall install, activate and maintain metering, communication and telemetry equipment as required by the Tariff and Seller's Large Generator Interconnection Agreement, including without limitation, the installation of separate CAISO revenue meters for each Energy Storage System to ensure a separate resource ID with the CAISO for each such Energy Storage System, separate communication equipment for each Energy Storage System, and other requirements as may be necessary to permit separate dispatch and identification of costs for each Energy Storage System. Communication equipment must be capable at a minimum of supporting the Communication Protocols in Appendix 18.7. Seller shall provide Buyer access to the information provided to CAISO under the Tariff.

19.1.1 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 Accepted Electrical Practices and the 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.

19.1.2 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 reasonable 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 under the terms of the Meter Service Agreement was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.

19.1.3 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 10.3.

19.2 Retail Electric Meter. [To be inserted]

ARTICLE 20. OUTAGES

20.1 Scheduled Outages.

20.1.1 No later than January 15, April 15, July 15 and October 15 of each Contract Year during the Delivery Period, and at least sixty (60) days prior to the Guaranteed Initial Delivery Date, Seller shall submit to Buyer Seller's schedule of proposed Scheduled Outages ("Outage Schedule") for the following twelve (12)-month period in a the form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Industry Standards, accommodate Buyer's requests regarding the timing of any Scheduled Outage. Seller may propose changes to any previously scheduled outage 15 days prior to such scheduled outage. Buyer shall review each such change and shall advise Seller within three (3) days of Buyer's receipt thereof, in Buyer's sole discretion but consistent with Industry Standards and Accepted Electrical Practices, whether such change is acceptable or Buyer may propose alternate dates for the requested scheduled maintenance. Seller shall cooperate with Buyer to arrange and coordinate all Scheduled Outages with the CAISO. Seller will communicate to Buyer all changes to a Scheduled Outage and estimated time of return of each Energy Storage System as soon as practicable after the condition causing the change becomes known to Seller. The total amount of Scheduled Outages pursuant

to this Section 20.1.1 for each Contract Year shall not exceed (i) for any Contract Years in which routine maintenance is scheduled in accordance with Accepted Electrical Practices, [_____] (or a prorated amount in the case of the first Contract Year), and (ii) for any Contract Years in which non-routine or major maintenance is scheduled in accordance with Accepted Electrical Practices, an additional [_____] hours (or a prorated amount in the case of the first Contract Year) per Contract Year for a maximum aggregate amount under clauses (i) and (ii) of [_____] hours for a Contract Year in which routine maintenance is scheduled in accordance with Accepted Electrical Practices and non-routine or major maintenance is scheduled in accordance with Accepted Electrical Practices.

20.1.2 If reasonably required in accordance with Accepted Electrical Practices, Seller may perform maintenance at a different time than, maintenance scheduled pursuant to Section 20.1.1. Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Energy Storage System, as a “Resource Adequacy Resource” that is subject to the Availability Standards, to qualify for an “Approved Maintenance Outage” under the Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer), and Seller shall limit maintenance repairs performed pursuant to this Section 20.1.2 to periods when Buyer does not reasonably believe the Project will be dispatched. Unless otherwise agreed to by the Parties, the total amount of Scheduled Outages scheduled pursuant to this Section 20.1.2 shall count against the hours permitted in Section 20.1.1 and shall not exceed the caps listed in Section 20.1.1.

20.2 No Scheduled Outages During Summer Months. Except as scheduled by the Parties under Section 20.1.2, no outages shall be scheduled or planned from each June 1 through October 31 during the Delivery Period. In the event that the Seller has a previously Scheduled Outage that becomes coincident with a CAISO-declared system emergency, Seller shall make all reasonable efforts to reschedule such Scheduled Outage.

20.3 Notice of Unscheduled Outages. Seller shall notify Buyer by telephoning Buyer’s Generation Operations Center no later than ten (10) minutes following the occurrence of an Unscheduled Outage, or if Seller has knowledge that an Unscheduled Outage will occur, within twenty (20) minutes of determining that such Unscheduled Outage will occur. Seller shall relay outage information to Buyer as required by the Tariff within twenty (20) minutes of the Unscheduled Outage. Seller will communicate to Buyer the estimated time of return of each Energy Storage System as soon as practical after Seller has knowledge thereof.

20.4 Inspection. In the event of an Unscheduled Outage, Buyer shall have the option to inspect any Energy Storage System and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller’s safety and security rules and instructions during any inspection, and shall not interfere with work on or operation of the Project.

20.5 Reports of Outages. Seller shall promptly prepare and provide to Buyer, all reports of Unscheduled Outages or Scheduled Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any Applicable Laws. Seller shall also report all Unscheduled Outages or Scheduled Outages in the Daily Operating Report.

ARTICLE 21.
FORCE MAJEURE

21.1 No Default for Force Majeure. A Party shall not be in default in the performance of its obligations under this Agreement when and to the extent that the failure or delay of its performance is due to an event of Force Majeure. However, a failure to make payments when due shall not be excused; except to the extent such failure is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

21.2 Force Majeure Claim. If, because of a Force Majeure, either Party is unable to perform its obligations under this Agreement, such Party shall be excused from whatever performance is affected by the Force Majeure only to the extent so affected. The following procedure shall apply in the event there occurs a Force Majeure:

(a) The Claiming Party, as soon as reasonably practical, shall give the other Party written Notice describing the particulars of the occurrence;

(b) The Claiming Party, within five (5) Business Days of providing Notice of occurrence of the Force Majeure under clause (a) above, shall provide evidence reasonably sufficient to establish that the occurrence constitutes a Force Majeure as defined in this Agreement;

(c) The suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure;

(d) The Claiming Party shall use commercially reasonable efforts to remedy its inability to perform as soon as possible. This subsection shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Claiming Party, are contrary to its interest. The Parties agree and understand that the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the sole discretion of the Claiming Party; and

(e) As soon as Claiming Party is able to resume performance of its obligations under this Agreement, it shall do so and shall promptly give the other Party Notice of this resumption.

21.3 Termination for Force Majeure. If any Force Majeure event shall suspend performance by a Claiming Party for more than six (6) months from the date of Notice provided by such Claiming Party in Section 21.2(a), then, unless such Force Majeure event was caused by the Event of Default of the other Party or other delay or failure of the other Party in performing a material obligation under this Agreement, such other Party may, at any time following the end of such six (6)-month period, terminate this Agreement upon thirty (30) days prior written Notice to the Claiming Party, without further obligation by the terminating Party, except as to the payment of any costs and liabilities incurred prior to the effective date of such termination. Except to the extent Buyer may be entitled to Daily Delay Damages under Section 2.10.1, if this Agreement is terminated by Buyer under this Section 21.3, then within five (5) days following such termination, Buyer shall return to Seller any and all Letters of Credit, cash deposit, or any other forms of security or credit support previously provided by Seller and held at that time by Buyer.

ARTICLE 22.
REPRESENTATIONS, WARRANTIES AND COVENANTS

22.1 Representations and Warranties of Both Parties. As of the Effective Date and/or the CP Satisfaction Date (as applicable), each Party represents and warrants to the other Party that:

22.1.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

22.1.2 As of the CP Satisfaction Date, it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, other than with respect to Seller, any of those Required Permits that satisfy all of the following: it is not required prior to the start of construction of the Project, it is not subject to the discretionary action of the applicable Governmental Authority, and it otherwise can be obtained in the ordinary course of business;

22.1.3 The execution, delivery and performance of this Agreement are within its power, 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 Laws (excluding any Governmental Authority approvals or consents or any Required Permits, which items are covered in Section 22.1.2);

22.1.4 This Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

22.1.5 It is not Bankrupt and there are not proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or become Bankrupt;

22.1.6 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 in Seller's case, Guarantor, if applicable, any legal proceedings that could materially adversely affect such party's ability to perform its obligations under this Agreement or the Guaranty Agreement, as applicable;

22.1.7 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;

22.1.8 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;

22.1.9 It is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

22.1.10 It has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Product under this Agreement.

22.2 Additional Representations and Warranties of Seller. Seller represents, warrants and covenants to Buyer that:

22.2.1 As of the CP Satisfaction Date and subject to Permitted Liens, Seller has Site Control and will maintain Site Control for the remainder of the Term;

22.2.2 To the best of Seller's knowledge, each specification and description of the Project and the Product in Article 1 is true and correct. Seller covenants that, throughout the Term, Seller will promptly provide Buyer with Notice of any change in any material respect in any of the specifications or descriptions set forth in Article 1;

22.2.3 Seller will execute a PGA and MSA (with each Energy Storage System) prior to the Delivery Period, Seller will deliver to Buyer a true and complete copy of such PGA and MSA, and such PGA and MSA, as originally executed by Seller, shall remain in full force and effect throughout the entire Delivery Period, subject to such amendments or modifications as are deemed desirable or necessary by Seller and the CAISO, subject to approval of such amendments or modifications by Buyer, which approval shall not be unreasonably delayed or withheld;

22.2.4 Seller will execute all necessary grid connection, maintenance, or transmission facility services agreements prior to the commencement of the Delivery Period, Seller will deliver to Buyer a true and complete copy of such agreements, and such agreements, as originally executed by Seller, shall remain in full force and effect throughout the entire Delivery Period, subject to such amendments or modifications as are deemed desirable or necessary by Seller and the counter-party to such agreements, subject to approval of such amendments or modifications by Buyer, which approval shall not be unreasonably delayed or withheld;

22.2.5 As of the Effective Date, Seller has not used, granted, pledged, assigned or otherwise committed to deliver during the Delivery Period any Capacity of the Project to meet the Resource Adequacy Requirement of, or confer Resource Adequacy Benefits upon, any entity other than Buyer; and

22.2.6 Seller has obtained, or will obtain, all necessary Emissions Reductions Credits and/or Marketable Emission Trading Credits required for the Project to operate in conformance with this Agreement and in accordance with Applicable Laws, including any applicable environmental laws, rules, regulations, and permits.

22.3 Seller's Affirmative Covenants.

22.3.1 Seller shall maintain and preserve its existence as a [_____] limited liability company formed under the laws of the State of [_____] and all material rights, privileges and franchises necessary or desirable to enable it to perform its obligations under this Agreement.

22.3.2 Seller shall, from time to time as requested by Buyer, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid and enforceable under all Applicable Laws the rights, liens and priorities of Buyer with respect to its Priority Security Interest and the Subordinated Security Interest furnished pursuant to this Agreement.

22.3.3 Seller covenants throughout the Delivery Term that it shall maintain ownership of a fee, easement, long-term leasehold interest, or other similar asset ownership interest in the Project.

22.4 Seller's Negative Covenants.

22.4.1 Seller shall not create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable for, contingently or otherwise, any Seller's Debt, or issue any disqualified stock, in each case, other than Seller's Debt incurred, issued, assumed or guaranteed, or disqualified stock issued, in connection with the financing or refinancing of the development, construction, ownership or operation of the Project.

22.4.2 Except for Permitted Liens, Seller shall not create, incur, assume or suffer to be created by it or any subcontractor, employee, laborer, materialman, other supplier of goods or services or any other person any lien on Seller's interest in the Site, the Project, or any part thereof or interest therein. Seller shall promptly pay or discharge, or shall cause its contractors to promptly pay and discharge, and discharge of record, any such lien for labor, materials, supplies or other obligations upon Seller's interest in the Site, the Project, or any part thereof or interest therein, unless Seller is disputing any such lien in good faith and only for so long as it does not create an imminent risk of a sale or transfer of the Site, the Project or a material part thereof or interest therein. Seller shall promptly notify Buyer of any attachment or imposition of any lien against Seller's interest in the Site, the Project, or any part thereof or interest therein.

22.4.2 On and after the CP Satisfaction Date, Seller shall not permit the amount of Seller's Debt, to exceed the amount designated in Appendix 22.4.3 as applicable to each period described therein.

22.4.3 Seller shall not hold any material assets, become liable for any material obligations or engage in any material business activities other than directly associated with the development, construction, ownership or operation of the Project.

22.4.4 Seller shall not own, form or acquire, or otherwise conduct any of its activities through, any direct or indirect subsidiary.

22.4.5 During any period during which a Seller is a Defaulting Party, Seller shall not (i) declare or pay any dividend, or make any other distribution or payment, on account of any equity interest in Seller or (ii) otherwise make any distribution or payment to any Affiliate of Seller (excluding payments to such Affiliates for reasonable expenses related to the operation, maintenance and management of the Project).

22.4.6 Seller will not use, grant, pledge, assign or otherwise commit to deliver during the Delivery Period any Capacity of the Project to meet the Resource Adequacy Requirement of, or confer Resource Adequacy Benefits upon, any entity other than Buyer.

22.4.7 Seller shall not permit any Lenders that are Affiliates of Seller to have a security interest senior to Buyer's Subordinated Security Interest unless all of the Lenders are Affiliates of Seller.

22.5 Additional Representations, Warranties and Covenants of Buyer. Buyer represents, warrants, and covenants to Seller that:

22.5.1 Buyer shall cooperate with Seller to obtain approval(s) from any applicable Governmental Authorities with respect to governmental approvals needed by Seller.

22.5.2 Buyer shall ensure that Buyer personnel that enter the Site for any reason shall comply at all times with the safety and security procedures established by Seller and Seller's contractor(s).

22.5.3 Buyer shall not schedule, or allow the CAISO or any third party to schedule, the Project in violation of the Operating Restrictions or as otherwise permitted in this Agreement.

22.5.4 Buyer, in its role as Scheduling Coordinator and electricity recharge manager for the Project, shall not violate the Tariff or Industry Standards, or any combination of the foregoing.

ARTICLE 23. LIMITATIONS

23.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY PRODUCT, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURE OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. UNLESS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, 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 PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY (OTHER THAN INJUNCTIVE RELIEF AS PROVIDED IN THIS AGREEMENT) ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES TO BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY (OTHER THAN INJUNCTIVE RELIEF AS PROVIDED IN THIS AGREEMENT) ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHATSOEVER UNDER ANY

THEORY, INCLUDING WITHOUT LIMITATION, BY STATUTE, IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, (PROVIDED THAT THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY BY A PARTY OF THE TERMINATION PAYMENT OR ANY LIQUIDATED DAMAGES EXPRESSLY HEREIN PROVIDED, NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERY BY AN INDEMNITEE UNDER ANY INDEMNITY PROVISION IN RESPECT OF A THIRD PARTY CLAIM), RESULTING FROM A PARTY'S PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS UNDER OR TERMINATION OF THIS AGREEMENT. THE PARTIES INTEND 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. NOTHING IN THIS SECTION PREVENTS OR IS INTENDED TO PREVENT BUYER FROM PROCEEDING AGAINST OR EXERCISING ITS RIGHTS UNDER THE SECURITY DOCUMENTS.

23.2 No Representation by Buyer. Any review by Buyer of the Project or changes thereto, including, but not limited to, the design, construction or refurbishment, operation or maintenance of the Project, or otherwise, is solely for Buyer's information. By making such review, Buyer makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Project., and Seller shall in no way represent to any third party that any such review by Buyer of the Project, including, but not limited to, any review of the design, construction or renovation, operation, or maintenance of the Project by Buyer constitutes any such representation by Buyer. Seller is solely responsible for the economic and technical feasibility, operational capability, and reliability of the Project.

ARTICLE 24. RECORDS

24.1 Performance under this Agreement. Each Party and its Representatives shall maintain records and supporting documentation relating to this Agreement, the Project, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws, but in no event less than three (3) years after final payment is made under this Agreement.

24.2 [Sarbanes-Oxley and Securities and Exchange Commission 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 24.2(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. **[NOTE: Updates to be provided by SDG&E]**

24.3 Other Regulatory and Governmental Requirements. At Buyer's request, Seller shall maintain and deliver to Buyer copies of records and supporting documentation with respect to the Project that Seller is not already required to maintain or deliver under Sections 24.1 and 24.2, in order to comply with all Applicable Laws.

24.4 Audit Rights. Either Party shall have the right, at its sole expense and during normal working hours, to audit the documents, records or data of the other Party to the extent reasonably necessary to verify the accuracy of any statement, claim, charge or calculation made pursuant to this Agreement. Each Party shall promptly comply with any reasonable request by the other Party and provide copies of such documents, records or data to the requesting Party. The rights and obligations under this Section 24.4 shall survive the termination of this Agreement for a period of 2 years.

24.5 California Climate Action Registry. In accordance with CPUC OIR 06-04-009, upon modification of the protocols of the California Climate Action Registry to allow generation facility-specific registration, Seller shall promptly (a) register with the California Climate Action Registry and (b) send Buyer Notice of such registration and (c) remain a member of the California Climate Action Registry thereafter during the Delivery Period.

ARTICLE 25. DISPUTES

25.1 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 25. 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 25.

25.2 Management Negotiations.

25.2.1 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.

25.2.2 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.

25.2.3 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.

25.2.4 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 25.2.1 above, refuses or does not meet within the ten (10) Business Day period specified in Section 25.2.1 above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

25.3 Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 25.2 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").

25.3.1 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.

25.3.2 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.

25.3.3 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.

25.3.4 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.

25.3.5 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.

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

25.3.7 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.

25.3.8 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.

25.3.9 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.

25.3.10 The existence, content, and results of any Arbitration hereunder is confidential information that is subject to the provisions of Section 27.1.

25.4 WAIVER OF JURY TRIAL. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING UNDER THIS AGREEMENT TO THE EXTENT SUCH WAIVER IS CONSISTENT WITH APPLICABLE LAW.

25.5 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.

ARTICLE 26. INDEMNIFICATION

26.1 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 by Seller under this Agreement up to the Energy Delivery Point or electricity received by Seller under this Agreement after the Electric Retail 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 Laws, including without limitation the Tariff (subject to Buyer complying with its obligations as Scheduling Coordinator under Section 17), (iv) a breach of its covenants, representations, or warranties under this Agreement, (v) any Governmental Charges for which Seller is responsible hereunder, or (vi) 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 Energy Delivery Point or electricity delivered by Buyer under this Agreement up to the Electric Retail Delivery Point, (ii) the failure by Buyer to comply with Applicable Laws, including without limitation the Tariff, (iii) a breach of its covenants, representations or warranties under this Agreement, or (iv) 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.

26.2 Insurance. The provisions of this Article 26 shall not be construed to relieve any insurer of its obligations to pay any insurance claims in accordance with the provisions of any valid insurance policy.

26.3 Survival. All indemnity rights shall survive the termination of this Agreement.

ARTICLE 27.
CONFIDENTIALITY/REGULATORY DISCLOSURE

27.1 Confidentiality.

27.1.1 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 27.1.2 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 clause (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 27.1.1 ("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.

27.1.2 Specific Terms. Notwithstanding Section 27.1.1 of this Agreement, at any time on or after the date on which the Buyer makes its filing seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to this Agreement: Party names, resource type, Delivery Period, Project location, Contract Capacity, Guaranteed Initial Delivery Date and Energy Delivery Point.

27.1.3 Publicity. Except as otherwise agreed to in this Section 27.1 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.

27.2 Ownership of Information. All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Representatives receiving it, except the right of use in accordance with the terms of this Agreement.

27.3 Enforcement. The Parties agree that irreparable damage would occur if the confidentiality obligations under this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party will be entitled to seek an injunction or injunctions to prevent breaches of this Section 27 and to enforce specifically its provisions in any

court of competent jurisdiction, in addition to any other remedy to which the Party may be entitled by law or equity.

**ARTICLE 28.
MISCELLANEOUS**

28.1 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. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. All references to time shall be in PPT unless stated otherwise. The headings used herein are for convenience and reference purposes only. This Agreement shall be binding on each Party’s successors and permitted assigns. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect its obligations under the Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

28.2 Notices. Unless otherwise provided in this Agreement, any Notice shall be in writing to the address provided below and delivered by hand delivery, United States mail, overnight courier service, facsimile, or electronic messaging (e-mail). Notice by facsimile, electronic messaging (e-mail), or hand delivery shall be effective at the close of business on the day received, if the entire document was received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day after it was sent for “next-day delivery” or its equivalent by a nationally-recognized overnight courier or personally delivered. Notice by overnight courier service shall be effective on the next Business Day after it was sent. Notice by United States mail shall be effective on the day it was received. A Party may change its address by providing Notice of same to the other Party in accordance with this Section 28.2.

To Buyer:
San Diego Gas & Electric Company
8315 Century Park Court, CP21D
San Diego, California 92123
Attention: Director of Procurement and Portfolio Design
Telephone: 858-650-6156
Facsimile: 858-650-6191

To Seller:
Attention:
Telephone: (
Facsimile:

28.3 Governing Law; Venue. This Agreement shall be construed under the laws of the State of California without giving effect to choice of law provisions that might apply the laws of a different jurisdiction. The Parties hereby consent to conduct all dispute resolution, judicial

actions or proceedings arising directly, indirectly or otherwise in conjunction with, out of, related to or arising from this Agreement in the City of San Diego, California.

28.4 Amendment. This Agreement can only be amended by a writing signed by both Parties.

28.5 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 at least 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 value 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.

28.6 Further Assurances. If either Party determines in its reasonable discretion that any further instruments, assurances or other things are necessary or desirable to carry out the terms of this Agreement, the other Party shall execute and deliver all such instruments and assurances and do all things reasonably necessary or desirable to carry out the terms of this Agreement.

28.7 Waiver. None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives the waiver in writing. The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

28.8 Obligations Surviving Termination. Except as may be provided or limited by this Agreement, the obligations which by their nature are intended to survive termination of this Agreement, including, without limitation, representations, warranties, covenants and rights and obligations with respect to audits, indemnification, payment and settlement, confidentiality, shall so survive.

28.9 No Third Party Beneficiaries. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound by this Agreement).

28.10 Entire Agreement. Except for the Security Documents, [the electric retail service and electrical interconnection agreements between the Parties,][insert any others] this Agreement, when fully executed, constitutes the entire agreement by and between the Parties as to the subject matter hereof, and supersedes all prior understandings, agreements or representations by or between the Parties, written or oral to the extent they have related in any

way to the subject matter hereof. Each Party represents that, in entering into this Agreement, it has not relied upon any promise, inducement, representation, warranty, agreement or other statement that is not set forth in this Agreement.

28.11 Severability. If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement. In the event any such provision of this Agreement is so held invalid, illegal or void, the Parties shall promptly renegotiate in good faith new provisions to restore this Agreement as near as possible to its original intent and effect.

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

28.13 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) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. dist., No. 1 of Snohomish* 554 US 527 (2008).

28.14 Independent Contractors. The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, partnership or principal/agent relationship between the Parties hereto or to impose any partnership obligation or liability on either Party. Neither Party shall have any right, power or authority to enter into any agreement or commitment, act on behalf of, or otherwise bind the other Party in any way.

28.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any of the signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

28.16 Interpretation. The term “month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins and ends. Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding

agreement or document as then exist at the applicable time to which such construction applies. Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in this Appendix A, unless otherwise specified. Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement. 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. All references to dollars are to U.S. dollars.

(Signature page follows)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

[INSERT SELLER NAME]

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

SAN DIEGO GAS & ELECTRIC COMPANY

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

APPENDIX A DEFINITIONS

“AAA” means [the American Arbitration Association.

“Accepted Electrical Practices” means those practices, methods, applicable codes and acts engaged in or approved by a significant portion of the electric power industry during the relevant time period, or any of the practices, methods and acts which, in exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at reasonable cost consistent with good business practices, reliability, safety and expedition. Accepted Electrical Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of other, but rather to those practices, methods and act generally accepted or approved by a significant portion of the electric power industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence.

“ADS” means CAISO’s Automatic Dispatching System.

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

“Agreement” means this Power Purchase Tolling Agreement between Buyer and Seller.

“Ancillary Service Capacity” or “A/S Capacity” means Capacity associated with Ancillary Services available to Buyer within the scope of operations allowed Buyer under Section 1.1.3 of this Agreement.

“Ancillary Services” means spinning, non-spinning, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Project is capable of providing consistent with the Operating Restrictions set forth in Appendix 1.1, as each is defined in the Tariff. **[NOTE to Bidders: please tailor to reflect ancillary services bid.]**

“Applicable Laws” means all applicable statutes, laws, court decisions, ordinances, rules, order, writ, subpoena or regulations of any Governmental Authority, or the rules or regulations of any exchange or control grid operator.

“Arbitration” has the meaning set forth in Section 25.3.

“Associated Ancillary Services Energy” means the Energy expressed in megawatt-hours (“MWh”) expressly associated with the Ancillary Service Capacity made available from any Energy Storage System at the instruction of the CAISO.

“Associated Energy” means the Energy expressed in megawatt-hours (“MWh”) or kilowatt-hours (“KWh”), expressly associated with Capacity dispatched under this Agreement.

“Availability Incentive Payments” shall mean Availability Incentive Payments as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Availability Notice” means an hourly schedule of the amounts of Available Capacity that each Energy Storage System is expected to be available during each hour of the day to which the Availability Notice pertains, pursuant to Section 18.1.

“Availability Standards” shall mean Availability Standards as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Available Capacity” means the amount of Contract Capacity that is available to Buyer under this Agreement from the Project providing Contract Capacity on average during an hour.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit or creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Billing Meter” means a revenue quality meter accepted by the electricity retail service provider.

“Business Day” means any day except a Saturday, Sunday, the Friday immediately following the United States Thanksgiving holiday, or a Federal Reserve Bank holiday.

“CAISO” means the California Independent System Operator, a state chartered, nonprofit, public benefit corporation that controls certain transmission facilities of all Participating Transmission Owners and dispatches certain electric generation units and loads, or any successor entity performing the same functions.

“CAISO Charges Invoice” has the meaning set forth in Section 17.4.

“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.

“California Energy Commission” or “CEC” means the State Energy Resources Conservation and Development Commission as defined and used in Section 25104 in the California Public Resources Code, Division 15, Energy Conservation and Development (Sections 25000, et seq).

“Capacity” means the maximum dependable operating capability of any generating resource to produce or generate Energy, and shall include, without limitation, Unit Contingent

Capacity, Ancillary Services Capacity, Resource Adequacy Benefits, and any other products that may be developed or evolve from time to time during the Term that relate to the capability of the Project to produce or generate Energy.

“Charging Energy Requirements” means all of the Project’s electricity requirements, including electricity for any Non-Buyer Dispatch and any other purpose, whether operational or otherwise.

“Claiming Party” means the Party claiming a Force Majeure under Article 21.

“Claims” has the meaning set forth in Section 26.1.

“Collateral Assignment Agreement” has the meaning set forth in Section 12.1.

“Commercial Operation” means that (a) the Project has been completed in accordance with the Agreement and is ready for commercial operation in compliance with all Applicable Laws, Required Permits, and Accepted Electrical Practices, and (b) the Project shall have successfully passed all Commercial Operation Tests at a level that demonstrates satisfaction of at least 100%% of the Expected Contract Capacity and at most [insert number in Btu/kWh that is 105% of expected heat rate], and complete test reports have been submitted to Buyer, as set forth in a written Notice from Seller to Buyer specifying the date on which the requirements described in clauses (a) and (b) were satisfied, as confirmed in each case by Buyer and/or Buyer’s engineer; provided, however, that such confirmation must be made within twenty-one (21) days after receipt of complete test reports from Seller required pursuant to clause (b) and, if not made within such twenty-one (21) day period shall be deemed to have been given unless Buyer or Buyer’s engineer shall have provided the reasons for why such requirements have not been satisfied within such twenty-one (21) day period; provided, further, that upon such confirmation, Commercial Operation shall be deemed to have been achieved as of the date set forth in such Notice from Seller to Buyer that the requirements described in clauses (a) and (b) were satisfied.

“Commercial Operation Test” has the meaning set forth in Section 7.2.

“Conditions Precedent” has the meaning set forth in Section 2.4.

“Confidential Information” means any and all non-public proprietary written information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with this Agreement, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials, but does not include information, data, analyses, documents, or materials that (i) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Representatives in violation of this Agreement, or (ii) are already in the possession of or become available to the receiving Party or its Representatives on a nonconfidential basis from a source other than the disclosing Party or its Representatives, provided that, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (iii) the receiving Party or its

Representatives can demonstrate has been independently developed without a violation of this Agreement.

“Construction Period Security” has the meaning set forth in Section 11.2.2.

“Contract Capacity” has the meaning as set forth in Section 1.1.1.

“Contract Capacity, Efficiency Rate & Ancillary Services Tests” has the meaning as set forth in Section 7.3 and further described in Appendix 7.

“Contract Conditions” means [XX] degrees Fahrenheit, [XX]% relative humidity and [XX] psi barometric pressure. **[NOTE to bidders: insert conditions which are averages for the site location of the project.]**

“Contract Year” means the months within each calendar year during the Delivery Period. The initial Contract Year would be from the Initial Delivery Date until December 31st of such year. Contract Year #2 would be from January 1st through December 31st of the calendar year immediately following the initial Contract Year. The final Contract Year will be January 1st through the last day of the Delivery Period.

“Costs” means with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by the Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations under the Agreement or entering into new arrangements which replace the Product, including any costs or penalties imposed upon the Non-Defaulting Party for the loss of Resource Adequacy Benefits or for replacing those Resource Adequacy Benefits.

“CP Satisfaction Date” means the date on which all of the Conditions Precedent have been satisfied (or waived in writing by the applicable Party(ies) described in Section 2.5.1).

“CPUC” means the California Public Utilities Commission or any successor thereto.

“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 approves this Agreement in its entirety, including payments to be made by the Buyer and such other matters as may be requested by Buyer in its application to the CPUC for approval, subject to CPUC review of the Buyer’s administration of the Agreement.

“Credit Rating” means, with respect to any entity, on the relevant date of determination, the respective ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P or Moody’s. If a party has outstanding multiple debt or deposit obligations meeting such criteria and differing ratings have been assigned by a single rating agency to such multiple obligations, the lowest of such ratings shall apply. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligations by either S&P or Moody’s, then “Credit Rating” shall mean the general corporate credit rating or long-term issuer rating assigned by S&P or Moody’s, as the case may be.

“Cure Period” has the meaning set forth in Section 2.10.1.

“Daily Delay Damages” means liquidated damages paid by Seller to Buyer in the amount of \$[XX,XXX] per day for each day of delay in the months of June, July, August and September and \$[XX,XXX] per day for each day of delay in the other months of the year. **[NOTE to Bidders: this is the total security required during development divided by the number of days in the Cure Period]**

“Day-Ahead” has the meaning set forth in the Tariff.

“Day-Ahead Market” has the meaning set forth in the Tariff.

“Day-Ahead Schedule” has the meaning set forth in the Tariff.

“Default Equivalent Availability Factor” means the percentage calculated according to the formula below:

$$\text{DEAF} = 0.5 \times [(\text{PH} - (\text{DEDH} - \text{DEEDH})) / \text{PH}] + 0.5 \times [(\text{DNSRA}) / (\text{DNSRG})]$$

Where:

PH is the number of period hours;

DEDH is the number of equivalent derate hours (for the DEAF) calculated as the sum, for each derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the Expected Contract Capacity divided by the Expected Contract Capacity for the month. For the purposes of this calculation, a derate includes all outages for any reason, including without limitation, Unscheduled Outages, Force Majeure events, Delivery Excuse, forced derates, shortages relative to the Guaranteed Start-Up Time, shortages relative the Guaranteed Ramp Rates, Scheduled Outages, other times when any portion of the Expected Contract Capacity is not available, and when the Delivered Energy of the Project is less than the amount of energy dispatched by Buyer.

DEEDH is the number of equivalent excused derate hours (for the DEAF) solely due to either a Force Majeure event, Scheduled Outage or a Delivery Excuse (and for no other reason), calculated as the sum, for each excused derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the Expected Contract Capacity, divided by the Expected Contract Capacity for the month.

DNSRA shall be the non-spinning reserve available energy (for the DEAF) and is the sum for all hours in the applicable measurement period of the product of (a) one hour, times (b) the non-spinning reserve capacity available to Buyer in each such hour of the applicable measurement period (which amount includes the non-spinning reserve capacity that is unavailable solely due to either a Force Majeure event, Scheduled Outage, or a Delivery Excuse). For the purposes of this calculation, the non-spinning reserve capacity in each hour of the applicable measurement period shall be based on the lower of (1) the most current CAISO

certification amount, or (2) as stated in the Availability Notice, as each may be adjusted by derates (other than derates due to Force Majeure events, Scheduled Outages, or Delivery Excuses).

DNSRG shall be the non-spinning reserve gross energy (for the DEAF) and is the product of (a) the number of period hours in the applicable measurement period, times (b) the Expected Contract Capacity.

“Default Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the bank prime lending rate as may from time to time be published by the Federal Reserve in their H.15 Statistical Release, Selected Interest Rates (daily) or any successor publication as published by the Board of Governors of the Federal Reserve System, on such date (or if not published on such day on the most recent preceding day on which published), plus two percent (2 percent), and (b) the maximum rate permitted by Applicable Law. The Federal Reserve H.15 Statistical Release, Selected Interest Rates (daily) may be found at the following address: www.federalreserve.gov/releases/H15/update.

“Defaulting Party” has the meaning set forth in Section 3.1.

“Delivered Energy” means, in respect of a Energy Storage System, for a period of time, the amount of Energy generated by such Energy Storage System and delivered for Buyer’s account during the period at the Energy Delivery Point for such Energy Storage System as measured by the Energy Metering Equipment, which for the avoidance of doubt shall be net of Station Use.

“Delivery Excuse” means (i) any Event of Default of Buyer under this Agreement; (ii) the delay or failure by Buyer in performing a material obligation under this Agreement; (iii) the delay or failure of Buyer to deliver electricity or to accept Product as required under this Agreement for whatever reason which failure does not arise in each case as a result of Seller’s non-performance under this Agreement; [(iv) the delay or failure by the Participating Transmission Owner in performing a material obligation under any interconnection agreement to which it is a party with Seller; [provided, Seller assigns to Buyer any claim it may have against the Participating Transmission Owner related to such delay or failure] (v) the delay or failure by the electricity retail service provider in performing a material obligation under any interconnection agreement to which it is a party with Seller; provided, Seller assigns to Buyer any claim it may have against such provider related to such delay or failure;]] (vi) any curtailment ordered directly or indirectly from the CAISO (but not including any reduction of deliverable capacity of the Project in accordance with Section [40.4.6.1] or [40.4.2] of the Tariff); [(vii) Capacity derates that are consistent with Accepted Electrical Practices that are the result of ambient conditions differing from Contract Conditions, excluding therefrom any derates due to icing of inlet air to any of the Energy Storage Systems].

“Delivery Period” has the meaning set forth in Section 2.3.

“Delivery Period Security” has the meaning set forth in Section 11.2.3.

“Dispatch Notice” means the operating instruction, and any subsequent updates (an “Updated Dispatch Notice”), given by Buyer to Seller, directing the applicable Energy Storage System to operate at a specified megawatt output. Dispatch Notices may be communicated electronically (i.e. through ADS or e-mail), via FAX, telephonically or other verbal means, in the case of Dispatch Notices from Buyer, in accordance with the procedures set forth in Section 18.2. Telephonic or other verbal communications shall be documented (either recorded by tape, electronically or in writing) and such recordings shall be made available to both Buyer and Seller upon request for settlement purposes.

“Early Termination Date” has the meaning set forth in Section 3.3.

“Effective Date” is as set forth in the introductory paragraph of this Agreement.

“Efficiency Rate” means the rate of conversion of the [SDG&E to insert] into Energy.

“Efficiency Rate Payment” has the meaning set forth in Appendix 7.6.

“Electric Retail Delivery Point” has the meaning set forth in Section 1.3.2.

“Emission Reduction Credits” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions, or any similar federal, state or local Applicable Laws of like effect.

“Energy” means all electrical energy produced, flowing or supplied by a generating resource, measured in kilowatt-hours or multiple units thereof. Energy shall include without limitation, Unit Contingent Energy, Associated Energy, Associated Ancillary Services Energy, Supplemental Energy, reactive power, and any other electrical energy products that may be developed or evolve from time to time during the Term.

“Energy Delivery Point” means the point specified in Section 1.3.1.

“Energy Metering Equipment” means, for each Energy Storage System, the meters and measuring equipment recognized by the CAISO at the Energy Delivery Point for such Energy Storage System, and which provides the Delivered Energy delivered by such Energy Storage System to the Energy Delivery Point.

“Energy Storage System” means the generating unit(s) specified in Recital B and more specifically described Section 1.2.2 and Appendix 1.1.

“Environmental Costs” means costs incurred in connection with the acquiring and maintaining all environmental permits and licenses for the Project, and the Project’s compliance with all applicable environmental laws, rules and regulations, including without limitation capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Project, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the

costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site where the Project is located, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.

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

“EPC Contractor” means the entity chosen by Seller to perform the engineering, procurement and construction activities for the Project, if any.

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

“Equivalent Availability Factor” has the meaning set forth in Appendix 9.2.

“Executive(s)” has the meaning set forth in Section 25.2.1.

“Expected Contract Capacity” means the expected Capacity of the Project, net of Station Use, as measured in megawatts (MW) at the location of the applicable Energy Delivery Point, as shown in Appendix 1.1.1.

“FERC” means the Federal Energy Regulatory Commission, or any division thereof.

“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)(vi) 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) 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;

(v) Seller's failure to obtain additional 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;

(vi) a strike, work stoppage or labor dispute that is directed specifically at Seller, Seller's Affiliates, or the Project; or

(vii) any equipment failure except to the extent 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" has the meaning set forth in the Tariff.

"Forward Price Assessment" means quotations solicited or obtained in good faith from regularly published and widely-distributed forward price assessments from a broker that is not an Affiliate of either Party and who is actively participating in markets for the relevant products.

"Fuel Manager" has the meaning set forth in Article 14.

"GAAP" has the meaning set forth in Section 24.2.

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to such Party, if any (exclusive of Costs), resulting from the termination and liquidation of the Agreement, determined in a commercially reasonable manner.

“Generation Management System” or “GMS” means the automated system employed by Buyer real time operations to remotely monitor and dispatch each Energy Storage System.

“Generation Operations Center” or “GOC” means the location of Buyer’s real time operations personnel.

“GHG Limit” means the GHG Rate times the [INSERT ELECTRICITY CAP] associated with a Buyer dispatch.

“GHG Charges” has the meaning set forth in Section 13.4 of this Agreement.

“GHG Rate” means [117 lbs of CO₂/MMBtu], the rate in pounds of CO₂ equivalent Greenhouse Gas emitted per [to be inserted].

“Governmental Authority” means any federal, state, local, municipal, or other governmental, executive, administrative, judicial or regulatory entity, and the CAISO or any other transmission authority, having or asserting jurisdiction over a Party, the Project or this Agreement.

“Governmental Charges” has the meaning set forth in Section 13.1.

“Greenhouse Gas” means emissions into the atmosphere of gases that are regulated by one or more Governmental Authorities as a result of their contribution to the greenhouse effect heating of the surface of the earth. Greenhouse gases include carbon dioxide (CO₂), nitrous oxide (N₂O) and methane (CH₄), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆), which are generated in a variety of industrial processes. Greenhouse gases may be defined, or expressed, in terms of a ton of CO₂-equivalent, in order to allow comparison between the different effects of gases on the environment.

“Grid Control Center” or “applicable Grid Control Center” means the location of the personnel responsible for operating the transmission grid and/or coordinating same with the CAISO.

“Guaranteed Efficiency Rate” means the Guaranteed Efficiency Rate as set forth with Appendix 7.6.

“Guaranteed Initial Delivery Date” is the date set forth in Section 2.7 for the Project.

“Guaranteed Ramp Rate” means the Guaranteed Ramp Rate as set forth with Appendix 7.6.

“Guaranteed Start-Up Time” means the Guaranteed Start-Up Time as set forth with Appendix 7.6.

“Guarantor” the entity identified as provided in Section 11.4.

“Guaranty Agreement” means, if a Guarantor has been identified as provided in Section 11.4, the guaranty agreement from the Guarantor in a form reasonably acceptable to Buyer.

“Hour-Ahead” has the meaning set forth in the Tariff.

“Hour-Ahead Schedule” has the meaning set forth in the Tariff.

“Industry Standards” has the meaning set forth in Section 8.1.1.

“Initial Negotiation End Date” has the meaning set forth in Section 25.2.1.

“Initial Delivery Date” has the meaning set forth in Section 2.3.

“Interconnection Facilities” means all apparatus installed to interconnect the Project to the Participating Transmission Owner’s or other utility owned or managed electric system or to the CAISO Grid to make available to Buyer the Contract Capacity and Associated Energy, including, without limitation, connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the Participating Transmission Owner’s electric system (or other system to which the Participating Transmission Owner’s electric system is connection, including the CAISO Grid) and Buyer’s customers from faults occurring at the Project, and (b) the Project from faults occurring on the Participating Transmission Owner’s electric system or on the systems of others to which the Participating Transmission Owner’s electric system is directly or indirectly connected. Interconnection Facilities also include any necessary additions and reinforcements to the Participating Transmission Owner’s electric system or CAISO Grid required as a result of the interconnection of the Project to the Buyer electric system, the CAISO Grid or electric systems of others to which the Buyer electric system is directly or indirectly connected.

“Interest Rate” means for any date the rate per annum equal to the Commercial Paper (prime, 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 (prime, 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.

“Lender” means any bank, financial institution or other entity (or any agent thereof) that provides development, bridge, construction, permanent debt, tax equity or other financing or refinancing for the Project to Seller consistent with Section 22.4.3 (subject to the Subordination Agreement and the Collateral Assignment Agreement).

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least “A-” from S&P and “A3” from Moody’s, substantially in the form of Appendix 11.3 and reasonably acceptable to Buyer.

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

“Manager” has the meaning set forth in Section 25.2.1.

“Market Quotation Average Price” means ‘the arithmetic mean of the quotations solicited in good faith at a specific point in time from not less than three Reference Market-Makers; *provided, however,* that the Party obtaining the quotes shall use reasonable efforts to obtain good faith, then-current quotations from at least five Reference Market-Makers and, if at least five such quotations are obtained, the Market Quotation Average Price shall be determined by disregarding the highest and lowest quotations and taking the arithmetic mean of the remaining quotations. The quotations shall be based on the midpoint (average) of firm and transactable offers to sell and bids to buy, which offers and bids are substantially similar to this Agreement. The quotations must be obtained assuming that the Party obtaining them will provide sufficient credit support for the proposed transaction.’

“Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (*see* 42 U.S.C. § 7651b.(a) to (f)), or any similar federal, state or local Applicable Laws of like effect.

“Maximum Force Majeure Delay” has the meaning set forth in Section 2.10.2.

“Meter Service Agreement” or “MSA” has the meaning set forth in the Tariff.

“Milestone Schedule” means the schedule in the form of Appendix 6.1(a), setting forth Seller’s development, design, procurement, construction, commissioning and testing milestones, as set forth in Section 6.1.

“Minimum Guaranteed Availability” has the meaning set forth in Section 3.2(f).

“Minimum Operating Level” means the minimum operating level of a Energy Storage System as specified in Appendix 1.1.

“Monthly Capacity Payment” has the meaning set forth in Section 9.2.

“Monthly Progress Report” means a monthly progress report, sent by Seller to Buyer no later than the tenth day of each month while the Project has not yet met its Initial Delivery Date, and within five (5) days of Buyer’s request, substantially in the form set forth in Appendix 6.1(b) and describing Seller’s compliance with the Milestone Schedule, including projected time to complete any milestones, for the Project, as set forth in Section 6.1.

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

“MW” means mega-watt or mega-watts.

“NERC” means the North American Electric Reliability Council, or any successor thereto.

“NERC Holidays” means “Additional Off-peak Days” as defined by NERC on the NERC website at <http://www.nerc.com>.

“Non-Availability Charges” shall mean Non-Availability Charges as defined in the Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the Tariff.

“Non-Buyer Dispatch” means a dispatch by Seller pursuant to a Seller Initiated Test (as defined in Section 7.1).

“Non-Defaulting Party” has the meaning set forth in Section 3.3.

“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).

“Off-Peak Period” means any hour that is not an On-Peak Period.

“On-Peak Period” means the time from hour ending 07:00 PPT through hour ending 22:00 PPT in any day.

“Operating Restrictions” means limitations on Buyer’s ability to schedule and use Capacity, Ancillary Services, and Energy that are identified in Appendix 1.1 to this Agreement.

“Pacific Prevailing Time” or “PPT” means Pacific Daylight Time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

“Participating Generator Agreement” or “PGA” has the meaning set forth in the Tariff.

“Participating Transmission Owner” means the transmission owner that has released to the CAISO operational control of its transmission facilities to which the Project is interconnected. As of the Effective Date, the Participating Transmission Owner is [San Diego Gas & Electric Company.] **[NOTE to Bidders: to be modified if project connected directly to SDG&E’s service territory.]**

“Performance Assurance” means collateral in the form of cash, Letter of Credit, Guaranty Agreement or other security acceptable to Buyer in its sole discretion required to be provided to Buyer under Section 11.2.

“Performance Guarantees” has the meaning set forth in Section 7.6.

“Permit Requirements” means any requirement or limitation imposed as a condition of a permit or other authorization relating to construction or operation of the Project or related facilities, including but not limited to, limitations on any pollutant emissions levels; limitations on operational levels or operational time; limitations on any specified operating constraint, requirements for acquisition and provision of any Emission Reduction Credit or Marketable Emission Trading Credit; or any other operational restriction or specification related to compliance with any laws or regulations applicable to the Project.

“Permitted Liens” means liens and encumbrances (a) imposed by the Priority Security Interest and the Subordinated Security Interest (including pursuant to any Security Document) or (b) imposed by any Lender.

“PMAX” means the applicable CAISO-certified maximum operating level of a Energy Storage System.

“PMIN” means the applicable CAISO-certified minimum operating level of a Energy Storage System, provided.

“Pre-Construction Security” has the meaning set forth in Section 11.2.1.

“PRG” has the meaning set forth in Section 27.2.

“Priority Security Interest” has the meaning set forth in Section 11.5.

“Product” means the Capacity, Energy, Ancillary Services, and Resource Adequacy Benefits of each of the Energy Storage Systems at the Project and all 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 Use) in accordance with the terms hereof.

“Project” has the meaning set forth in the Recitals.

“Protective Apparatus” means control devices (such as meters, relays, power circuit breakers and synchronizers) specified in the interconnection agreements for the Project.

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

“Referral Date” has the meaning set forth in Section 25.2.1.

“Reliability Must-Run Contract” or “RMR Contract” means a Must-Run Service Agreement between the owner of an RMR Unit (or the output therefrom) and the CAISO.

“Representatives” means the officers, directors, members, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents or representatives of a Party or of its Affiliates and in the case of Buyer, includes any Independent Evaluator (as such term is used in CPUC Decision 04-12-048) used by Buyer in connection with the Request for Offers from which this Agreement arose.

“Required Permits” has the meaning set forth in Section 5.1(b).

“Resource Adequacy Benefits” means the rights and privileges attached to any generating resource that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions D.04-10-035, D.05-10-042 and D.06-06-0064 and CPUC Resource Adequacy Rulemakings (R.)04-04-003 and (R.)05-12-013 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such Decisions, rulings, laws, rules or regulations may be amended or modified from time to time during the Term. **[NOTE TO BIDDERS: to be updated for flexible RA rulings.]**

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

“Scheduled Energy” means the Energy from a Energy Storage System expected to be delivered to the Energy Delivery Point pursuant to (a) the latest Buyer Dispatch Notice , or (b) any CAISO instructions, including without limitation pursuant to (i) Supplemental Energy bids, (ii) a Reliability Must-Run Contract (as defined in the Tariff) between the CAISO and the Seller, (iii) any Waiver Denial Periods, or (iv) Ancillary Services exercised.

“Scheduled Outage” means a period during which any Energy Storage System is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 20.1.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO for the purposes of undertaking the functions specified in Article 17.

“SEC” means the Securities and Exchange Commission.

“Security Documents” means those agreements, documents, instruments, or certifications in a form reasonably acceptable to Buyer that grant and perfect Buyer’s Priority Security Interest and/or Subordinated Security Interest.

“Seller’s Debt” means, without duplication, each of the following: (i) all indebtedness of Seller for borrowed money; (ii) all obligations of Seller for the deferred purchase price of property or service, which purchase price is due more than six (6) months after the date of placing such property in service or taking delivery or title thereto or the completion of such services (other than trade payables not overdue by more than ninety (90) days incurred in the ordinary course of Seller’s business); (iii) all obligations of Seller evidenced by notes, bonds, debentures, disqualified stock or other similar instruments; (iv) all obligations of Seller created or arising under any conditional sale or other title retention agreement with respect to property acquired by Seller (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (v) all monetary obligations of Seller under (a) a lease of any property (whether real, personal, or mixed) by Seller as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of Seller, (b) a so-called synthetic, off-balance sheet or tax retention lease, or (c) an agreement for the use or possession of property creating obligations which do not appear on the balance sheet of Seller but which, upon the insolvency or bankruptcy of Seller, would be characterized as indebtedness of Seller (without regard to accounting treatment); (vi) all obligations, contingent or otherwise, of Seller under acceptance, letter of guaranty, letter of credit or similar facilities; (vii) all obligations of Seller with respect to any redeemable equity

interests in Seller, including in the case of preferred stock, at the greater of the voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (viii) all Swap Obligations of Seller; (ix) all indebtedness of others referred to in clauses (i) through (viii) above guaranteed by Seller, or in effect guaranteed by Seller through an agreement (a) to pay or purchase such indebtedness or to advance or supply funds for the payment or purchase of such indebtedness, (b) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such indebtedness or to assure the holder of such indebtedness against loss; (c) to supply funds to or invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered), or (d) otherwise to assure a creditor against loss; and (x) without duplication of the foregoing, all indebtedness referred to in clauses (i) through (ix) above secured by any lien on property (including amounts and contract rights) owned by Seller. The outstanding amount of indebtedness as described above at any date shall be the outstanding balance at such date of all unconditional obligations as described above and, with respect to contingent obligations as described above, the maximum liability upon the occurrence of the contingency giving rise to the obligation. Notwithstanding the foregoing, the term “Seller’s Debt” as used herein shall not include Seller’s obligations under this Agreement or the lease of the Site (provided, such Site lease does not constitute an obligation of Seller described in clause (v) of the first sentence of this definition).

“Seller Initiated Test” has the meaning set forth in Section 7.1.

“Site Control” means that Seller owns the Site and the Project or has demonstrable contractual rights to, or is the managing general partner of any partnership (or comparable manager of any other person) who owns or has demonstrable contractual rights to, with explicit authority to act in all matters relating to, the control and operation of, the Site and the Project in order to perform its obligations under this Agreement.

“Start-Up” means the action of bringing a Energy Storage System from shutdown to synchronization at its minimum load and the unconditional release of such Energy Storage System for ramping to the Scheduled Energy.

“Start-Up Fuel” has the meaning set forth in Section 9.4.

“Station Use” means Energy produced by the Project that is used to operate the Project’s auxiliary equipment or is lost in transmission losses, transformational losses, or other electrical losses prior to the Energy Delivery Point. The auxiliary equipment includes, but is not limited, to forced and induced draft fans, cooling towers, boiler feed pumps, lubricating oil systems, plant lighting, control systems and sump pumps.

“Subordinated Security Interest” has the meaning set forth in Section 11.6.1.

“Subordination Agreement” has the meaning set forth in Section 11.6.1.

“Supplemental Energy” is the Energy from Projects which have uncommitted capacity following finalization of the Hour-Ahead Schedules and which Energy shall be available to CAISO during the Real Time Market.

“Swap Obligations” means obligations in respect of any swaps, caps or collar agreements or similar arrangements to hedge against fluctuations in interest rates or currency exchange rates or the exchange of nominal interest obligations, either generally or under specific contingencies, in each case, valued at the aggregate net mark-to-market value.

“Tariff” means the tariff and protocol provisions, as amended or supplemented from time to time, of the CAISO.

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

“Termination Payment” has the meaning set forth in Section 3.4.

“Transmission Owners Tariff” means the tariff setting out a Participating Transmission Owner’s rates and charges for transmission access to the CAISO Grid, filed with the CPUC, as it may be amended or superseded and accepted by the CPUC from time to time, or any successor tariff.

“Uninstructed Deviation Penalty” has the meaning set forth in the Tariff.

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

“Unit Contingent Capacity” means electrical capacity that is dependent upon the availability and operation of a Energy Storage System.

“Unit Contingent Energy” means Energy produced by a Energy Storage System that is dependent upon the availability and operation of that Energy Storage System.

“Unscheduled Outage” means a period during which a Energy Storage System is not capable of providing service due to the need to maintain or repair a component thereof, which period has not been scheduled in advance in accordance with Section 20.1.

“Variable O&M Charge” means a variable operations and maintenance charge calculated in accordance with Appendix 9.3.

“Waiver Denial Periods” has the meaning set forth in the Tariff.

“WECC” means the Western Electricity Coordinating Council, or any successor thereto.

**APPENDIX 1.1
OPERATING RESTRICTIONS**

<u>Type</u>	<u>Measurement Units For Limit</u>	<u>Period Of Applicability</u>	<u>Unit 1 Limit</u>	<u>Unit 2 Limit</u>	<u>Project Limit</u>
Start-Up Time	Minutes from cold start to reach Contract Capacity	Term of Agreement			
Maximum Number Of Daily Start-Ups	Number per day	Term of Agreement			
Maximum Number Of Annual Start-Ups	Number per year	Term of Agreement			
Minimum Run Time	Minutes per dispatch	Term of Agreement			
Minimum Down Time	Minutes from shutdown to next start	Term of Agreement			
Minimum Operating Level	MW	Term of Agreement			
Maximum Annual Run Time (excluding start-ups)	Hours per year	Term of Agreement			
Maximum Annual Run Time that Energy Storage System can be Dispatched at Less than its Full Availability (excluding start-ups)	Hours per year	Term of Agreement			

**APPENDIX 1.1.1
CONTRACT CAPACITY**

Energy Storage System	Expected Contract Capacity	Contract Capacity
Unit 1	[xxx]MW	To be determined by Commercial Operation Test and periodic Contract Capacity Tests and corrected to Contract Conditions, subject to the limitations in Section 1.1.1.
Unit 2		
Project		

APPENDIX 1.3.1
ENERGY DELIVERY POINT

Single-line diagram depicting grid interconnection and contract Energy Delivery Point

APPENDIX 6.1(a)
MILESTONE SCHEDULE

<u>Milestone</u>	<u>Milestone Date</u>
Receipt of Air Quality Permit	
Execution of Large Generator Interconnection Agreement	
Commencement of Construction Activities	
Completion of Combustion Turbine Foundation(s)	
Completion of Setting Combustion Turbine(s) on Foundation(s)	
Synchronization of all Energy Storage Systems to CAISO Transmission System	
Achievement of Delivery Date	
[Note to bidders: may include additional milestones based on project]	

**APPENDIX 6.1(b)
MONTHLY PROGRESS REPORT**

**Monthly Progress Report
of
[INSERT SELLER'S NAME]**

**provided to
San Diego Gas & Electric Company**

[Date]

Instructions.

All capitalized terms used in this report shall have the meanings set forth below and any capitalized terms used in this report which are not defined below shall have the meanings ascribed thereto in the Power Purchase Tolling Agreement by and between [insert Seller's name] (Seller) and San Diego Gas & Electric Company (Buyer) dated [_____, 200_] (the "Agreement").

Seller shall review the status of each significant element of the Milestone Schedule and Seller shall identify such matters referenced in clauses (i)-(iii) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Project or the Milestone Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that conditions precedent and the milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) Any material matter or issue arising in connection with a Permit Requirement, or compliance therewith, with respect to which there is a dispute over the interpretation of a law or regulation, any organized public opposition to the granting of a necessary Permit Requirement, or any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, in each case which in Seller's reasonable opinion could reasonably be expected to materially threaten or prevent achieving Commercial Operation of any Energy Storage System by the Initial Delivery Date;

(ii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to achieve Commercial Operation of any Energy Storage System by the Initial Delivery Date ;

(iii) The status of any matter or issue identified as outstanding in any prior Monthly Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

Seller shall complete, certify, and deliver this form Monthly Progress Report to Buyer, together with all attachments and exhibits.

Major activities to be performed for each aspect of the Project during the current calendar month.

Please provide a brief summary of the Major¹ activities to be performed for each of the following aspects of the Project during the current calendar month:

¹ For Purposes of this Report, "Major" shall mean any activity, event, or occurrence which may have a material adverse impact on the construction of the Project or completion of the Project on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Major activities scheduled to be performed in the previous calendar month but not completed as scheduled.

Please provide a brief summary of the Major activities which were scheduled to be performed in the previous calendar month and their status, including those activities that were not completed as scheduled:

Design

Engineering

Major Equipment procurement

Construction

adverse impact includes, but is not limited to, Seller's inability to achieve a Milestone Date.

Milestone report

Permitting

Overall assessment of the Project status.

Please provide a brief summary of your assessment of the status and progress of each of the following aspects of the Project:

Design

Engineering

Major Equipment procurement

Construction

Milestone report

Permitting

Exhibit 1: Progress Curve.

The progress curve which shows the progress achieved on the construction of the Project through the current month against the current Monthly Progress Report is included herewith as Exhibit 1.

Exhibit 2: Photos.

The photos included with this Exhibit 2 indicate construction progress to-date at the Project site.

Safety and Health Reports

Any work stoppage from the previous calendar month:

Work stoppage impact on construction of the Project:

I, _____, on behalf of and as an authorized representative of, do hereby certify that any and all information contained in the attached _____'s Monthly Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Project as of the date specified below.

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX 7 TESTING PROTOCOLS

[DISCUSS WHETHER TESTING IS ONLY ON A PROJECT LEVEL OR IS ALSO ON A
GENERATING UNIT BASIS]

Seller shall develop detailed test procedures for the Commercial Operation Tests and for the Contract Capacity, Efficiency Rate, and Ancillary Services Testing and submit them to Buyer for review and approval prior to use. Each procedure shall define the object, scope, criteria, and methods (including correction curves and an analysis of test uncertainty) applicable to the test. Test corrections shall include ambient temperature, relative humidity, and barometric pressure. The test procedures shall be submitted at least four (4) months prior to the commencement of testing. Buyer shall review and comment on proposed test procedures within thirty (30) calendar days of receipt.

Seller and Buyer shall cooperate to schedule Commercial Operation Tests at reasonable times in light of Seller's need to achieve Commercial Operation and Buyer's need to manage delivery of test energy to load. The Contract Capacity, Efficiency Rate, and Ancillary Services Testing shall be conducted at mutually agreed times prior to June of each calendar year after the Initial Delivery Date.

Buyer reserves the right to witness the tests.

Project instrumentation will be used during the performance tests whenever practical. The accuracy of Project instrumentation shall be verified within 30 days of the performance of any tests. No corrections for equipment degradation or test tolerances will be included in the test results.

Certified test reports for all tests shall be submitted to Buyer for review and approval as a condition of the Project reaching Commercial Operation status.

The Commercial Operation Tests required pursuant to Section 7.2 shall consist of the following tests:

- Contract Capacity Test
- Efficiency Rate Test
- Reliability/Availability Test
- Ancillary Services Tests
 - Start-up Time Test
 - Ramp Rate Test
- Generator Capability Test

Contract Capacity Test

The Contract Capacity Test shall be conducted for the purpose of determining each Energy Storage System's and the Project's net capacity corrected to Contract Conditions. The Contract Capacity shall be based on each of the Energy Storage Systems operating under steady state

operation at one hundred percent (100%) capacity. The Contract Capacity Test shall be conducted generally in accordance with the ASME Performance Test Code (PTC) 22.

The Project's Delivered Energy shall be measured at the Energy Delivery Point, net of plant auxiliary loads, using the installed CAISO metering. The Contract Capacity Test shall consist of a four-hour test with all Energy Storage Systems at 100 percent capacity, steady-state operation. All auxiliary systems shall be operating as normally required for one hundred percent (100%) capacity at Contract Conditions. Emissions shall be in compliance as monitored by the CEMS.

Electronic data shall be taken at time increments of no more than one minute and shall be corrected to the Contract Conditions. Manual data shall be taken at time increments of no more than ten minutes and shall be corrected to the Contract Conditions.

The capacity of the Project during the Contract Capacity Test shall be determined as follows: the average Delivered Energy during each hour shall be corrected from test conditions during that hour to the Contract Conditions using performance correction curves and methods contained in the test procedures. The corrected hourly readings shall then be averaged to determine the Contract Capacity of the Project.

Efficiency Rate Test[To be inserted]

Reliability/Availability Test

Seller shall demonstrate to Buyer the Energy Storage System's reliability and availability as follows:

- Each Energy Storage System shall start, run without tripping at one hundred percent (100%) Contract Capacity for four (4) hours and perform a normal shutdown five (5) consecutive times within three (3) days.
- The testing sequence shall be restarted:
 - If the Energy Storage System fails to start, run without tripping for four (4) hours and perform a normal shutdown during any of the five (5) consecutive tests; or
 - If maintenance or corrective action is performed during or between any of the five (5) tests.

Ancillary Services Tests

Seller shall conduct a Start-up Time Test to confirm for Buyer the Guaranteed Start-Up Time in Appendix 7.6 for each Energy Storage System.

Seller shall conduct a Ramp Rate Test to confirm for Buyer the Guaranteed Ramp Rate of the Energy Storage System in Appendix 7.6 for each Energy Storage System.

Generator Capability Test

To the extent not addressed in the testing described above, Seller shall conduct appropriate tests to demonstrate the Energy Storage System's capability to operate within the Operating Restrictions specified in Appendix 1.1.

The Contract Capacity, Efficiency Rate, and Ancillary Services Testing required pursuant to Section 7.3 shall consist of the following tests:

- Contract Capacity Test
- Efficiency Rate Test
- Ancillary Services Tests
 - Start-up Time Test
 - Ramp Rate Test

These tests will be conducted in a similar manner to that described above.

[NOTE to Bidders: black start testing to be inserted if black start is bid.]

**APPENDIX 7.6
PERFORMANCE GUARANTEES**

1. [To be inserted]

2. Guaranteed Start-Up Time.

Each Energy Storage System shall be brought to full capacity from a cold start within [] minutes. For a failure to achieve the Guaranteed Start-Up Time (except to the extent caused by a Delivery Excuse), Seller shall reimburse Buyer for imbalance charges, other charges, or penalties imposed by the CAISO upon Buyer as a result thereof.

3. Guaranteed Ramp Rate.[To be discussed with bidders.]

The ramp rate at specific energy outputs of each Energy Storage System shall be as set forth in the following table: [DISCUSS]

Load	Ramp Rate for each Energy Storage System individually	Ramp Rate for Project as a whole

For a failure to achieve the Guaranteed Ramp Rate (except to the extent caused by a Delivery Excuse), Seller shall reimburse Buyer for imbalance charges, other charges, or penalties imposed by the CAISO upon Buyer as a result thereof and for any costs associated with replacing any Ancillary Services.

**APPENDIX 9.2
MONTHLY CAPACITY PAYMENT**

The Monthly Capacity Payment for each month of the Delivery Period shall be determined as follows:

$$MCP = (CC \times CR \times SF \times AAF) + ERP - RRA$$

Where:

MCP is the Monthly Capacity Payment expressed in Dollars for such month of the Delivery Period.

CC is the Contract Capacity, expressed in kW, rounded to the nearest 100 kW.

CR is the Capacity Rate expressed in Dollars per kW-year,

$$CR = \text{\$[XXX]/kW-yr}$$

SF is the Monthly Shaping Factor for the applicable month, as set forth in the following table:

Month	Monthly Shaping Factor (%)
January	6.7
February	5.0
March	5.0
April	5.8
May	6.3
June	8.3
July	15.8
August	17.5
September	11.7
October	5.8
November	5.8
December	6.3

AAF is the Availability Adjustment Factor for each month, expressed as a three-place decimal and determined as follows:

- (a) If the Equivalent Availability Factor (“EAF”) for the month is less than or equal to 0.980, then the AAF equals EAF / 0.98.
- (b) If the EAF for the month is greater than 0.980 but less than 0.990, then the AAF equals 1.0.

- (c) If the EAF for the month is greater than or equal to 0.990, then the AAF equals $EAF / 0.99$.

ERP is the Efficiency Rate Payment, which is calculated in accordance with Appendix 7.6.

RRA is the Reliability Reduction Adjustment, which equals [\$XXX] for each minute a Energy Storage System is late in synchronizing to the CAISO Grid beyond the time when such Energy Storage System was scheduled to be delivering Energy as set forth in the Dispatch Notice; provided, however, that this RRA shall only apply to start-ups dispatched by Buyer in the Day-Ahead Market.

The Equivalent Availability Factor (EAF), which shall be computed monthly, is the equivalent availability factor computed as follows:

$$EAF = 0.5 \times [(PH - (EDH - EEDH)) / PH] + 0.5 \times [(NSRA) / (NSRG)]$$

Where:

PH is the number of period hours;

EDH is the number of equivalent derate hours calculated as the sum, for each derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the Contract Capacity divided by the Contract Capacity for the month. For the purposes of this calculation, a derate includes all outages for any reason, including without limitation, Unscheduled Outages, Force Majeure events, Delivery Excuse, forced derates, shortages relative to the Guaranteed Start-Up Time, shortages relative the Guaranteed Ramp Rates, Scheduled Outages, other times when any portion of the Contract Capacity is not available, and when the Delivered Energy of the Project is less than the amount of energy dispatched by Buyer.

EEDH is the number of equivalent excused derate hours solely due to either a Scheduled Outage or a Delivery Excuse (and for no other reason), calculated as the sum, for each excused derate, of the product of the number of hours of full or partial derate hours times the size of the reduction from the Contract Capacity, divided by the Contract Capacity for the month.

NSRA shall be the non-spinning reserve available energy and is the sum for all hours in the applicable measurement period of the product of (a) one hour, times (b) the non-spinning reserve capacity available to Buyer in each such hour of the applicable measurement period (which amount includes the non-spinning reserve capacity that is unavailable solely due to either a Scheduled Outage or a Delivery Excuse). For the purposes of this calculation, the non-spinning reserve capacity in each hour of the applicable measurement period shall be based on the lower of

(1) the most current CAISO certification amount, or (2) as stated in the Availability Notice, as each may be adjusted by derates (other than derates due to Scheduled Outages or Delivery Excuses).

NSRG shall be the non-spinning reserve gross energy and is the product of (a) the number of period hours in the applicable measurement period, times (b) the Contract Capacity.

**APPENDIX 9.3
VARIABLE O&M CHARGE**

The Variable O&M Charge for each month of the Delivery Period shall be calculated as follows:

$$\text{VOMP} = \text{RATE} \times \text{Delivered Energy}$$

Where:

$$\text{RATE} = \$[\text{XX}]/\text{MWH}$$

APPENDIX 9.4
START-UP CHARGE

The Start-Up Costs for each Buyer or CAISO dispatch of a Energy Storage System shall not exceed [XXX].

The Start-Up Charge for each Buyer or CAISO dispatch of a Energy Storage System shall be calculated as follows:

$$SUC = RATE \times NSU$$

Where:

SUC is the Start-Up Charge payment to be determined for such month.

RATE = \$[XXX] per start-up

NSU is the number of Start-Ups of such Energy Storage System in such month.

**APPENDIX 11.3
LETTER OF CREDIT FORM**

IRREVOCABLE NONTRANSFERABLE STANDBY
LETTER OF CREDIT

Reference Number: _____

Transaction Date: _____

BENEFICIARY:

San Diego Gas & Electric Company

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of San Diego Gas & Electric Company, a California corporation (the "Beneficiary"), for the account of _____, a _____ corporation (the "Applicant"), for the amount of XXX AND XX/100 Dollars (\$ _____) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on the Expiration Date (as hereinafter defined).

This Letter of Credit shall be of no further force or effect upon the close of business on _____ or, if such day is not a Business Day (as hereinafter defined), on the next preceding Business Day, unless extended in accordance with the terms of this Letter of Credit. For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in San Diego, California.

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

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Attachment A attached hereto and which forms an integral part hereof, duly completed and purportedly bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at _____ or such other number as specified from time to time by the Bank. The facsimile transmittal shall be

deemed delivered when received. It is understood that drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

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

This Letter of Credit is transferable in whole or in part.

Banking charges shall be the sole responsibility of the Applicant.

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 except as described in the succeeding paragraph.

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 sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment.

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

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

AUTHORIZED SIGNATURE for Bank

By:

Title: _____

ATTACHMENT A TO APPENDIX 11.3
DRAWING CERTIFICATE
TO [ISSUING BANK NAME]
IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Reference Number. _____
(Sample Text)

DRAWING CERTIFICATE

Bank
Bank Address

Subject: Irrevocable Nontransferable Standby Letter of Credit
Reference Number: _____

The undersigned _____, an authorized representative of San Diego Gas & Electric Company (the "Beneficiary"), hereby certifies to [Issuing Bank Name] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. _____, dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:
 - []A. An Event of Default, as defined in the Power Purchase Tolling Agreement between Beneficiary and Applicant (the "Agreement"), with respect to the Applicant has occurred and is continuing.
 - []B. The Letter of Credit will expire in fewer than sixty (60) days from the date hereof, and Applicant has not provided to Beneficiary alternate Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.
 - []C. Applicant has forfeited all or part of its Pre-Construction Security as set forth and defined in the Agreement.
2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.\$ _____), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.
3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire-transferred to the Beneficiary in accordance with the following instructions:

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

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of _____, _____.

Beneficiary: SAN DIEGO GAS & ELECTRIC COMPANY

By:
Name:
Title:

APPENDIX 14.1
ELECTRIC RETAIL SERVICE INTERCONNECTION

Drawing depicting interconnection

[to be determined]

**APPENDIX 18.1
AVAILABILITY NOTICE**

Availability Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Unit 100% Available No Restrictions: _____

Hour Ending	Available Capacity	Minimum Output	Comments
	(MW)	(MW)	
1:00			
2:00			
3:00			
4:00			
5:00			
6:00			
7:00			
8:00			
9:00			
10:00			
11:00			
12:00			
13:00			
14:00			
15:00			
16:00			
17:00			
18:00			
19:00			
20:00			
21:00			
22:00			
23:00			
0:00			

Comments: _____

**APPENDIX 18.2
DISPATCH AND UPDATED DISPATCH NOTICES**

Dispatch Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Hour Ending	Scheduled Energy	Spinning Reserve	Non-Spinning Reserve	Comments
	(MW)	(MW)	(MW)	
1:00				
2:00				
3:00				
4:00				
5:00				
6:00				
7:00				
8:00				
9:00				
10:00				
11:00				
12:00				
13:00				
14:00				
15:00				
16:00				
17:00				
18:00				
19:00				
20:00				
21:00				
22:00				
23:00				
0:00				

Comments: _____

Updated Dispatch Notice

Trading Day: _____

Station: _____

Issued By: _____

Unit: _____

Issued At: _____

Changes from Scheduled Delivery are highlighted.

Comments: _____

Hour Ending	Scheduled Energy	Spinning Reserve	Non-Spinning Reserves	Comments
	(MW)	(MW)	(MW)	
1:00				
2:00				
3:00				
4:00				
5:00				
6:00				
7:00				
8:00				
9:00				
10:00				
11:00				
12:00				
13:00				
14:00				
15:00				
16:00				
17:00				
18:00				
19:00				
20:00				
21:00				
22:00				
23:00				
0:00				

**APPENDIX 18.5
DAILY OPERATING REPORT**

Daily Operating Report

for MM/DD/YY

Availability – Capacity - Generation

Plant Status at 0600 Hours:

Unit 1	Unit 2	Unit 3
<input type="checkbox"/> Operating <input type="checkbox"/> Available <input type="checkbox"/> Not Available <small>See significant events</small>	<input type="checkbox"/> Operating <input type="checkbox"/> Available <input type="checkbox"/> Not Available <small>See significant events</small>	<input type="checkbox"/> Operating <input type="checkbox"/> Available <input type="checkbox"/> Not Available <small>See significant events</small>

Previous 24 Hours:

Unit 1	Unit 2	Unit 3
Operating Hours: <u>0:00</u> Hrs:Min (0001 – 2400 Total On Line Hours)	Operating Hours: <u>0:00</u> Hrs:Min (0001 – 2400 Total On Line Hours)	Operating Hours: <u>0:00</u> Hrs:Min (0001 – 2400 Total On Line Hours)
Net Generation: <u>0.0</u> MWhr (0001 – 2400 Total Net Generation)	Net Generation: <u>0.0</u> MWhr (0001 – 2400 Total Net Generation)	Net Generation: <u>0.0</u> MWhr (0001 – 2400 Total Net Generation)

Project

Total Availability: 100 %
((On Line Hr + Off Line Available Hr)/24)

Total Capacity: 100 %
((MW Generated/MW Scheduled) x 100)

Total Generation: 0 MWhr
(CTG + HP STG + LP STG)

Period Availability:

Unit 1	Unit 2	Unit 3
M(onth)TD Availability <u>100.00</u> % <small>(MTD On Ln Hr + MTD Off Ln Avl Hr)/MTD Hr</small>	M(onth)TD Availability <u>100.00</u> % <small>(MTD On Ln Hr + MTD Off Ln Avl Hr)/MTD Hr</small>	M(onth)TD Availability <u>100.00</u> % <small>(MTD On Ln Hr + MTD Off Ln Avl Hr)/MTD Hr</small>
P(eak)TD Availability <u>100.00</u> % <small>(PTD On Ln Hr + PTD Off Ln Avl Hr)/PTD Hr</small>	P(eak)TD Availability <u>100.00</u> % <small>(PTD On Ln Hr + PTD Off Ln Avl Hr)/PTD Hr</small>	P(eak)TD Availability <u>100.00</u> % <small>(PTD On Ln Hr + PTD Off Ln Avl Hr)/PTD Hr</small>

Significant Events

No significant events, generation losses, major equipment out of service, accidents, injuries or operating anomalies.

Losses of Generation: (Include Date/Time Off Line; Date/Time On Line; Brief Narrative Description of Event.)
List Major Equipment Out of Service; Briefly Describe any Accidents or Injuries; Describe any Operating Anomalies

Number of additional pages: _____ 0 _____ Submitted by: _____

**APPENDIX 18.7
COMMUNICATIONS PROTOCOLS**

Communication Protocols

Dated as of _____

These Communication Protocols have been drafted to assist in the operation of the Power Purchase Tolling Agreement between Seller and Buyer dated _____ (the "Agreement"). If there is any inconsistency between the Communication Protocols and the Agreement, the Agreement shall prevail. These Communication Protocols shall become effective as of the date first set forth above. The Parties acknowledge and agree that these Operating Procedures are subject to change and shall be modified as evolving market conditions and rules may require. Unless otherwise defined in these Communication Protocols, defined terms herein shall have the meanings ascribed in the Agreement.

1. Contacts and Authorized Representatives

The "Contact Information" tables sets forth those contact functions, phone/fax numbers and e-mail information by which each Party elects to be contacted by the other. References in these Operating Procedures to notices by telephone, fax, or e-mail shall be deemed to refer to the applicable number set forth in the Contact Information Table.

2. Communication Protocols - General

2.1 Intra-day Communication: All communications and notices between the Parties that occur intra-day for the applicable trading day including those regarding emergencies, Dispatch Notices, Updated Dispatch Notices, Availability Notices, and notices to avoid imbalance penalties, uninstructed deviation charges/credits or any other CAISO charge types specified in the Agreement, and shall be provided telephonically to the applicable Party.

If to Seller, such notices and communications shall be provided to the following contact, in order of priority, (1) Dispatch Desk, (2) Plant Manager. If to Buyer, such notices and communications shall be provided to the following contact, in order of priority, Real Time. Each Party shall confirm all Intra-day Communication either electronically or via fax as soon as practicable.

2.2 Communication Failure: In the event of a failure of the primary communication link between Seller and Buyer, both Parties will try all available means to communicate, including cell phones or additional communication devices as installed.

2.3 System Emergency: Buyer and Seller shall communicate as soon as possible all changes to the schedule requested by the CAISO as a result of a system emergency.

During Transmission System Emergencies, Seller's operations staff shall communicate with Buyer's Grid Operations Department via established communications devices. Buyer's Grid Operations Department will periodically test the communications devices to be utilized during system emergencies.

2.4 Verbal Communication: Each Party shall provide confirmation (either electronically or via facsimile) of any telephonic operating notice or communication provided to the other Party as soon as practicable. All telephonic communication shall be subject to recording.

2.5 Confidentiality: Confidential communications between the Parties in discharging their rights and obligations under the Agreements and these Communication Protocols will be subject to the applicable restrictions set forth in the Agreement.

2.6 Staffing: Parties will have available 24 hours a day, seven days a week, personnel available to communicate regarding the implementation of these Communication Protocols.

Contact Information Table

Contacts and Authorized Representatives for Buyer

Outlined below is the contact and communication information for the relevant contact groups. This list may be amended by Buyer with timely Notice to Seller.

Contact	Primary Phone	Secondary Phone	Fax	Email
Real Time	858-650-6160	619-517-5661	858-650-6191	tsched@semprautilities.com
Day-Ahead Scheduling	858-650-6178	858-650-6160	858-650-6191	presched@semprautilities.com
Day-Ahead Trading	858-650-6137	858-650-6160	858-650-6191	rmiller3@semprautilities.com jpasquito@semprautilities.com
Settlements – Power	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Contract Administration	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Outage Scheduling	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD
Transmission System Emergencies	TBD before IDD	TBD before IDD	TBD before IDD	TBD before IDD

Contacts and Authorized Representatives for Seller

Outlined below is the contact and communication information for the relevant Seller employees. This list may be amended by Seller with timely Notice to Buyer.

Contact:	Primary Phone	Secondary Phone	Fax	Email
Dispatch Desk (Day Ahead)				
Dispatch Desk (Real Time)				
Outage Desk				
Plant Manager				
Contract Administration				
Settlements				
Operations Manager				
Operations Supervisor				

**APPENDIX 22.4.3
CAP ON SELLER'S DEBT**

<u>CONTRACT YEAR</u>	<u>AMOUNT</u>
1 and before	\$[]
2	\$[]
3	\$[]
4	\$[]
5	\$[]
6	\$[]
7	\$[]
8	\$[]
9	\$[]
10	\$[]
11	\$[]
12	\$[]
13	\$[]
14	\$[]
15	\$[]
16	\$[]
17	\$[]
18	\$[]
19	\$[]
20	\$[]

LONG FORM CONFIRMATION
FOR RESOURCE ADEQUACY CAPACITY PRODUCT
Resource Adequacy Contract Number: _____

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between _____ ("Seller") and San Diego Gas & Electric Company ("Buyer"), each individually a "Party" and together the "Parties", dated as of [___] (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: Party A / Seller

Name: Party B / Buyer

All Notices:

< company name >
< street address >
< city/state/zip >

Attn: _____

Telephone: (____) ____ - ____

Facsimile: (____) ____ - ____

Duns: _____

Federal Tax ID Number: _____

All Notices:

San Diego Gas & Electric Company
8315 Century Park Court CP 21D
San Diego CA 92123-1593

Attn: Contract Administration

Telephone: (858) 650-6176

Facsimile: (858) 650-6190

Duns: 006911457

Federal Tax ID Number: 95-1184800

Invoices:

< company name >
< street address >
< city/state/zip >

Attn: _____

Telephone: (____) ____ - ____

Facsimile: (____) ____ - ____

Invoices:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593

Attn: Energy Accounting Manager

Telephone: (858) 650-6177

Facsimile: (858) 650-6190

Scheduling:

< company name >
< street address >
< city/state/zip >
Attn: _____
Day Ahead: () ____ - ____
Real Time: () ____ - ____
Facsimile: () ____ - ____

Payments:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: () ____ - ____
Facsimile: () ____ - ____

Wire Transfer:

< bank name >
< bank street address >
< bank city/state/zip >
ABA Routing Number: _____
Payee: _____
Account Number: _____
Confirmation: _____
Facsimile: () ____ - ____

Credit and Collections:

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: () ____ - ____
Facsimile: () ____ - ____

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

< company name >
< street address >
< city/state/zip >
Attn: _____
Telephone: () ____ - ____
Facsimile: () ____ - ____

Scheduling:

San Diego Gas & Electric Company
8315 Century Park Court, CP 21D
San Diego, CA 92123-1593
Attn: Transaction Scheduling Manager
Day Ahead: (858) 650-6168
Real Time: (858) 650-6160
Facsimile: (858) 650-6191

Payments:

San Diego Gas & Electric Company
8315 Century Park Court
San Diego CA 92123-1593
Attn: Energy Accounting Manager
Telephone: (858) 650-6177
Facsimile: (858) 650-6190

Wire Transfer:

Union Bank of California
445 South Figueroa Street
Los Angeles CA 90071
ABA Routing Number: 122000496
Payee: San Diego Gas & Electric Company
Account Number: 4430000352
Confirmation: SDG&E – Major Markets
Facsimile: (213) 244-8316

Credit and Collections:

San Diego Gas & Electric Company
555 West Fifth Street, ML 18A3
Los Angeles, CA 90013-1011
Attn: Major Markets – Credit and
Collections Manager
Telephone: (213) 244-4343
Facsimile: (213) 244-8316

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
Telephone: (858) 650-6141
Facsimile: (858) 650-6106

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Article Two

Transaction Terms
and Conditions

- Optional provision in Section 2.4.
If not checked, inapplicable.

Article Four

Remedies for Failure
to Deliver or Receive

- Accelerated Payment of Damages.
If not checked, inapplicable.

Article Five

Events of Default; Remedies

- Cross Default for Party A:
 Party A: _____ Cross Default Amount: _____
 Other Entity: _____ Cross Default Amount: _____
- Cross Default for Party B:
 Party B: N/A Cross Default Amount: N/A
 Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
 Option B – Affiliates shall have the meaning set forth in
the Agreement unless otherwise specified as follows:

 Option C (No Setoff)

Article 8

Credit and
Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- Option A
 Option B Specify: _____
 Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
 Applicable

(c) Collateral Threshold:

- Not Applicable
 Applicable

(d) Downgrade Event:

- Not Applicable
 Applicable

(e) Guarantor for Party B: None.

Guarantee Amount: N/A

8.2 Party B Credit Protection: **SDG&E CREDIT
DEPARTMENT TO EVALUATE BASED ON
COUNTERPARTY**

- (a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
- (b) Credit Assurances:
 Not Applicable
 Applicable
- (c) Collateral Threshold:
 Not Applicable
 Applicable
If applicable, complete the following:
Party A Collateral Threshold: \$ _____;
provided, however, that Party A's Collateral
Threshold shall be zero if an Event of Default or
Potential Event of Default with respect to Party A
has occurred and is continuing.
Party A Independent Amount: \$ _____
Party A Rounding Amount: \$ _____
- (d) Downgrade Event:
 Not Applicable
 Applicable
If applicable, complete the following:
 It shall be a Downgrade Event for Party A if
Party A 's Credit Rating falls below _____
from S&P or _____ from Moody's or if Party A
is not rated by either S&P or Moody's
 Other:
Specify: _____
- (e) Guarantor for Party A: None
Guarantee Amount: N/A

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
 Party B is a Governmental Entity or Public Power System
 Add Section 3.6. If not checked, inapplicable
 Add Section 8.4. If not checked, inapplicable

Other Changes

1. The modifications to Section 1.12, 1.50 and 5.2 of the Master Agreement specified in that certain Errata published by the Edison Electric Institute (version 1.1, July 18, 2007) are hereby incorporated herein as if set forth in full.

2. Section 10.2(ii) of the Master Agreement shall be modified by inserting “Except for the approval by the CPUC as stated in Section 2.2 of this Confirmation,” at the beginning of the first sentence in such section.

3. Section 10.6 of the Master Agreement shall be deleted in its entirety and replaced with the following:

“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 PERMISSIBLE UNDER APPLICABLE LAW, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”

4. Schedule P: Products and Related Definitions shall be deleted in its entirety.

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff and includes any similarly defined payments under the Tariff in respect of Flexible RA Attributes.
- 1.3 “Availability Standards” has the meaning set forth in the Tariff and includes any similarly defined standards under the Tariff in respect of Flexible RA Attributes.
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means (a) the Local RA Attributes, (b) the RA Attributes, (c) the Flexible RA Attributes, and (d) any other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any accounting construct applied to any Compliance Obligations.
- 1.7 “Capacity Price” means the price specified in the Capacity Price Table in Section 4.1.
- 1.8 “Capacity Replacement Price” means (a) the actual rate per kW-day paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) including any penalties, fines, transaction costs and expenses reasonably incurred by Buyer in

- purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, any penalties, fines, transaction costs and expenses plus the per kW-day market price for the Product not delivered by Seller under this Confirmation. Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed the "Replacement Price" for this Transaction.
- 1.9 "Compliance Obligations" means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with a generating unit's Capacity Attributes established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.10 "Compliance Showing" means one or more of the following: (a) Local RAR Showing, (b) RAR Showing, (c) Flexible RAR Showing, or (d) other Capacity Attributes compliance or advisory filing (or similar or successor showing or filing), in each case, that an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.11 "Confirmation" has the meaning specified in the introductory paragraph.
- 1.12 "Confirmation Effective Date" has the meaning specified in Section 2.2.
- 1.13 "Confirmation Execution Date" has the meaning specified in the introductory paragraph.
- 1.14 "Contract Price" means, for any day in any Monthly Delivery Period, the Capacity Price for such period.
- 1.15 "Contract Quantity" means the quantity of Product (in MW) as set forth in Section 3.5.
- 1.16 "Contract Term" has the meaning set forth in Section 2.1.
- 1.17 "CPUC" means the California Public Utilities Commission.
- 1.18 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-25, and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.19 "CPUC Filing Guide" is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC's resource adequacy program as provided in the CPUC Decisions.
- 1.20 "Credit Rating" means, with respect to any entity, the rating assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement, or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.

Storage Resource Adequacy Template For discussion purposes only

- 1.21 “Delivery Period” has the meaning specified in Section 3.4.
- 1.22 “Emission Reduction Credits” or “ERC(s)” means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby such district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.
- 1.23 “Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all Emission Reduction Credits or Marketable Emission Trading Credits (including any costs related to greenhouse gas emissions) required by any applicable environmental laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to the site, and the decontamination or remediation, on or off the site, necessitated by the introduction of such hazardous substances on the site.
- 1.24 “Flexible RA Attributes” means, with respect to a Unit, any and all flexible resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.
- 1.25 “Flexible RAR” means the flexible capacity requirements, including, without limitation, maximum continuous ramping, load following, and regulation, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Flexible RAR may also be known as ramping, maximum ramping, maximum continuous ramping, maximum continuous ramping capacity, maximum continuous ramping ramp rate, load following, load following capacity, load following ramp rate, regulation, regulation capacity, regulation ramp rate.
- 1.26 “Flexible RAR Showing” means the Flexible RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.27 “GADS” means the Generating Availability Data System, or its successor.
- 1.28 “Governmental Body” means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.
- 1.29 “Local Capacity Area” has the meaning set forth in the Tariff.

- 1.30 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes and Flexible RA Attributes.
- 1.31 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.32 “Local RAR Showing” means the Local RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.33 “LSE” means load-serving entity.
- 1.34 “Marketable Emission Trading Credits” means without limitation, emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (see 42 U.S.C. § 7651b.(a) to (f)).
- 1.35 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.36 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.37 “Monthly Payment” has the meaning specified in Section 4.1.
- 1.38 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.39 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.40 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.41 “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.42 “Non-Availability Charges” has the meaning set forth in the Tariff and includes any similarly defined charges under the Tariff in respect of Flexible RA Attributes.
- 1.43 “Non-Specified RA Replacement Capacity” has the meaning set forth in the Tariff and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes.

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- 1.44 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.45 “Outage Schedule” has the meaning specified in Section 3.8.
- 1.46 “Planned Outage” shall have the meaning in CPUC Decisions, and includes a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of the Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.47 “Product” has the meaning specified in Section 3.1.
- 1.48 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.49 “Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix A, of the Unit EFC as of the Confirmation Execution Date that is dedicated to Buyer under this Transaction.
- 1.50 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local RA Attributes and Flexible RA Attributes.
- 1.51 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.52 “RAR Showing” means the RAR compliance or advisory filing (or similar or successor showing or filing) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.53 “Replacement Capacity” means capacity which has equivalent Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer as of the Confirmation Execution Date.
- 1.54 “Replacement Rules” has the meaning set forth in Section 3.9(b).
- 1.55 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.56 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.57 “RMR Contract” has the meaning set forth in the Tariff.
- 1.58 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc. or its successor).

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- 1.59 "Scheduling Coordinator" or "SC" has the meaning set forth in the Tariff.
- 1.60 "Seller" has the meaning specified in the introductory paragraph.
- 1.61 "Seller's Firm Quantity" has the meaning set forth in Section 3.2.
- 1.62 "Showing Month" shall be the calendar month that is the subject of the Compliance Showing, as applicable, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.63 "Specified RA Replacement Capacity" has meaning set forth in the Tariff and includes any similarly defined capacity under the Tariff in respect of Flexible RA Attributes.
- 1.64 "Substitute/Specified Capacity" has the meaning set forth in Section 3.9(a).
- 1.65 "Substitution Rules" has the meaning set forth in Section 3.9(b).
- 1.66 "Supply Plan" has the meaning set forth in the Tariff and includes any similarly defined plan under the Tariff in respect of Flexible RA Attributes.
- 1.67 "Tariff" means the tariff and protocol provisions, including any applicable CAISO-published "Operating Procedures" and "Business Practice Manuals," as amended or supplemented from time to time, of the CAISO.
- 1.68 "Transaction" has the meaning specified in the introductory paragraph.
- 1.69 "Unit" or "Units" shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.70 "Unit Contract Quantity" means the amount of Product (in MW) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Execution Date.
- 1.71 "Unit EFC" means the effective flexible capacity or capacity that is qualified to provide Flexible RA Attributes established by the CAISO for the applicable Unit.
- 1.72 "Unit NQC" means the Net Qualifying Capacity established by the CAISO for the applicable Unit.
- 1.73 "Unit Delivered Quantity" means the amount of applicable Product (in MW) actually "delivered" by Seller to Buyer by each individual Unit. As used herein, "delivered" shall mean shown in the Supply Plan and, for purposes of Section 4.1, shall include any Substitute/Specified Capacity under Section 3.9, and in all cases, shall not include (i) any portion of Seller's Firm Quantity for which Buyer is required under the Compliance Obligations or the Tariff to procure Replacement Capacity, and (ii) any portion of Seller's Firm Quantity for which Seller is required hereunder, but fails, to provide Replacement Capacity to Buyer.

2. Term

2.1 Contract Term

The “Contract Term” shall mean the period of time commencing upon the Confirmation Effective Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties’ obligations under this Agreement have been fulfilled.

2.2 Conditions Precedent; Binding Nature

This Agreement shall not be effective or binding on either Party until, and it shall become effective and binding on both Parties as of, the date on which the conditions precedent, if any, described below shall have been achieved (or waived in writing by each of the Parties in their sole discretion) (the “Confirmation Effective Date”).

(a) [Insert]

If any of the foregoing conditions precedent are not achieved (or waived in writing by each of the Parties) on or before the deadline dates therefor (without extension for Force Majeure or any other reason), then this Agreement shall automatically terminate. If there are no conditions precedent listed above in this Section 2.2 then the Confirmation Effective Date shall be the Confirmation Execution Date. This Agreement shall be effective and binding as of the Confirmation Effective Date.

3. Transaction

3.1 Product

- (a) Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes (including all Local RA Attributes and Flexible RA Attributes (if any)) of the Units identified in Appendix A (collectively, the “Product”) and Seller shall deliver the Product as described in Section 3.2 below. Product does not include any right to dispatch or receive the energy or ancillary services from the Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.
- (b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.
- (c) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder, and (ii) if the event in Section 3.1(c)(i) occurs then the Product shall include such Capacity Attributes related to Flexible RAR.

3.2 Seller's Firm Quantity

During the Delivery Period, Seller shall provide Buyer with the Product from the Unit(s) in the amount of the Contract Quantity. Except as otherwise stated in this Section 3.2 and except for reasons of Force Majeure, if the Unit(s) are not available to provide any portion of the Product for any reason including without limitation any Outage or any adjustment of the Capacity Attributes of any Unit(s), Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5 and Section 10. "Seller's Firm Quantity" shall equal the Contract Quantity during all times during the Delivery Period, except during the periods listed in Appendix B, during which time Seller's Firm Quantity shall be reduced by the Outage amount for each Unit specified in Appendix B and Seller shall not be obligated to and shall not provide Buyer with Replacement Capacity pursuant to Section 5.1 for the Outage amount resulting in the reduction in Seller's Firm Quantity as specified in the Outage Schedule in Appendix B.

3.3 Reserved.

3.4 Delivery Period

The "Delivery Period" shall be _____ thru _____, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.5 Contract Quantity:

During each month of the Delivery Period, Seller shall provide the Product from each Unit in the total amount for such month as follows:

CONTRACT QUANTITY TABLE

Unit Name	CAISO Resource ID*	Month(s)	Unit Contract Quantity (MW)	
			Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes

* CAISO Resource ID should match a Unit described in Appendix A

3.6 Delivery of Product

Seller shall provide Buyer with the Contract Quantity for each day in each Monthly Delivery Period consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Delivered Quantity for each Unit provided to Buyer so that the total amount of Unit Delivered Quantity identified and confirmed equals the Unit Contract Quantity for each Unit, unless specifically notified or requested not to do so by the Buyer pursuant to Section 3.9, and;
- (b) Seller shall cause each Unit's SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable Compliance Showing, that Buyer will be credited with Unit Delivered Quantity for the applicable portion of the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Delivered Quantity for each Unit credited equals the Unit Contract Quantity.

3.7 CAISO/CPUC Offer Requirements

Subject to Buyer's request under Section 3.9(a), Seller shall, or cause the Unit's SC to, bid and/or schedule with, or make available to, the CAISO the Unit Contract Quantity for each Unit in compliance with the Tariff and the CPUC Filing Guide, including any must offer obligation under the Tariff or the CPUC Filing Guide, and shall, or cause the Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff and the CPUC Filing Guide that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff and CPUC Filing Guide provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

3.8 Planned Outages

As of the Confirmation Execution Date, Seller and Buyer have agreed to all Planned Outages during the Delivery Period (other than "Short-Notice Opportunity RA Maintenance Outages", "Off-Peak Opportunity RA Maintenance Outage" and "RA Maintenance Outage With Replacement" as defined or described in the Tariff) as specified in Appendix B ("Outage Schedule"). Seller shall, or cause the Unit's SC to reconfirm the Outage Schedule or submit a schedule of proposed changes to the Outage Schedule, if any, to Buyer on each of the following dates during the Contract Term: (i) the Confirmation Effective Date, (ii) thirty (30) days before the applicable year-ahead showing, and (iii) no later than January 1, April 1, July 1 and October 1 of each calendar year. Within twenty (20) Business Days after its receipt of a schedule of proposed changes, Buyer shall notify Seller in writing of any reasonable request for modifications to such Seller proposed changes, and Seller shall, to the extent consistent with Good Utility Practices, accommodate Buyer's requests regarding the timing of any Seller proposed changes to the Outage Schedule. In addition, Seller shall, or cause the Unit's SC to, submit any subsequent Seller proposed changes to

the Outage Schedule to Buyer at least ten (10) Business Days before such change is to occur. Within three (3) Business Days after its receipt of such Seller proposed change to the Outage Schedule, Buyer may notify Seller in writing of any reasonable requests for modifications to such Seller proposed changes. Seller shall, to the extent consistent with Good Utility Practices, accommodate Buyer's requests regarding the timing of any Seller proposed changes to the Outage Schedule. Any such notification shall not affect Seller's obligation to provide Replacement Capacity in accordance with Section 3.2, and any such changes to the Outage Schedule shall not alter or otherwise amend Seller's Firm Quantities specified as of the Execution Date.

3.9 Unit Substitution; RA Replacement Capacity

- (a) Substitute/Specified Capacity: No later than five (5) Business Days before the relevant deadline for each applicable Compliance Showing, Buyer may (i) request, subject to Seller's reasonable approval, that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's applicable Unit Contract Quantity on the Supply Plan or (ii) notify Seller that a portion or all of the Unit Contract Quantity of a Unit will be included in an applicable Compliance Showing as Specified RA Replacement Capacity or Non-Specified RA Replacement Capacity. The amount of Unit Contract Quantity that is the subject of such a request or notice shall be known as "Substitute/Specified Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, to the extent provided, such Substitute/Specified Capacity shall be deemed Unit Delivered Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to Substitute/Specified Capacity: If Buyer requests Substitute/Specified Capacity, Seller shall (i) make such Substitute/Specified Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize, as applicable, the substitution rules in Section 40.9.4.2.1 of the Tariff including any similarly defined substitution rules under the Tariff in respect of Flexible RA Attributes ("Substitution Rules") or, if approved in accordance with the Applicable Laws, the replacement rules in Sections 9.3.1.3.1 and 9.3.1.3.2 of the Tariff including any similarly defined replacement rules under the Tariff in respect of Flexible RA Attributes (the "Replacement Rules"), and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize, as applicable, the Substitution Rules and the Replacement Rules, including, but not limited to, ensuring that the Substitute/Specified Capacity will qualify, as applicable, for substitution under the Substitution Rules and for replacement under the Replacement Rules, and providing Buyer with all information needed to utilize the Substitution Rules and Replacement Rules.
- (c) Seller agrees that all Substitute/Specified Capacity utilized by Buyer under the Substitution Rules and Replacement Rules, as applicable, is subject to the requirements identified in Section 3.7.
- (d) Failure to Provide Substitute/Specified Capacity: If Seller fails to provide Substitute/Specified Capacity or Buyer is unable to utilize the Substitute/Specified Capacity under the Substitution Rules and Replacement Rules due to Seller's failure to fulfill its obligations under Section 3.9(b)(ii),

then Seller shall reimburse Buyer for any and all Non-Availability Charges incurred by Buyer and shall pay Buyer the CPM revenue the CASIO would have paid the Buyer but for Seller failure, due to such failure or inability to utilize the Substitution Rules and Replacement Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the Substitute/Specified Capacity does not qualify for substitution under Section 40.9.4.2.1(1)(i) or (ii) of the Tariff, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.9(d) associated with such inability.

3.10 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product.

4. Payment

4.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a "Monthly Payment" to Seller for each Unit after the applicable Monthly Delivery Period, as follows:

where:

A = applicable Contract Price (in \$/kW-day) for that calendar day

B = Unit Delivered Quantity (in MW) for Capacity Attributes provided by Seller for such Unit in that calendar day; provided, however, in no event shall this quantity "***B***" exceed Seller's Firm Quantity for such Unit (in MW) for Capacity Attributes nor shall this quantity "***B***" be less than zero.

d = Total number of calendar days in the respective Monthly Delivery Period

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit's Monthly Payment (or any day in any Monthly Payment) be less than zero.

CAPACITY PRICE TABLE

2014 Contract Month	Capacity Price (\$/kW-day)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

4.2 Reserved.

4.3 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services. Seller shall indemnify, defend and hold Buyer harmless from and against all liabilities, damages, claims, losses, costs or expenses (including, without limitation, attorneys' fees) incurred by or brought against Buyer in connection with Environmental Costs.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor but excluding payments described in Section 4.3(a)(i)-(iv).

- (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
- (e) Subject to the Unit being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation.

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

If Seller is unable to provide the Contract Quantity from any Unit(s) for any day in any Monthly Delivery Period and Replacement Capacity is required under Section 3.2, then:

- (a) Seller shall notify Buyer of the non-availability of any portion of the Contract Quantity from any Unit(s) and identify Replacement Unit(s), (i) no later than fifteen (15) Business Days before the relevant deadline for an LSE's Compliance Showing, or (ii) if, after the relevant deadline for an LSE's Compliance Showing, such non-availability is prompted by CAISO's then applicable replacement requirement for Planned Outages, no later than two (2) calendar days following Seller's receipt of notice from the CAISO, and
- (b) Seller shall, at no additional cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals Seller's Firm Quantity.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1, and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that day in such Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, Seller's failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units within the notice deadlines specified in this Section 5.1, may result in the calculation of damages payable to Buyer and/or the indemnification of Buyer against any penalties, fines or costs under Section 5 and Section 10.

5.2 Damages for Failure to Provide Replacement Capacity

If Seller fails to provide Buyer any portion of the Seller's Firm Quantity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then the following shall apply:

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to replace the portion of Seller's Firm Quantity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity, and;
- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to "Accelerated Payment of Damages," if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the Capacity Replacement Price paid by Buyer for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a) for such day, plus (B) the Capacity Replacement Price times the portion of Seller's Firm Quantity not provided by Seller nor purchased by Buyer pursuant to Section 5.2(a) for such day times 1,000 kW/MW, and (ii) the portion of Seller's Firm Quantity not provided for the applicable day in the applicable Monthly Delivery Period times the Contract Price for that day times 1,000 kW/MW.

5.3 Indemnities for Failure to Deliver Seller's Firm Quantity

If Buyer is unable to purchase Replacement Capacity after Seller fails to provide Buyer a portion of the Seller's Firm Quantity from Replacement Units for any day in any Monthly Delivery Period as required by Section 5.1, then in addition to the damages pursuant to Section 5.2(b)(i)(B) with respect to the portion of Seller's Firm Quantity that Buyer has not replaced, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO, or any Governmental Body having jurisdiction, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Seller's Firm Quantity or any portion of the Replacement Capacity;
- (b) Seller's failure to provide timely notice of the non-availability of any portion of the Seller's Firm Quantity;
- (c) A Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Unit Contract Quantity purchased hereunder, or;
- (d) any other failure by Seller to perform its obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines and costs.

6. Other Buyer and Seller Covenants

6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's Compliance Obligations. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations, to maintain the benefits of the bargain struck by the Parties on the Confirmation Execution Date. The Parties acknowledge that the benefit of the bargain as stated in this Agreement attempts to reflect anticipated changes to the CASIO and CPUC Resource Adequacy rules as such rules have been proposed as of the Confirmation Execution Date.

6.2 Seller's Represents, Warrants and Covenants

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;

- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC or Unit EFC, as applicable, for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Contract Quantity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each Compliance Showing, the Unit Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (i) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's SC schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO, and;
- (j) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer and Seller may disclose this Agreement to the CPUC, CAISO and any Governmental Body, as required by Applicable Law, and Seller may disclose the transfer of the Contract Quantity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

8. 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.

9. Collateral Requirements NOTE to respondents: Amount to be determined by SDG&E credit department

On or before the Confirmation Execution Date, to secure its obligations under this Confirmation, Seller agrees to deliver a Letter of Credit or cash in the amount of _____ to Buyer and maintain such security in full force and effect until it is required to be returned in accordance with this Section 9. The security posted under this Section 9 shall not be deemed a limitation of Seller's damages. Buyer shall return to Seller any unused portion of this security after the following have occurred: (i) the Delivery Period has expired or terminated early; and (ii) all payment obligations of the Seller arising under this Confirmation, including compensation for penalties, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

Notwithstanding anything to the contrary, the Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the EEI Agreement:

"If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable Compliance Showing due to the termination of the Transaction under the Master Agreement caused by Seller's Event of Default and Buyer has not purchased Replacement Capacity for the applicable portion of the Contract Quantity, then Buyer may, in good faith, estimate as its Losses in respect of the Transaction the present value of the amount of those penalties, fines and costs on a \$/kW-day basis subtracting the Contract Price (in \$/kW-day) and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties, fines and costs are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained."

[Signature page follows]

Storage Resource Adequacy Template For discussion purposes only

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

_____ SAN DIEGO GAS & ELECTRIC COMPANY
a _____ a California corporation

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

APPROVED as to legal form _____

APPENDIX A

Unit Information

Unit Resource Name	
CAISO Resource ID	
Unit SCID	
2014 Unit NQC (MW)	
Prorated Percentage of Unit Factor	
2014 Unit EFC (MW)	
Prorated Percentage of Unit Flexible Factor	
Resource Type	
Resource Category (MMC Bucket 1, 2, 3 or 4)	
Path 26 (North or South)	
Local Capacity Area (if any, as of Confirmation Execution Date)	
Unit Contract Quantity (MW) for Capacity Attributes (excluding Flexible RA Attributes)	
Unit Contract Quantity (MW) for Flexible RA Attributes	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	

APPENDIX B

Outage Schedule

Seller's Firm Quantity shall be, for each calendar day, on a Unit basis for each Unit, the Contract Quantity listed in Section 3.5, except as stated below:

Unit Name	CAISO Resource ID*	Outage (MW)	SLIC Outage Start Date	SLIC Outage End Date	Duration		Adjusted Seller's Firm Quantity (MW)	
					Days	Hours	Capacity Attributes (excluding Flexible RA Attributes)	Flexible RA Attributes

* CAISO Resource ID should match a Unit described in Appendix A

Appendix C

APPENDIX C

Governing Statutes and Rules

Subject	Reference	Key Provision
Energy Storage	Assembly Bill ("AB") 2514, codified at Public Utilities Code ("Pub. Util. Code") Sec 2835	Requires California Public Utilities Commission ("CPUC") to determine targets for local serving entity procurement of energy storage resources
Energy Storage	CPUC Rulemaking ("R.")10 12 007	Review of staff's Energy Storage Framework proposal
Energy Storage	CPUC ("D.") 13 10 040	Requires Investor Owned Utility ("IOU") procurement of energy storage pursuant to biennial CPUC approval Plan
Greenhouse Gas ("GHG") Emissions Performance Standard	Senate Bill ("SB") 1368, codified at Pub. Util. Code Sec 8340	Prohibits "covered procurement" from exceeding CO2 emissions standard of 1100 lb./MWh
Renewables Portfolio Standard	AB 327	Requires IOUs to procure 33% of energy from renewable resources by 2020
GHG	AB 32, codified at Health & Safety Code § 38500 et seq.	Requires California to reduce GHG to 1990 levels by 2020.
Self Generation Incentive Plan ("SGIP")	Pub. Util. Code § 376.6 D.11 12 030	Establish SGIP to provide incentives for investing in distributed generation.
Permanent Load Shifting ("PLS")	D.12 04 045 Resolution E 4586	Adopts PLS programs and budgets.
Resource Adequacy	D.13 06 024	Energy Storage may be procured as a form of flexible capacity used to provide resource adequacy
Alternative Fueled Vehicle Programs	R.13 11 007	Evaluation of electric vehicle batteries for energy storage
Long Term Procurement Plan ("LTPP")	R.12 03 014	Need determinations may tie to procurement energy storage
Procurement Rules	D.07 12 052	Utility procurement outside of competitive solicitations; development of utility owned resource
Transmission Interconnection Rules	California Independent System Operator ("CAISO") Large Generator Interconnection Agreement	Requirements for generator interconnection to grid at transmission level
Transmission Interconnection Rules	Utility Wholesale Distribution Tariff	Requirements for generator interconnection with IOU owned distribution system
Transmission Interconnection Rules	Rule 21	Interconnection at distribution level by Qualifying Facilities ("QFs") under Public Utilities Regulatory Policy Act ("PURPA"), net metering, and SGIP
Confidentiality	D.06 06 066, D.08 04 023	Confidentiality of energy procurement information submitted to CPUC
Confidentiality	CPUC General Order 66 C	Exceptions to Public Records Act
Cost Recovery	D.04 12 048	10 year limit on recovery of procurement costs except for RPS contracts
Cost Recovery	D.06 07 029	Cost Allocation Methodology for long term procurement of new generation
Cost Recovery	D.08 09 012	Responsibility for non bypassable charges
Standards of Conduct	D.02 10 062, as modified by D.02 12 074; D.03 06 067; D.03 06 076.	CPUC Standards of Conduct for energy procurement