



**Board of Directors of the
Clean Power Alliance of Southern California
Regular Meeting
Thursday, November 2, 2023
2:00 p.m.**

[Visit CPA's YouTube Channel to view a Live Stream of the Meeting](https://www.youtube.com/@CPApublicmeetings)
www.youtube.com/@CPApublicmeetings

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**Clean Power Alliance
Diana Mahmud Board Room**
801 S. Grand Ave., Suite 400
Los Angeles, CA 90017

Members of the public may also participate in this meeting at the following locations:

Calabasas City Hall Council Conference Room 100 Civic Center Way Calabasas, CA 91301	Ventura County Government Center Channel Islands Conference Room, 4th Floor Hall of Administration 800 South Victoria Avenue Ventura, CA 93009
Whittier City Hall Admin Conference Room 13230 Penn Street Whittier, CA 90602	South Bay Cities Council of Governments Conference Room 2355 Crenshaw Blvd., Suite 125 Torrance, CA 90501
Simi Valley City Hall City Manager's Conference Room 2929 Tapo Canyon Road, Simi Valley, CA 93063	

PUBLIC COMMENT: Members of the public may submit their comments by one of the following options:

- **Email Public Comment:** Members of the public are encouraged to submit written comments on any agenda item to clerk@cleanpoweralliance.org up to four hours before the meeting. Written public comments will be announced at the meeting and become part of the meeting record. Public comments received in writing will not be read aloud at the meeting.
- **Provide Public Comment During the Meeting:** The General Public Comment item is reserved for persons wishing to address the Board on any Clean Power Alliance-related matters not on today's agenda. Public comments on matters on today's Consent Agenda and Regular Agenda shall be heard at the time the matter is called. Comments on items on the Consent Agenda are consolidated into one public comment period. Members of the public who wish to address the Board at CPA's Office are requested to complete a comment card and provide it to staff. If you are attending from a remote location, please identify yourself to a CPA representative when your item is called. Each speaker is limited to two (2) minutes (in whole-minute increments) per agenda item with a

cumulative total of five 5 minutes to be allocated between the General Public Comment, the entire Consent Agenda, or individual items in the Regular Agenda. Please refer to [Policy No. 8 – Public Comment](#) for additional information.

NAVIGATING OUR AGENDA PACKETS: The meeting agenda packets are bookmarked PDFs, which display a list of agenda items to the left of the page and allow you to click to view specific items within the packet. If viewing in your browser, click the "document outline" button in the upper left corner of the screen. If the PDF is downloaded, the bookmark panel (ribbon icon) appears on the left side of the screen.

ACCESSIBILITY: Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least two (2) working days before the meeting at clerk@cleanpoweralliance.org or (213) 713-5995. Notification in advance of the meeting, while not required, will enable us to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it.

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

ROLL CALL

GENERAL PUBLIC COMMENT

CONSENT AGENDA

1. Approve Minutes from the October 5, 2023 Board of Directors Meeting
2. Receive and File November 2023 Bill Positions Report
3. Receive and File Monthly Community Advisory Committee Report

NOTICE OF PUBLIC HEARING ON DECEMBER 7, 2023 TO CONSIDER A RESOLUTION TO APPROVE AN IMPLEMENTATION PLAN ADDENDUM ADDING LA CAÑADA-FLINTRIDGE, LYNWOOD, AND/OR PORT HUENEME AND AUTHORIZE STAFF TO SUBMIT ADDENDUM TO THE CALIFORNIA PUBLIC UTILITIES COMMISSION

REGULAR AGENDA

Action Item

4. Approve a 15-Year Renewable Power Purchase Agreement with SunZia Wind PowerCo LLC and Authorize the Chief Executive Officer to Execute the Agreement For Either 500 MW (Option 1) or 575 MW (Option 2)

Information Item

5. Receive a Presentation of CPA's Fiscal Year (FY) 2022-2023 Audited Financial Statements, FY 2022-2023 Budget to Actual Report, and Initial 2024 PCIA and SCE Rate Outlook

COMMITTEE CHAIR UPDATES

Director Deborah Klein Lopez, Chair, Legislative & Regulatory Committee

Director Susan Santangelo, Chair, Finance Committee

Director Robert Parkhurst, Chair, Energy Planning & Resources Committee

MANAGEMENT REPORT**BOARD MEMBER COMMENTS****REPORT FROM THE CHAIR****ADJOURN – NEXT REGULAR MEETING ON DECEMBER 7, 2023**

Public Records: Public records that relate to any item on the open session agenda for a regular Board Meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all, or a majority of, the members of the Board. Public records are available for inspection at CPA's Office at 801 S. Grand Ave., Suite 400, Los Angeles, CA 90017, or online at www.cleanpoweralliance.org/agendas.



Commonly Used Acronyms

BESS	Battery Energy Storage System
CAC	Community Advisory Committee
CAISO	California Independent System Operator
CALCCA	California Community Choice Association
CalEVIP	California Electric Vehicle Incentive Program
CARB	California Air Resources Board
CARE	California Alternate Rates for Energy (Low Income Discount Rate)
CCA	Community Choice Aggregation
CEC	California Energy Commission
CPUC	California Public Utilities Commission
DA	Direct Access (Private Retail Energy Supplier)
DAC	Disadvantaged Community (As Defined by Calenviroscreen 3.0)
DER	Distributed Energy Resources
DR	Demand Response
ERMP	Energy Risk Management Policy
ERRA	Energy Resource Recovery Account (SCE Generation Rate Setting)
ESA	Energy Storage Agreement
EVSE	Electric Vehicle Supply Equipment (EV Charger)
FERA	Family Electric Rate Assistance (Low Income Discount Rate)
GHG	Greenhouse Gas
IOU	Investor Owned Utility
IRP	Integrated Resource Plan
JPA	Joint Powers Authority



Commonly Used Acronyms

Kwh	Kilowatt-Hour (A Measure of Energy Used in A One-Hour Period)
Kw	Kilowatt = 1,000 Watts (Watt = A Measure of Instantaneous Power)
LSE	Load Serving Entity
MB	Medical Baseline (Discount Rate for Medical Equipment Needs)
MW	Megawatt = 1,000 Kilowatts
Mwh	Megawatt-Hour = 1,000 Kilowatt-Hours
NEM	Net Energy Metering (Usually for Customers with Solar)
OAT	Other Applicable Tariffs
PCIA	Power Charge Indifference Adjustment (Can Be Called "Exit Fee")
PCC1	Renewable Energy Generated Inside California
PCC2	Renewable Energy Generated Outside California
PCC3	A REC from A Renewable Resource, Delivered Without Energy
PCL	Power Content Label
POU	Publicly Owned or Municipal Utility
PPA	Power Purchase Agreement
PSPS	Public Safety Power Shutoff
PV	Photovoltaic (Solar) Panels
RA	Resource Adequacy
REC	Renewable Energy Credit
RPS	Renewables Portfolio Standard
T&D	Transmission and Distribution
TOU	Time Of Use (Used to Refer to Rates that Differ by Time Of Day)
WECC	Western Electricity Coordinating Council



Staff Report – Agenda Item 1

To: Board of Directors

Subject: Approve Minutes from the October 5, 2023 Board of Directors Meeting

Date: November 2, 2023

RECOMMENDATION

Approve.

ATTACHMENT

1. Minutes

MINUTES

Board of Directors of the
Clean Power Alliance of Southern California
Regular Meeting
Thursday, October 5, 2023, 2:00 p.m.

Meeting videos are available on [CPA's YouTube Channel](http://www.youtube.com/@CPApublicmeetings).
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Board members participated from the following locations:

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South Bay Cities Council of Governments Conference Room 2355 Crenshaw Blvd., Suite 125 Torrance, CA 90501	

CALL TO ORDER

Chair Julian Gold called the meeting to order at 2:00 p.m. and Gabriela Monzon, Clerk of the Board, conducted roll call.

PLEDGE OF ALLEGIANCE

Director Crosswhite led the pledge of allegiance.

Roll Call				
1	Agoura Hills	Deborah Klein Lopez	Director	Remote
2	Alhambra			Absent
3	Arcadia	Michael Cao	Director	Present
4	Beverly Hills	Julian Gold	Chair	Present
5	Calabasas	Ed Albrecht	Alternate	Remote
6	Camarillo	Susan Santangelo	Director	Remote
7	Carson	Reata Kulcsar	Alternate	Remote
8	Claremont	Corey Calaycay	Director	Present
9	Culver City	Joe Susca	Alternate	Remote
10	Downey			Absent

11	Hawaiian Gardens			Absent
12	Hawthorne	Alex Monteiro	Director	Present
13	Hermosa Beach	Doug Krauss	Alternate	Remote
14	Los Angeles County	Rita Kampalath	Alternate	Present
15	Malibu	Marianne Riggins	Director	Remote
16	Manhattan Beach			Absent
17	Moorpark	Renee Delgado	Director	Remote
18	Ojai	Michelle Ellison	Alternate	Remote
19	Oxnard	Bert Perello	Director	Remote
20	Paramount	Vilma Cuellar Stallings	Director	Remote
21	Redondo Beach	Paige Kaluderovic	Director	Remote
22	Rolling Hills Estates	Steve Zuckerman	Alternate	Remote
23	Santa Monica	Caroline Torosis	Alternate	Present
24	Santa Paula	Jenny Crosswhite	Director	Present
25	Sierra Madre	Robert Parkhurst	Director	Present
26	Simi Valley	Rocky Rhodes	Director	Present
27	South Pasadena	Jon Primuth	Director	Present
28	Temple City			Absent
29	Thousand Oaks	David Newman	Director	Remote
30	City of Ventura	Liz Campos	Director	Remote
31	Ventura County	Vianey Lopez	Vice Chair	Remote
32	West Hollywood	Chelsea L. Byers	Alternate	Present
33	Westlake Village			Absent
34	Whittier	Leon Vasquez	Alternate	Remote

All votes are unanimous unless otherwise stated.

GENERAL PUBLIC COMMENT

There was no public comment.

CONSENT AGENDA

1. Approve Minutes from September 7, 2023, Board of Directors Meeting
2. Approve and Authorize the Chief Executive Officer to Execute a One-Year Professional Services Agreement with Bloom Ads Global Media Group for a Not-to-Exceed Amount of \$250,000

3. Ratify Two Special Assessments for General Rate Case (GRC) and Energy Resource Recovery Account (ERRA) Proceeding Management Services from the California Community Choice Association for Contracts with (a) MRW & Associates with a Not-to-Exceed Amount of \$24,300, (b) NewGen Strategies & Solutions with a Not-to-Exceed Amount of \$94,200, and (c) Keyes & Fox LLP with a Not-to-Exceed Amount of \$118,440
4. Approve and Authorize the Chief Executive Officer to Execute the Professional Legal Services Agreement between CPA and (a) Keyes & Fox LLP with a Not-to-Exceed Amount of \$380,000 per contract year and (b) Clean Energy Counsel, LLP with a Not-to-Exceed Amount of \$570,000 Per Contract Year
5. Receive and File Monthly Bill Positions Report
6. Receive and File Monthly Community Advisory Committee Report

Motion: Director Calaycay, Claremont

Second: Director Monteiro, Hawthorne

Vote: The consent agenda was approved by a roll call vote.

REGULAR AGENDA

7. A) Adopt Resolution 23-10-056 Authorizing the Offer of Membership to the Cities of La Cañada-Flintridge, Lynwood, and Port Hueneme to Join CPA with Service to Customers to Begin in 2025 or the Year Specified by the California Public Utilities Commission (CPUC) in its Approval of CPA's Addendum to its Implementation Plan, if later than 2025; and, B) Direct Staff to Prepare an Implementation Plan Addendum and Any Related Documents as Required by the CPUC and for Consideration by the Board at a Public Hearing at the December 7, 2023 Meeting

Karen Schmidt, Director, Rates and Strategy, provided a presentation on the proposed expansion authorization. Ms. Schmidt reviewed the Board's expansion priorities, feasibility studies, benefits and projected first-year financial impacts of expansion, regulatory uncertainty, and the timeline. The Executive Committee supports the proposed expansion invitations.

Director Rhodes asked about the impact of a new city's default rate on CPA's Resource Adequacy compliance. Ted Bardacke, CEO, explained that RA would not be affected by energy level changes. Director Parkhurst asked if other Community Choice Aggregations (CCAs) also struggle with RA compliance. Matt Langer, Chief Operating Officer, indicated that non-compliance is not uncommon at this point in the year; low RA supply and high demand suggest that other CCAs are still working to meet year-ahead compliance as well. In response to Director Perello's question about new commercial customers, Mr. Bardacke noted there is one in Port Hueneme and one in La Cañada-Flintridge but customer privacy limits detailed discussions. Responding to Director Susca's question about the new cities' default energy rate option, Ms. Schmidt stated that the cities have not yet discussed that; cities may discuss default energy rate option when they consider joining the Joint Powers Authority but are not obligated to do so. Director Crosswhite asked about CPA's expansion costs based on the cities' default energy rate option. Ms. Schmidt explained that the cost to CPA would vary by city and depend on the energy rate option and customer composition. CPA would incur a slight cost increase if Lynwood chose the 100% Green option due to its significant low-income population, but the increase would remain minimal.

A written public comment was received for this item.

Motion: Director Calaycay, Claremont
Second: Director Torosis, Santa Monica
Vote: Item 7 was approved by a roll call vote.

8. Receive Update on Long-Term Power Contracting

Mr. Langer provided an update on long-term power contracting. The 2023 Clean Energy and Reliability Request for Offers (RFO) aims to enhance CPA's portfolio with renewable energy and RA through long-term contracts, reducing reliance on unstable short-term markets. CPA broadened its procurement options to attract more RFO offers, including RA-only offers, tolls for RA with natural gas, and fast track offers. CPA received 128 conforming bids, the highest in any previous long-term RFO, and 21 offers from 16 local projects. The Review Team shortlisted 2.5 times the targeted renewable energy and a minimum of 3 times the targeted RA. Mr. Langer reviewed the details of the shortlisted and waitlisted projects and thanked the Power Supply Team for their work.

Director Parkhurst remarked on the Energy Committee's contributions to grid reliability and battery installations that prevented blackouts in the fall of 2022. Director Calaycay applauded the fact that some of the shortlisted projects are in the state, creating green job opportunities in California. In response to Director Zuckerman's question about past project delays, Mr. Langer indicated that previously amended projects are on track, and routine project delays have normalized. Director Perello asked about CPA's ability to increase hydro power generation and highlighted that out-of-state projects also have local benefits of reducing climate change. Mr. Langer noted that CPA primarily purchases available hydroelectric power, as larger hydroelectric projects are typically owned by other IOUs or municipal providers.

MANAGEMENT REPORT

Mr. Bardacke noted that CPA secured an investment grade credit rating, leading to benefits such as improved credit terms and enhanced liquidity. Monthly financial reports indicated net revenue falling below budget due to recent cooler temperatures. The CPUC is examining interconnection issues in critical facilities and new buildings. Board members may direct such community issues to Gina Goodhill, Senior Director, Government Affairs.

In response to Director Perello's question about the reasons behind these interconnection issues, Mr. Bardacke suggested they can result from delayed infrastructure upgrades, inadequate planning, or staff shortages.

COMMITTEE CHAIR UPDATES

Director Susan Santangelo, Chair, Finance Committee, reported on customer payment behavior and CPA's bad debt reserve.

BOARD MEMBER COMMENTS

Director Monteiro commented on SCE's infrastructure issues in Hawthorne, where SCE reports that it needs to replace 42% of electricity poles and transformers.

REPORT FROM THE CHAIR

Chair Gold extended an invitation to all city council members to discuss matters of local importance, including SCE infrastructure concerns or clean energy matters, at a convening for local elected officials he and Irvine Mayor Farrah Kahn are hosting on October 14th in the City of Long Beach.

ADJOURN

Chair Gold adjourned the meeting at 3:32 p.m.

DRAFT



Staff Report – Agenda Item 2

To: Board of Directors

From: Gina Goodhill, Senior Director, Government Affairs

Approved By: Ted Bardacke, Chief Executive Officer

Subject: Receive and File November 2023 Bill Positions Report

Date: November 2, 2023

RECOMMENDATION

Receive and file.

ATTACHMENT

1. 2023 Legislative & Regulatory Policy Platform

Bill Number & Author	Title & Summary	Status	CPA Position	Alignment with CPA Policy Platform	Notes
AB 914 Assemblymember Laura Friedman	Electrical infrastructure: California Environmental Quality Act: review time period Establishes a two-year time limit, from the date an application is accepted as complete, for a lead state agency to complete the CEQA review and approve or deny an application for an electrical infrastructure project	Amended 7/14/23 Held in Senate Appropriations Committee	Support	2e, 3d	This is one of several bills aimed at addressing a growing backlog of utility energization projects.
SB 420 Senator Josh Becker	Electrical Transmission Facility Projects Would expand CPUC certificate exemptions from transmission lines under 50 kilovolts to new sub-transmission and distribution lines and to the reconstruction of an existing line that are under 138kv if	10/07/23 Vetoed by Governor	Support	2e, 3d	This is one of several bills aimed at addressing a growing backlog of utility energization projects.

	they meet specific location requirements.				
SB 410 Senator Josh Becker	Powering Up Californians Act Would require the CPUC to take various actions to more quickly connect customers to the grid. This include establishing maximum energization time periods, reporting requirements, and a pathway for customers to report energization delays to the CPUC	10/07/23 Signed by Governor and Chaptered into law	Support	2e, 3d	This is one of several bills aimed at addressing a growing backlog of utility energization projects.
AB 691 Assemblymember Phil Ting	Flexible Interconnection and Energization This bill would require the CPUC to implement an optional flexible interconnection tariff to incorporate the capabilities of power control systems to limit the import and export of electricity	Amended 6/8/23 Held in the Senate Committee on Energy, Utilities and Communication at author request	Support	2f, 3b, 3c, 3d, 3e, 5d	This bill would assist multifamily properties install EV chargers without requiring prohibitively large electricity distribution upgrades.

SB 306 Senator Anna Caballero	Climate Change: Equitable Building Decarbonization Program: Extreme Heat Action Plan Makes changes to the direct install program approved in the state's 2022 Budget and codifies the Governor's Extreme Heat Action Plan	Amended 5/18/23 Held in Senate Appropriations Committee	Support	3d, 5d	
AB 3 Assemblymember Rick Chavez Zbur	California Offshore Wind Advancement Act Would develop a strategy for seaport readiness for offshore wind energy developments, and study the feasibility of achieving 70% and 85% in-state assembly and manufacturing of offshore wind energy projects	10/07/23 Signed by Governor and Chaptered into law	Support	2f, 5c	
SB 507 Senator Lena Gonzalez	Electric vehicle charging station infrastructure: assessments Would require the California Energy Commission (CEC) to quantify EV charging infrastructure needed to support the state's 2035	Amended 4/17/2023 Held in Senate Appropriations Committee	Support	3b, 5d	

	electric vehicle goals, including in disadvantaged communities and between different types of housing. If infrastructure is not on track to meet state goals and is disproportionately distributed, the CEC must develop solutions.				
AB 1373 Assemblymember Eduardo Garcia	Energy Would make significant policy changes to electricity market structure and regulation as proposed by the Newsom Administration's 2023 budget energy trailer bill, including the creation of a central procurement entity (CPE) run by the Department of Water Resources (DWR).	10/07/23 Signed by Governor and Chaptered into law	Neutral	1b; 1d; 2a; 2d	CalCCA successfully amended the bill to explicitly maintain CCAs ability to self-procure diverse resources unless otherwise procured by the proposed central procurement entity.
AB 1538 Assemblymember Al Muratsuchi	Clean Energy Reliability Program Would create an incentive program for load-serving entities that procure clean energy capacity above their minimum CPUC	Amended 4/17/2023 Held in Assembly Appropriations Committee	SPONSOR	2a; 2d; 5a; 5c;	

	requirements in order to enhance electricity system reliability and reduce customer costs.				
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2023 Legislative and Regulatory Policy Platform

Overview and Purpose

The Clean Power Alliance (CPA) Legislative and Regulatory Policy Platform (Platform) serves as a guide to the CPA Board of Directors and CPA staff in their advocacy efforts and engagement on policy matters of interest to CPA. The Platform allows both members of the CPA Board of Directors and CPA staff to pursue actions at the regional, state and federal legislative and regulatory levels in a consistent manner and with the understanding that they are pursuing actions in the best interest of the organization and its mission, its member agencies, and its customers.

The Platform provides direction to CPA staff on positions that should be taken on regulatory matters and legislative bill proposals. The Platform also provides guidance to the Chief Executive Officer on positions that should be taken on legislative and regulatory matters that come before the California Community Choice Association (CalCCA) Board of Directors.

CPA staff report to the Board monthly on all positions taken on legislative bills. For bills that fall outside the scope of this platform, bills that are likely to attract high-profile supporters and detractors, bills that would raise taxes, or bills that would knowingly put CPA at odds with positions that its member agencies have taken, CPA staff will seek approval of a proposed position to the Legislative & Regulatory Committee and Board of Directors before taking a position.

Policy Principles

The Legislative and Regulatory Policy Platform is centered around five basic principles:

1. Protecting CPA's local control and competitive position, especially as it relates to rates, finances, power procurement and expansion of its service territory.

2. Pursuing power resource planning and procurement that promote the growth in renewable energy capacity at the local level and reduce fossil fuel dependency, with the goal of combating climate change.
3. Developing and administering customer programs that encourage clean energy adoption by CPA customers.
4. Ensuring fair access to data, particularly as it relates to energy usage, billing, and information needed to develop and administer customer programs.
5. Supporting CPA's ability to set electric rates and offer programmatic services that are affordable and inclusive for all.

These principles are incorporated throughout the below platform.

Policy Platform

1) Affordability and Local Control

- a. Fair rates and cost allocation: CPA will pursue administrative and legislative initiatives that will ensure that non-bypassable charges assessed for CPA customers are fair, and that CPA's customers are not unnecessarily burdened by non-bypassable charges.
- b. Finances: CPA will pursue administrative and legislative initiatives to ensure that CPA is eligible to apply and receive funding made available to the electricity sector for decarbonization, reliability, and affordability purposes, and that CPA's financial health are not disparately impacted by new regulations.
- c. CCA Expansion: CPA will pursue administrative and legislative initiatives to protect CPA's ability to expand its service to new member agencies.
- d. Local Control: CPA will pursue administrative and legislative initiatives to protect CPA Board's authority over CPA's procurement, rate-setting, and customer program development activities.

2) Power Resources Planning and Procurement

- a. Resource Adequacy and Reliability: CPA will pursue administrative and legislative initiatives that will enable CPA to secure capacity resources to meet its reliability obligations, such as initiatives that evaluate the supply of capacity resources available to load serving entities (LSEs), determine the appropriate market mechanisms for LSEs to procure capacity resources, and develop a durable policy framework that encourages all LSEs to construct their fair share of new capacity resources to maintain grid reliability while pursuing decarbonization efforts..

- b. Carbon-Free Resources: CPA will pursue administrative and legislative initiatives that will maximize CPA's ability to procure carbon-free resources to meet or exceed the needs of CPA's three product offerings and its long-term carbon-free procurement goal as required by SB 100 and other statutory or regulatory obligations.
- c. Renewable Resources: CPA will pursue administrative and legislative initiatives that will maximize CPA's ability to procure eligible Renewable Portfolio Standard (RPS) resources to meet the needs of CPA's three product offerings and its long-term RPS procurement goal as required by SB 100 and other statutory or regulatory obligations.
- d. Integrated Resource Plan: CPA will pursue administrative and legislative initiatives that will maximize CPA's ability to plan and procure resources to meet various environmental and reliability goals set by state laws and by its Board of Directors, while offering affordable products and programs to serve its customers, including disadvantaged communities.
- e. Transmission: CPA will pursue administrative and legislative initiatives that will provide CPA adequate access to transmission capacity to maximize its procurement of RPS-eligible or carbon-free resources that meet various statutory and regulatory requirements.
- f. Research & Development: CPA will pursue administrative and legislative initiatives that support the research and development of new energy resources that can be procured to meet the reliability and decarbonization goals set by the State and its Board of Directors.

3) Customer Programs

- a. Demand Response, Demand Flexibility and Energy Efficiency: CPA will pursue administrative and legislative initiatives that will enable CPA to pursue demand response programs and opportunities for its customers.
- b. Zero-emission vehicles: CPA will pursue administrative and legislative initiatives to promote electrification of the transportation sector in response to state and federal goals aimed at increasing the usage of zero emission vehicles.
- c. Building decarbonization: CPA will pursue administrative and legislative initiatives that supports the ability of CPA to promote electrification and the reduction of natural gas usage in the building sector.
- d. Local Grid Management and Resiliency: CPA will pursue administrative and legislative initiatives that supports the ability of CPA and its member agencies to offer local grid management and resiliency solutions to increase local reliability and adaptability that could protect against power outages and extreme heat.
- e. Distributed Energy Resources: CPA will pursue administrative and legislative initiatives that supports the ability of CPA to offer and utilize distributed

energy resources as part of its reliability, resiliency and community engagement strategies.

- f. Research and Development: CPA will pursue administrative and legislative initiatives that supports the ability of CPA to explore new opportunities related to behind the meter clean energy resources.

4) Data Access

- a. Timely and Accurate Access to Customer Data: CPA will pursue administrative and legislative initiatives that will enable CPA to obtain timely and accurate access to its customers' data to improve billing accuracy and inform the development and implementation of customer programs.
- b. Fair Fees for Data Management Services: CPA will pursue administrative and legislative initiatives to ensure that the fees due to Southern California Edison for data access and management are fairly assessed based on data needs and potential technological improvements.

5) Diversity, Equity, Inclusion

- a. Customer Protection: CPA will pursue administrative and legislative initiatives that supports the protection of all ratepayers, particularly environmental and social justice communities in CPA's service territory.
- b. Supplier Diversity: CPA will pursue administrative and legislative initiatives that supports supplier diversity in CPA's contracting activities and through women-owned, minority-owned, disabled-veteran-owned, and lesbian, gay, bisexual, and/or transgender owned business enterprises.
- c. Workforce Development: CPA will pursue administrative and legislative initiatives that supports workforce development with a focus on new stable, well-paying local jobs, and participation in a just transition to a low-carbon economy.
- d. Energy Equity: CPA will pursue administrative and legislative initiatives that supports increased access to clean energy technologies, clean energy and contracting jobs, and clean energy opportunities for environmental and social justice communities in CPA's service territory.



Staff Report – Agenda Item 3

To: Board of Directors

From: Christian Cruz, Community Outreach Manager

Approved by: Ted Bardacke, Chief Executive Officer

Subject: Receive and File Monthly Community Advisory Committee Report

Date: November 2, 2023

RECOMMENDATION

Receive and file.

MEETING REPORT

LONG-TERM POWER CONTRACTING UPDATE

In October, the CAC received an update on CPA's long-term power contracting objectives, an overview of the Request for Offer (RFO) process, and an overview of the contracting and shortlist process. Specifically, the update to the CAC noted:

- CPA's long-term power contracting objectives reduce costs, mitigate risk, contribute to new capacity on the grid, and help with CPA's long-term planning and stable rate-setting.
- CPA conducts an RFO process on an annual basis that assesses portfolio needs, market conditions and incorporates input from the Energy Committee, including a comprehensive and dynamic shortlisting process to best fit CPA's portfolio needs.

In addition, the update highlighted that the 2023 Clean Energy and Reliability RFO solicited competitive proposals to meet CPA's various energy portfolio needs while also making progress toward existing and future California Public Utilities Commission (CPUC) Procurement Orders and Resource Adequacy (RA) requirements.

The CAC recommended that CPA staff continue to highlight CPA's commitment to environmental stewardship and workforce development in the project selection process when they communicate externally about these projects.

ENERGY ADVISOR PROGRAM

In October, the CAC also received an update on CPA's Energy Advisor Program. This program is designed to enable CPA residential and small business customers to advance energy efficiency and electrification projects by maximizing access to existing funding opportunities and providing on-call technical support. CPA will conduct outreach activities to all customers with targeted outreach to low-income communities, community-based organizations, and regional stakeholders. Key services that the program will provide to customers include:

- Free, on-call, and multilingual assistance from energy experts for customer questions related to energy efficiency and electrification upgrades.
- Virtual energy assessments.
- References to qualified contractors and reviews of contractor bids.
- Connecting customers to local, statewide and federal financing and incentives.
- Connecting customers to complementary CPA programs and rates.

As the development of the Energy Advisor Program continues, staff will come back to the CAC for additional input and guidance. The anticipated program launch is May 2024.

The CAC recommended that when customers use the service, they should be provided with information on the cost of the recommended upgrade over its life cycle and potential changes to their energy bill. In addition, the CAC also recommended developing a focused outreach approach to small businesses about the Energy Advisor Program.

ATTACHMENT

1. CAC Meeting Attendance

Community Advisory Committee Attendance											
2023											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov
East Ventura/West LA County											
Angus Simmons	✓	A		A		✓		✓	✓	✓	
Jennifer Burke	✓	A		✓		✓		X	X	X	
Debbie West	✓	✓		✓		✓		✓	✓	✓	
San Gabriel Valley											
Richard Tom	A	✓		✓		A		A	✓	X	
Vacant	A	A		A							
West/Unincorporated Ventura County											
Vacant	✓	✓		A		✓		A	✓		
Vern Novstrup	✓	✓		✓		✓		A	✓	✓	
South Bay											
Court Casady						✓		✓	✓	✓	
Diane Wallace						✓		✓	✓	✓	
Gateway Cities											
Irella Perez	✓	✓		A		A		A	A	✓	
Genaro Bugarin	✓	✓		✓		✓		✓	✓	X	
Westside											
Cris Gutierrez	A	A		✓		✓		A	A	✓	
David Haake	A	✓		✓		✓		✓	✓	X	
Unincorporated LA County											
Neil Fromer	✓	✓		✓		✓		✓	✓	✓	
Vacant	X	X		✓		A		A			
✓ - Attended A – Absent X – Medical/Personal Leave											

Action Items and Presentations**January**

Building Electrification (Reach Codes)

February

Local Programs Mid-Cycle Review

March

Canceled

April

NEM 3.0 Policy Proposals

FY 2023/24 Rate Setting and Budget

May

Cancelled

June

Customer Programs Update

July

DARK

August

CAC Tour of LACI

September

Customer Programs Update

OctoberLong-Term Power Contracting
Energy Advisory Program



Staff Report – Agenda Item 4

To: Board of Directors

From: Lindsay Saxby, Vice President, Power Supply

Approved By: Ted Bardacke, Chief Executive Officer

Subject: Approve a 15-Year Renewable Power Purchase Agreement with SunZia Wind PowerCo LLC and Authorize the Chief Executive Officer to Execute the Agreement for Either 500 MW (Option 1) or 575 MW (Option 2)

Date: November 2, 2023

RECOMMENDATION

Approve a 15-Year Renewable Power Purchase Agreement with SunZia Wind PowerCo LLC and Authorize the Chief Executive Officer to Execute the Agreement For Either 500 MW (Option 1) or 575 MW (Option 2)

Staff prefers Option 2.

BACKGROUND

2023 Clean Energy and Reliability RFO

CPA launched its 2023 Clean Energy and Reliability Request for Offers (RFO) on June 9, 2023, with bids due on July 19. The goal of the solicitation was to fill a larger portion of CPA's portfolio needs with long-term contracts and to reduce the need to procure products such as Resource Adequacy (RA) and renewable energy in short-term markets, which are often volatile.

CPA received a robust response to the RFO from 128 conforming offers. On September 18, 2023, a review team consisting of four Board members from the Energy Committee as well as senior staff consisting of the Chief Executive Officer, Chief Operating Officer, and Vice President, Power Supply met to analyze the submitted projects. These review team members evaluated confidential terms and conditions, including pricing, and selected a shortlist of projects to be recommended to the Energy Committee. On September 27, 2023, the Energy Committee reviewed and approved the recommended shortlist, authorizing staff to proceed with power purchase agreement (PPA) negotiations.

In order to attract more offers into the 2023 RFO, CPA expanded procurement options, including fast-tracking certain offers with exigent circumstances such as earlier Commercial Operation Dates (COD) or other time-sensitive milestones. Under this fast-track process, CPA entered into contingent negotiations with two projects prior to notifying Proposers of their shortlist status. The SunZia Wind project was one of these fast-tracked projects, and in September the Energy Committee approved the SunZia Wind project to be included in the shortlist.

Per CPA's Energy Risk Management Policy, any new build power purchase transactions with greater than a 5-year term or 7-year maturity limit is required to be approved by the Board.

CPA retained Todd Larsen with Clean Energy Counsel to represent CPA and its interests in the negotiation of this agreement. Mr. Larsen's work was overseen by CPA's General Counsel.

PROJECT OVERVIEW

The SunZia Wind project is a proposed 3,515 MW new-build wind facility expected to come online in 2026. The project is located in Lincoln, Torrance, and San Miguel Counties in central New Mexico. The project will connect to the California Independent System Operator (CAISO) grid at the Palo Verde intertie in part via an approximately 550-mile-long transmission line dedicated to the project. At Palo Verde, the project has a 2,131

MW firm transmission limit. CPA will contract for a share of all the energy that flows through Palo Verde, proportional to its contracted MW share of the project. The project is in mid-stage development, the transmission line is fully permitted and is anticipated to begin construction in Q4 2023.

CPA was offered a 500 MW share of the project in the RFO. Following the October 18 Executive Committee meeting at which several committee members expressed support for the project and inquired as to whether CPA's share could be increased, the developer offered CPA an additional 75 MW at exactly the same terms as had been offered into the RFO and subsequently negotiated into the contract. Staff is requesting that the Board approve either the 500 MW (Option 1) or 575 MW (Option 2) PPA.

Under the proposed agreement, CPA would contract for either 500 MW or 575 MW of the facility. CPA will pay for the output of its share at a fixed-price rate per megawatt-hour with no escalation for the full term of the 15-year contract. CPA is entitled to all product attributes from CPA's share of the facility, including renewable energy and Resource Adequacy.

Developer

Pattern is an independent developer with renewable energy facilities in the United States, Canada, Japan, and Mexico. Pattern has developed an operating portfolio of 35 renewable power facilities with a total operating nameplate capacity of approximately 6 GW. Pattern has also already successfully developed, financed, and constructed approximately 1,600 MW of New Mexico wind combined with transmission for delivery to California, known as the Western Spirit project. Buyers of energy from that project include several other CCAs and the Los Angeles Department of Water and Power.

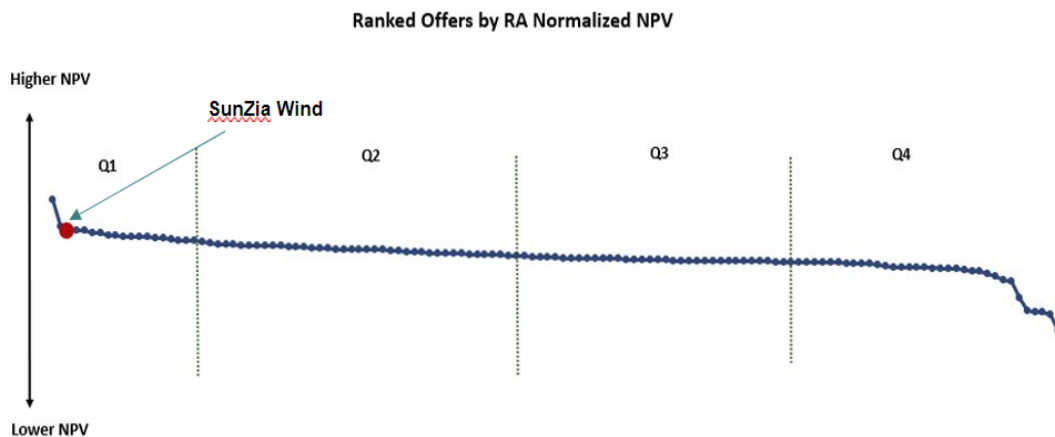
Evaluation Criteria

CPA ranks projects for economic value based on the net present value (NPV) and on a High, Medium, Neutral, and Low scale in five other qualitative evaluation criteria categories (development score, workforce development, environmental stewardship,

benefits to disadvantaged communities, and project location). Below is the ranking assigned to this project in each of those categories.

Value

The SunZia project fell within the first quartile (Q1) of offer submissions ranked by NPV in the 2023 Clean Energy and Reliability RFO and was the third ranked value project overall in the RFO, which also included solar, storage, and other technologies. (See picture below). The SunZia Wind PPA is also priced comparably with the first quartile of Q3 2022 market prices for wind PPAs, as reflected in LevelTen's Q2 2023 PPA Price Index, which provides average wind PPA pricing for recently offered wind projects in CAISO.



Development Score

The project ranks High as it is in mid-to-late-stage development. The project has secured full site control through a combination of private land purchases and state land leases from the New Mexico State Lands Office. The project has executed its interconnection agreements, one for the portion of transmission from the project to the Pinal Central substation in southern Arizona,¹ and the second from Pinal Central to the CAISO intertie

¹ The one pending lawsuit affecting the SunZia Transmission project was dismissed by the Arizona Superior Court on August 25, 2023.

at Palo Verde. The SunZia Wind project has secured most permits needed for construction of the turbines, with a few administrative permits outstanding from the Federal Aviation Administration, the Bureau of Land Management for mining plans, and Torrance and Lincoln counties. The project has strong support from federal government agencies.

Workforce Development

The project ranks High on workforce as SunZia Wind has committed to paying prevailing wages, utilize significant amounts of union labor, and gained the formal support of the International Brotherhood of Electrical Workers (IBEW)². The developer has also agreed to fund CPA's Workforce Development efforts in Los Angeles and Ventura Counties and supports the local community in New Mexico via multiple community benefit agreements, a number of which focus on job training. The developer estimates that construction of the SunZia facility will create up to 2,000 full-time construction jobs and 100 new local permanent jobs through maintenance and operations.

Environmental Stewardship

The project ranks Neutral on environmental stewardship as the project is not located within an ecological avoidance area but some of the land is located on undisturbed habitat. The project developer has worked with conservation groups to avoid, minimize, or mitigate project impacts on wildlife and habitat, and the project has the support of the National Audubon Society. It is located in one of the prime areas Western United States identified by The Nature Conservancy as a place where environmentally low-conflict renewable energy supply could be sourced to meet California's clean energy goals.

Benefits to Disadvantaged Communities

The project ranks Neutral on benefits to Disadvantaged Communities (DACs) as it is out-of-state and not located within a DAC.

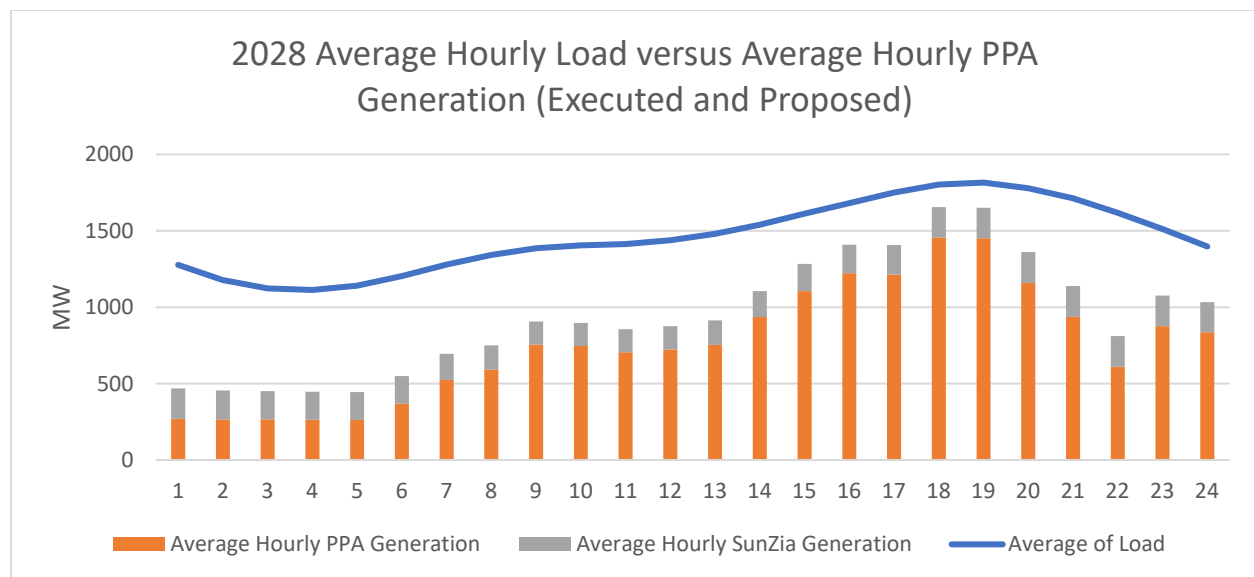
² See Attachment 2.

Project Location

The project ranks Medium on location as it is located outside of California, but the majority of the project is in Lincoln County, a federally designated “Energy Community”, with large amounts of fossil fuel related employment and an above average unemployment rate in 2022. The project also has the support of local business groups in Southern California, including the Los Angeles Business Council.³

RATIONALE

The SunZia project will make a significant contribution towards growing CPA’s renewable energy supply sourced from long-term contracts. The project will also add resource diversity to CPA’s portfolio – from a resource that is difficult to acquire in California – and will contribute to CPA’s Resource Adequacy portfolio by providing both energy and RA in hours of the day that are complementary to a typical solar plus storage profile. Under current RA rules, SunZia will provide up to 150 MW of RA to CPA under the PPA, varying by month.



³ See Attachment 3.

ENVIRONMENTAL REVIEW

The SunZia Wind project is subject to the siting jurisdiction of the New Mexico Public Regulation Commission (NM PRC)⁴ and environmental impact reports were required to be prepared as part of the applications for location control approval. These environmental impact reports⁵ are complete and certified by NM PRC.

CPA has no role, jurisdiction, or authority whatsoever with respect to NM PRC review or project approval.

OTHER CONTRACT TERMS

Buyer's Share

CPA will receive a Buyer's Share of all energy that flows through the project's 2,131 MW connection into CAISO. The Buyer's Share is calculated by taking CPA's contracted portion of the project and dividing it by the total project size. This "Buyer's Share" then determines the Hourly Delivery Cap, or the maximum MW that can be transferred into CAISO in any given hour for CPA's benefit.

Buyer's Share for 500 MW SunZia PPA:

- 500 MW (CPA's contracted portion) / 3,515 MW (total project) = **14.2%**
- Hourly Delivery Cap = 2,131 MW * 14.2% = **303 MW**

Buyer's Share for 575 MW SunZia PPA:

- 575 MW (CPA's contracted portion) / 3,515 MW (total project) = **16.4%**
- Hourly Delivery Cap = 2,131 MW * 16.4% = **349 MW**

Project Bifurcation or Transition

Renewable energy projects often go through ownership structure changes during pre-development, construction, and operation, usually in response to financing needs; all of

⁴The SunZia Wind project is separate from the SunZia Transmission project. The Transmission project is being developed partly on federal land and for those portions, subject to the National Environmental Policy Act (NEPA). With regard to the federal lands, the Bureau of Land Management issued a Record of Decision in May 2023 for a Right of Way grant for the SunZia transmission line.

⁵ These NM PRC reports are modeled after the Environmental Impact Statement (EIS) pursuant to NEPA.

CPA's contracts have provisions allowing for ownership changes to go forward via administrative consent.

In the case of the SunZia project, to allow for the project developer to make potential future modifications to the ownership structure, the contract includes provisions for Project Bifurcation or Project Transition. The SunZia Wind project is divided into two portions, SunZia North and SunZia South. Under the PPA, CPA would receive a share of energy generated from both portions.

In the Project Bifurcation case, the PPA Seller may split the agreement into two Replacement PPAs with CPA with respect to each portion of the facility (for example, one for PPA North and a second PPA for South). To effectuate this, the parties would terminate the original PPA and simultaneously execute two new PPAs. This would allow the owner of the northern portion to be different than the owner of the southern portion.

In the Project Transition case, the PPA Seller may shift CPA's entire share of the project onto SunZia South. This would involve terminating the existing PPA and simultaneously executing a Replacement PPA with 100% of the output coming from SunZia South instead of from a mix of SunZia North and SunZia South as in the current agreement.

In either the Project Bifurcation or Transition case, the terms and conditions of the Replacement PPA must be the same as those set forth in the current PPA, and the total Guaranteed Capacity and Expected Energy, as established in the current PPA, will not change.

ATTACHMENTS

1. Renewable Power Purchase Agreement with SunZia Wind PowerCo LLC⁶
2. International Brotherhood of Electrical Workers (IBEW) Support Letter
3. Los Angeles Business Council Support Letter
4. Presentation on SunZia Wind PPA

⁶ Base values in the PPA represent the Option 1, 500MW. Values in [] brackets represent Option 2, 575MW.

**SUNZIA PPA
RENEWABLE ENERGY
EXECUTION VERSION**

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: SunZia Wind PowerCo LLC, a Delaware limited liability company

Buyer: Clean Power Alliance of Southern California, a California joint powers authority

Description of Facility: A wind-powered electricity generating facility with a nameplate capacity of up to 3,515 MW, as described in Exhibit A, as such facility may be modified under the terms of this Agreement.

Milestones:

Milestone	Expected Date for Completion
Executed Interconnection Agreement	Completed
Bureau of Land Management Record of Decision for SunZia Transmission Line	Completed
Evidence of Site Control	11/30/2023
Expected Financial Close	11/30/2023
Expected Construction Start Date	
Guaranteed Construction Start Date	9/1/2024
Expected Initial Synchronization	2/28/2026
Expected Commercial Operation Date	4/30/2026
Expected Date of CAISO Commercial Operation	4/30/2026
Guaranteed Commercial Operation Date	

Delivery Term: Fifteen (15) Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1-15	1,578,359 [1,815,112] MWh, as such amount may be adjusted by Seller in accordance with the definition of “Expected Energy” below

Guaranteed Capacity: 500 [575] MW of total Facility capacity

Renewable Rate:

Contract Year	Renewable Rate (\$/MWh)
1 – 15	<div style="background-color: yellow; display: inline-block; width: 50px; height: 1em;"></div> /MWh (flat) with no escalation; <i>provided</i> , prior to the RA Guarantee Date the Renewable Rate shall be equal to the \$ <div style="background-color: yellow; display: inline-block; width: 50px; height: 1em;"></div> /MWh.

Product

- ☒ Facility Energy
- ☒ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
 - ☒ Portfolio Content Category 1
 - ☐ Portfolio Content Category 2
 - ☐ Portfolio Content Category 3
- ☒ Capacity Attributes

Scheduling Coordinator: Seller

Security Amounts:

Development Security: \$ /kW of Guaranteed Capacity

Performance Security: \$ /kW of Guaranteed Capacity

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Exhibit K	Form of Letter of Credit
Exhibit L	Form of Limited Assignment Agreement
Exhibit M	Form of Guaranty
Exhibit N	Notices
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Exhibit T	Force Majeure Event and/or Development Cure Period Claim Form
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RENEWABLE POWER PURCHASE AGREEMENT

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

RECITALS

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

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12(c).

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

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

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Alternate Facility**” means that certain wind generating facility described in Exhibit A.

“**Alternative Delivery Point**” means a Scheduling Point other than the Delivery Point that is agreed upon by Buyer and Seller.

“Approved Forecast Vendor” means (a) [REDACTED] or (b) any other reputable third-party vendor that is registered to do business in California, experienced in providing and verifying wind energy generation forecasts, and not an Affiliate of Seller.

“Assignment Agreement” has the meaning set forth in Section 14.5(a).

“Available Capacity” means Buyer’s Share of the Installed Capacity, expressed in whole MW, that is available to generate Energy.

“Balancing Authority” has the meaning set forth in the CAISO Tariff.

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

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

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

“Buyer Assignee” has the meaning set forth in Section 14.5(a).

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

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

“Buyer’s Share” means, (a) prior to the Commercial Operation Date, the percentage equal to the result of dividing the Guaranteed Capacity by the lesser of (i) 3,515 MW or (ii) the total nameplate capacity of the Facility in operation at the time, as applicable, and (b) from and after the Commercial Operation Date, the percentage equal to the result of dividing the Guaranteed Capacity by the Installed Capacity, as such percentage may change from time to time with changes to the Installed Capacity; *provided*, in no event shall the Buyer’s Share exceed 100% (whether before or after establishment of the final Installed Capacity).

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.8(a).

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

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

“CAISO Commercial Operation” means that the CAISO has provided notification that the Energy generation from a portion of the Facility that is no smaller than the Guaranteed Installed Capacity may be scheduled into the CAISO markets on an unconditional basis in accordance with the CAISO Tariff and Business Practice Manual(s) as applicable, including the New Resource Implementation process.

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

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

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

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

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

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that CEC has provided final certification, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy qualifies as generation from an Eligible Renewable Energy Resource.

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

“Change of Control” means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

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

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

"CIRA Tool" means the CAISO Customer Interface for Resource Adequacy, or any successor mechanism.

"COD Certificate" has the meaning set forth in Exhibit B.

"COD Delay Damages Payment" has the meaning set forth in Exhibit B.

"Commercial Operation" has the meaning set forth in Exhibit B.

"Commercial Operation Date" means the date Commercial Operation is achieved.

"Commercial Operation Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, *divided by* (b) [REDACTED]

"Compliance Actions" has the meaning set forth in Section 3.12(a).

"Compliance Expenditure Cap" has the meaning set forth in Section 3.12.

"Confidential Information" has the meaning set forth in Section 18.1.

"Construction Start" has the meaning set forth in Exhibit B.

"Construction Start Date" has the meaning set forth in Exhibit B.

"Contract Revenues" has the meaning set forth in Section 4.4(b).

"Contract Term" has the meaning set forth in Section 2.1(a).

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

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

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

“COVID-19” means the pandemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“CPM Adjustment Factor” means, for any RA Shortfall Month, the percentage for the corresponding calendar month set forth in Exhibit P.

“CPM Price” has the meaning set forth in Section 3.8(b).

“CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

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

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailement Order” means any of the following:

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

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

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

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the PTO.

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

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, *divided by* [REDACTED]

"Daily Delay Damages Payment" has the meaning set forth in Exhibit B.

"Damage Payment" means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

"Day-Ahead Forecast" means Buyer's Share of the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses and subject to the Hourly Delivery Cap, for each hour of the immediately succeeding day, based on a forecast from the Approved Forecast Vendor using a forecasting methodology to determine the potential generation of the Facility as a function of Available Capacity, wind speed and direction, wind turbine power curves and other pertinent data for the period of time, consistent with Prudent Operating Practice; *provided*, a Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediately succeeding day, each succeeding non-Business Day and the next Business Day.

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

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

"Deemed Delivered Energy" means (i) Buyer's Share of the amount of Energy, expressed in MWh, that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility or delivered to the Delivery Point during a Market Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected Facility Energy) provided pursuant to Section 4.3(d) for the period of time during such Market Curtailment Period, less (ii) the amount of Facility Energy delivered to the Delivery Point during the Market Curtailment Period; *provided*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0) MWh.

"Deemed Delivered RA" means, for any month, the amount of Resource Adequacy Benefits expressed in kW that Seller would have delivered to Buyer, but for Buyer's actions or inactions (including failure to obtain Import Capability sufficient to allow for the importation of such capacity into the CAISO). If (i) Seller submits a Supply Plan to the CAISO in accordance with the requirements of this Agreement by the applicable Showing Deadline and is otherwise in compliance with Section 3.7, but (ii) the CIRA Tool shows that Seller's Supply Plan has not been

accepted by the CAISO through no fault of Seller, and (iii) Seller uses commercially reasonable efforts to resolve any failure by the CAISO to approve such Supply Plan, then the Resource Adequacy Benefits included in such Supply Plan shall be considered Deemed Delivered RA.

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

“Deficient Month” has the meaning set forth in Section 4.8(e).

“Delay Damages” means Daily Delay Damages and Commercial Operation Delay Damages.

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

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

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

“Development Security” means, at Seller’s option, (a) cash or (b) one or more Letters of Credit, in aggregate in the amount specified for the Development Security on the Cover Sheet.

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

“Dynamic Schedule” has the meaning set forth in the CAISO Tariff.

“Dynamic Transfer” means either a Pseudo-Tie or a Dynamic Schedule.

“E-Tag” has the meaning set forth in the CAISO Tariff.

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

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

“Electrical Losses” means all transmission or transformation losses between the Facility’s point of interconnection to the PTO’s Transmission System and the Delivery Point; *provided*, Electrical Losses shall not include losses that are financially settled by Seller.

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

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

“Energy Replacement Damages” has the meaning set forth in Section 4.7(a).

“EPC Contract” means Seller’s engineering, procurement and construction contract(s) for the Facility.

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

“Excess MWh” has the meaning set forth in Exhibit C.

“Excused Capacity Reduction” means a reduction to the Capacity Attributes available from the Facility due to (a) System Emergency [REDACTED], (b) Curtailment Order [REDACTED] (c) Force Majeure Event, (d) Major Planned Outage, (e) Qualified Forced Facility Outage, or (f) Planned Outage; *provided:*

(x) [REDACTED]

(z) [REDACTED]

[REDACTED]

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

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

“Expected Energy” means the quantity of Facility Energy (with associated Green Attributes) that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet; *provided*, (i) such amount shall be increased or decreased by Seller in a Notice to Buyer within sixty (60) days following the delivery by Seller of the final Installed Capacity Certificate in the form attached hereto as Exhibit I, and (ii) the amount of Expected Energy stated in such notice shall equal Buyer’s Share of the P50 amount set forth in the most wind resource assessment from a Licensed Professional Engineer (adjusted as necessary to reflect the Hourly Delivery Cap), but in no event shall the adjusted annual Expected Energy amount be more than [REDACTED] higher or lower than the annual Expected Energy amount as set forth on the Cover Sheet as of the Effective Date; *provided further*, Seller shall use commercially reasonable efforts to notify Buyer of any change in the anticipated Expected Energy from the quantity specified on the Cover Sheet prior to the Commercial Operation Date.

“Facility” means the wind-powered electricity generating facility described on the Cover Sheet and in Exhibit A, installed at the Site pursuant to the terms of the EPC Contracts, and including mechanical equipment and associated facilities and equipment required to deliver Facility Energy to the Delivery Point; *provided*, the “Facility” does not include any Shared Facilities.

“Facility Energy” means, in any Settlement Interval or Settlement Period, as applicable, (i) Buyer’s Share of (a) the Energy produced by the Facility and delivered to the Delivery Point as measured in MWh by the Facility Meter, net of all Electrical Losses (without duplication of losses

programmed into the Facility Meter, if any) and Station Use, or (b) if the Facility output is reduced, at Seller's direction (and not, for example, as a result of a Forced Facility Outage) in any Settlement Interval or Settlement Period, as applicable, that is not during a Curtailment Period or Market Curtailment Period, then Facility Energy for such Settlement Interval will instead be equal to Buyer's Share of the Energy that the Facility would have been able to produce and deliver to the Delivery Point if the Facility output was not so reduced, and, in each case of (a) and (b), subject to the Hourly Delivery Cap *multiplied by* the duration of the Settlement Interval or Settlement Period, as applicable, (as measured in hours); *plus* (ii) all Replacement Energy delivered as part of prospectively delivered Replacement Product pursuant to Section 4.7(b).

"Facility Meter" means one or more CAISO-approved revenue quality meters, or if a CAISO approved meter is not consistent with PTO requirements, then a PTO-approved meter or meters, located inside the Facility's point of interconnection switching station, together with a CAISO-approved or PTO-approved, as the case may be, data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility net of Electrical Losses and Station Use.

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

"Fifteen Minute Market" or "FMM" has the meaning set forth in the CAISO Tariff.

"Financial Close" means Seller and/or one or more of its Affiliates has obtained debt and/or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

"Fitch" means Fitch Ratings, Inc., or its successor.

"Floor Price" means (a) for the period during which Seller is eligible to obtain PTCs and for that portion of the Facility Energy or Deemed Delivered Energy, as the case may be, to which PTC eligibility applies, the amount, on a dollar per MWh basis, equal to the Negative PTC Value, or (b) for all other periods and portions of Facility Energy or Deemed Delivered Energy, zero dollars per MWh (\$0/MWh), subject to clause (b) of Exhibit D.

"Force Majeure Event" has the meaning set forth in Section 10.1.

"Forced Facility Outage" means (i) an unexpected failure of one or more components of the Facility (including subsequent outages to remediate such unexpected failure), or (ii) the unexpected removal from service of one or more components of the Facility, which removal from service is required to prevent or limit imminent harm to or loss of life or property, or prevent imminent loss of or damage to the Facility or the Transmission System, in each case that prevents Seller from generating Energy and/or making Energy from the Facility available at the Delivery Point, and that is not the result of a Force Majeure Event.

"Forecasted Product" has the meaning set forth in Section 4.3(b).

“Future Environmental Attributes” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes.

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated therewith, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under

the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

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

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

“Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 4.2, updated April 27, 2023, as may be further amended from time to time.

“Guaranteed Capacity” means the portion of the generating capacity of the Facility, as measured in MW, that Seller commits to install pursuant to this Agreement, as set forth on the Cover Sheet.

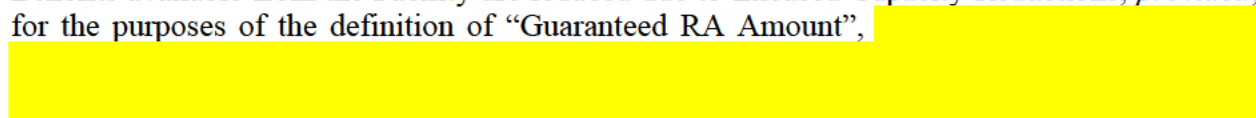
“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.


“Guaranteed Construction Start Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7(a).

“Guaranteed Installed Capacity” means, as of any date commencing with the Commercial Operation Date, the total installed generating nameplate capacity of the Facility, as measured in MW, with respect to which Seller has commenced and is obligated to continue deliveries of Energy (not including test energy) and associated Green Attributes and/or resource adequacy benefits produced by or associated with such generating nameplate capacity to purchasers under power purchase agreements or similar long-term offtake agreements (including this Agreement).

“Guaranteed RA Amount” means a guaranteed amount of Resource Adequacy Benefits equal to Buyer’s Share of the Facility’s Net Qualifying Capacity, which guaranteed amount of Resource Adequacy Benefits shall be subject to reduction by the amount Resource Adequacy Benefits available from the Facility are reduced due to Excused Capacity Reductions; *provided*, for the purposes of the definition of “Guaranteed RA Amount”,





“Guarantor” means any Person that (a) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (b) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of Buyer.

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

“Hourly Delivery Cap” means the maximum delivery rate of Energy and associated Renewable Energy Credits and Green Tags delivered to the Delivery Point and sold to Buyer in any given hour under this Agreement, which amount shall be equal to Buyer’s Share multiplied by 2,131 MW.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“Import Capability” means that portion of the Maximum Import Capability allocated by the CAISO that is necessary to support the importation of Resource Adequacy Benefits from the Facility into the CAISO market in an amount equal to the Guaranteed RA Amount.

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

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

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

“Installed Capacity” means the nameplate capacity of the Facility at the point of interconnection (which point of interconnection is specified in the Interconnection Agreement), as evidenced by a certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit I hereto, as it may be updated from time to time by delivery of a subsequent certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit I hereto solely as permitted pursuant to Section 2(a) of Exhibit B.

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

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

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

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

“Intertie” has the meaning set forth in the CAISO Tariff.

“IP Indemnity Claim” has the meaning set forth in Section 16.1(b).

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

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

“Joint Powers Agreement” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kW” means kilowatts in alternating current, unless expressly stated in terms of direct current.

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

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

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

the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, or from an issuer otherwise acceptable to Buyer in its sole discretion, in a form substantially similar to the letter of credit set forth in Exhibit K, or as reasonably acceptable to Buyer.

“Licensed Professional Engineer” means either (i) [REDACTED] (ii) [REDACTED] (iii) the independent engineer retained by the Lenders, or on their behalf under customary terms and conditions, in connection with a financing of the Facility, which engineer, or employee or principal thereof (a) is licensed to practice engineering in New Mexico, (b) has training and experience in the power industry specific to the technology of the Facility, (c) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility other than as the independent engineer for the Lenders, and (d) is licensed in an appropriate engineering discipline for the required certification being made, or (iv) a person acceptable to Buyer in its reasonable judgment.

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

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

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

“Major Equipment Failure” means a failure of (i) one of the Facility’s [REDACTED] (the procurement of which involves a similarly long lead time), or (ii) no less than [REDACTED] of the Facility’s [REDACTED] or (iii) no less than [REDACTED] of the Facility’s [REDACTED]

“Major Planned Outage” means a Planned Outage which results in a reduction of more than [REDACTED] to the amount of Resource Adequacy Benefits provided to Buyer from the Facility in any Showing Month.

“Market Curtailment Period” means the period of time during which Seller reduces Facility Energy during a Settlement Interval or Settlement Period, as applicable, in which the LMP in the Day-Ahead Market and the Real-Time Market at the Delivery Point is less than the Floor Price; *provided*, the Market Curtailment Period shall be inclusive of the time required for the Facility to ramp down to implement such curtailment and ramp up following such curtailment in accordance with the Operating Restrictions.

“Material Permits” means all permits required for Seller to commence construction that have not been obtained as of the Effective Date, as set forth on Exhibit S.

“Maximum Import Capability” has the meaning set forth in the CAISO Tariff, and includes any replacement or successor method implemented by the CAISO with respect to the ability of generating units that are external to the CAISO Balancing Authority area to provide Resource Adequacy Benefits.

“Milestones” means the significant development activities and dates associated therewith set forth on the Cover Sheet.

“Monthly Forecast” has the meaning set forth in Section 4.3(b).

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

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

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

“Negative LMP” means, in any Settlement Period or Settlement Interval, the LMP at the Delivery Point in the applicable CAISO market that is less than zero dollars per MWh (\$0/MWh).

“Negative PTC Value” means the amount, on a dollar per MWh basis, equal to the PTC value that Seller is eligible to earn in respect of Energy from the Facility at the time of calculation, *multiplied by* negative one (-1).

“NERC” means the North American Electric Reliability Corporation or any successor entity.

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

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

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

“Non-Summer Month” means any month that is not a Summer Month, commencing as of the month in which the RA Guarantee Date occurs and throughout the Delivery Term.

“**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, or electronic messaging (e-mail).

“**Operating Restrictions**” means the operational characteristics of the Facility set forth in Exhibit U.

“**Pacific Prevailing Time**” means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates and maintains the Transmission System or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected, as set forth in Exhibit A.

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

“**Performance Measurement Period**” means the prior 24-month period measured from the end of each Contract Year commencing in the second Contract Year.

“**Performance Security**” means (i) cash, (ii) one or more Letters of Credit, and/or (iii) a Guaranty, in aggregate in the amount specified for the Performance Security on the Cover Sheet.

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

(a) A tangible net worth plus Unfunded Capital Commitments of not less than [REDACTED] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least two (2) years of experience in the ownership and operations of utility-scale wind-powered electricity generation facilities, or has retained a third-party with such experience to operate the Facility.

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

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

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

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

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

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

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a portfolio.

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

“Prevailing Wage” has the meaning set forth in Section 13.4.

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

“Production Tax Credits” or **“PTCs”** means production tax credit under Section 45 of the Internal Revenue Code as in effect from time-to-time throughout the Contract Term or any successor or other provision providing for a federal tax credit determined by reference to storage of energy resources for which Seller, as the owner of the Facility, is eligible.

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

“Project Bifurcation” has the meaning set forth in Section 2.6.

“Project Transition” has the meaning set forth in Section 2.6.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale wind-powered electricity generating facilities in the Western United States, and (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale wind-powered electricity generating facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability

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

“Pseudo-Tie” has the meaning set forth in the CAISO Tariff.

“PTC Amount” means the amount, on a dollar per MWh basis, equal to the Production Tax Credits that Seller would have earned in respect of Energy from the Facility at the time, grossed up on an after-tax basis at the then-highest marginal combined federal and New Mexico state corporate tax rate [REDACTED] but failed to earn as a result of Market Curtailment Period, which amount will be calculated by reference to the amount of Deemed Delivered Energy and the number of the Facility’s wind turbines that are eligible to receive Production Tax Credits at the time of determination.

“Qualified Forced Facility Outage” means a Forced Facility Outage with respect to which a Licensed Professional Engineer has certified: (i) that the conditions for a Forced Facility Outage have been met (*provided*, in the event of a removal from service of a component of the Facility as set forth in clause (ii) of the definition of “Forced Facility Outage”, such removal from service must occur no later than [REDACTED] following the discovery by Seller of the need for such removal), (ii) that such Forced Facility Outage was not caused by Seller’s fault or negligence, including Seller’s failure to follow Prudent Operating Practices, and (iii) the estimated duration of such Forced Facility Outage.

“Qualified Forced Facility Outage Limit” means [REDACTED]

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

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

“RA Deficiency Cap” shall mean, for each Showing Month, the corresponding dollar amount set forth below:

RA Deficiency Cap	
Showing Month	\$/kW-month
Jan	[REDACTED]

Feb			
Mar			
Apr			
May			
Jun			
Jul			
Aug			
Sep			
Oct			
Nov			
Dec			

“RA Guarantee Date” means the Commercial Operation Date; *provided*, if the Facility is not delivering Resource Adequacy Benefits to Buyer for the Showing Month in which the Commercial Operation Date occurs, the RA Guarantee Date shall be the earlier of (i) the first day of the Showing Month in which the Facility is delivering Resource Adequacy Benefits to Buyer, and (ii) the first day of the Showing Month following the date that is [REDACTED] after the Commercial Operation Date.

“RA Plan” means each of (a) Buyer’s monthly or annual “Resource Adequacy Plan” (as defined in the CAISO Tariff) filed with the CAISO, and (b) Buyer’s monthly or annual resource adequacy plans filed with the CPUC.

“RA Shortfall Amount” has the meaning set forth in Section 3.8(b).

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing with the Showing Month that includes the RA Guarantee Date, during which the RA Shortfall Amount is greater than zero (0) kW.

“Real-Time Forecast” has the meaning set forth in Section 4.3(d).

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

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

“REC Price” means the prevailing market price (expressed in \$/MWh) for RECs meeting the RPS requirements for Portfolio Content Category 1, determined by averaging quotes provided by Buyer from three (3) unaffiliated brokers.

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

“Recurring Certificate Transfers” has the meaning set forth in the WREGIS Operating Rules.

“Remedial Action Plan” has the meaning set forth in Section 2.4.

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

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

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

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

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

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

“Replacement RA” means resource adequacy benefits from the Facility or from another resource, in each case that are reasonably comparable to the Resource Adequacy Benefits, delivered to the Delivery Point or to another point within the CAISO grid and provided by Seller to Buyer in accordance with Section 3.7(e).

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

“Resource Adequacy Benefits” means the rights and privileges attached to Buyer’s Share of the Capacity Attributes available from the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include flexible capacity and any local, zonal or otherwise locational attributes associated with the Facility, if any.

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

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-06-031, 20-12-006, 21-06-029, 21-07-014, 22-03-034, 22-06-050, 22-12-028, 22-08-039, 23-04-010 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

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

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

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

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

“Scheduling Point” has the meaning set forth in the CAISO Tariff.

“Security Interest” has the meaning set forth in Section 8.9.

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

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

“Seller’s WREGIS Account” has the meaning set forth in Section 4.8(a).

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

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

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

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

“Shared Facilities Agreements” has the meaning set forth in Section 6.3.

“Showing Deadline” means, for any Showing Month, the deadline for submitting a Supply Plan or RA Plan, as applicable, applicable to that Showing Month, as established by the CAISO.

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

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; *provided*, any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

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

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

“Station Use” means the Energy (including Energy produced by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility, and/or that is consumed within the Facility’s electric energy distribution system as losses.

“Summer Month” means any of June, July, August September and October, commencing as of the month in which the RA Guarantee Date occurs and throughout the Delivery Term.

“SunZia North” means that portion of the Facility identified as SunZia Wind North in Exhibit A.

“SunZia South” means that portion of the Facility identified as SunZia Wind South in Exhibit A.

“SunZia Transmission Line” means that certain 3,000-MW high-voltage (+/-525-kV) transmission line originating at the Interconnection Point in New Mexico and terminating near Phoenix, Arizona. The western terminus of the line will connect to the 500-kV Pinal Central Substation.

“Supply Chain Code” has the meaning in Exhibit Q.

“Supply Plan” has the meaning set forth in the CAISO Tariff, as applicable to the Guaranteed RA Amount from the Facility.

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

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Tax Credits” means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.

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

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

“Test Energy” means (1) Buyer’s Share of Energy delivered from the Facility to the Delivery Point, subject to the Hourly Delivery Cap (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the PTO’s system, and [REDACTED] (2) the associated Green Attributes, including RECs, that meet the RPS requirements for Portfolio Content Category 1.

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

“Transmission Provider” means any entity that (i) owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities, and (ii) transmits or transports the Product on behalf of Seller or Buyer to or from the Delivery Point, including the Participating Transmission Owner.

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

“Transmission System Outage” means an outage on a Transmission System, other than a System Emergency, that prevents (i) Buyer from receiving, or (ii) Seller from delivering, Energy at the Delivery Point.

“Ultimate Parent” means Pattern Energy Group LP.

“Unfunded Capital Commitments” means as of any date of determination, the aggregate amount of all currently-available but undrawn capital obligated to be provided to a Person by investor(s) pursuant to binding, written agreements, not subject to the satisfaction of any conditions precedent to such funding outside the control of such Person.

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

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

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.8(e).

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

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); *provided*, subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

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

2.2 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes to Buyer's reasonable satisfaction each of the following conditions, which Buyer shall, if submitted by Seller within thirty (30) days of the expected Commercial Operation Date, review and either accept or provide Notice stating in reasonably detail the basis for Buyer's rejection thereof within five (5) Business Days of receipt thereof. If there is a dispute between Buyer and Seller as to whether Commercial Operation has occurred, then either Party may elect to immediately refer the matter to the dispute resolution procedures set forth in Article 15, and all payments of Commercial Operation Delay Damages from and after the date such dispute is initiated shall be tolled until the dispute is resolved. If the dispute is resolved in favor of Seller, the Commercial Operation Date shall be the date proposed by Seller prior to such dispute and no Commercial Operation Delay Damages shall be owed from Seller from and after such date, and if the dispute is resolved in favor of Buyer, Commercial Operation Delay Damages (if any) shall be due as set forth in Exhibit B.

(a) Seller shall have delivered to Buyer certificates from a Licensed Professional Engineer substantially in the form of Exhibit H and Exhibit I;

(b) A Pseudo-Tie Participating Generator Agreement (as defined in the CAISO Tariff) between Seller and CAISO, an agreement governing the terms of Dynamic Transfers between CAISO and the host Balancing Authority for the Facility, and a Meter Service Agreement for CAISO Metered Entities (as defined in the CAISO Tariff) between CAISO and Seller (if, with respect to each such agreement, it is required under the CAISO Tariff or for Seller to meet its obligations under this Agreement), shall have been executed and delivered and be in full force and effect and a copy of such agreements delivered to Buyer;

(c) All applicable regulatory authorizations, approvals and permits necessary for the operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

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

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(e) Seller has obtained CAISO Certification for the Facility;

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

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8;

(h) Seller has delivered to Buyer an officer's certificate stating that Seller has not utilized any equipment or resources in connection with the construction, commissioning or testing of the Facility in violation of Section 2.3(b);

(i) Seller has paid Buyer for all amounts due and owing by Seller under this Agreement as of the Commercial Operation Date, if any, including Delay Damages.

2.3 Development; Construction; Progress Reports.

(a) Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation and additional information (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

(b) Seller shall use commercially reasonable efforts to ensure that all materials, products and components that are used in constructing, installing and operating the Facility throughout the Contract Term and provided by Seller and Seller's contractors and suppliers in direct contract with Seller or Seller's Affiliates shall be in compliance with the Supply Chain Code. Seller shall comprehensively implement due diligence procedures for its and its Affiliate's first-tier subcontractors and suppliers, and other subcontractors and suppliers to the extent reasonably practicable. Seller shall notify Buyer as soon as reasonably practicable if it becomes aware of any breach of its obligations under this Section 2.3(b).

(c) Buyer shall have the right, at Buyer's sole expense, to retain an independent auditor to audit Seller's compliance with the requirements of Section 2.3(b).

2.4 **Remedial Action Plan.** If Seller misses a Milestone by more than ninety (90) days with respect to any Milestone prior to the Guaranteed Construction Start Date, and thirty (30) days with respect to the Guaranteed Construction Start Date or any Milestone after the Guaranteed Construction Start Date, in each case except as the result of Force Majeure Event or Buyer Default, in addition to updates provided to Buyer via Progress Reports delivered pursuant to Section 2.3, Seller shall submit to Buyer, within ten (10) Business Days of the end of such ninety (90)- or thirty (30)-day period, as applicable, following the Milestone completion date, a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date, as it may be extended; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.5 **Facility Ownership.** Buyer acknowledges that, as of the Commercial Operation Date, the Facility will be owned by one or more of Seller’s Affiliates (each an “**Owner**”) that will be, in turn, wholly owned by Seller, and the Facility will not be owned directly by Seller. As of the Commercial Operation Date, Seller will have, and throughout the Contact Term Seller will maintain, such agreements with Seller’s Affiliates and other instruments as are necessary for Seller to perform its obligations under this Agreement. References to Seller in this Agreement will include, as the context requires, Owners (including in respect of Seller performing the obligation or causing Owners to perform the obligation). Seller will maintain its one hundred percent (100%) ownership of the Owners throughout the Delivery Term and will not sell or transfer Owners without Buyer’s consent, which consent shall not be withheld or delayed unreasonably.

2.6 **Project Bifurcation or Transition.** Notwithstanding the provisions of Section 2.5, Seller may, at any time during the Contract Term, elect by Notice to Buyer to both terminate this Agreement and either (x) cause each Owner to simultaneously enter into a Replacement PPA with Buyer in respect of the portion of the Facility (i.e., the portions of the Facility known as SunZia Wind North or SunZia Wind South) owned by such Owner (a “**Project Bifurcation**”), or (y) cause the Owner of SunZia Wind South to enter into a Replacement PPA with Buyer solely in respect of its portion of the Facility (a “**Project Transition**”). Each Replacement PPA will be on the same terms and conditions as those set forth in this Agreement, except for those administrative changes that are necessary to effectuate the separation or transition of this Agreement into Replacement PPA(s) with the Owner or Owners, as applicable. Among the provisions that are to be changed are:

(a) the identity of Seller throughout shall be changed to reflect the identity of the applicable Owner;

(b) subject to the potential adjustment of the Installed Capacity pursuant to the terms of this Agreement or any Replacement PPA, the nameplate capacity of (i) each Owner's portion of the Facility, in the case of a Project Bifurcation, or (ii) SunZia Wind South in the case of a Project Transition (either the actual Installed Capacity, if the transition to the Replacement PPA(s) occurs after the final Installed Capacities have been determined under this Agreement, or the anticipated installed capacity at the time of the Project Bifurcation or Project Transition, as applicable, if otherwise) shall be inserted in "Description of Facility" in the Cover Sheet;

(c) Exhibit A (Facility Description) shall be revised to reflect (i) each Owner's portion of the Facility in the case of a Project Bifurcation, or (ii) a description of SunZia Wind South in the case of a Project Transition; and

(d) Exhibit N (Notices) shall be revised to reflect the appropriate information for each Owner signatory to the relevant Replacement PPA, as applicable.

(e) All instances of "2,131 MW" in this Agreement shall be changed in each Replacement PPA, on a pro rata basis, to reflect the installed capacity of each Owner's portion of the Facility relative to, as applicable, either the actual Installed Capacity, if the Project Bifurcation or Project Transition, as applicable, occurs after the final Installed Capacity has been determined, or the anticipated installed capacity at the time of the Project Bifurcation or Project Transition, as applicable, if otherwise.

(f) In the case of a Project Bifurcation:

- (i) the amount of the Guaranteed Capacity in the Cover Sheet of each Replacement PPA shall be changed, on a pro rata basis, to reflect the installed capacity of each Owner's portion of the Facility, as applicable (either the actual Installed Capacity, if the transition to the Replacement PPAs occurs after the final Installed Capacities have been determined, or the anticipated installed capacity at the time of the transition, if otherwise); provided that, for the avoidance of doubt, the sum of the Guaranteed Capacities in the Cover Sheet in each Replacement PPA shall equal the Guaranteed Capacity in the Cover Sheet in this Agreement; and
- (ii) subject to the potential adjustment of the Expected Energy pursuant to the terms of this Agreement or any Replacement PPA, the amount of the Expected Energy in the Cover Sheet shall be reduced on a pro rata basis to reflect the nameplate capacity and net capacity factor of each Owner's portion of the Facility (either the actual Installed Capacity and net capacity factor when the final Installed Capacities have been determined or, if the final Installed Capacities have not yet been determined, the anticipated nameplate capacity and net capacity factor), as determined by Seller in its reasonable discretion; *provided*, the sum of the Expected Energy amounts in the Cover Sheet in each

Replacement PPA shall equal the Expected Energy amount in the Cover Sheet in this Agreement;

(g) In the case of a Project Transition:

- (i) subject to the potential adjustment of the Guaranteed Capacity pursuant to the terms of this Agreement or any Replacement PPA, the amount of the Guaranteed Capacity in the Cover Sheet of the Replacement PPA shall equal the amount of the Guaranteed Capacity in the Cover Sheet in this Agreement;
- (ii) subject to the potential adjustment of the Expected Energy pursuant to the terms of this Agreement or any Replacement PPA, the amount of the Expected Energy in the Cover Sheet of the Replacement PPA shall equal the amount of the Expected Energy in the Cover Sheet in this Agreement as of the Effective Date;
- (iii) the site for the facility set forth in the Replacement PPA shall not be materially different from the site set forth for SunZia South in Exhibit A;



- (v) the “Ultimate Parent” definition shall identify a Person that is not an Affiliate of the Person that owns SunZia North upon the effective date of the Project Transition.

In addition: (1) subject to the potential adjustment of the Installed Capacity pursuant to the terms of this Agreement or any Replacement PPA, if the Installed Capacity has been determined in accordance with this Agreement as of the effective date of the Replacement PPA(s), the Installed Capacity shall be revised to reflect the corresponding amount of installed nameplate capacity associated with (i) each Owner’s portion of the Facility in the case of a Project Bifurcation, or (ii) the installed nameplate capacity of SunZia Wind South in the case of a Project Transition, (2) in the case of Project Bifurcation, contract values or requirements that are based on determinants that are changing as a result of such Project Bifurcation shall be adjusted on a pro rata basis under the Replacement PPAs to correspond to the changed determinants, including the amount of the Guaranteed Energy Production (which is set based on the Expected Energy) and the amount of required Development Security and Performance Security (which are each set based on the Guaranteed Capacity), and (3) Section 2.5 shall no longer apply and shall not be included in the Replacement PPA(s).

If Seller elects to consummate a Project Bifurcation or a Project Transition, Seller shall include in its Notice to Buyer drafts of each Replacement PPA, as applicable, and a draft agreement providing for the termination of this Agreement. Buyer shall, within ten (10) Business Days of its receipt of Seller's Notice, provide by Notice to Seller any comments on the draft Replacement PPA(s), as applicable, and the termination agreement, and cooperate reasonably with Seller and the Owners to resolve any issues and enter into the Replacement PPA(s) and the termination agreement within thirty (30) days of Seller's Notice. If the Replacement PPA(s) and the termination agreement are not executed within such thirty (30) days, the Parties shall resolve their differences under the dispute resolution procedures set forth in Article 15.

Upon execution of the Replacement PPA(s) and termination of this Agreement: (A) each Owner shall deliver to Buyer substitute Development Security or Performance Security, as applicable, and as may be necessary or convenient; (B) upon receipt of the substitute Development Security or Performance Security referenced in item (A) of this sentence (if any), Buyer shall return to Seller the Development Security or Performance Security, as applicable; (C) Buyer and the Owners shall, and the Owners shall cause Seller to, reasonably cooperate to implement any additional administrative actions that may be necessary to effectuate the Project Bifurcation or Project Transition (including, for example, in connection with WREGIS or CAISO); and (D) Seller shall have no further obligations to Buyer and Buyer shall have no further obligations to Seller, except for those obligations associated with the period of time prior to the termination of this Agreement.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Facility at the Renewable Rate and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. The sale by Seller and purchase by Buyer of Facility Energy hereunder shall be for resale; *provided*, no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer shall have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Facility Energy. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period or Settlement Interval, as applicable, the amount of Facility Energy may deviate from the amounts

thereof scheduled with the CAISO. Following the Commercial Operation Date, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Seller as Scheduling Coordinator hereunder, except as expressly set forth in this Agreement.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and to Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Renewable Rate. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. Seller shall sell, and Buyer shall purchase from Seller, all Test Energy on an as-available basis. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to (a) [REDACTED] of the Renewable Rate [REDACTED] and (b) [REDACTED]

[REDACTED] per MWh thereafter (if applicable) (the “**Test Energy Rate**”). The conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes.**

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.7(d) and Section 3.12, Seller shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide all Resource Adequacy Benefits to Buyer at the Delivery Point. Throughout the Delivery Term, and subject to Section 3.7(d) and Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) [REDACTED] For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments that are reasonable and necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement, including submitting Supply Plans in accordance with CAISO and CPUC requirements and the requirements of this Agreement. At least [REDACTED] prior to the CAISO submission deadline for each annual RA Plan, and at least [REDACTED] prior to the Showing Deadline for each monthly RA Plan [REDACTED]

[REDACTED] Seller shall provide a non-binding Notice to Buyer presenting the Resource Adequacy Benefits that Seller expects to include in such Supply Plan for the next calendar year or Showing Month, including any Replacement RA Seller commits to provide pursuant to Section 3.7(e), if applicable; *provided*, if Seller becomes aware of any change to the Resource Adequacy Benefits that Seller is able to include in any monthly Supply Plan after delivering any such Notice, Seller shall provide a Notice to Buyer of any such change as soon as reasonably practicable, [REDACTED]

[REDACTED]

(d) Buyer acknowledges that it will be required to take certain actions and obtain certain rights at the Delivery Point in order to make use of the Capacity Attributes associated with the Product, including: (a) maintaining Import Capability necessary to import the Guaranteed RA Amount into the CAISO at the Delivery Point, (b) timely filing its RA Plans as required by the CAISO and the CPUC, and (c) obtaining any other rights or capacities that Buyer is required to obtain, or take any other action that Buyer is required to take, in order for Seller to provide or Buyer to make use of the Capacity Attributes of the Facility, in each case as may be required under applicable Law and as may change from time to time. To the extent Buyer does not or cannot maintain Import Capability or any other rights or capacities necessary to support the importation of the Guaranteed RA Amount into the CAISO or otherwise receive or utilize the Capacity Attributes, for reasons other than a Seller failure under this Agreement, including Seller’s failure to comply with applicable CPUC and CAISO requirements necessary to deliver Resource Specific

Import RA to Buyer, the Capacity Attributes that are not imported or that cannot be imported shall constitute Deemed Delivered RA.

(e) If Seller anticipates that it will have any RA Deficiency Amounts in a Showing Month from and after the RA Guarantee Date, Seller may provide Replacement RA in the amount of (X) Guaranteed RA Amount,

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages, as the sole and exclusive remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For any Showing Month from and after the RA Guarantee Date, the "**RA Deficiency Amount**" shall equal the product of (i) the difference, expressed in kW, of (A) the Guaranteed RA Amount, *minus* (B) Buyer's Share of the Net Qualifying Capacity of the Facility that was included in the Supply Plan for the applicable Showing Month (not less than the amount included in Seller's Notice to Buyer pursuant to Section 3.7(c)) (or, if Seller does not have a Net Qualifying Capacity in such Showing Month (other than due to Buyer's action or inaction), the Net Qualifying Capacity of the Facility shall be deemed to be zero (0) kW), *minus* (C) Deemed Delivered RA in respect of such Showing Month, *minus* (D) Replacement RA delivered in respect of such Showing Month (such difference, the "**RA Shortfall Amount**"), *multiplied by* (ii) (A) the product of (X) the CPM Soft Offer Cap (or its successor) *multiplied by* (Y) the CPM Adjustment Factor ("**CPM Price**"),

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification; *provided*, Seller's failure to obtain and/or maintain CEC Certification and Verification within one hundred eighty (180) days after the Commercial Operation Date shall not constitute a breach or default under this agreement so long as (i) Seller applies for CEC Certification and Verification for the Facility within thirty (30) days after Commercial Operation and thereafter uses commercially reasonable efforts to obtain CEC Certification and Verification as soon as reasonably practicable, (ii) Seller provides non-binding Notice to Buyer promptly upon learning of any reasonably expected delay in obtaining CEC Certification and Verification beyond one hundred eighty (180) days following

the Commercial Operation Date, and (iii) Seller obtains final CEC Certification and Verification on or before two hundred seventy (270) days following the Commercial Operation Date. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6]

3.11 **California Renewables Portfolio Standard.** Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the Facility Energy is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap.** If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes, Capacity Attributes, CEC Certification and Verification, and/or WREGIS Certificates (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [REDACTED] per MW of Guaranteed Capacity (**"Compliance Expenditure Cap"**).

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the **"Compliance Actions."**

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the **"Accepted Compliance Costs"**), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted

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Compliance Costs.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, which discussion either Party may terminate in its sole discretion at any time; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties in the sole discretion of each as set forth in a written agreement.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) **Energy**. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product and Replacement Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall effectuate the delivery of Facility Energy through Dynamic Transfers and shall be responsible for securing such arrangements with CAISO, the PTO and any other Transmission Provider as are necessary in connection therewith. Seller shall be responsible for paying or satisfying when due any costs or charges (except as otherwise set forth in this Agreement) imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties (except as otherwise set forth in this Agreement), if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses. The Facility Energy will be scheduled with the CAISO by Seller (or Seller's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) **Green Attributes**. All Green Attributes associated with Test Energy and the Facility Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys Buyer's Share of all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) **Energy Products**. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy-related products or Ancillary Services that may become recognized from time to time in the CAISO market, and Seller is able to provide any such

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product from the Facility without material adverse effect (including any obligation to incur more than *de minimis* costs, expenses or liabilities, or any more than *de minimis* impacts on the operations of Seller, any of Seller's Affiliates, or the Facility) on Seller, Seller's Affiliates or the Facility or Seller's obligations or liabilities under this Agreement or any other agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including any obligation to incur more than *de minimis* costs, expenses or liabilities, or any more than *de minimis* impacts on the operations of Seller, any of Seller's Affiliates, or the Facility) on Seller, Seller's Affiliates or the Facility or Seller's obligations or liabilities under this Agreement or any other agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) **Green Attributes.** Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting.** Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are consistent with the information known by Seller at the time the forecasts are submitted and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practice.

(a) **Annual Forecast of Facility Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the compliance deadline for the annual RA Plan (which is currently the last Business Day of October that is prior to commencement of the year for the annual RA Plan) for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of expected Facility Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) **Monthly Forecast of Facility Energy and Available Capacity.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter fifteen (15) days before the applicable RA Plan Showing Deadline for each Showing Month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly expected (i) Available Capacity and (ii) Facility Energy (items (i)-(ii) collectively referred to as the "**Forecasted Product**"), for each day of the following month in a form substantially similar to Exhibits F-1 and F-2, as applicable ("**Monthly Forecast**").

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(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery of Facility Energy, Seller shall provide Buyer with a non-binding forecast of the hourly expected Available Capacity and the Day-Ahead Forecast.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall, or shall cause its authorized representative to, notify Buyer of any changes from the Day-Ahead Forecast resulting from changes of fifteen (15) MW or more in Available Capacity or when Buyer's Share of hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, differs by more than fifteen (15) MWh, as applicable, of the amount set forth in the Day-Ahead Forecast ("Real-Time Forecast"), in each case whether due to a Forced Facility Outage, Force Majeure Event or other cause affecting the Available Capacity, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Capacity or, if applicable, Buyer's Share of the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, changes by at least fifteen (15) MW or fifteen (15) MWh, as applicable, as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Facility Energy shall be based on a forecast from the Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity or Buyer's Share of hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall use commercially reasonable efforts to inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. Such Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer, provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Meteorological Data.

(i) Commencing on the Commercial Operation Date, and continuing throughout the Delivery Term, Seller shall provide to Buyer records of meteorological measurements based on output from [REDACTED] reasonably representative meteorological stations installed at the Site, which shall be either [REDACTED]

[REDACTED] which measurements shall be provided by Seller to Buyer [REDACTED]

[REDACTED] (provided, Buyer shall have the option to elect, no more than once per calendar year, the method of delivery as set forth in subsections (x) or (y) above upon no less than [REDACTED]

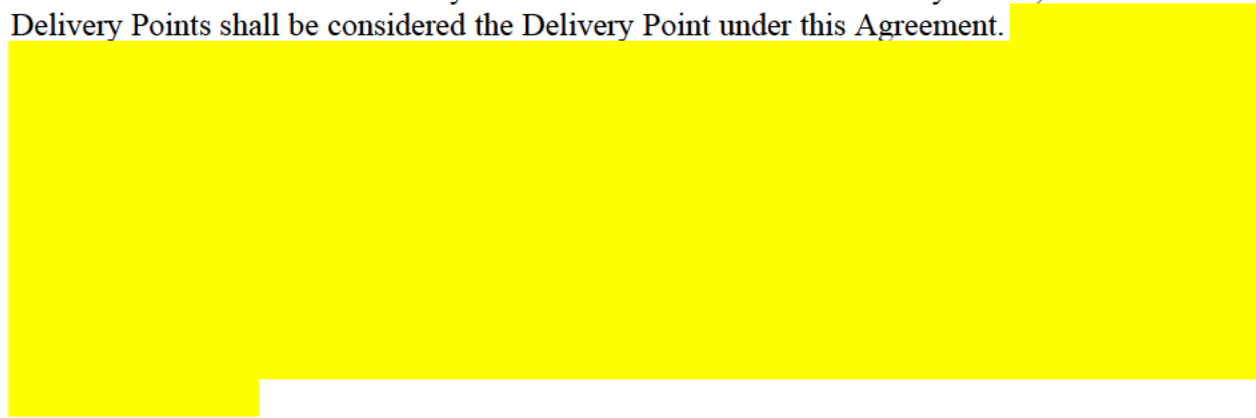
prior written Notice to Seller of such election), in each case including the following data points: (A) wind speed (and, if Seller elects to receive meteorological data as set forth in 4.3(e)(y) above, the highest 3-second wind gust within ten (10) minutes), (B) wind direction, (C) ambient air temperature, (D) precipitation (rain rate), (E) precipitation (running thirty (30)-day total), and (F) barometric pressure; *provided*, the method of data delivery and the foregoing data points specified under this Section 4.3(e) may be updated as reasonably agreed to by the Parties. Such updates may include modifications to or additions of data points as are reasonably necessary for Buyer's administration of this Agreement, to the extent that Seller can effectuate such updates through the use of commercially reasonable efforts.

(ii) All information provided to Buyer pursuant to this Section 4.3(e) shall constitute Confidential Information of Seller, and Buyer shall be prohibited from providing any such information to any other Person without Seller's express written prior consent (in Seller's sole discretion). Seller shall not be obligated to provide any assistance to Buyer with respect to using, interpreting or otherwise processing such data, but Seller shall respond to Buyer's reasonable requests for clarifying or correcting information.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set forth in the Operating Restrictions.

(b) Alternative Delivery Point/Third-Party Sales. In the event that, and for so long as, Seller is unable, despite using commercially reasonable efforts, to Dynamically Transfer or deliver all or a portion of the Product to Buyer at the Delivery Point, but is able to Dynamically Transfer and deliver Product to Buyer at one or more Alternative Delivery Points, such Alternative Delivery Points shall be considered the Delivery Point under this Agreement.



(c) Failure to Comply. Subject to Section 4.4(a), if Seller fails to comply with a Curtailment Order, then, for each MWh of Facility Energy that is delivered in excess of the Curtailment Order, Seller shall pay Buyer for each such MWh the amount, if any, paid to Seller by Buyer for delivery of such excess MWh.

(d) Seller Equipment Required for Operating Instruction Communications.

Seller shall develop and install all communications systems necessary for the operation of the Facility in accordance with Prudent Operating Practice, including communications systems that provide for the receipt and following of automated dispatch instructions from the CAISO.

4.5 **Station Use.** Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy used to serve Station Use), (ii) the supply of such Station Use shall not be deemed a violation of this Agreement, (*provided*, Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences), and (iii) Station Use may not be supplied from Facility Energy (*provided*, Seller may supply Station Use from Energy produced by the Facility so long no such Energy is recorded as Facility Energy by the Facility Meter, and subject to the other requirements of this Agreement).

4.6 **Facility Maintenance.** Without limiting Section 3.1 or Exhibit G:

(a) Seller shall provide to Buyer written schedules for Planned Outages for each calendar year no later than September 1 of the prior calendar year for each following calendar year. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller shall in good faith take into account any such comments. Seller shall promptly deliver to Buyer the final updated schedule of Planned Outages thereafter. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages.

(b) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a). Seller shall be responsible, at no additional cost to Buyer, to provide any replacement Capacity Attributes required by the CAISO in connection with the CAISO's approval of any Seller request for a Planned Outage after the applicable Supply Plan has been submitted.

(c) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned during any Summer Month during the Delivery Term

unless (i) such outage is required to avoid damage to the Transmission System, (ii)

(iv) such outage is reasonably required to maintain health and safety pursuant to Section 6.2, or (v) the Parties agree otherwise in writing. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency that prevents Seller from reasonably performing the contemplated maintenance activities, Seller shall make commercially reasonable efforts to reschedule such Planned Outage.

(d) Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall promptly provide Buyer with Notice and expected duration (if known)

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of any Forced Facility Outage and shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of such outage.

(e) Seller shall be permitted to reduce deliveries of Product (i) during any period of System Emergency, (ii) pursuant to a Curtailment Order, (iii) during a Market Curtailment Period, (iv) during any Force Majeure Event, (v) due to Prudent Operating Practice or in compliance with applicable Law, or (vi) otherwise pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff or as may be required under a Shared Facilities Agreement.

(f) Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

(g) Seller shall be permitted in its sole discretion to reduce Facility generation other than Buyer's Share of such Facility generation during any Settlement Interval or Settlement Period that is not during a Curtailment Period or Market Curtailment Period. During such curtailments, Seller shall deliver Facility Energy to Buyer in accordance with clause (b) of the definition of "Facility Energy".

(h) With respect to any (i) Major Planned Outage or (ii) Forced Facility Outage of [REDACTED] or more of Installed Capacity that persists for more than [REDACTED] [REDACTED] Seller shall provide reports to Buyer not less frequently than each month regarding Seller's progress toward completion of repairs, maintenance, equipment replacement and/or any other material aspect of returning the Facility to full operation, including information reasonably requested by Buyer.

4.7 **Guaranteed Energy Production.**

(a) During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of Facility Energy, as measured in MWh, equal to [REDACTED] of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period; *provided*, the Guaranteed Energy Production applicable to the first Performance Measurement Period of the Delivery Term shall be equal to [REDACTED] of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, in addition to Facility Energy, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, *plus* (b) Facility Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any (i) Force Majeure Events, (ii) Curtailment Period (excluding any Transmission System Outage due to the fault or negligence of Seller), (iii) System Emergency not caused by Seller, or (iv) Buyer Default or other Buyer failure to perform that prevents Seller from being able to deliver Facility Energy to the Delivery Point ("**Lost Output**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay

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Buyer damages calculated in accordance with Exhibit G (“**Energy Replacement Damages**”); *provided*, Seller may, as an alternative, provide Replacement Product delivered retrospectively to Buyer at the Delivery Point or the SP 15 EZ Gen Hub.

(b) Seller shall be permitted to deliver Replacement Product (i) prospectively during any Performance Measurement Period if Seller reasonably anticipates that delivery of such Replacement Product is necessary to achieve the Guaranteed Energy Production for such Performance Measurement Period, or (ii) retrospectively during the Contract Year immediately following any Performance Measurement Period in accordance with Section 4.7(a) above; *provided*, Seller’s right to deliver Replacement Product shall be subject to mutual agreement of the Parties (in the reasonable discretion of each) of the delivery schedule for such Replacement Product; *provided further*, the amount of Replacement Product delivered by Seller pursuant to (i) or (ii) shall not exceed ten percent (10%) of the Expected Energy for the Contract Year for which such Replacement Product is delivered. Seller shall provide Notice to Buyer of any proposed delivery of Replacement Product, including a proposed schedule of such deliveries, (i) no later than thirty (30) days prior to the proposed delivery of such Replacement Product in the case of prospectively delivered Replacement Product, and (ii) no later than thirty (30) days after the conclusion of any Performance Measurement Period with respect to which Seller proposes to deliver retroactive Replacement Product.

4.8 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“**Seller’s WREGIS Account**”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using Recurring Certificate Transfers (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“**Buyer’s WREGIS Account**”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Recurring Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy

generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility's metered data.

(d) Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or is the result of any action or inaction of, Seller, then Seller shall either (x) resolve the associated WREGIS Certificate Deficit or (y) provide Replacement Green Attributes (as defined in Exhibit G) upon a schedule reasonably acceptable to Buyer (including in consideration of costs to Buyer), in each case no later than ninety (90) days following such Deficient Month; *provided*, Seller may offer to cure such WREGIS Certificate Deficit pursuant to clause (x) or (y) above after such ninety (90)-day period, which cure Buyer may accept or reject in its sole discretion; *provided further*, (1) if Buyer rejects Seller's proffered cure following such ninety (90)-day period,

If and to the extent Seller fails to cure any WREGIS Certificate Deficit, as set forth in either clause (x) or (y) of the previous sentence, Buyer's payment obligation for Facility Energy associated with the uncured WREGIS Certificate Deficit shall be reduced by

Without limiting Seller's obligations under this Section 4.8, if a deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1]

(h) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2]

(i) Seller's obligations under Sections 3.10, 4.8(g) and 4.8(h) shall be subject to Section 3.12, the term "Project" as used in Section 3.10 shall refer to the "Facility" as defined herein, the term "the contract" in Section 4.8(h) shall refer to "this Agreement" as defined herein, and the term "commercially reasonable efforts" as used in Section 3.10 and Section 4.10(g) means efforts consistent with and subject to Section 3.12.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or

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exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in Exhibit N Notice of such condition as soon as practicable thereafter. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; *provided*, such agreements shall (i) not preclude Seller from performing or satisfying, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than 2,131 MW, (ii) provide for separate metering of the Facility, (iii) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID, and (iv) provide that any curtailment that is not specific to one or more CAISO Resource IDs of output from generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities, unless such curtailment of Shared Facilities was attributable to the Facility or

caused by Seller. Seller shall not, and shall not permit any affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements minus 2,131 MW.

ARTICLE 7 METERING

7.1 **Metering**. The Facility Meter shall be installed at the switching station adjacent to the SunZia East Converter Station and maintained at Seller's cost. If the Facility Meter is inaccurate, Seller will cause such meter to be promptly corrected in accordance with Prudent Operating Practice and CAISO or PTO requirements, as applicable. Seller shall be responsible for any costs, fines or penalties, including imbalance charges as a result of the inaccurate meter. The Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. Seller shall, or shall cause its Scheduling Coordinator to, provide Buyer with read-only access to a real-time data feed of the generation of the Facility, and real-time Facility Meter reads. In addition, Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer on a read-only basis, and consents to Buyer obtaining from the CAISO or the PTO, as applicable, the Facility Meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller, or Seller's Scheduling Coordinator, shall cooperate with Buyer to provide records, including invoices or settlement data from the CAISO, for the full Facility, for Buyer to verify the accuracy of all invoices, and to allow both Parties to retrieve the Facility Meter reads from the CAISO Market Results Interface – Settlements (MRIS-S) (or its successor) or from the Facility Meter at the Facility.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the Facility Meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists, such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during the second half of such period so long as such adjustments are accepted by CAISO and WREGIS; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the fifteen (15th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Facility Energy

and Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production (if any), the LMP prices at the Delivery Point for each Settlement Period, and the Renewable Rate applicable to such Product in accordance with Exhibit C, and other relevant data for the prior month; and (b) be in a format reasonably acceptable to Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Seller shall provide Buyer with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Buyer to verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts no later than thirty (30) days after Buyer's receipt of the invoice from Seller; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), *plus* two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement, for a period of three (3) years following the last payment hereunder (or such longer period required by applicable Law), because the compensation under this Agreement exceeds \$10,000.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled

in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all undisputed amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect; *provided*, Seller shall have no obligation to replenish the Development Security following any draw thereupon by Buyer; *provided further*, Buyer shall not draw on the Development Security with respect to any payments due from and payable by Seller until after any required Notice and the expiration of all cure periods. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is provided in the form of more than one Letter of Credit, any draw on the Development Security by Buyer shall be made pro rata among each such Letter of Credit.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer

collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, 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); *provided*, Buyer shall not draw on the Performance Security with respect to any payments due from and payable by Seller until after any required Notice and the expiration of all cure periods. Following the occurrence of both events listed in clauses (a) and (b) above, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is provided in the form of more than one Letter of Credit, any draw on the Performance Security by Buyer shall be made pro rata among each such Letter of Credit.

8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security and Performance Security, to the extent the Development Security and/or Performance Security are provided in the form of cash collateral or cash equivalent collateral, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter(s) of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) 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 remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.10 **Financial Statements.**

(a) If a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

(b) Buyer shall provide to Seller (i) within one hundred twenty (120) days following the end of each fiscal year during the Contract Term, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year during the Contract Term, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles ("GAAP"); *provided*, should any such statements not be available on a timely basis due to a delay in preparation or certifications, such unavailability shall not be an Event of Default so long as Buyer diligently pursues the preparation, certification, and delivery of the statements. Buyer shall be deemed to have delivered such financial statements to Seller if such statements are made publicly available.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition.**

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(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of the claiming Party; *provided*, a Force Majeure Event shall not excuse any such delay, nonperformance, or noncompliance to the extent the claiming Party’s fault or negligence contributed thereto in scope or duration.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic

landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Renewable Rate unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order, except to the extent that a Curtailment Order is caused by an event that otherwise qualifies as a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The

Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In order to claim a Force Majeure Event, the claiming Party, within fourteen (14) days of becoming aware that an event or series of events, as applicable, constitutes a Force Majeure Event, must give the other Party Notice describing the particulars of the occurrence in substantially the form set forth in Exhibit T, (b) provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement, and (c) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party.

[REDACTED]

10.4 **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) plus the payment of Commercial Operation Delay Damages equal or exceed [REDACTED], and Seller has demonstrated to Buyer's reasonable satisfaction that Seller's failure to achieve COD by the Guaranteed Commercial Operation Date (as extended) was the result of delays that would have otherwise entitled to Seller [REDACTED] of Development Cure Period delays but for the one hundred eighty (180)-day limitation, then Seller may terminate this Agreement upon Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer plus the full amount of Commercial Operation Delay Damages paid by Seller, less any amounts drawn in accordance with this Agreement with respect to other amounts due from Seller, if any.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12)-month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party; *provided*, if Seller is the Party claiming such Force Majeure Event and such Force Majeure Event cannot reasonably be cured within such twelve (12) month period, then Seller may provide a plan to Buyer, which must be acceptable to

Buyer in its reasonable discretion, to cure such Force Majeure Event within an additional six (6) month period and Buyer may not terminate this Agreement due to such Force Majeure Event unless Seller has not resumed performance of its material obligations hereunder upon the expiration of such additional six (6)-month period; *provided further*, if the impacted Party has claimed and received relief from performance of its obligations due to such Force Majeure Event for a consecutive eighteen (18)-month period, then either Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1 or for which an exclusive remedy is provided), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable;

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was

a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party;
or

(vii) failure by either Party to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 (except, with respect to Seller, as set forth in Sections 11.1(b)(vi) and 11.1(b)(vii)) within five (5) Business Days after Notice from the other Party, including Seller's failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to achieve the Construction Start Date on or before the Guaranteed Construction Start Date or Commercial Operation on or before the Guaranteed Commercial Operation Date, as such dates may be extended by Seller's payment of Daily Delay Damages, Commercial Operation Delay Damages and/or by Development Cure Period extensions;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the 6-month pro rata amount of Expected Energy for such period adjusted for seasonality proportionately to the monthly forecast provided annually by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days, or such longer period if necessary to remedy a Major Equipment Failure, not to exceed a total of eighteen (18) months ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) if at any time during the Delivery Term the Installed Capacity does not equal or exceed the Guaranteed Installed Capacity;

(v) Reserved;

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, or (3) a replacement Guaranty from a Guarantor meeting the criteria set forth in the definition of

Guarantor, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time;

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit;

(vii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such representation or warranty is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty.

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Damage Payment; Termination Payment. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the amount of the Development Security as set forth on the Cover Sheet plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall

be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) Except as set forth in Section 11.3(a)(iii), if Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal Buyer's Share of the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Facility, less the fair market value (determined in a commercially reasonable manner) of (A) all Seller's assets individually or (B) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of.

(iii) If Buyer is the Defaulting Party and such default arises in connection with: (A) Buyer's repudiation of this Agreement; (B) Buyer's bad faith; (C) Buyer's failure to comply with its obligations under Section 2.2 to, within five (5) Business Days after receipt thereof, either accept or provide Notice stating in reasonable detail the basis for its reasonable rejection of Seller's evidence of completion of any condition to Commercial Operation set forth in Section 2.2 (provided that Seller submitted such evidence within thirty (30) days of the expected Commercial Operation Date); or (D) Buyer's failure to comply with its obligations under Section 2.6 to (x) within ten (10) Business Days of its receipt of Seller's Notice of a Project Bifurcation or Project Transition, provide Notice to Seller of any comments on the draft Replacement PPA(s) and termination agreement attached to such Notice, and (y) cooperate reasonably with Seller and the Owners to resolve any issues and enter into the Replacement PPA(s) and the termination agreement within thirty (30) days of Seller's Notice to Buyer of the same (*provided*, this clause (D) shall apply only if the draft Replacement PPA(s) are on the same terms and conditions as those set forth in this Agreement, except for those administrative changes that are necessary to effectuate the separation or transition of this Agreement into Replacement PPA(s) (including such changes as are set forth in Section 2.6(a) through Section 2.6(g), as applicable)), then the Damage Payment shall be owed to Seller and shall be equal to the Termination Payment determined in accordance with Section 11.3(b) below as of the Early Termination Date. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in Section 11.3(a)(ii) above or this Section 11.3(a)(iii), as applicable, are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets,

end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 Notice of Payment of Termination Payment or Damage Payment. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 Disputes With Respect to Termination Payment or Damage Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If this Agreement is terminated prior to the Commercial Operation Date for any reason except due to Buyer's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of [REDACTED] following such early termination date, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement and (a) Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof, or (b) Seller and Buyer fail to reach an agreement on the changes necessary to conform the new agreement on materially similar terms to this Agreement within ninety (90) days after Buyer's receipt of such offer, despite both Parties negotiating in good faith. Seller's or Seller's Affiliate's written offer to sell the Product pursuant to this Section 11.6 shall be at the Renewable Rate without increase or escalation; [REDACTED]

Nothing in this Section 11.6 shall be construed to limit in any way Seller's right to market, sell, or deliver Energy, green attributes, capacity attributes, or other products generated by or associated with the Facility in excess of Buyer's Share of such Energy, green attributes, capacity attributes, or other products generated by or associated with the Facility.

Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND

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MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

NOTWITHSTANDING ANYTHING ELSE HEREIN TO THE CONTRARY, SELLER'S AGGREGATE LIABILITY ARISING UNDER OR RELATED TO THIS AGREEMENT IN CONNECTION WITH ANY DELAY BY SELLER IN COMPLETING THE FACILITY OR ACHIEVING THE COMMERCIAL OPERATION DATE, INCLUDING FAILURE BY SELLER TO ACHIEVE THE MILESTONE DATES SET FORTH ON THE COVER SHEET AND ANY FAILURE BY SELLER TO SELL PRODUCT TO BUYER HEREUNDER AS A RESULT OF ANY SUCH DELAY OR FAILURE, SHALL NOT EXCEED THE SUM OF (A) THE AMOUNT OWING OR PAID BY SELLER IN RESPECT OF DELAY DAMAGES, IF ANY, AND (B) THE AMOUNT OF THE DAMAGE PAYMENT OWED BY SELLER, IF ANY.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR

PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other material agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Seller and its Affiliates are developing the Facility to be located in New Mexico.

(f) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Construction Start Date to be later than the Guaranteed Construction Start Date or the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

(g) Prior to the Construction Start Date, Seller or an Affiliate of Seller will enter into (or has already entered into as of the date hereof) (i) EPC Contracts that provide for the construction of the Facility as described in Exhibit A and (ii) turbine supply agreements that provide for the purchase of distinct turbines for SunZia North and for SunZia South, respectively. Promptly upon (but in no event later than ten (10) Business Days following) execution of the turbine supply agreement in respect of SunZia South, Seller shall provide to Buyer an updated Exhibit A setting forth the turbine supplier for SunZia South.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage.** Seller shall use commercially reasonable efforts to ensure that all employees hired by Seller (and its contractors and subcontractors) that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at base rates not less than those prevailing for workers performing similar work in the locality as provided by applicable New Mexico Law, if any ("**Prevailing Wages**"). Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall, at Seller's sole expense, provide either (a) a certificate [REDACTED] reasonably acceptable to Buyer, demonstrating that Seller (and its contractors and subcontractors) paid Prevailing Wages, or (b) a certificate from an officer of Seller certifying that Seller made commercially reasonable efforts to pay Prevailing Wages together [REDACTED] reasonably acceptable to Buyer of such efforts, and in either case including at a minimum (i) the Prevailing Wages pursuant to New Mexico Law for each applicable trade classification with respect to workers performing work or providing services at the Site, and (ii) the highest and the lowest annual base rate paid to such workers for the Facility in each such classification. Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created

by, other inapplicable provisions of any New Mexico labor laws. Buyer agrees that Seller's obligations under this Section 13.4 may be satisfied upon the execution of a project labor agreement with respect to construction of the Facility.

13.5 **Community Benefits Funding.** Seller shall (a) on or before the date that is thirty (30) days after the date of Financial Close, if such date occurs, pay to Buyer [REDACTED] and (b) on or before the Commercial Operation Date, if such date occurs, pay to Buyer [REDACTED], both for Buyer to use for community benefits as determined by Buyer in its sole discretion. Any public statements regarding Seller's payments under this Section 13.5 and their direct connection to specific community benefits for which such payments are used shall be subject to Section 18.5.

13.6 **Supplier Diversity Reporting.** From the Effective Date until the Commercial Operation Date, upon request from Buyer and on a schedule to be reasonably agreed by the Parties, Seller shall provide a separate "Supplier Plan" setting forth (a) the plans and efforts of Seller to subcontract with businesses owned by women, minorities, disabled veterans, lesbian, gay, bisexual, or transgender persons, or persons with disabilities ("**Diverse Suppliers**"), as more fully defined under CPUC General Order 156 (*provided*, Persons shall qualify as Diverse Suppliers only to the extent such Persons are so certified with the Supplier Clearinghouse as set forth in CPUC General Order 156 or elect to voluntarily self-identify as such to Seller), and (b) the plans and efforts of Seller to subcontract with small, local, and diverse businesses, as more fully defined under CPUC General Order 156 ("**Small Local Businesses**"); *provided*, such report shall be in a form reasonably acceptable to Buyer.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing (including any tax equity financing) of the Facility without the consent of Buyer. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to execute a customary and reasonable consent to collateral assignment of this Agreement, as reasonably agreed by Buyer, Seller and Lender; *provided*, Seller shall reimburse Buyer's reasonable and documented out-of-pocket legal fees in connection with negotiating such consent to collateral assignment.

14.3 **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

(a) the assignee is a Permitted Transferee;

(b) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment to the extent permitted under applicable Law, and if prior Notice is not permitted because Seller or any other Person involved in the transaction, directly or indirectly, is a publicly traded company and applicable Laws prohibit prior disclosure to Buyer, then within ten (10) Business Days after the date of such assignment [REDACTED] and [REDACTED]

(c) Seller (x) has, except in connection with a Change of Control, provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 **Shared Facilities; Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity or cash equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 **Buyer Financing Assignment.**

(a) Seller agrees that Buyer may assign a portion of its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction ("**Buyer Assignee**") at any time upon not less than fifteen (15) Business Days' prior notice to Seller by delivering Notice of such assignment, which Notice must include a proposed assignment agreement substantially in the form attached hereto as Exhibit L ("**Assignment Agreement**"); *provided*, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to Baa3 from Moody's and BBB- from S&P. As reasonably requested by Buyer Assignee, Seller shall (i) provide Buyer Assignee with reasonable information and documentation with respect to Seller,

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including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer, the requirements of this Section 14.5, and Lender consent. From and after any execution of an Assignment Agreement, Buyer shall remain primarily responsible for all its obligations under this Agreement and the Assignment Agreement, including (i) the obligation to pay for all Product and (ii) any and all damages, costs and expenses of Seller associated with Buyer Assignee's failure to take or pay for any such Product as contemplated by this Agreement. In no event shall any assignment by Buyer under this Section 14.5 purport to limit any rights of Seller under, or cause Seller to incur any additional obligations under, this Agreement other than *de minimis* administrative or ministerial obligations.

(b) Subject to the provisions of this Section 14.5(b), if Buyer proposes to use a financing structure other than the financing structure contemplated by the form attached hereto as Exhibit L, including modifying this Agreement to require Seller to deliver some or all of the Facility Energy using Inter-SC Trades or other structure that materially deviates from the terms of this Agreement or the form of Assignment Agreement, Seller agrees to use commercially reasonable efforts to negotiate with Buyer an assignment agreement providing for such structure, starting from the form of Assignment Agreement attached hereto, as such form shall be modified at the request of Seller to ensure that Seller is satisfied in its reasonable discretion that (x) it will be made financially whole (including for the time value of money) with respect to its financial position under such proposed financing structure compared to Seller's financial position absent such proposed financing structure and the transactions contemplated thereby, including but not limited to with respect to Seller's cash flows and liquidity position, and (y) it will not be required to (i) change the manner in which the Facility is operated, (ii) change the Delivery Point or the transmission path to the Delivery Point, (iii) procure additional or alternative transmission capacity, or (iv) change the way that Energy is delivered (*provided*, such restriction shall not preclude Inter-SC Trades at a different transaction point, such as SP-15); *provided*, such form must include the express requirements that Buyer Assignee shall make timely payment of all amounts due from Buyer under this Agreement, and that Buyer shall remain primarily liable for all of Buyer's obligations under this Agreement and such agreement memorializing such proposed financing structure, including (i) the obligation to pay for all Product and (ii) any and all damages, costs and expenses of Seller associated with Buyer Assignee's failure to take or pay for any such Product as contemplated by this Agreement; *provided further*, Seller's execution of any such agreement memorializing such proposed financing structure shall be subject to Lender consent.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at

such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC – 17]

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either forty-five (45) days of initiating such discussions, or within sixty (60) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, each Party shall bear its own respective costs, expenses and attorneys' fees in connection with said action.

15.4 **Venue.** In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be the federal courts of the United States or, if such federal courts refuse jurisdiction notwithstanding the Parties' agreement, then in the courts of the State of California, in either case sitting in Los Angeles County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, and waive any claim or defense that such forum is not convenient or proper.

ARTICLE 16 INDEMNIFICATION

16.1 Indemnification.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used in connection with the Facility (an "**IP Indemnity Claim**").

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its

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damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, the following types and minimum limits of insurance with a carrier rated "A- VII" or higher by A.M. Best's Key Rating Guide: (i) commercial general liability insurance, including products and completed operations and personal injury (including bodily injury and death) and property damage insurance, with a minimum limit of liability of One Million Dollars (\$1,000,000) per occurrence, and a general aggregate of not less than Two Million Dollars (\$2,000,000) for combined bodily injury and property damage; and (ii) an umbrella insurance policy in a minimum limit of liability of Ten Million Dollars (\$10,000,000). The amounts of liability insurance described in this Article 17 may be satisfied by primary insurance or by any combination of primary and excess/umbrella insurance. Such insurance shall contain standard cross-liability and severability of interest provisions such that each Person is protected in the same manner as though a separate policy has been issued to each but nothing therein shall operate to increase the insurance company's liability beyond the amount the insurance company would have been liable if only one Person or interest had been named as insured. The liability insurance policies referenced in this Article 17 shall (x) provide an endorsement waiving rights of subrogation against Buyer, (y) name

Buyer as additional insured on all required liability insurance (except workers compensation), and (z) be primary to any insurance of Buyer that may apply to such occurrence, accident or claim and no "other insurance" provision shall be applicable to Buyer or any additional insureds, by virtue of having been named an additional insured under any policy of insurance.

(b) Workers Compensation and Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000) providing statutory benefits as required by Law (if any exposure exists) for injury, sickness, disability or death of the employees.

(c) Business Auto Liability Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) combined single limit. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired motor vehicles in the performance of the Agreement.

(d) Property Insurance. Seller shall maintain or cause to be maintained property insurance (construction all-risk or operational all-risk as may be applicable) covering the Facility against physical loss or damage, including coverage for natural perils including but not limited to flood, earthquake, windstorm, severe convective storm and wildfire, all with limits in accordance with industry standard recognizing that natural perils may be subject to a lower sublimit. Coverage will be on an "all-risk" basis including mechanical and electrical breakdown.

(e) Subcontractor Insurance. Seller shall require all of its tier-one subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. Seller shall use commercially reasonable efforts to cause all subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (e)(i) and (e)(iii). Seller shall use commercially reasonable efforts to cause all subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(e).

(f) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. All insurance required herein shall be primary coverage without right of contribution from any insurance of Buyer, and such policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and subcontractors and any subrogation rights which may pass to Seller's insurance carriers for the payment of any claims. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

(g) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, comply with the terms and conditions of Article 16.

ARTICLE 18

CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as "Confidential" that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant

to the California Public Records Act for production, inspection and/or copying of Confidential Information ("**Requested Confidential Information**"), Buyer shall as soon as practical, and no later than ten (10) Business Days after receipt, notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing Notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party's request or demand to the extent Buyer reasonably believes that disclosure is required under the California Public Records Act and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents ("**Buyer's Indemnified Parties**"), from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer's Indemnified Parties for Buyer's refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential investors or financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue or make (or cause its Affiliates to issue or make) a written press release or written public statement regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such written press release or written public statement, which agreement shall not be unreasonably conditioned, withheld or delayed.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The

Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Change in Electric Market Design.**

(a) If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

(b) If any of the Transmission Systems utilized to deliver Product to the Delivery Point under this Agreement are integrated into a new or existing regional transmission organization or independent system operator and such integration has a material and adverse impact on either Party's performance under this Agreement, including the costs of either Party to perform, then the affected Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to restore the balance of benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith; *provided*, neither Party shall be obligated to amend this Agreement if such amendment(s) would adversely affect, or could reasonably be expected to have or result in any adverse effect on, any of such Party's rights, benefits, costs, revenue, value of the Agreement, risks and/or obligations under this Agreement.

19.13 **Further Assurances**. Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than or in addition to those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

SUNZIA WIND POWERCO LLC,
a Delaware limited liability company

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA,
a California joint powers authority

By: _____
Name: _____
Title: _____

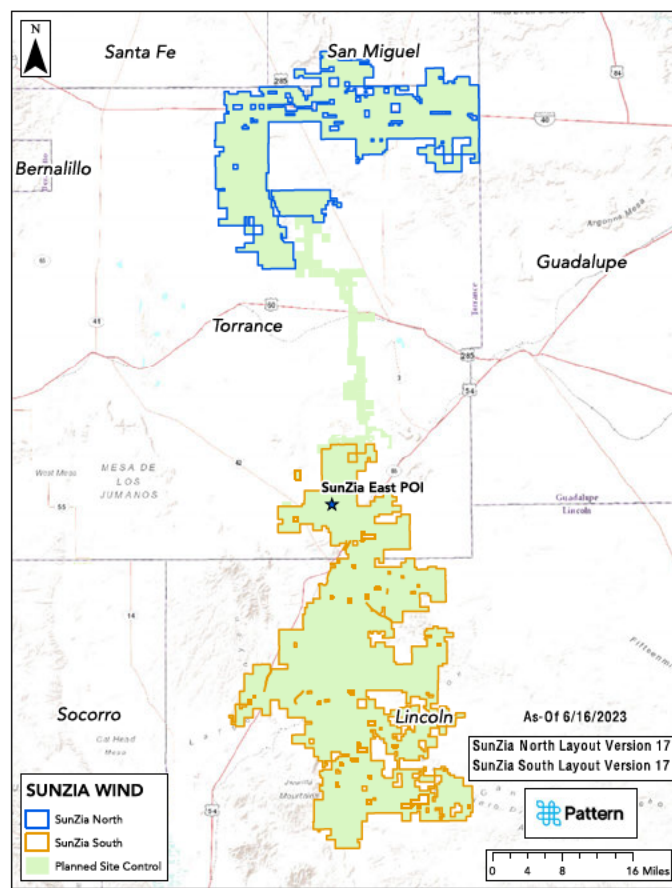
By: _____
Name: _____
Title: _____

FACILITY DESCRIPTION

The Facility description provided herein reflects Seller's expectation for the Facility and the Site as of the Effective Date. Seller may, by Notice to Buyer prior to the Construction Start Date, modify the Site Name and Site Location within the counties set forth below. Except as otherwise provided in the Agreement, Seller shall not make any alteration or modification to the Facility which results in a change to the Guaranteed Capacity, Guaranteed RA Amount, or to the anticipated output of the Facility without Buyer's prior written consent; *provided*, Seller shall be permitted to repower the Facility after the tenth (10th) Contract Year so long as Seller continues to be obligated to deliver Guaranteed Energy Production and Guaranteed RA Amount associated with the Guaranteed Capacity during such repower; upon any such repower that changes the Installed Capacity, Seller shall deliver an updated Installed Capacity Certificate in the form of Exhibit I.

Site Name: SunZia Wind Project, consisting of SunZia Wind North and SunZia Wind South

Site Map:



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OLD: 4875-6359-3848.26
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Project	Anticipated Nameplate Capacity (MW)*		Wind Turbine Model(s)
Facility	3,515.4		
SunZia Wind North	1,089		Vestas
SunZia Wind South	2,426.4		To be provided by Seller pursuant to Section 13.1(g)

* the “Anticipated Nameplate Capacity” listed above is the anticipated nameplate capacity for the Facility and each sub-project as of the Effective Date

Site Location: Lincoln, Torrance and San Miguel Counties, New Mexico

Delivery Point: CAISO Scheduling Point-Intertie combination at PALOVRDE_ASR-APND and PVWEST, or an Alternative Delivery Point as mutually agreed by the Parties.

Transmission Provider:

Technology: Utility Scale Wind Technology

Guaranteed Capacity: 500 [575] MW

State: New Mexico

Facility Metering Points: See Exhibit R, as may be updated by Seller from time to time upon Notice to Buyer, so long as such update does not have a materially adverse effect on Buyer, as determined by Buyer in its reasonable discretion.

Participating Transmission Owner: SunZia Transmission, LLC

Alternate Facility Descriptions: the Western Spirit Wind Complex, consisting of the below projects:

1. Clines Corners Wind Project: a 324 MW wind-powered electricity generating facility located in Torrance and Guadalupe Counties, in the State of New Mexico, with CAISO IDs CLINESCO_3_PVDYN and CLINESCO_3_WBDYN .
2. Duran Mesa Wind Project: a 105 MW wind-powered electricity generating facility located in Torrance County, in the State of New Mexico, with CAISO ID DURNMESA_3_WBDYN.
3. Tecolote Wind Project: a 272 MW wind-powered electricity generating facility located in

Torrance and Guadalupe Counties, in the State of New Mexico, with CAISO ID
TECOLOTE_3_WBDYN.

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EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- (a) “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for commencement of construction of the Facility following Seller’s execution of an EPC Contract related to the Facility, and once Seller has issued a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site, and has ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration. The date of Construction Start will be evidenced by Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.”
- (b) Subject to Section 5 of this Exhibit B, Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of [REDACTED] days of extensions by such payment of Daily Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller shall provide Notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date (“**Daily Delay Damages Payment**”). If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b); *provided* such Daily Delay Damages Payment may, at Seller’s option, be in the form of cash or one or more Letter(s) of Credit, which Letter(s) of Credit Buyer may immediately draw on, on a pro rata basis, to receive such Daily Delay Damages Payment; *provided*, if Seller provides such Letter(s) of Credit to Buyer prior to providing Notice of the Daily Delay Damages Payment as set forth above, then Buyer shall not draw on such Letter(s) of Credit until Buyer receives such Notice from Seller. Additionally, if Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller and not previously refunded by Buyer.

2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent as set forth in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”).

- (a) Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date. Seller may continue to increase the Installed Capacity of the Facility after the Commercial Operation Date and will notify Buyer from time to time of such increases by delivering a certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit I hereto; when the Installed Capacity is complete, Seller shall include a statement to that effect in a Notice accompanying the final such certificate.
- (b) Subject to Section 2.2 of the Agreement and Section 5 of this Exhibit B, if Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date (as it may be otherwise extended hereunder), Seller may elect to extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] days of extensions by such payment of Commercial Operation Delay Damages. If Seller elects to extend the Guaranteed Commercial Operation Date, on or before the date that is five (5) Business Days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date (“**COD Delay Damages Payment**”); *provided*, such COD Delay Damages Payment may, at Seller’s option, be in the form of cash or one or more Letter(s) of Credit, which Letter(s) of Credit Buyer may immediately draw on, on a pro rata basis, to receive such COD Delay Damages Payment; *provided*, if Seller provides such Letter(s) of Credit to Buyer prior to providing Notice of the COD Delay Damages Payment as set forth above, then Buyer shall not draw on such Letter(s) of Credit until Buyer receives such Notice from Seller. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of the COD Delay Damages Payment, Buyer shall refund to Seller in cash the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended, times the Commercial Operation Delay Damages, not to exceed the total amount of the COD Delay Damages Payment paid by Seller pursuant to this Section 2(b).

(c) [REDACTED]



[Redacted]	
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2. If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), and Buyer has not terminated this Agreement on or before the date that is sixty (60) days after the Guaranteed Commercial Operation Date (as may be extended hereunder) in accordance with Sections 11.1(b)(ii) and 11.2, Seller may elect to terminate this Agreement upon Notice to Buyer, it shall not be an Event of Default by either Party, and neither Party shall have any liability to the other Party, except for the payment by Seller, as liquidated damages, of the Damage Payment, and those obligations that survive termination as expressly described in Section 2.1(b) and Section 11.6.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent (i) the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, and (ii) such delays could not be mitigated by Seller using commercially reasonable efforts to overcome the delays; *provided*, if such delays occur concurrently, the Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date, as applicable, shall only be extended by a single day for each such concurrent day of delay:
- (a) Seller has not acquired the Material Permits by the Guaranteed Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - (b) a Force Majeure Event occurs; or

- (c) the Interconnection Facilities or the SunZia Transmission Line are not complete and ready for the Facility to achieve Initial Synchronization by the expected date for Initial Synchronization as set forth on the Cover Sheet, despite the exercise of commercially reasonable efforts by Seller;

(

- (e) a delay caused by Buyer.

Seller shall submit any claim for Development Cure Period delays within (x) three (3) Business Days of the applicable milestone in the case of (a), (c) or (d) above, and (y) fourteen (14) days after the initial occurrence of the claimed Force Majeure Event in the case of (b) above, in substantially the form set forth in Exhibit T. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(e) above) shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(e) above) shall not exceed [REDACTED]. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

[REDACTED]

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. During the Delivery Term, Buyer shall pay Seller the following amounts for each MWh of Facility Energy, retroactively delivered Replacement Energy delivered pursuant to Section 4.7, and Deemed Delivered Energy during each Contract Year:

(i) Facility Energy. For each MWh of Facility Energy and retroactively delivered Replacement Energy delivered pursuant to Section 4.7, in each Settlement Interval or Settlement Period, as applicable, the difference of (A) the Renewable Rate, minus (B) the Day-Ahead Market LMP applicable to the Delivery Point for such Settlement Interval or Settlement Period, as applicable; *provided*, (x) if the Day-Ahead Market LMP applicable to the Delivery Point for such Settlement Interval or Settlement Period, as applicable, is less than the Floor Price, (A) if the LMP in the Real-Time Market at the Delivery Point is greater than or equal to the Floor Price, Buyer shall pay the difference of (1) the Renewable Rate minus (2) the LMP in the Real-Time Market at the Delivery Point, or (B) if the LMP in the Real-Time Market at the Delivery Point is less than the Floor Price, then such LMP in the Day-Ahead Market will be deemed to be the Floor Price for purposes of this clause (a), and (y) if the result of the foregoing results in a negative value, then Seller shall pay Buyer the absolute value of such result (which payment may be applied as a credit to Buyer on Seller's monthly invoice); and

(ii) Deemed Delivered Energy. For each MWh of Deemed Delivered Energy in each Settlement Interval or Settlement Period, as applicable, Buyer shall pay Seller the Renewable Rate for each MWh of Deemed Delivered Energy. In addition, during the period in which Seller is receiving the PTC for the Facility Energy, Buyer shall also pay the PTC Amount for all Deemed Delivered Energy; *provided, however*, Buyer shall not pay the PTC Amount for Deemed Delivered Energy that was generated by the Facility and sold to a third party during a Market Curtailment Period pursuant to Section 4.4(b). Notwithstanding the foregoing, Seller shall receive no compensation from Buyer, including for the PTC Amount, for Deemed Delivered Energy to the extent that Seller is required to reduce delivery of Facility Energy or would be required to reduce delivery of Deemed Delivered Energy as a result of any Curtailment Period.

(b) Excess Contract Year Deliveries Over 115%. Notwithstanding the foregoing, if at any point in a Contract Year the amount of Facility Energy plus Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, Seller shall provide Notice to Buyer thereof and Buyer shall have the right, but not the obligation, to purchase additional Product (which shall include the purchase of Replacement Energy and Deemed Delivered Energy) during such Contract Year. If Buyer elects not to purchase such additional Product for the remainder of such Contract Year, Buyer shall notify Seller thereof, and (i) Seller's obligation to deliver and Buyer's obligation to purchase Product will stop five (5) Business Days following the receipt of such notice by Seller, until the first day of the following Contract Year, and (ii) Seller may sell and deliver Product to any third party until the first day of the following

Contract Year. If Seller makes third-party sales in accordance with this paragraph, Seller shall be entitled to all revenues and shall bear all costs associated with such sales.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval or Settlement Period, as applicable, Seller delivers Facility Energy in excess of the product of (a) the Hourly Delivery Cap *multiplied by* (b) the duration of the Settlement Interval or Settlement Period, as applicable, expressed in hours ("Excess MWh"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(e) Tax Credits. The Parties agree that the Renewable Rate is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Seller as Scheduling Coordinator for the Facility. Seller shall act as the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility to Schedule and deliver Test Energy and the Product at the Delivery Point. Seller shall bid the Facility's generation into the applicable CAISO market pursuant clause (b) below. Each Party shall perform all scheduling activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. As between Buyer and Seller hereunder, Seller shall be responsible for reporting the Facility Energy delivered to the CAISO in its FERC electronic quarterly reports. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement. Seller (as the Facility's SC) shall ensure that all Facility Energy is electronically tagged (E-Tagged) in accordance with Prudent Operating Practice, this Agreement, and the applicable CAISO Tariff protocols and Scheduling practices.

(b) CAISO Market Participation. Seller shall submit bids equal to or below the Floor Price for Buyer's Share of the Facility's generation into the Day-Ahead Market, and Seller shall bid into the Real-Time Market at or below the Floor Price (i) Buyer's Share of any expected generation above the Day-Ahead Forecast that is awarded a Day-Ahead Schedule or (ii) Buyer's Share of all expected generation in the event that there is no Day-Ahead Schedule. Seller may, but is not required to, reduce deliveries of Product during periods in which the LMP in the Day-Ahead Market or Real-Time Market at the Delivery Point is less than the Floor Price, as applicable; *provided*, Seller shall not reduce deliveries of Product below the amount of the Day-Ahead Forecast that has been awarded a Day-Ahead Schedule during periods in which the LMP in the Real-Time Market at the Delivery Point is less than the Floor Price; *provided further*, if Seller does not reduce deliveries of Product during such periods, Seller shall be compensated for such Facility Energy pursuant to Section (a) in Exhibit C, and such Facility Energy shall not be considered to be Deemed Delivered Energy. The Parties agree to use good faith efforts to work together to permit Buyer to set the Floor Price on a [REDACTED] basis upon not less than ten (10) Business Days' Notice to Seller; *provided, however*, that Buyer shall not have the right to set the Floor Price at a price that is greater than (i) for the period during which Seller is eligible to obtain PTCs for Facility Energy, the Negative PTC Value, and (ii) after the period during which Seller is eligible to obtain PTCs for Facility Energy, zero dollars per MWh (\$0/MWh).

(c) CAISO Costs and Revenues. As the Scheduling Coordinator for the Facility, Seller shall be responsible for all CAISO costs, including without limitation, all penalties, Imbalance Energy charges, and other charges, and shall be entitled to all CAISO revenues, including without limitation, credits, Imbalance Energy payments, and revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account

and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be Seller's responsibility.

(d) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(e) Customer Market Results Interface Access. Seller shall provide to Buyer read-only access to Seller's (or its SC's) customer market results interface for the Facility.

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Current facility description.
3. Current Site plan of the Facility.
4. Description of any planned changes to the Facility or the Site from the previous Progress Report.
5. Gantt chart or schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter or month, as applicable.
8. Written description about the progress relative to Seller's Milestones, including (i) whether Seller has met or is on target to meet the Milestones, and (ii) if a Milestone has been delayed, a description of the cause of the delay, potential courses of action to achieve such missed Milestone and all subsequent Milestones.
9. List of issues that could reasonably foreseeably affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Schedule of status of all major construction agreements, permits, financing agreements and major equipment purchase orders showing the start dates, anticipated completion dates, and completion percentages.
12. Schedule of all Material Permits obtained through the date of the Progress Report.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the PTO's Transmission System and all other interconnection utility services.

EXHIBIT F-1

MONTHLY EXPECTED AVAILABLE CAPACITY

[MW Per Hour] – [Insert Month]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

SMRH:4875-6359-3848.38

EXHIBIT F-2

MONTHLY EXPECTED FACILITY ENERGY

[MWh Per Hour] – *[Insert Month]*

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

SMRH:4875-6359-3848.38

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)] - (E + F)$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the LMP in the Day-Ahead Market at the Delivery Point for all of the hours in the Performance Measurement Period, *plus* (b) the REC Price

D = the Renewable Rate, in \$/MWh

E = The amount of Energy Replacement Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

F = The product of (a) the amount of Replacement Product in MWhs delivered by Seller with respect to the immediately preceding Contract Year and (b) the price which is (C - D)

“Adjusted Energy Production” shall mean the sum of the following: Facility Energy + Deemed Delivered Energy + Lost Output.

“Replacement Energy” means Energy that is produced by the Facility or the Alternate Facility and provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“Replacement Green Attributes” means Renewable Energy Credits that are of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product, and that may be used in connection with the same compliance period applicable to Buyer under the RPS program as the Renewable Energy Credits that would have been generated by the Facility.

SMRH:4875-6359-3848.38

“Replacement Product” means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the Contract Year in connection with which such Replacement Product is delivered.

No payment shall be due if the calculation of (a) $(A - B)$, (b) $(C - D)$, or (c) $[(A - B) * (C - D)] - (E + F)$, yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G.

Within sixty (60) days after each Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period; *provided*, the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by the undersigned, a licensed professional engineer and duly authorized representative of _____ in its capacity as independent engineer ("**Engineer**") for purposes of this certification, to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**"), pursuant to the [agreement between Seller and Engineer] and in connection with that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [Pattern Entity] ("**Seller**") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

- (1) Wind turbines with a nameplate capacity at least equal to at least 100% of the Guaranteed Installed Capacity have been installed at the Facility.
- (2) Testing and commissioning of each wind turbine referred to in paragraph (1) above has been completed in accordance with the turbine supply agreement, and each such wind turbine has delivered electricity to the Point of Interconnection specified in the Interconnection Agreement.
- (3) The Participating Transmission Owner has provided documentation supporting full unrestricted release of at least the Guaranteed Installed Capacity for Commercial Operation on _____[DATE]_____.
- (4) the CAISO has provided notification that the Energy generation from a portion of the Facility that is no smaller than the Guaranteed Installed Capacity may be scheduled into the CAISO markets on an unconditional basis in accordance with the CAISO Tariff and Business Practice Manual(s) as applicable, including the New Resource Implementation process.

EXECUTED on this _____ day of _____, 20__.

Sincerely,

By: _____

[NAME], P.E.

[TITLE]

New Mexico License No. [##]

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by the undersigned, a licensed professional engineer and duly authorized representative of _____ in its capacity as independent engineer ("**Engineer**") for purposes of this certification, to Clean Power Alliance of Southern California, a California joint powers authority ("**Buyer**"), pursuant to the [agreement between Seller and Engineer] and in connection with that certain Renewable Power Purchase and Sale Agreement dated _____ ("**Agreement**") by and between [Pattern Entity] ("**Seller**") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of the date set forth below, [] wind turbines with an aggregate nameplate capacity of [], which is the Installed Capacity as of the date hereof, have been installed at the Facility, and testing and commissioning of each such wind turbines has been completed in accordance with the turbine supply agreement and each such wind turbine has delivered electricity to the Point of Interconnection specified in the Interconnection Agreement.

EXECUTED on this _____ day of _____, 20__.

Sincerely,

By: _____
[NAME], P.E.
[TITLE]
New Mexico License No. [##]
Exp. [DATE]

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by [SELLER ENTITY] ("Seller") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) the EPC Contract related to the Facility was executed on _____;
- (2) the notice to proceed with the construction of the Facility was issued on _____ (attached);
- (3) the Construction Start Date (as defined in Exhibit B of the Agreement) has occurred as of _____; and
- (4) the precise Site on which the Facility is located is (which must be within the boundaries of the previously identified Site):

(such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ____ day of _____.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [●]

DATE: [●]

BENEFICIARY:

APPLICANT: SUNZIA WIND POWERCO LLC

1088 SANSOME STREET, SAN FRANCISCO, CA 94111

EXPIRATION DATE: [●]

AMOUNT/CURRENCY: [●]

AT THE REQUEST OF AND FOR THE ACCOUNT OF APPLICANT, WE, [INSERT BANK NAME AND ADDRESS] (“ISSUER”), HEREBY ESTABLISH IN YOUR FAVOR IN RESPECT OF OBLIGATIONS OF APPLICANT OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [●] (“LETTER OF CREDIT”) IN FAVOR OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, A CALIFORNIA JOINT POWERS AUTHORITY (“BENEFICIARY”), 801 S GRAND, SUITE 400, LOS ANGELES, CA 90017, WHEREBY, SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN, BENEFICIARY IS HEREBY AUTHORIZED TO DRAW ON US, BY SIGHT, BY ITS DRAWING STATEMENT AS PROVIDED HEREIN, FOR AN AGGREGATE AMOUNT UP TO BUT NOT EXCEEDING [●] (THE “FACE AMOUNT”).

WE ARE ADVISED THIS LETTER OF CREDIT IS IRREVOCABLE AND IS ESTABLISHED AS SECURITY PURSUANT TO THAT CERTAIN RENEWABLE POWER PURCHASE AGREEMENT DATED AS OF _____, 2023 BETWEEN APPLICANT AND BENEFICIARY (THE “AGREEMENT”).

THIS LETTER OF CREDIT SHALL BE EFFECTIVE IMMEDIATELY AND SHALL EXPIRE ON [●], WHICH IS ONE YEAR AFTER THE ISSUE DATE OF THIS LETTER OF CREDIT, OR ANY EXPIRATION DATE EXTENDED IN ACCORDANCE WITH THE TERMS HEREOF (THE “EXPIRATION DATE”).

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ADDITIONAL TWELVE (12) MONTH PERIODS FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE, BUT IN NO EVENT TO AN EXPIRATION DATE LATER THAN [●] (THE “FINAL EXPIRATION DATE”), UNLESS AT LEAST NINETY (90) DAYS PRIOR TO THE EXPIRATION DATE WE SEND NOTICE IN WRITING TO YOU VIA HAND DELIVERY OR OVERNIGHT COURIER AT THE ABOVE ADDRESS, THAT WE ELECT NOT TO

AUTOMATICALLY EXTEND THIS LETTER OF CREDIT FOR ANY ADDITIONAL PERIOD.

ON OR BEFORE THE EXPIRATION DATE OF THIS LETTER OF CREDIT YOU MAY DRAW ON US HEREUNDER FOR UP TO THE FULL UNUTILIZED AMOUNT AVAILABLE AS OF THE DATE OF DRAWING ON THIS LETTER OF CREDIT.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED UNDER THIS LETTER OF CREDIT (PROVIDED THAT THE CUMULATIVE AGGREGATE AMOUNT THAT MAY BE DEMANDED UNDER THIS LETTER OF CREDIT SHALL NOT EXCEED THE FACE AMOUNT), AND THIS LETTER OF CREDIT SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ANY CONTINUING BALANCE.

FUNDS UNDER THIS LETTER OF CREDIT SHALL BE AVAILABLE TO THE BENEFICIARY UPON PRESENTATION TO US OF A DATED DRAWING CERTIFICATE IN THE FORM OF EXHIBIT A HERETO (WHICH IS AN INTEGRAL PART OF THIS LETTER OF CREDIT) PURPORTEDLY SIGNED BY THE BENEFICIARY'S DULY AUTHORIZED REPRESENTATIVE.

THE DRAWING CERTIFICATE MAY BE PRESENTED BY (A) PHYSICAL DELIVERY TO [ADDRESS] OR (B) BY FACSIMILE TO FACSIMILE NUMBER [●] (EACH SUCH DRAWING, A "FAX DRAWING"); PROVIDED, HOWEVER, THAT A FAX DRAWING WILL NOT BE EFFECTIVELY PRESENTED UNTIL YOU CONFIRM BY TELEPHONE OUR RECEIPT OF SUCH FAX DRAWING BY CALLING US AT TELEPHONE NUMBER [●] OR YOU CONFIRM BY EMAIL AT: [●]. IF YOU PRESENT A FAX DRAWING UNDER THIS LETTER OF CREDIT YOU DO NOT NEED TO PRESENT THE ORIGINAL OF ANY DRAWING DOCUMENTS, AND IF WE RECEIVE ANY SUCH ORIGINAL DRAWING DOCUMENTS THEY WILL NOT BE EXAMINED BY US. IN THE EVENT OF A FULL AND FINAL DRAWING THE ORIGINAL STANDBY LETTER OF CREDIT MUST BE RETURNED TO US BY OVERNIGHT COURIER.

ALL PAYMENTS MADE UNDER THIS LETTER OF CREDIT SHALL BE MADE WITH ISSUER'S OWN IMMEDIATELY AVAILABLE FUNDS BY MEANS OF WIRE TRANSFER IN IMMEDIATELY AVAILABLE UNITED STATES DOLLARS TO BENEFICIARY'S ACCOUNT AS INDICATED BY BENEFICIARY IN ITS DRAWING CERTIFICATE OR IN A COMMUNICATION ACCOMPANYING ITS DRAWING CERTIFICATE.

WE HEREBY AGREE THAT THE DRAWING DOCUMENTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED BY US UPON DELIVERY OF THE ABOVE SPECIFIED DRAWING CERTIFICATE, IF PRESENTED ON OR BEFORE THE EXPIRATION DATE AS SPECIFIED HEREIN.

AS STIPULATED HEREIN, "BUSINESS DAY" SHALL MEAN ANY DAY OTHER THAN A SATURDAY, SUNDAY OR A DAY ON WHICH BANKING INSTITUTIONS IN THE STATE

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OF ILLINOIS ARE AUTHORIZED OR REQUIRED BY LAW TO CLOSE. IF ANY DRAWING OR THE DOCUMENTATION PRESENTED IN CONNECTION THEREWITH, DOES NOT CONFORM TO THE TERMS AND CONDITIONS HEREOF, WE WILL ADVISE YOU OF THE SAME BY TELEPHONE OR FACSIMILE AND GIVE THE REASONS FOR SUCH NON-CONFORMANCE.

THIS LETTER OF CREDIT IS ISSUED SUBJECT TO THE RULES OF THE 'INTERNATIONAL STANDBY PRACTICES 1998', INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ('ISP98') AND AS TO MATTERS NOT ADDRESSED BY ISP98 SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF STATE OF NEW YORK.

NOTWITHSTANDING ANY REFERENCE IN THIS LETTER OF CREDIT TO ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS (OTHER THAN AS SET FORTH IN THE IMMEDIATELY PRIOR PARAGRAPH), THIS LETTER OF CREDIT CONTAINS THE ENTIRE AGREEMENT BETWEEN BENEFICIARY AND ISSUER RELATING TO THE OBLIGATIONS OF ISSUER HEREUNDER.

OTHER THAN AS PROVIDED HEREIN, COMMUNICATIONS WITH RESPECT TO THIS LETTER OF CREDIT SHALL BE IN WRITING, SHALL SPECIFICALLY REFER TO BENEFICIARY AND TO OUR LETTER OF CREDIT NO. [●], AND SHALL BE ADDRESSED TO: [●] [ISSUING BANK'S NAME AND ADDRESS]

ALL NOTICES TO BENEFICIARY SHALL BE IN WRITING AND ARE REQUIRED TO BE SENT BY CERTIFIED LETTER, OVERNIGHT COURIER OR DELIVERED IN PERSON TO: [BENEFICIARY], ATTN: [BENEFICIARY ADDRESS]. ONLY NOTICES TO BENEFICIARY MEETING THE REQUIREMENTS OF THIS PARAGRAPH SHALL BE CONSIDERED VALID. ANY NOTICE TO BENEFICIARY WHICH IS NOT IN ACCORDANCE WITH THIS PARAGRAPH SHALL BE VOID AND OF NO FORCE OR EFFECT.

ALL COSTS RELATED TO THIS LETTER OF CREDIT SHALL BE PAID BY THE APPLICANT.

ALL PARTIES TO THIS LETTER OF CREDIT ARE ADVISED THAT THE U.S. AND CANADIAN GOVERNMENT HAS IN PLACE CERTAIN SANCTIONS AGAINST CERTAIN COUNTRIES, TERRITORIES, INDIVIDUALS, ENTITIES, AND VESSELS. ISSUER ENTITIES, INCLUDING BRANCHES AND, IN CERTAIN CIRCUMSTANCES, SUBSIDIARIES, ARE/WILL BE PROHIBITED FROM ENGAGING IN TRANSACTIONS OR OTHER ACTIVITIES WITHIN THE SCOPE OF APPLICABLE SANCTIONS.

EXHIBIT "A"

DRAWING CERTIFICATE

TO: [ISSUING BANK]

[ADDRESS]

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [●] ISSUED BY [ISSUING BANK] TO [BENEFICIARY] ("LETTER OF CREDIT"); CAPITALIZED TERMS USED BUT NOT DEFINED IN THIS DRAWING CERTIFICATE HAVE THE MEANINGS ASCRIBED TO THEM IN THE LETTER OF CREDIT)

THIS IS A DRAWING CERTIFICATE UNDER THE ABOVE-MENTIONED LETTER OF CREDIT.

I,_____, AN AUTHORIZED REPRESENTATIVE OF [BENEFICIARY], DO HEREBY CERTIFY THAT:

APPLICANT AND BENEFICIARY ARE PARTY TO THAT CERTAIN RENEWABLE POWER PURCHASE AGREEMENT DATED AS OF _____, 2023 (THE "AGREEMENT").

THE DRAWING UNDER THIS LETTER OF CREDIT IS IN AN AMOUNT DETERMINED ON A PROPORTIONATE BASIS WITH RESPECT TO EACH OTHER OUTSTANDING LETTER OF CREDIT (OR OTHER FORM OF CREDIT SUPPORT) PROVIDED BY OR ON BEHALF OF THE APPLICANT TO BENEFICIARY IN SUPPORT OF THE AGREEMENT AS [DEVELOPMENT SECURITY] [PERFORMANCE SECURITY] [SECURITY FOR PAYMENT OF DAILY DELAY DAMAGES IN ACCORDANCE WITH EXHIBIT B OF THE AGREEMENT] [SECURITY FOR PAYMENT OF COMMERCIAL OPERATION DELAY DAMAGES IN ACCORDANCE WITH EXHIBIT B OF THE AGREEMENT], AND DOES NOT EXCEED A PRO RATA AMOUNT WITH RESPECT TO A CONCURRENT DRAWING UNDER EACH SUCH OTHER OUTSTANDING LETTER OF CREDIT (OR OTHER FORM OF CREDIT SUPPORT).

[CHOOSE ONLY ONE OF THE FOLLOWING]

- (1) BENEFICIARY IS MAKING A DRAWING UNDER THIS LETTER OF CREDIT IN THE AMOUNT OF U.S. \$ _____ BECAUSE [AN EVENT OF DEFAULT (AS SUCH TERM IS DEFINED IN THE AGREEMENT) WITH RESPECT TO SELLER HAS OCCURRED OR OTHER OCCASION PROVIDED FOR IN THE AGREEMENT WHERE BENEFICIARY IS AUTHORIZED TO DRAW ON THE LETTER OF CREDIT HAS OCCURRED] [OR] [A DAILY DELAY DAMAGES PAYMENT IS DUE UNDER THE

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AGREEMENT] [OR] [A COMMERCIAL OPERATION DELAY DAMAGES
PAYMENT IS DUE UNDER THE AGREEMENT].

- (2) BENEFICIARY IS MAKING A DRAWING UNDER THIS LETTER OF CREDIT IN THE AMOUNT OF U.S. \$_____, WHICH EQUALS THE FULL AVAILABLE AMOUNT UNDER THE LETTER OF CREDIT, BECAUSE APPLICANT IS REQUIRED TO MAINTAIN THE LETTER OF CREDIT IN FORCE AND EFFECT BEYOND THE EXPIRATION DATE OF THE LETTER OF CREDIT BUT HAS FAILED TO PROVIDE BENEFICIARY WITH A REPLACEMENT LETTER OF CREDIT OR OTHER ACCEPTABLE INSTRUMENT WITHIN THIRTY (30) DAYS PRIOR TO SUCH EXPIRATION DATE.

IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT, CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, A CALIFORNIA JOINT POWERS AUTHORITY IS ENTITLED TO AND HEREBY DEMANDS PAYMENT OF USD _____, SUCH AMOUNT TO BE PAID TO [BENEFICIARY] BY WIRE TRANSFER IN IMMEDIATELY AVAILABLE FUNDS TO: (INSERT WIRE INSTRUCTIONS), WHICH, CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA CERTIFIES IT IS ENTITLED TO UNDER THE AGREEMENT.

COMMUNICATIONS TO ME CONCERNING THIS DRAWING CERTIFICATE MAY BE MADE AT FOLLOWING TELEPHONE AND FACSIMILE NUMBERS: _____;
_____.

IN WITNESS WHEREOF, [BENEFICIARY] THROUGH ITS AUTHORIZED REPRESENTATIVE HAS EXECUTED AND DELIVERED THIS DRAWING CERTIFICATE THIS DAY OF , 20__.

[____]

BY:_____

NAME:_____

TITLE:_____

EXHIBIT L
FORM OF LIMITED ASSIGNMENT AGREEMENT

**FORM OF ASSIGNMENT SCHEDULE
[SELLER ENTITY]**

Assigned Product: Energy and Green Attributes (PCC1)

Assigned Delivery Point:

Assigned Prepay Quantity: As set forth in Appendix 2; provided that (i) all Assigned Products shall be delivered pursuant to the Limited Assignment Agreement during the Assignment Period as provided in Appendix 1 and (ii) the Assigned Prepay Quantity is defined for the convenience of PPA Buyer and [Financing Party] and shall have no impact on the obligations of the Parties under the Limited Assignment Agreement.

APC Contract Price: \$/MWh

Assignment Period:

ANNEX I – FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [] by and among [PPA Seller], a [] (“**PPA Seller**”), Clean Power Alliance, a California joint powers authority (“**PPA Buyer**”), and [Financing Party], a [] (“**Financing Party**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as defined in Appendix 1 hereto. Unless the context otherwise specifies or requires, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

1. Limited Assignment and Delegation.

(a) PPA Buyer hereby assigns, transfers, and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of, or have made available to it, the products described in Appendix 1 (collectively, the “**Assigned Product**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”). All Assigned Product shall be delivered pursuant to the terms and conditions of this Agreement during the Assignment Period as provided in Appendix 1. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer. The Parties agree that the assignment, transfer and/or conveyance of all or any portion of the Assigned Products in accordance with this Agreement and the Parties’ performance of any obligation in accordance with this Agreement shall not constitute a failure to meet the requirements of the PPA, or a breach of any covenant, representation or warranty under the PPA (and in no event shall Seller be responsible for any failure of any portion of the Assigned Products to satisfy the requirements of the PPA, to the extent such failure results from the assignment, transfer and/or conveyance of such Assigned Products in accordance with this Agreement).

(b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Product that is actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”); provided that (i) all other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer and PPA Buyer shall be solely responsible for any amounts due to PPA Seller that are not directly related to Assigned Product; and (ii) the Parties acknowledge and agree that PPA Seller will only be obligated to deliver a single consolidated invoice during the Assignment Period (with a copy to Financing Party consistent with Section 1(d) hereof). To the extent Financing Party fails to pay the Delivered Product Payment Obligation by the due date for payment set forth in the PPA, notwithstanding anything in this Agreement to the contrary, PPA Buyer agrees that it shall remain responsible for payment of such Delivered Product Payment Obligation and that PPA Seller may declare an Event of Default pursuant to Section 11.1(a)(i) of the PPA if Buyer does not make such payment within five (5) Business Days of receiving Notice of such non-payment from PPA Seller, and that PPA Buyer shall remain liable for any and all damages, costs and expenses of Seller associated with Financing Party’s failure to take or pay for any such Product as contemplated by this Agreement. The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer’s rights and obligations under the PPA, and that all rights and obligations arising under the PPA that are not expressly included in the Assigned Rights and Obligations

shall be “Retained Rights and Obligations” that are retained solely by PPA Buyer, and (ii) the Retained Rights and Obligations include all rights and obligations of PPA Buyer arising during the Assignment Period except the rights and obligations expressly included in the Assigned Rights and Obligations. Any claims arising or existing in connection with or related to the PPA, whether related to performance by PPA Seller, PPA Buyer or Financing Party, and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Product Payment Obligation (provided, however, PPA Buyer still remains liable that all amounts due and owing under the PPA are timely paid), will be included in the Retained Rights and Obligations, and any such claim will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.

(c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance, and delegation described in clauses (a) and (b) above.

(d) All scheduling of Assigned Product and other communications related to the PPA shall take place pursuant to the terms of the PPA; provided that during the Assignment Period (i) title to Assigned Product will pass from PPA Seller to Financing Party upon delivery or making available by PPA Seller of Assigned Product in accordance with the PPA; (ii) PPA Buyer will provide copies to Financing Party of any Notice of a Force Majeure Event or Event of Default or default, breach or other occurrence that, if not cured within the applicable grace period, could result in an Event of Default contemporaneously upon delivery thereof to PPA Seller and promptly after receipt thereof from PPA Seller; (iii) PPA Seller will provide copies to Financing Party of annual forecasts of Energy and monthly forecasts of available capacity and Energy provided pursuant to Section 4.3 of the PPA; (iv) PPA Seller will provide copies to Financing Party of all invoices and supporting data provided to PPA Buyer pursuant to Section 8.1, provided that any payment adjustments or subsequent reconciliations occurring after the date that is ten (10) days prior to the payment due date for a monthly invoice, including pursuant to Section 8.4, will be resolved solely between PPA Buyer and PPA Seller and therefore PPA Seller will not be obligated to deliver copies of any communications relating thereto to Financing Party; and (v) PPA Buyer and PPA Seller, as applicable, will provide copies to Financing Party of any other information reasonably requested by Financing Party relating to Assigned Product.

(e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Product received from PPA Seller through one or more intermediaries such that all Assigned Product will be re-delivered to PPA Buyer; and (ii) in the event that PPA Buyer fails to pay the relevant intermediary entity for any such Assigned Products, the receivables owed by PPA Buyer for such Assigned Products (“PPA Buyer Receivables”) may be transferred to Financing Party. To the extent any such PPA Buyer Receivables are transferred to Financing Party, and PPA Buyer acknowledges in writing that such receivables are due and payable and waives any and all defences and counterclaims associated with such receivables for the undisputed amounts owed pursuant to the PPA, Financing Party may transfer such PPA Buyer Receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation. Thereafter, PPA Seller shall be entitled to pursue collection on such PPA Buyer Receivables directly against PPA Buyer. Nothing in this Section 1(e) shall modify PPA Seller’s right to declare an Event of Default pursuant to Section 11.1(a)(i) of the PPA in the event that any portion of the Delivered Product Payment Obligation remains unpaid by the due date for payment set forth in the PPA, and such amount is not paid by Financing Party or PPA Buyer within five (5) Business Days of PPA Buyer receiving Notice of such non-payment from PPA Seller as provided in Section 1(b), above.

(f) On or before the commencement of the Assignment Period, [] (“**Guarantor**”) will issue, in favor of PPA Seller, a guaranty of Financing Party’s payment obligations under this Assignment Agreement substantially in the form of Appendix 3 attached hereto (“**Guaranty**”). PPA Seller may draw upon, apply, or make demand under the Guaranty to recover any unpaid amounts due from Financing Party and not timely paid as set forth herein; provided, however, that PPA Seller’s rights under the Guaranty and this subsection (f) shall not reduce or affect PPA Buyer’s obligation to render payments when due under the PPA or extend any deadlines in the PPA.

(g) All payments due to PPA Seller in respect of Sections 3.3 of the PPA will be paid (subject to Section 1(e), above) by Financing Party into the custodial account listed in Appendix 1, and all payments due to PPA Buyer in respect of Section 3.3 of the PPA will be paid by PPA Seller into the custodial account listed in Appendix 1, which custodial account is established under that certain Custodial Agreement of even date herewith that Financing Party, PPA Buyer and [Custodian] have entered into for the administration of payments due hereunder.

(h) The Assigned Prepay Quantity set forth in Appendix 2 relates to obligations by and between Financing Party and PPA Buyer and has no impact on PPA Seller’s rights and obligations under the PPA.

(i) Except as expressly set forth in Section 1(a) of this Assignment Agreement with respect to the product delivery obligations, nothing in this Agreement modifies or amends any rights or obligations of PPA Buyer and PPA Seller under the PPA.

2. Assignment Early Termination.

(a) The Assignment Period may be terminated early upon the occurrence of any of the following:

(1) delivery of a written notice of termination specifying a termination date by either Financing Party or PPA Buyer to each of the other Parties;

(2) delivery of a written notice of termination specifying a termination date by PPA Seller to each of Financing Party and PPA Buyer following Financing Party’s failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such payment is not made by Financing Party within five (5) Business Days following receipt by Financing Party and PPA Buyer of written notice;

(3) delivery of a written notice by PPA Seller if any of the events described in the definition of Bankrupt in the PPA occurs with respect to Financing Party;

(4) delivery of a written notice by Financing Party if any of the events described in the definition of Bankrupt in the PPA occurs with respect to PPA Seller;
or

(5) failure of the Guaranty provided by the Guarantor to PPA Seller hereunder to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Financing Party hereunder or if the Guarantor provides notice of termination of the Guaranty or otherwise repudiates,

disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of the Guaranty.

(b) The Assignment Period will end at the end of last delivery hour on the date specified in the termination notice provided pursuant to Section 2(a), above, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clause (1) or (2) of Section 2(a), above. All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration or early termination of the Assignment Period, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered or made available to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

(c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA. All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the PPA, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Representations and Warranties. The PPA Seller and the PPA Buyer represent and warrant to Financing Party that (a) the PPA is in full force and effect; and (b) no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder.

4. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Article 9 of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Buyer agrees to notify Financing Party of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. Notices to Financing Party shall be provided to the following address, as such address may be updated by Financing Party from time to time by notice to the other Parties:

Financing Party

Email: _____

5. Miscellaneous. Section 13.2 (Buyer's Representations and Warranties), Article 18 (Confidential Information), Sections 19.5 (Severability), 19.7 (Counterparts), 19.2 (Amendments), 19.4 (No Agency, Partnership, Joint Venture or Lease), 19.6 (Mobile-Sierra), 19.8 (Electronic Delivery), 19.9 (Binding Effect) and 19.10 (No Recourse to Members of Buyer) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

6. U.S. Resolution Stay Provisions. The Parties agree that the terms of Section 1 and Section 2 and the related defined terms (together, the "**Bilateral Terms**") of the form of bilateral template entitled "Full-Length Omnibus (for use between U.S. G-SIBs and Corporate

Groups)", published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org), the effect of which is to amend the qualified financial contracts between the Parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a "Covered Agreement", Financing Party shall be deemed a "Covered Entity" and the Counterparty shall be deemed a "Counterparty Entity". In the event that, after the date of this Agreement, all Parties hereto become adhering Parties to the 2018 ISDA U.S. Resolution Stay Protocol (the "**Protocol**"), the terms of the Protocol will replace the terms of this section. In the event of any inconsistencies between this Agreement and the terms of the Protocol or the Bilateral Terms (each, the "**QFC Stay Terms**"), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to "this Agreement" include any related credit enhancements entered into between the Parties, directly or indirectly through an agent, or provided by one to the other.

"QFC Stay Rules" means the regulations codified at 12 C.F.R. 252.2, 252.81-8, 12 C.F.R. 382.1-7 and 12 C.F.R. 47.1-8, which, subject to limited exceptions, require an express recognition of the stay-and-transfer powers of the FDIC under the Federal Deposit Insurance Act and the Orderly Liquidation Authority under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act and the override of default rights related directly or indirectly to the entry of an affiliate into certain insolvency proceedings and any restrictions on the transfer of any covered affiliate credit enhancements.

7. Governing Law, Jurisdiction, Waiver of Jury Trial.

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the Parties under this Assignment Agreement will be governed by and construed, enforced and performed in accordance with the laws of the State of California, without reference to any conflicts of law provisions that would direct the application of another jurisdiction's laws; provided, however, that the authority of PPA Buyer to enter into and perform its obligations under this Assignment Agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each Party submits to the exclusive jurisdiction of the federal courts of the United States of America for the Southern District of California sitting in the city and county of Los Angeles.

(c) **Waiver of Right to Trial by Jury.** Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Assignment Agreement.

(d) **Waivers by PPA Buyer.** In the event that any of California Civil Code Sections 2815, 2787 to 2855 (inclusive), 2899, or 3433, or any common law principles or holdings regarding suretyship, may apply with respect to PPA Buyer's obligations hereunder, PPA Buyer hereby waives for the benefit of PPA Seller any and all surety defenses to the fullest extent permitted under applicable law, including all rights and defenses that are or may become available to PPA Buyer by reason of California Civil Code Sections 2787 to 2855, inclusive, 2899 and/or 3433, and any right to revoke this Assignment Agreement, including any such right arising under California Civil Code § 2815; *provided*, nothing in this Section 7(d) shall be deemed to be of waiver of, and PPA Buyer retains in full, any and all rights and defenses PPA Buyer has under the PPA, including at law and in equity.

(e) **Forward Contract.** The Parties acknowledge and agree that the delivery of the Assigned Products to Financing Party contemplated hereby is intended to constitute a “forward contract” and that the Parties are intended to constitute “forward contract merchants” within the meaning of the United States Bankruptcy Code.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

[PPA SELLER]

By: _____

Name: _____

Title: _____

CLEAN POWER ALLIANCE

By: _____

Name: _____

Title: _____

[FINANCING PARTY]

By: _____

Name:

Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____

Name:

Title:

Appendix 1

Assigned Rights and Obligations

PPA: “PPA” means that certain Renewable Power Purchase Agreement dated [____], by and between Clean Power Alliance and [____], a [____] limited liability company, as amended from time to time.

“Assignment Period” means the period beginning on [_____] and extending until [_____] provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 2 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA; provided that applicable provisions of this Agreement shall continue in effect after termination of the Assignment Period to the extent necessary to enforce or complete, duties, obligations or responsibilities of the Parties arising prior to the termination.

Assigned Product: “Assigned Product” includes (i) Energy and (ii) Green Attributes (including PCC1 RECs); provided, however, that the following are expressly excluded from the Assigned Product and any and all rights and obligations with respect to the following shall remain with Buyer: Ancillary Services; Capacity Attributes; Resource Adequacy Benefits.

Further Information: PPA Seller shall continue to transfer the WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy under the PPA pursuant to Section 4.7 of the PPA, provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both Financing Party and Clean Power Alliance upon twenty (20) Business Days’ notice, which change shall be effective as of the first day of the next calendar month, unless otherwise agreed. All Assigned Product delivered by PPA Seller to Financing Party shall be a sale made at wholesale, with Financing Party reselling all such Assigned Product.

Appendix 2

Assigned Prepay Quantity

[NOTE: To be set forth in a monthly volume schedule.]

Appendix 3
Form of Financing Party Parent Guaranty

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EXHIBIT M
FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [_____] a [_____] (“Guarantor”), and [_____] (together with its successors and permitted assigns, “Buyer”).

Recitals

A. Buyer and _____, a _____ (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 20____.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed the sum of _____ Dollars (\$_____) plus reasonable costs incurred by Buyer in enforcing this Guaranty, if successful, up to Two-Hundred Thousand Dollars (\$200,000) for an aggregate maximum liability of _____ Dollars (\$_____) (the “Guarantee Limit”). The Parties understand and agree that any payment by Guarantor shall thereafter reduce the Guarantee Limit hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "Demand Notice"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "Payment Demand") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any Person, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four business days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at
Attn:
Fax:

If delivered to Guarantor, to it at
Attn:
Fax:

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States sitting in the County of San Francisco, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior

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written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT

TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.
- (iv) THE PARTIES AGREE THAT THE COSTS OF THE REFEREE SHALL BE SHARED EQUALLY BY THE PARTIES.
- (v) THE PARTIES AGREE THAT EACH PARTY SHALL BE RESPONSIBLE FOR ITS OWN COSTS AND EXPENSES, INCLUDING LEGAL FEES, IN CONNECTION WITH ANY GENERAL REFERENCE PROCEEDING.

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____
Printed Name:
Title:

BUYER:

[_____]

By: _____
Printed Name:
Title:

By: _____
Printed Name:
Title:

EXHIBIT N

NOTICES

SUNZIA WIND POWERCO LLC ("Seller")	CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA , a California joint powers authority ("Buyer")
All Notices: Street: 1088 Sansome St. City: San Francisco, CA Attn: General Counsel Phone: [REDACTED] Email: [REDACTED]	All Notices: Street: 801 S Grand, Suite 400 City: Los Angeles CA, 90017 Attn: Chief Executive Officer Phone: (213) 269-5870 Email: tbardacke@cleanpoweralliance.org
Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: Federal Tax ID Number:
Invoices: Attn: Pattern Energy Settlements Phone: [REDACTED] Email: [REDACTED]	Invoices: Attn: Vice President, Power Supply Phone: (213) 280-4011 E-mail: settlements@cleanpoweralliance.org
Scheduling: Attn: Manager 24/7 Operations Control Center [REDACTED] Email: [REDACTED] Phone: [REDACTED] Facsimile: [REDACTED]	Scheduling: Attn: Operations 24/7 Desk Phone: (817) 462-1509 Email: TenaskaComm@tnsk.com
Confirmations: Attn: Pattern Energy Settlements Phone: [REDACTED] Email: [REDACTED]	Confirmations: Attn: Vice President, Power Supply Phone: (213) 280-4011 Email: lsaxby@cleanpoweralliance.com Email CC: energycontracts@cleanpoweralliance.org
Payments: Attn: Pattern Energy Settlements Phone: [REDACTED] Email: [REDACTED]	Payments: Attn: Vice President, Power Supply Phone: (213) 280-4011 E-mail: settlements@cleanpoweralliance.org
Wire Transfer: BNK: [REDACTED] ABA: [REDACTED]	Wire Transfer: BNK: River City Bank ABA: [REDACTED] ACCT: XXXXXX7557

SMRH:4875-6359-3848.38

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OLD: 4875-6359-3848.26
84ET-377928

SUNZIA WIND POWERCO LLC ("Seller")	CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority ("Buyer")
ACCT: [REDACTED] ACCT NAME: [REDACTED]	
Emergency Contact: Attn: 24/7 Operations Control Center Phone: [REDACTED] Email: [REDACTED]	Emergency Contact:

EXHIBIT O
RESERVED

SMRH:4875-6359-3848.38

1

102523

OLD: 4875-6359-3848.26
84ET-377928

EXHIBIT P
CPM Adjustment Factors

Month	Multiplier
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

EXHIBIT Q

Supply Chain Code of Conduct

Buyer is committed to ensuring that the fundamental human rights of workers are protected, including addressing the potential risks of forced labor, child labor, servitude, human trafficking and slavery across our portfolio.

Our requirements and expectations for Seller's supply chain are detailed below in our Supply Chain Code of Conduct ("**Supply Chain Code**"). Seller must comply with all applicable Laws and this Supply Chain Code (subject to Section 2.3(b) of this Agreement), even when this Supply Chain Code exceeds the requirements of applicable Law.

These standards are derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization ("ILO"), including the ILO Declaration on Fundamental Principles and Rights at Work, and the Responsible Business Alliance Code of Conduct.

1. Freely Chosen Employment

Forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons is not permitted. This includes transporting, harboring, recruiting, transferring, or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. There shall be no unreasonable restrictions on workers' freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities including, if applicable, workers' dormitories or living quarters. All work must be voluntary, and workers shall be free to leave work at any time or terminate their employment without penalty if reasonable notice is given as per worker's contract. Employers, agents, and sub-agents' may not hold or otherwise destroy, conceal, or confiscate identity or immigration documents, such as government-issued identification, passports, or work permits. Employers can only hold documentation if such holdings are required by law. In this case, at no time should workers be denied access to their documents. Workers shall not be required to pay employers' agents or sub-agents' recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker.

2. Young Workers

Child labor is not to be used in any stage of manufacturing. The term "child" refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence of educational partners, and protection of students' rights in accordance with applicable laws and regulations. Suppliers shall provide appropriate support and training to all student

workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

3. Working Hours

Studies of business practices clearly link worker strain to reduced productivity, increased turnover, and increased injury and illness. Working hours are not to exceed the maximum set by local law. Further, suppliers shall use commercially reasonable efforts to limit a workweek to not more than 60 hours per week, including overtime. All overtime must be voluntary. Workers shall be allowed at least one day off every seven days.

4. Wages and Benefits

Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. For each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed. All use of temporary, dispatch and outsourced labor will be within the limits of the local law.

5. Humane Treatment

There is to be no harsh or inhumane treatment including violence, gender-based violence, sexual harassment, sexual abuse, corporal punishment, mental or physical coercion, bullying, public shaming, or verbal abuse of workers; nor is there to be the threat of any such treatment. Disciplinary policies and procedures in support of these requirements shall be clearly defined and communicated to workers.

6. Non-Discrimination/Non-Harassment

Suppliers should be committed to a workplace free of harassment and unlawful discrimination. Companies shall not engage in discrimination or harassment based on race, color, age, gender, sexual orientation, gender identity and expression, ethnicity or national origin, disability, pregnancy, religion, political affiliation, union membership, covered veteran status, protected genetic information or marital status in hiring and employment practices such as wages, promotions, rewards, and access to training. Workers shall be provided with reasonable accommodation for religious practices. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way or otherwise in violation of applicable law. This was drafted in consideration of ILO Discrimination (Employment and Occupation) Convention (No.111).

7. Freedom of Association

In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices

without fear of discrimination, reprisal, intimidation, or harassment.

8. Restricted Jurisdictions

Supplier shall not manufacture or produce products in the Xinjiang Uyghur Autonomous Region of China, or knowingly procure goods and services mined, produced or manufactured in the same.

EXHIBIT R

METERING DIAGRAM

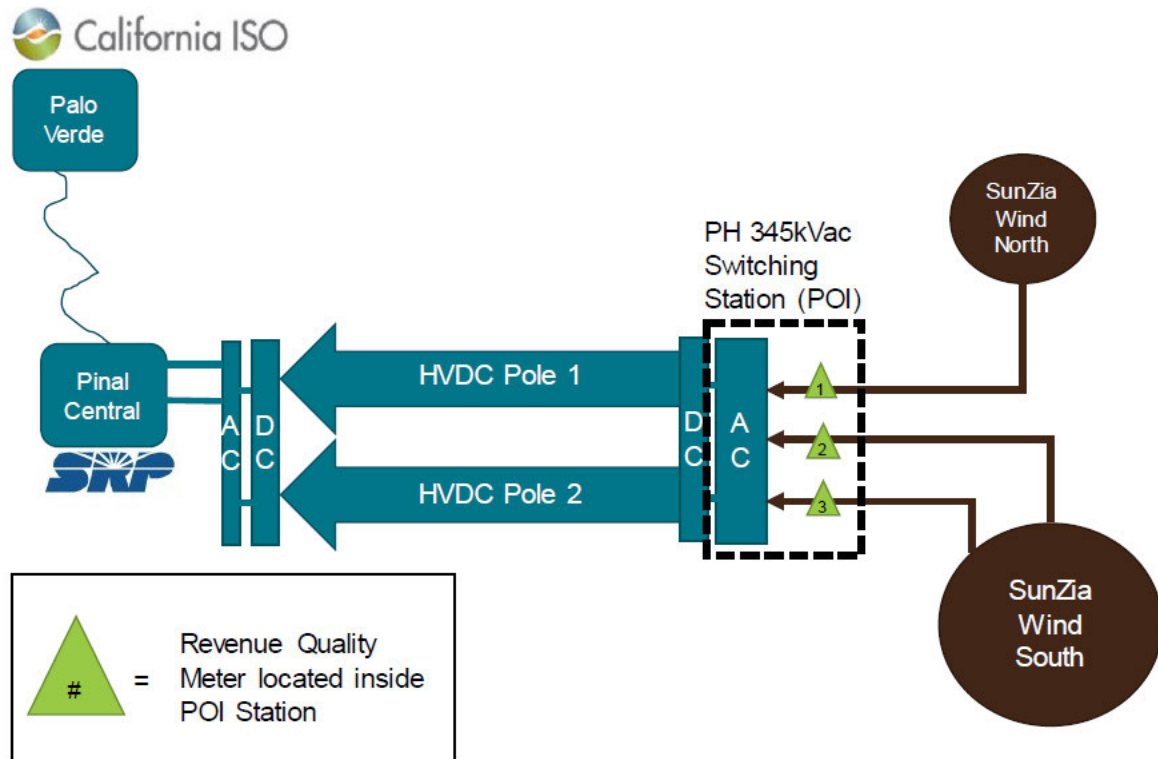


EXHIBIT S

MATERIAL PERMITS

<i>No.</i>	<i>Permits</i>
	<u><i>SunZia Wind North Material Permits</i></u>
1.	N/A

	<u><i>SunZia Wind South Material Permits</i></u>
1.	<u>Bureau of Land Management - Mining Plan - Rio Puerco Field Office</u>
2.	<u>Bureau of Land Management - Mining Plan - Roswell Field Office</u>
3.	<u>Federal Aviation Administration Act - Determinations of No Hazard</u>
4.	<u>First Amendment to Torrance County – Road Use Agreement</u>
5.	<u>First Amendment to Lincoln County – Road Use Agreement, SunZia South</u>
6.	<u>First Amendment to Lincoln County – Road Use Agreement</u>

EXHIBIT T

Force Majeure Event and/or Development Cure Period Claim Form

Instructions

- A. Please review Article 10 and Exhibit B (if applicable) of the Renewable Power Purchase Agreement prior to filling out the form.
- B. Fill out the form completely and return to your assigned Contract Manager at CPA.

Seller: [Name]

Project: [Name]

Current Guaranteed Construction Start Date: [Date]

New Guaranteed Construction Start Date (if Seller's claims are validated in full): [Date]

Guaranteed Commercial Operation Date: [Date]

New Guaranteed Commercial Operation Date (if Seller's claims are validated in full):
[Date]

Seller hereby certifies and represents to Buyer the following:

1. Please describe the claimed Force Majeure Event or other event giving rise to the claimed Development Cure Period delay(s) (the "Claimed Event"), including its cause, date of commencement and date it ended or is anticipated to end, if known.
2. Please specify the extent of the delay or prevented performance, if known, caused by the Claimed Event, including the relief claimed thereby. Describe how the claimed relief was calculated/determined, accounting for individual developments causing such delay or prevented performance.
3. With respect to a Claimed Event other than a Force Majeure Event, please describe the commercially reasonable efforts taken by Seller, if any, to prevent such event or, if applicable, explain in reasonable detail why it was not possible to take such efforts.
4. Please describe the commercially reasonable efforts taken to mitigate the delays or

nonperformance caused by the Claimed Event, if any, or, if applicable, explain in reasonable detail why it was not possible to take such efforts, and specify if such efforts, if any, reduced the delay days or nonperformance that would otherwise have occurred absent such mitigation.

5. Please attach supporting documentation, including (to the extent applicable and available):

- Force Majeure notices or other correspondence received from suppliers and/or contractors that describe the basis for and extent of the Claimed Event.
- Documentation, contracts, and/or correspondence with suppliers and/or contractors evidencing the claiming Party's mitigation efforts.
- Project schedule and/or GANNT charts that demonstrate the effect of the Claimed Event on the Guaranteed Commercial Operation Date.

By signing this Claim form, I attest and affirm that I am authorized to sign this form on behalf of the Seller.

[SELLER NAME]

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT U

OPERATING RESTRICTIONS

Operating Restrictions of the Facility are as follows:

- Interconnection Capacity (Maximum Injection Amount): 3,000 MW
- Minimum operating capacity: 0.0 MW
- Maximum number of start-ups per calendar day (if any such operational limitations exist): N/A
- Ramp Rate: The ramp rate accepted by CAISO in the Master File of the Facility.
- Minimum Down Time: N/A



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Washington, DC 20001
202.833.7000
www.ibew.org

KENNETH W. COOPER
International President

PAUL A. NOBLE
International
Secretary-Treasurer

September 14, 2023

VIA U.S. MAIL AND EMAIL

Dr. Julian Gold
Board Chair
Clean Power Alliance
801 S Grand Ave, Suite 400
Los Angeles, CA 90017

Mr. Ted Bardacke
Chief Executive Officer
Clean Power Alliance
801 S Grand Ave, Suite 400
Los Angeles, CA 90017

Mr. Robert Parkhurst
Chair, Energy Committee
Clean Power Alliance
801 S Grand Ave, Suite 400
Los Angeles, CA 90017

**Re: IBEW Support for the SunZia Clean Energy Transmission and
Wind Infrastructure Project**

Dear Dr. Gold, Mr. Parkhurst, and Mr. Bardacke:

On behalf of the more than 820,000 active and retired members of the International Brotherhood of Electrical Workers (IBEW), I write in full support of the SunZia Clean Energy Transmission and Wind Infrastructure Project. SunZia's approximately \$8 billion investment in New Mexico and Arizona has been described as the largest single-phase renewable energy project in the United States.

The project will create 3,500 megawatts of new wind generation — enough power for 3 million customers — with a 550-mile long, primarily bi-directional 525 kV high-voltage direct current (HVDC) transmission line between the two states. It will also create more than 2,000 construction jobs during peak construction and is anticipated to employ a significant number of IBEW members of Albuquerque, New Mexico Local Union 611 and Phoenix, Arizona Local Union 769.

The IBEW represents approximately 420,000 active members working in the construction industry. These highly skilled and trained IBEW members play a vital role in the future economic prosperity of their communities. IBEW local unions like Local Unions 611 and 769 are the leaders in the nation in recruiting and training the highly skilled workforce necessary for responsible economic development supported by good, union jobs.



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WORKERS®**

Dr. Gold, Mr. Parkhurst and Mr. Bardacke
September 14, 2023
Page 2

Thanks to partnerships with the IBEW and other labor unions, the SunZia project represents a significant, positive and responsible economic development opportunity for Arizona and New Mexico. Good, union jobs create an economic ripple effect, as union members' income contributes directly or indirectly to state and local payroll taxes, increased spending in local businesses and local construction vendors, investments in job training, increased local charitable contributions, increased tourism, and more. The project is estimated to provide \$20.5 billion in total economic benefit and \$1.3 billion in direct payments to local governments, communities, schools and private landowners.

Building and maintaining a highly qualified workforce is extremely important to build the renewable energy infrastructure of the future. I greatly appreciate the IBEW's collaboration with Pattern Energy and its contractor(s) to ensure that a highly qualified labor workforce is employed on SunZia, and the IBEW looks forward to contributing to the success of the project.

IBEW members across the West appreciate the high labor standards that Clean Power Alliance has promoted on its projects, with more than 20 project labor agreements in effect on new clean energy infrastructure completed or under construction for CPA, as well as the financial contributions they have provided to the IBEW training centers in Los Angeles and Ventura counties. SunZia will continue this legacy of high-road job creation that you have supported.

For these reasons, I ask that you approve the Power Purchase Agreement for the SunZia project, which will help meet the challenges being faced as a nation to build a resilient grid and meet carbon reduction goals for future generations.

Sincerely yours,

Kenneth W. Cooper
International President

KWC:mea



October 18, 2023

Re: Los Angeles Business Council Support – SunZia Wind

Dear Clean Power Alliance Board of Directors,

The Los Angeles Business Council (LABC) is pleased to support the continued business of Pattern Energy in California with regard to the SunZia suite of wind and transmission projects. Pattern Energy, a member of the Los Angeles Business Council, serves more clean energy to California than any other company, including more than 6% for the City of Los Angeles.

LABC supports SunZia Wind with Clean Power Alliance, just as we supported the Pattern Energy Red Cloud Wind PPA with the Los Angeles Department of Water & Power (LADWP), which was part of the gigawatt-scaled Western Spirit wind and transmission suite of facilities commissioned in 2022. The Western Spirit facilities were ground-breaking, as Pattern Energy partnered with the municipal government of Los Angeles and the state government of New Mexico, utilizing new-build transmission developed jointly with the New Mexico Renewable Energy Transmission Authority (RETA), paired with existing grid capacity owned by LADWP that had been originally built for now-retired coal plants. Western Spirit was a truly cost-effective renewable energy success for the citizens of Los Angeles, and represented the largest renewable energy construction project in the U.S. at the time, upholding the values of responsible development with strong community engagement and good-paying jobs for working families, including more than 70% union labor.

Now Pattern Energy is preparing for SunZia Wind, its next major regional wind and transmission effort, which will be more than three times larger than Western Spirit and LABC is again proud to support the project for any load serving entity, especially those serving the interests of the greater Los Angeles area, such as Clean Power Alliance. With almost 70% of its customers receiving 100% Green Power, CPA has already signed 33 long-term contracts to meet the energy needs of its customers. SunZia will continue CPA's commitment to procuring renewable energy for their over 3 million customers.

LABC agrees with the Biden Administration that SunZia is, "a game- changer for America's Clean Energy Economy and our fight to save the planet." LABC believes in the integrity and vision of both Pattern Energy and Clean Power Alliance showing responsible leadership in the renewable energy industry, the state of California, and the nation.

Sincerely,

Mary Leslie
President
LABC

SunZia Wind Power Purchase Agreement

November 2, 2023





Agenda

- ⚡ Action Requested
- ⚡ Background
- ⚡ Project Summary



Actions Requested

- ⚡ CPA is seeking Board approval for the SunZia Wind long-term renewable energy Power Purchase Agreement (PPA)

Option	Project	Technology	Installed Capacity	Commercial Operation Date	Contract Length	Process
1	SunZia Wind	Wind	500 MW	2026	15 Years	2023 Clean Energy and Reliability RFO
2	SunZia Wind	Wind	575 MW	2026	15 Years	2023 Clean Energy and Reliability RFO

- ⚡ SunZia originally offered 500 MW in CPA's 2023 Clean Energy and Reliability RFO and was shortlisted by the Energy Committee
- ⚡ Subsequent to October's Executive Committee meeting, CPA received an offer to increase the contract size by 75 MW for a total of 575 MW under the same terms as offered in the RFO and subsequently negotiated contract
- ⚡ Staff prefers Option 2

Background and Project Overview



Background

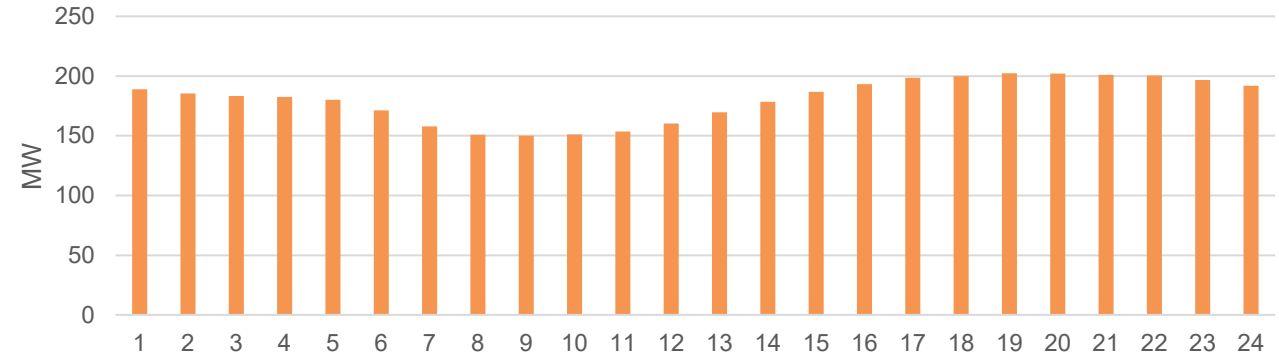
- ⚡ CPA launched the 2023 Clean Energy and Reliability RFO in June to fill a larger portion of its portfolio needs with long-term contracts and reduce its need to procure Resource Adequacy (RA) and renewable energy in short-term markets.
- ⚡ In September 2023, the Energy Committee approved the RFO shortlist and waitlist recommendation. The SunZia Wind project was on the shortlist with an installed capacity of 500 MW.
- ⚡ On October 23rd, following discussion of the project at the October 19 Executive Committee meeting, SunZia approached CPA with an offer to increase the installed capacity of the project by 75MW to 575MW.
- ⚡ The SunZia Wind complex is a 3,515 MW wind project in central New Mexico developed by Pattern Energy. It is complemented by a new transmission line being constructed to bring the energy to California.
- ⚡ CPA would be an “anchor” off-taker of the project, contracting for 500MW (14%) or 575 MW (16%) of SunZia’s total capacity.
- ⚡ SunZia Wind is historic in size. Its nameplate capacity is approximately 50% greater than the Hoover Dam, and its annual generation will be about three times that of the Hoover Dam. Together with the transmission line, it is the single largest renewable energy project ever constructed in the United States (\$8 billion).
- ⚡ The project has been nearly two decades in the making and has a wide variety of supporters across the Federal government, labor, environmental, and business groups.



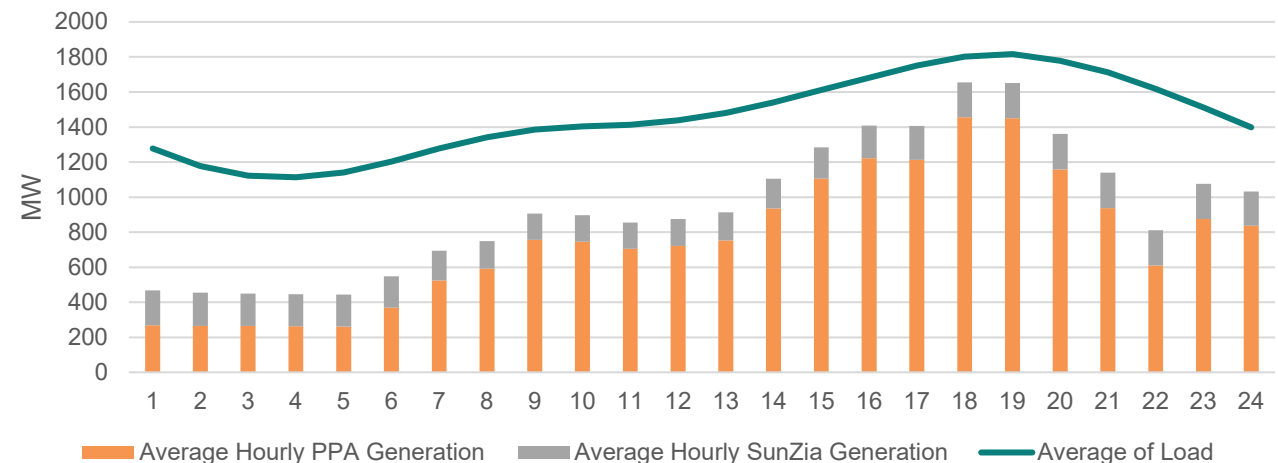
Wind and CPA's Energy Portfolio

- ⚡ Wind energy is important to CPA's portfolio because it is complementary to the generating profile of solar, providing renewable energy in the evening and at night.
- ⚡ Expected generation from the SunZia PPA will make a significant contribution to CPA's renewable energy supply sourced from long-term contracts.
- ⚡ At 500 MW, the SunZia project will fill approximately 14% of CPA's forecasted renewable need in 2028. At 575 MW, it will fill approximately 16% of the renewable need.

SunZia Average Hourly Profile

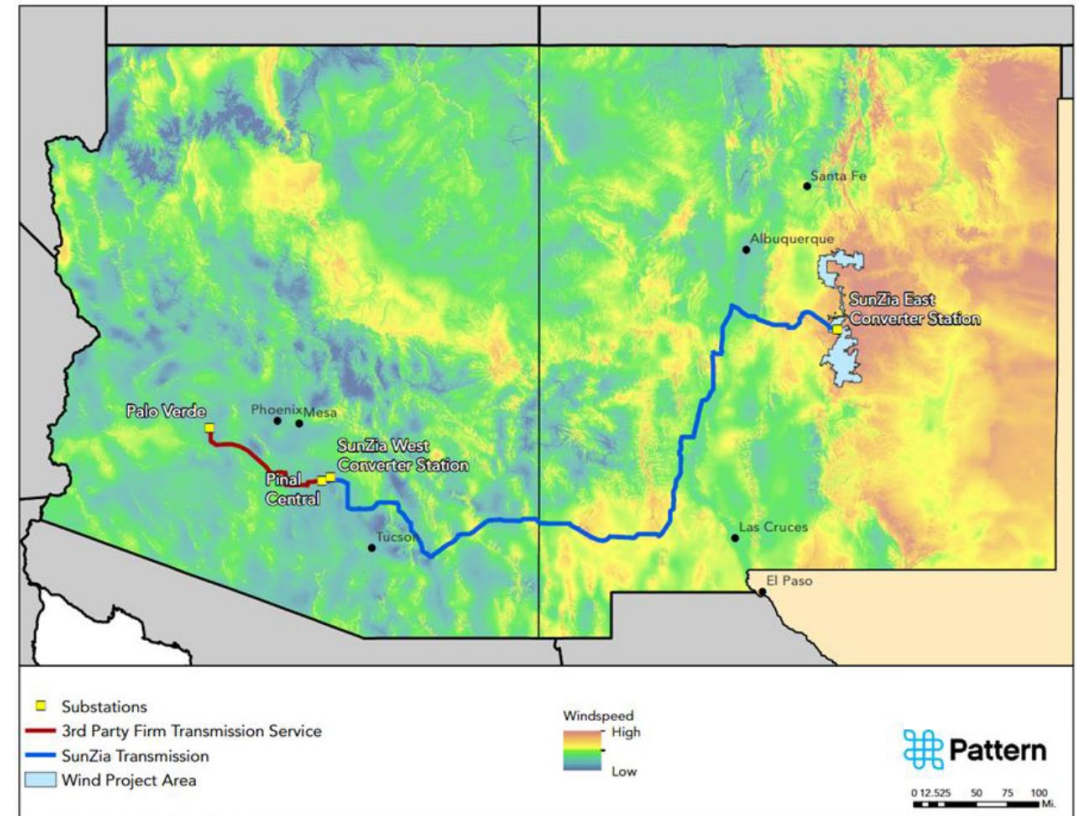


2028 Average Hourly Load versus Average Hourly PPA Generation (Executed and Proposed)



SunZia Wind Project Overview

- ⚡ SunZia Wind is located in Lincoln, Torrance and San Miguel Counties in central New Mexico. A new transmission line (SunZia Transmission) will bring the wind power to both Arizona and to the California Independent System Operator (CAISO)
- ⚡ The developer, Pattern Energy, has an operating portfolio of 35 renewable power facilities and has placed approximately 6 GW of wind generation into service in its history, including the new Western Spirit project which supplies LADWP and other public power/CCA entities in California
- ⚡ Energy from SunZia will be dynamically transferred into the CAISO at the Palo Verde intertie, at which point the project has a 2,131 MW firm transmission limit
- ⚡ CPA will receive a "Buyer's Share" – either 14% or 16% depending on option selected – of all energy that flows to CAISO
- ⚡ Under current Resource Adequacy (RA) rules, SunZia will provide up to 150 MW of RA to CPA under the PPA, varying by month
- ⚡ The proposed PPA has provisions to split the project and/or contract into two pieces to facilitate financing



SunZia Wind Supporters

The project has a long list of supporters:

- ⚡ **Federal Government:** the project groundbreaking was headlined by Secretary of the Interior, Deb Haaland. Interior was the main permitting authority for the transmission line. The project was praised as evidence that the US can still do big things in energy.
- ⚡ **Labor:** IBEW is a significant supporter of the project, hailing it in a letter to CPA as a significant, positive and responsible economic development opportunity and a source of good, union jobs.
- ⚡ **Environmental:** The project is supported by the National Audubon Society and located in a “low-conflict area” identified by the Nature Conservancy. Pattern has worked with conservation groups to avoid, minimize, or mitigate project impacts on wildlife and habitat.



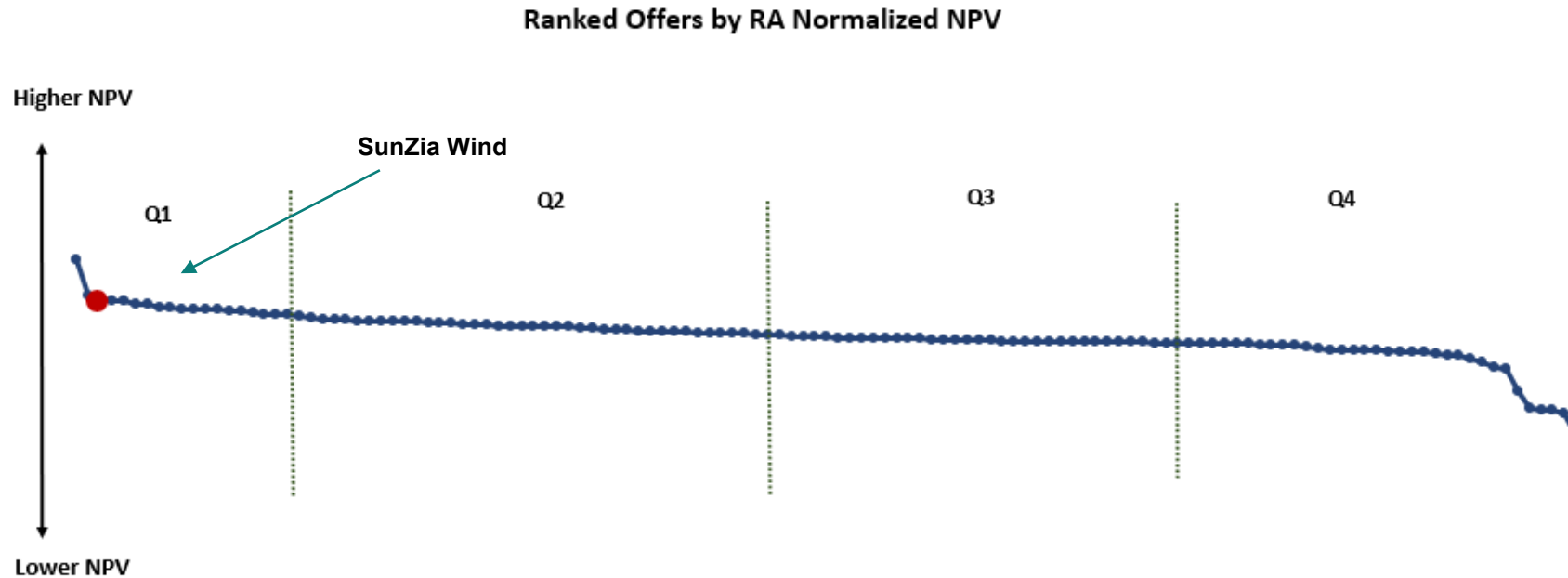
Interior Secretary Haaland at the project groundbreaking on Sept 1.

Project Valuation and Rationale



RFO Valuation

- ⚡ CPA solicited for multiple technologies in it's RFO, including solar, battery storage, and wind and received four conforming offers from wind projects.
- The SunZia Wind offer was the third best valued project submitted in the solicitation of *any technology*.
- Only one of the wind offers was in-state and accounted for ~150 MW of the total 1,000 MW of wind offered.
- CPA shortlisted the in-state offer as well as SunZia, but the project has not entered exclusivity.
- SunZia Wind is located in one of the nation's windiest locations, has a dedicated transmission line, and a near-term online date (2026).



SunZia Wind Project Evaluation

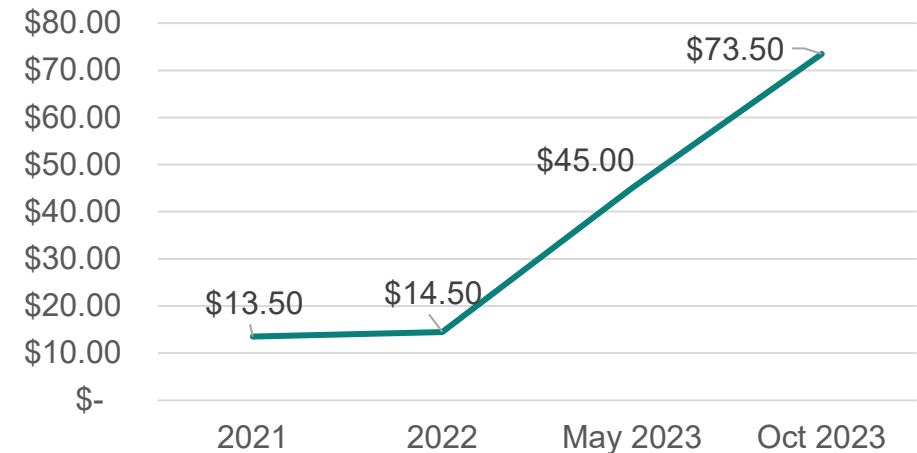
Criteria	Rank	Rationale
Quantitative Value	First Quartile	The project was in the first quartile of projects ranked by RA Normalized NPV.
Development Score	High	The project scores “High” as it is significantly de-risked. The major discretionary permits have been secured and the project has site control. Interconnection Agreements are executed. The developer, Pattern, has extensive experience in renewable energy and wind resource development.
Workforce Development	High	The project scores “High” as Pattern has secured agreements with IBEW and has pledged to fund CPA’s local Workforce Development efforts.
Environmental Stewardship	Neutral	The project scores a “Neutral” in Environmental Stewardship. Although partially located on undisturbed lands, Pattern has engaged with local, regional, and national conservation stakeholders to reduce project impacts on habitat and species.
Benefits to Disadvantage Communities (DACs)	Neutral	The project scores “Neutral” as it is not located in a DAC.
Project Location	Medium	The project scores “Medium” as it is located outside California but the majority of the project is located in a federally-designated “Energy Community” with significant amounts of employment in the fossil fuel industry and higher than average levels of unemployment.

Market Conditions

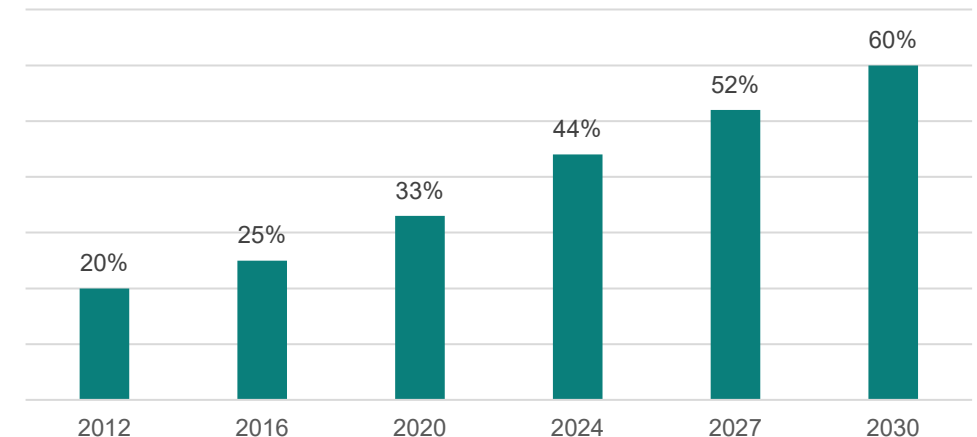
- ⚡ Availability of additional energy from new renewable resources will most likely remain tight for the foreseeable future
- ⚡ CPA's load growth is expected to accelerate due in part to increased electric vehicle adoption and building electrification, resulting in an increased need for renewable energy
- ⚡ As state RPS Procurement requirements increase, there will be an increase in demand for renewable projects
- ⚡ Interconnection backlogs and transmission constraints continue to stifle the supply of resources available to come online
- ⚡ Due to tight market conditions, short-term REC prices have dramatically increased in the last year
- ⚡ CPA has made a strategic decision to procure long-term resources beyond its compliance requirements to ensure CPA has enough supply to meet customer commitments, regulatory requirements, and to help mitigate its exposure to price risk in the short-term markets for Renewable Energy Credits (RECs) and RA

1. Prices are CPUC benchmarks for 2021 and 2022 and broker quotes for 2023

PCC1 Market Price \$/REC¹

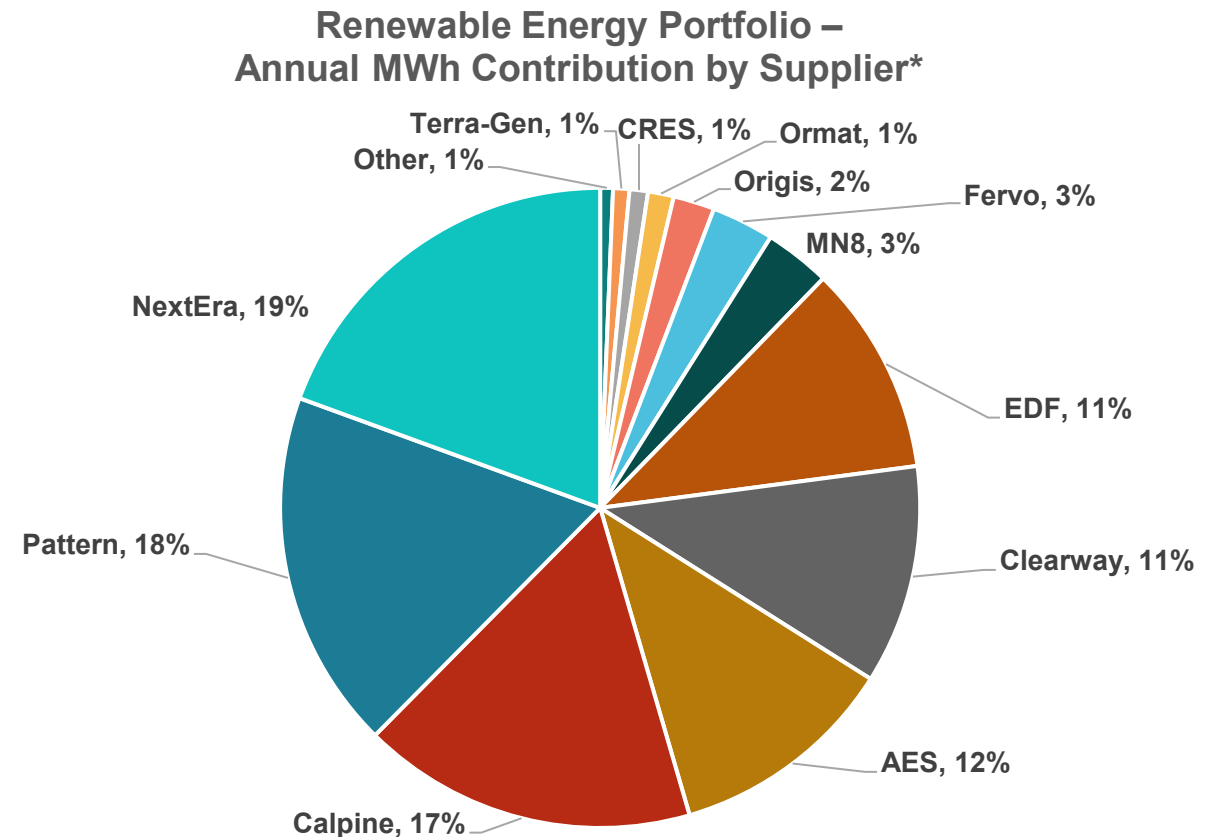


California Renewable Portfolio Standard Requirements
(% of Retail Sales)



Supplier Concentration

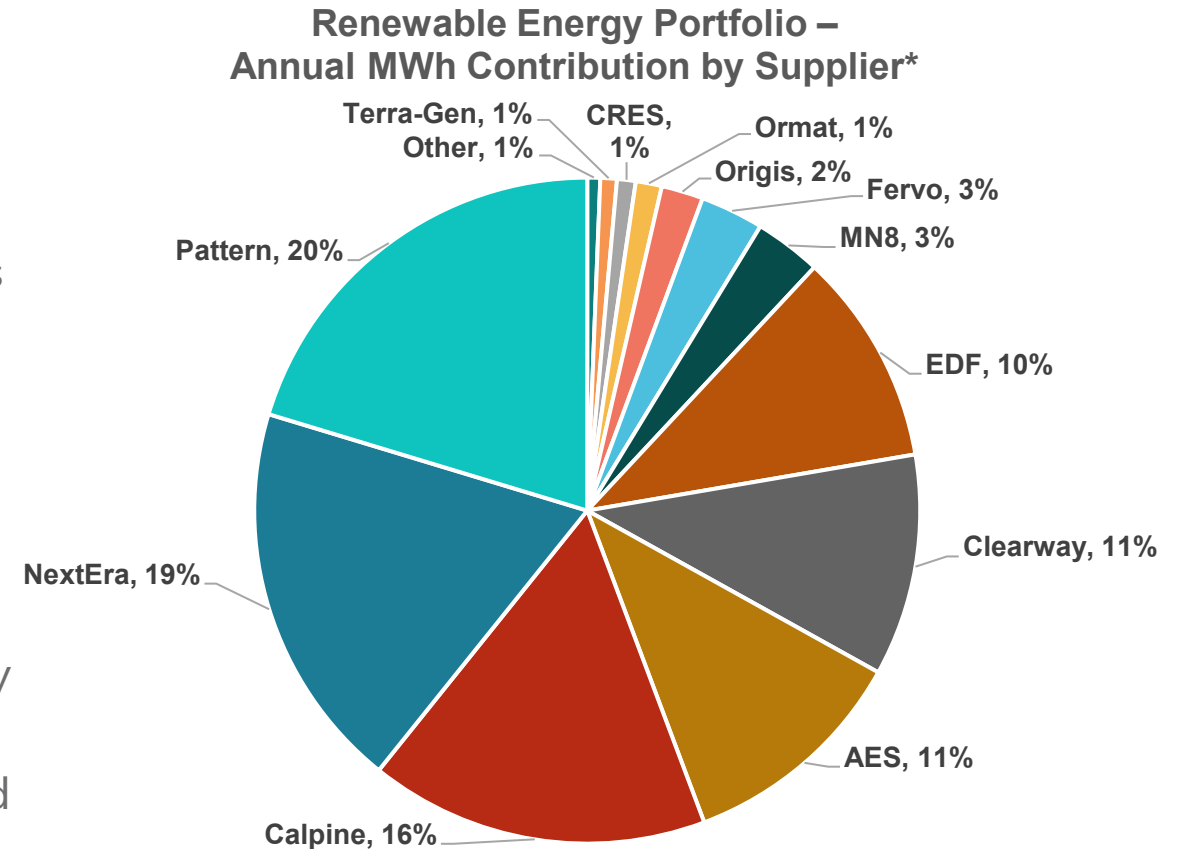
- The addition of the 500MW or 575 MW SunZia project will result in Pattern becoming CPA's second largest energy supplier in terms of total annual MWh
- While SunZia is a large project, Pattern's portfolio share is comparable to other leading suppliers in CPA's portfolio



*Chart data includes the 500 MW SunZia project

SunZia Wind Project 575 MW Option 2

- ⚡ Subsequent to the October Executive Committee meeting, CPA received an offer to increase the contract size by 75 MW.
- ⚡ The additional capacity is being offered under the same terms as those negotiated in the shortlisted offer.
- ⚡ In addition to the 500 MW staff prefers accepting SunZia's offer for an additional 75 MW of capacity for a total of 575 MW.
- ⚡ CPA has yet to enter exclusivity with all of its shortlisted counterparties and it is common for projects to drop out after shortlisting or for fully executed contracts to fail to achieve COD.
- ⚡ SunZia is in late stages of its development and is very likely to achieve commercial operation.
- ⚡ Wind projects are scarce and SunZia is competitively priced and in the 1st quartile in NPV.
- ⚡ The additional 75 MW has a negligible impact on CPA's supplier concentration risk.



*Chart data includes the 575 MW SunZia project



Summary

- ⚡ The Sunzia Wind project will allow CPA to make meaningful progress towards meeting its long-term renewable energy and RA needs
- ⚡ Sunzia Wind was the third highest value project in the RFO across all technologies and will provide CPA with cost effective renewable energy with a generation profile that complements CPA's solar resources
- ⚡ **Action Requested: Approve the 15-year Renewable Power Purchase Agreement with SunZia Wind PowerCo LLC (SunZia Wind) and authorize the Chief Executive Officer to execute the agreement for either Option 1 or Option 2.**



Staff Report – Agenda Item 5

To: Board of Directors

From: David McNeil, Chief Financial Officer

Approved By: Ted Bardacke, Chief Executive Officer

Subject: Fiscal Year 2022-2023 Audited Financial Statements and Fiscal Year 2022-2023 Budget to Actual Report

Date: November 2, 2023

RECOMMENDATION

Receive a presentation of CPA's Fiscal Year (FY) 2022-2023 Audited Financial Statements and FY 2022-2023 Budget to Actual report.

BACKGROUND

Each year CPA publishes fiscal year-end financial statements. CPA's Bylaws require the Finance Committee to select an independent auditor to perform a financial audit of the accounts of CPA on an annual basis. In April 2023, the Finance Committee selected Baker Tilly to perform an audit of CPA's FY 2022-23 financial statements.

Staff is responsible for the preparation and fair presentation of the financial statements. The independent auditor performs tests to ensure that the financial statements are free from material misstatement. On October 17, 2023 Baker Tilly reported its audit findings to the Finance Committee which included a 'clean' audit opinion.

The FY 2022-23 Financial Statements (Attachment 1) consist of the following:

- Independent Auditors' Report (Auditors' Report)
- Management's Discussion and Analysis
- Financial Statements, including:

- Statements of Net Position
- Revenues and Expenses and Changes in Net Position
- Statements of Cash Flows
- Notes to the Financial Statements

DISCUSSION

Auditors' Report

The Auditors' Report includes its opinion that CPA's FY 2022-23 Financial Statements "present fairly, in all material respects, the financial position of Clean Power Alliance of Southern California as of June 30, 2023 and 2022, and the respective changes in financial position and cash flows thereof for the years then ended in accordance with accounting principles generally accepted in the United States of America". The Auditors' Report contains what is generally regarded as an unqualified or "clean" audit opinion.

Financial Highlights

- CPA recorded strong financial results in FY 2022-23. The net position increased by \$80.3 million, up from a \$67 million increase in the prior year.
- CPA's FY 2022-23 financial results benefited from the following:
 - Increases in retail rates on July 2022 and April 2023. However, these benefits were offset by September 2022 heat wave, gas and energy price shocks in December 2022 and January 2023, higher than budgeted renewable energy costs, and a Resource Adequacy compliance penalty.
 - Interest Income increased due to the increase in market interest rates stemming from rate hikes made by the Federal Reserve.
 - The receipt and application of \$10.4 million of California Arrearage Payment Program (2022 CAPP) funds which reduced eligible past-due accounts receivable and increased cash in January 2023.
 - Cash was positively impacted by the increase in net position, higher accrued electricity costs and lower energy market settlements. Cash was negatively impacted by higher accounts receivable, accrued revenue, and higher prepaid expenses. Higher accounts receivable and accrued revenue

arose primarily from an increase in retail electricity rates. Higher prepaid expenses resulted primarily from resource adequacy contracts. Higher accrued electricity costs resulted from higher electricity costs and delays in supplier invoicing for renewable energy. Lower energy market settlements expenditures arose from cool weather conditions in June 2023 and lower charges from the CAISO.

- In September 2022, CPA drew \$60 million on its \$80 million JP Morgan Chase credit facility. CPA repaid \$20 million of the loan in September 2022, and an additional \$40 million was repaid in October 2022.
- In January 2023, CPA drew \$35 million on its \$80 million JP Morgan credit facility and repaid it in the same month.
- In June 2023 CPA amended the credit facility agreement with JP Morgan, by increasing the facility size to \$160 million from \$80 million.
- As of June 30, 2023, CPA had no loans, bank debt or letters of credit outstanding and apart from a \$147,000 letter of credit issued to SCE; \$159.853 million of CPA's line of credit was unutilized.
- Total liquidity (unrestricted cash and cash equivalents and unused bank line of credit) increased year over year from \$134.4 million as of June 30, 2022 to \$292.6 million as of June 30, 2023.
- The financial results comply with CPA's credit covenants.
- On September 27, 2023, CPA received an A- issuer credit rating from S&P Global Ratings, which is expected to yield many benefits to CPA including:
 - Increasing the number and quality of financial institutions willing to finance CPA's long-term renewable and energy storage projects;
 - Increasing energy supplier participation in CPA's short-term solicitations for energy and RA, increasing competition and potentially reducing costs;
 - Reducing or eliminating certain collateral posting obligations;

- Reducing costs associated with CPA's bank line of credit; and
- Enhancing CPA's reputation as a stable, financially-sound leader in the energy industry.

Key financial metrics and additional analysis of FY 2022-23 results are presented in the Presentation of FY 2022-23 Financial Results (see Attachment 3).

FY 2022-23 Budget to Actual Report

The FY 2022-23 Budget to Actual Report (see Attachment 2) compares actual results for the 12 months ending June 30, 2023 with the FY 2022-23 Budget as amended by the Board at its April 6, 2023 meeting (Amended Budget). Budget to Actual highlights include:

- Net position increased by \$80.3 million, \$13.3 million more than the prior year's increase of \$67 million.
- Operating revenues less energy cost (gross margin) was \$15.5 million below amended budget primarily impacted by the September 2022 heat wave, gas and energy price shocks in December 2022 and January 2023, higher than budgeted renewable energy costs, and a Resource Adequacy compliance penalty.
- Operating expenses were 23% under the budget primarily due to lower spending on general and administrative expenses, customer programs and other services, and the non-utilization of contingencies.
- CPA was within budget limits for all budget expense line items with the exception of the following:
 - SCE service expenses (\$190,466 or 9% over amended budget). SCE service expenses exceeded budget due to adjustments made by SCE in the current fiscal year that relate to services delivered in prior years.
 - Interest Income (\$1,284,273, 364% over amended budget) Interest Income increased significantly compared to the amended budget due to higher market interest rates stemming from rate hikes made by the Federal Reserve, which resulted in CPA earning more interest from the bank than in prior years.

Additional analysis of Budget to Actual results, including a comparison of actual FY 2022-23 results with the FY 2022-23 Amended Budget approved by the Board in April 2023, appears in the Presentation of FY 2022-23 Financial Results (Attachment 3).

Summary

For the year ending June 30, 2023, CPA increased the net position by \$80.3 million and \$162.8 million in total liquidity. CPA is in sound financial health and is well-positioned to serve its customers and deliver on its mission.

ATTACHMENTS

1. FY 2022-23 Audited Financial Statements
2. FY 2022-23 Budget to Actual Report
3. Presentation of FY 2022-23 Financial Results and Initial 2024 PCIA and SCE Rate Outlook



**CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA**

**Basic Financial Statements with Independent
Auditors' Report**

For the Fiscal Years Ended June 30, 2023 and 2022

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Independent Auditors' Report

To the Board of Directors of
Clean Power Alliance of Southern California

Opinion

We have audited the accompanying financial statements of Clean Power Alliance of Southern California (CPA), as of and for the years ended June 30, 2023 and 2022, and the related notes to the financial statements, which collectively comprise the CPA's basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements referred to above present fairly, in all material respects, the financial position of CPA as of June 30, 2023 and 2022, and the changes in financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the CPA and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America; and for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the CPA's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditors' Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the CPA's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the CPA's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings and certain internal control-related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the Management's Discussion and Analysis, as listed in the table of contents be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Baker Tilly US, LLP

Madison, Wisconsin
October 17, 2023

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
YEARS ENDED JUNE 30, 2023 AND 2022**

The Management's Discussion and Analysis section provides an overview of Clean Power Alliance of Southern California's (CPA) financial activities as of and for the fiscal years ending June 30, 2023 and 2022. The information presented here should be considered in conjunction with the audited financial statements.

Contents of this Report

This report is divided into the following sections:

- Management's Discussion and Analysis.
- The Basic Financial Statements, including:
 - The *Statements of Net Position* which include all of CPA's assets, liabilities, and net position and provide information about the nature and amount of resources and obligations at a specific point in time.
 - The *Statements of Revenues, Expenses, and Changes in Net Position* which report all of CPA's revenue and expenses for the years shown.
 - The *Statements of Cash Flows* which report the cash provided and used by operating activities, as well as other sources and uses, such as non-capital financing activities.
 - Notes to the Basic Financial Statements, which provide additional details and information related to the Basic Financial Statements.

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
YEARS ENDED JUNE 30, 2023 AND 2022**

MANAGEMENT'S DISCUSSION AND ANALYSIS

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
YEARS ENDED JUNE 30, 2023 AND 2022**

BACKGROUND

CPA was formed pursuant to California Assembly Bill 117 which enables communities to purchase power on behalf of their residents and businesses and creates retail choices for electric generation services.

CPA, formerly Los Angeles Community Choice Energy (LACCE), was created as a California Joint Powers Authority on June 27, 2017. CPA was established to study, promote, develop, conduct, operate, and manage energy programs in Southern California. The parties to CPA's Joint Powers Agreement consist of local governments whose governing bodies elect to join CPA. Governed by a board of directors (Board) made up of elected officials from each of the parties to the JPA, CPA has the authority to set rates for the services it furnishes, incur indebtedness, and issue bonds or other obligations. CPA acquires electricity from commercial suppliers and delivers it through existing physical infrastructure and equipment managed by the California Independent System Operator (CAISO) and Southern California Edison (SCE).

Pursuant to the Public Utilities Code, when parties join CPA, all electricity customers in its jurisdiction, except for customers served under California's Direct Access Program, automatically become default customers of CPA for electric power generation, provided that customers are given the option to "opt-out".

CPA began operations by serving approximately 1,800 municipal and commercial accounts in February 2018. In June 2018, it enrolled approximately 28,000 municipal and commercial accounts. In February 2019, CPA enrolled approximately 900,000 residential customer accounts. In May 2019, CPA enrolled approximately 100,000 commercial accounts. CPA enrolled approximately 4,000 residential and commercial accounts from Westlake Village in June 2020. In March 2024, CPA will enroll approximately 38,000 additional accounts from three jurisdictions that joined the JPA in late 2022.

CPA's goal is to provide customers with competitively priced and affordable electricity with high renewable energy content and low greenhouse gas emissions. Currently, CPA offers its customers three electricity services to choose from: Lean Power, Clean Power, and 100% Green Power. Lean Power provides 40% clean power (20-25% renewable and 15-20% carbon-free energy content); Clean Power provides at least 50% clean power (50% renewable and up to 20% additional carbon-free energy content) and 100% Green Power provides 100% renewable energy content.

Financial Reporting

CPA presents its financial statements as a governmental enterprise fund under the economic resources measurement focus and accrual basis of accounting, in accordance with Generally Accepted Accounting Principles (GAAP) for proprietary funds, as prescribed by the Governmental Accounting Standards Board (GASB).

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
YEARS ENDED JUNE 30, 2023 AND 2022**

FINANCIAL HIGHLIGHTS

The following table summarizes CPA's assets, liabilities, deferred inflows of resources, and net position for the fiscal years (FY) ending June 30.

	2023	2022	Restated * 2021
Current assets	\$ 407,408,168	\$ 248,918,632	\$ 225,858,031
Noncurrent assets			
Capital assets, net	544,973	674,257	489,912
Intangibles - right-to-use lease asset, net	2,201,743	2,584,651	2,967,559
Other noncurrent assets	88,875	88,876	88,875
Total assets	<u>410,243,759</u>	<u>252,266,416</u>	<u>229,404,377</u>
Current liabilities	183,290,311	101,449,979	145,466,396
Noncurrent liabilities			
Lease liability, noncurrent	2,256,068	2,659,209	3,006,197
Other noncurrent liabilities	3,149,860	6,904,000	6,724,000
Total liabilities	<u>188,696,239</u>	<u>111,013,188</u>	<u>155,196,593</u>
Net position			
Investment in capital assets	87,507	252,712	404,068
Restricted for collateral	1,200,000	2,400,000	3,614,700
Unrestricted (deficit)	220,260,013	138,600,516	70,189,016
Total net position	<u>\$ 221,547,520</u>	<u>\$ 141,253,228</u>	<u>\$ 74,207,784</u>

* FY 2020-21 financial results are "restated" to reflect the implementation of GASB 87 consistent with generally accepted accounting principles.

Current Assets

Current assets were approximately \$407,408,000 at the end of FY 2022-23 and were mostly comprised of \$132,787,000 of cash and cash equivalents, \$123,259,000 of accounts receivable, \$87,230,000 of accrued revenue, \$46,153,000 of prepaid expenses and \$15,951,000 in deposits.

Current assets were approximately \$248,919,000 at the end of FY 2021-22 and were mostly comprised of \$54,538,000 of cash and cash equivalents, \$96,571,000 of accounts receivable, \$55,497,000 of accrued revenue, \$7,659,000 of other receivables, \$6,138,000 of prepaid expenses and \$26,116,000 in deposits.

Total current assets increased as of June 30, 2023, compared to the prior year, particularly cash, prepaids, accrual revenue, and accounts receivable. Cash increased year over year primarily due to operating surpluses and reduced collateral posting required by the CAISO. Prepaids increased compared to the prior year mainly due to the prepayments required pursuant to Resource Adequacy contracts. Accounts receivable increased primarily due to the retail sales increase resulting from rate increases in July 2022 and April 2023, more jurisdictions converting to the 100% Green rate, and the suspension by SCE of disconnections and late payments penalties applied to residential accounts receiving funding under the California Arrearage Payment Program.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
YEARS ENDED JUNE 30, 2023 AND 2022

Total current assets increased as of June 30, 2022, compared to the prior year, particularly deposits, accounts receivable, and other receivables. Deposits increased year over year primarily due to increased collateral posting amounts required by the CAISO. Accounts receivable increased year over year primarily due to a rate increase that went into effect in July 2021 and increased retail electricity use in May and June 2022 as compared to May and June 2021. Other receivables increased primarily due to payments from energy suppliers under the netting provisions of power purchase agreements.

Noncurrent Assets

Noncurrent assets decreased as of June 30, 2023, compared to the prior year mainly due to the amortizing of the intangible office lease asset and the depreciation expenses. Noncurrent assets decreased as of June 30, 2022, compared to the prior year primarily as a result of amortizing the intangible office lease asset.

Current Liabilities

Current liabilities consist mostly of the costs of electricity delivered to customers that are not yet due to be paid by CPA to its suppliers. Other components include trade accounts payable, taxes and surcharges due to governments, and various other accrued liabilities. Unearned program funds represent funds for customer programs received from the CPUC and not yet spent.

Total current liabilities increased as of June 30, 2023, compared to the prior year, mainly due to the increase in the cost of energy accrual resulting from higher resource adequacy and renewable energy costs.

Total current liabilities decreased as of June 30, 2022, compared to the prior year, primarily as a result of a decrease in security deposits from energy suppliers. Security deposits from energy suppliers decreased as a result of reduced collateral requirements arising from energy supply agreements.

Noncurrent Liabilities

Noncurrent liabilities decreased as of June 30, 2023, from the prior year primarily as a result of a decrease in supplier security deposits pursuant to energy supply agreements.

Noncurrent liabilities decreased as of June 30, 2022, from the prior year primarily as a result of the decrease in lease liability due to the reclass per GASB 87, offset by increased supplier security deposits pursuant to energy supply agreements.

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
YEARS ENDED JUNE 30, 2023 AND 2022**

Revenues and Expenses

The following table summarizes CPA's results of operations for the years ending June 30:

	2023	2022	Restated 2021
Operating revenues	\$ 1,167,777,256	\$ 867,481,478	\$ 824,104,492
Interest income	1,770,273	114,136	227,842
Total income	<u>1,169,547,529</u>	<u>867,595,614</u>	<u>824,332,334</u>
Operating expenses	1,088,598,932	799,920,707	796,556,502
Nonoperating expenses	654,305	629,463	153,683
Total expenses	<u>1,089,253,237</u>	<u>800,550,170</u>	<u>796,710,185</u>
Change in net position	<u>\$ 80,294,292</u>	<u>\$ 67,045,444</u>	<u>\$ 27,622,149</u>

Total Income

Operating revenues arise from electricity sales to customers and funding to support CPA's Power Share program. CPA reports electricity revenues, net of an allowance for uncollectable accounts, as described in the Notes to the Financial Statements.

Operating revenues increased to approximately \$1,167,777,000 in FY 2022-23 from \$867,481,000 in FY 2021-22. Revenue increased primarily as a result of increases in retail electricity rates that occurred in July 2022 and April 2023.

Operating revenues increased in FY 2021-22 from the prior year as a result of an increase in retail electricity rates that occurred in July 2021.

Year-over-year changes in interest income reflect changes in interest rates and average cash balances in interest-earning accounts.

Total Expenses

Operating expenses include the cost of electricity and electric capacity used to serve CPA's customers and meet its regulatory obligations, charges and credits levied by the CAISO, contracts with service providers, staff compensation and general and administrative expenses. Non-operating expenses consist primarily of interest and other expenses associated with borrowing agreements.

Operating expenses increased to \$1,088,599,000 in FY2022-23 from \$799,921,000 in FY 2021-22. The increase is mainly due to increased prices for certain products in the energy markets. CPA purchases its energy supply from various resources in order to reduce market risk and maintain a balanced, renewable energy portfolio. Contract service costs increased year-over-year as CPA implemented more customer programs and incentives and performed more community outreach.

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
YEARS ENDED JUNE 30, 2023 AND 2022**

Staffing and general and administrative costs increased year over year as CPA hired additional staff and built out its operating capabilities.

Electricity costs and other operating expenses increased in FY 2021-22 from the prior year primarily as a result of the increased energy costs, contract services and staff costs.

Change in Net Position

The change in net position represents the difference between total income and total expenses in a given fiscal year.

CPA's net position increased by \$80,294,000 in FY 2022-23. CPA's net position increased by \$67,045,000 in FY 2021-22 and by \$27,622,000 in FY 2020-21.

CPA had a higher increase in net position in FY 2022-23 as compared to FY 2021-22 due to increased electricity sales resulting primarily from rate increases and higher interest income offset by the increased costs for energy, staffing, and customer programs.

CPA had a higher increase in net position in FY 2021-22 as compared to the prior year due to increased electricity sales, offset by smaller increases in the cost of electricity and operating expenses.

PURCHASE COMMITMENTS AND ECONOMIC OUTLOOK

During the normal course of business, CPA enters into various agreements, including renewable energy agreements, energy storage agreements, and other power purchase agreements to purchase power and electric capacity (Resource Adequacy). CPA enters into power purchase agreements and energy supply agreements in order to comply with state law and voluntary targets for renewable and greenhouse gas (GHG) free products. California law established a Renewable Portfolio Standard (RPS) that requires load-serving entities, such as CPA, to gradually increase the amount of renewable energy they deliver to their customers.

In October 2015, the California Governor signed Senate Bill (SB) 350, the Clean Energy and Pollution Reduction Act of 2015, into law. SB 350 became effective January 1, 2016, and increases the amount of renewable energy that must be delivered by most load-serving entities, including CPA, to their customers from 33% of their total annual retail sales by the end of the 2017-2020 compliance period, to 50% of their total annual retail sales by the end of the 2028-2030 compliance period, and in each three-year compliance period thereafter, unless changed by legislative action.

In September 2018, the California Governor signed SB 100, the 100 Percent Clean Energy Act of 2018, into law. SB 100 increases the amount of renewable energy that must be delivered to customers by most load-serving entities, including CPA, by 60% of their annual retail sales by the end of the 2028-2030 compliance period. SB 100 also further establishes as state policy that eligible renewable energy resources and zero-carbon resources supply 100 percent of all retail

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
YEARS ENDED JUNE 30, 2023 AND 2022

sales of electricity to California end-use customers and 100 percent of electricity procured to serve all state agencies by December 31, 2045.

SB 100 provides compliance flexibility and waiver mechanisms, including increased flexibility to apply excess renewable energy procurement in one compliance period to future compliance periods. SB 350 requires that for the 2021-24 compliance period, at least 65% of the procurement a retail seller, such as CPA, counts toward the renewable portfolio standard requirement of each compliance period shall be from its contracts of ten years or more in duration.

In September 2022, California Governor Newsom signed SB1020. SB 1020 adds interim targets to the policy framework originally established in SB 100 to require renewable energy and zero-carbon resources to supply 90% of all retail electricity sales by 2035 and 95% of all retail electricity sales by 2040. The inclusion of interim targets will ensure that the state makes steady and accountable progress toward the full decarbonization of California's electricity grid.

CPA enters into long-term purchase agreements to bring new solar, wind, and other renewable energy generating facilities online, to meet its regulatory RPS and GHG-free targets, to accomplish its mission of providing renewable energy, reducing greenhouse gas emissions, serving its customers, and managing energy market risks. CPA enters into energy storage agreements to meet its obligations under the Resource Adequacy program administered by the CPUC and to better manage energy market risk. CPA manages risks associated with these commitments by aligning purchase commitments with the expected demand for electricity and assuring diversity of technologies, geographical locations, and suppliers.

Commitments under power purchase agreements increased to \$8.8 billion as of June 30, 2023, from \$5.33 billion as of June 30, 2022, consistent with CPA's Board-approved Energy Risk Management Policy.

Due to the economic impact of the COVID-19 pandemic, many utility customers have accrued significant energy debt and faced potential energy service disconnection if delinquent account balances are not resolved.

In response to the energy debt Californians are facing, the State Budget Act of 2021 appropriated \$1 billion from the federal American Rescue Plan Act of 2021 to support the establishment of the California Arrearage Payment Program (2021 CAPP). 2021 CAPP was designed to provide financial assistance to active and inactive residential and commercial customer accounts reflecting delinquent balances incurred during the COVID-19 pandemic relief period. CPA customers received approximately \$15.8 million of 2021 CAPP funding in early 2022.

The State Budget Act of 2022 appropriated additional funds for CAPP (2022 CAPP) and extended the eligibility period to cover retail bills for active residential customers issued between March 4, 2020, and December 31, 2021. CPA customers received approximately \$10.4 million of 2022 CAPP funding in early 2023.

CPA's allowance for uncollectable accounts as of June 30, 2022, was adjusted to reflect the 2022 CAPP payment. Management believes that the allowance for uncollectable accounts provides a

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
YEARS ENDED JUNE 30, 2023 AND 2022**

conservative estimate of customer non-payments and that CPA's cash flow, and gross margins are sufficient to manage slower customer payments. Management intends to continue its conservative use of financial resources and expects to generate ongoing operating surpluses in future years.

REQUEST FOR INFORMATION

This financial report is designed to provide CPA's customers, creditors, and other stakeholders with a general overview of the organization's finances and to demonstrate CPA's accountability for the funds under its stewardship.

Please address any questions about this report or requests for additional financial information to the Chief Financial Officer, 801 S. Grand Avenue, Suite 400, Los Angeles, CA 90017.

BASIC FINANCIAL STATEMENTS

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

STATEMENTS OF NET POSITION

YEARS ENDED JUNE 30, 2023 AND 2022

	2023	2022
ASSETS		
Current assets		
Cash and cash equivalents	\$ 132,786,879	\$ 54,537,672
Accounts receivable, net of allowance	123,259,054	96,570,772
Accrued revenue	87,229,664	55,496,791
Other receivables	595,202	7,659,464
Interest receivable	233,214	-
Prepaid expenses	46,152,849	6,138,404
Deposits	15,951,306	26,115,529
Restricted cash	1,200,000	2,400,000
Total current assets	407,408,168	248,918,632
Noncurrent assets		
Capital assets, net of depreciation	544,973	674,257
Intangibles - right-to-use lease asset, net of amortization	2,201,743	2,584,651
Deposits	88,875	88,876
Total noncurrent assets	2,835,591	3,347,784
Total assets	\$ 410,243,759	\$ 252,266,416
LIABILITIES		
Current liabilities		
Accounts payable	\$ 7,008,961	\$ 4,526,315
Accrued cost of electricity	159,985,884	83,629,207
Other accrued liabilities	2,774,283	2,403,579
User taxes and energy surcharges due to other governments	8,570,857	6,026,357
Security deposits from energy suppliers	194,700	1,013,500
Unearned program funds	4,352,484	3,504,033
Lease liability, current	403,141	346,988
Total current liabilities	183,290,311	101,449,979
Noncurrent liabilities		
Supplier security deposits	3,149,860	6,904,000
Lease liability, noncurrent	2,256,068	2,659,209
Total noncurrent liabilities	5,405,928	9,563,209
Total liabilities	\$ 188,696,239	\$ 111,013,188
NET POSITION		
Investment in capital assets	\$ 87,507	\$ 252,712
Restricted for collateral	1,200,000	2,400,000
Unrestricted	220,260,013	138,600,516
Total net position	\$ 221,547,520	\$ 141,253,228

The accompanying notes are an integral part of these financial statements.

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CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

YEARS ENDED JUNE 30, 2023 AND 2022

	2023	2022
OPERATING REVENUES		
Electricity sales for resale, net	\$ 1,165,886,425	\$ 866,391,283
Other revenue	1,890,831	1,090,195
Total operating revenues	1,167,777,256	867,481,478
OPERATING EXPENSES		
Cost of electricity	1,053,915,579	771,768,482
Contract services	18,879,277	17,515,817
Staff compensation	13,285,796	8,729,133
General and administration	2,518,280	1,907,275
Total operating expenses	1,088,598,932	799,920,707
Operating income	79,178,324	67,560,771
NONOPERATING REVENUES (EXPENSES)		
Interest income	1,770,273	114,136
Interest and related expenses	(585,086)	(556,219)
Interest expense - lease	(68,480)	(73,244)
Loss on disposal of fixed assets	(739)	-
Total nonoperating revenues (expenses)	1,115,968	(515,327)
CHANGE IN NET POSITION	80,294,292	67,045,444
Net position at beginning of year	141,253,228	74,207,784
Net position at end of year	\$ 221,547,520	\$ 141,253,228

The accompanying notes are an integral part of these financial statements.

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CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

STATEMENTS OF CASH FLOWS

YEARS ENDED JUNE 30, 2023 AND 2022

	2023	2022
CASH FLOWS FROM OPERATING ACTIVITIES		
Receipts from customers	\$ 1,075,244,841	855,470,318
Receipts from market settlements	-	817,914
Other operating receipts	6,139,683	7,960,456
Payments to suppliers for electricity	(931,422,472)	(809,646,260)
Payments for other goods and services	(19,984,055)	(18,704,129)
Payments for staff compensation	(12,772,049)	(8,490,168)
Tax and surcharge payments to other governments	(40,854,335)	(31,455,787)
Net cash provided (used) by operating activities	76,351,613	(4,047,656)
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES		
Loan proceeds	95,000,000	30,000,000
Principal payments on loan	(95,000,000)	(30,000,000)
Interest and related expense payments	(567,086)	(473,951)
Net cash provided (used) by non-capital financing activities	(567,086)	(473,951)
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES		
Payments to acquire capital assets	(90,125)	(329,161)
Payments on lease (principal and interest)	(415,468)	(132,664)
Net cash from non-capital financing activities	(505,593)	(461,825)
CASH FLOWS FROM INVESTING ACTIVITIES		
Interest income received	1,770,273	114,136
Net cash provided (used) by investing activities	1,770,273	114,136
Net change in cash and cash equivalents	77,049,207	(4,869,296)
Cash and cash equivalents at beginning of year	56,937,672	61,806,968
Cash and cash equivalents at end of year	\$ 133,986,879	\$ 56,937,672
Reconciliation to the Statement of Net Position		
Cash and cash equivalents (unrestricted)	132,786,879	54,537,672
Restricted cash	1,200,000	2,400,000
Cash and cash equivalents	\$ 133,986,879	\$ 56,937,672

The accompanying notes are an integral part of these financial statements. 15

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

STATEMENTS OF CASH FLOWS

YEARS ENDED JUNE 30, 2023 AND 2022

	2023	2022
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES		
Net operating income (loss)	\$ 79,178,324	\$ 67,560,771
Adjustments to reconcile operating income to net cash provided (used) by operating activities		
Depreciation expense	218,671	144,816
Amortization expense	382,908	382,908
Revenue adjusted for allowance for uncollectible accounts	18,485,347	7,727,349
(Increase) decrease in:		
Accounts receivable	(45,173,629)	(16,074,220)
Other receivables	6,831,048	(5,246,412)
Accrued revenue	(31,732,873)	402,273
Prepaid expenses	(40,014,445)	(1,950,200)
Deposits	10,164,223	(12,788,687)
Increase (decrease) in:		
Accounts payable	2,482,646	(257,833)
Energy market settlements payable	(16,529,143)	9,454,346
Accrued cost of electricity	92,885,821	(13,983,472)
Other accrued liabilities	352,704	522,300
User taxes due to other governments	2,544,499	697,258
Supplier security deposits	(4,572,940)	(42,544,900)
Unearned program funds	848,451	1,906,047
Net cash provided (used) by operating activities	<u>\$ 76,351,613</u>	<u>\$ (4,047,656)</u>

The accompanying notes are an integral part of these financial statements. 16

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

1. REPORTING ENTITY

Clean Power Alliance of Southern California (CPA) is a joint powers authority created on June 27, 2017. As of June 30, 2023, parties to its Joint Powers Agreement consist of the following local governments:

Counties	Cities	
Los Angeles	Agoura Hills	Ojai
Ventura	Alhambra	Oxnard
	Arcadia	Paramont
	Beverly Hills	Redondo Beach
	Calabasas	Rolling Hills Estates
	Carson	Santa Monica
	Camarillo	Santa Paula *
	Claremont	Sierra Madre
	Culver City	Simi Valley
	Downey	South Pasadena
	Hawaiian Gardens	Temple City
	Hawthorne	Thousand Oaks
	Hermosa Beach *	Ventura
	Malibu	West Hollywood
	Manhattan Beach	Westlake Village
	Monrovia *	Whittier
	Moorpark	

** Hermosa Beach, Monrovia, and Santa Paula are official members of the JPA as of March 2023, though customers in those jurisdictions won't begin CPA service until March 1, 2024.*

CPA is separate from and derives no ongoing financial support from its members. CPA is governed by a Board of Directors whose membership is comprised of elected officials representing the parties.

CPA's mission is to provide cost-competitive electric services, reduce electric sector greenhouse gas emissions, stimulate renewable energy development, implement distributed energy resources, promote energy efficiency and demand reduction programs, and sustain long-term rate stability for residents and businesses through local control. CPA provides electric service to retail customers as a Community Choice Aggregation Program under the California Public Utilities Code (CPUC) Section 366.2.

Electricity is acquired from commercial suppliers and delivered through existing physical infrastructure and equipment managed by Southern California Edison (SCE).

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

BASIS OF ACCOUNTING

CPA's financial statements are prepared in accordance with generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements.

CPA's operations are accounted for as a governmental enterprise fund and are reported using the economic resources measurement focus and the accrual basis of accounting – similar to business enterprises. Accordingly, revenues are recognized when they are earned, and expenses are recognized at the time liabilities are incurred. Enterprise fund-type operating statements present increases (revenues) and decreases (expenses) in total net position. Reported net position is segregated into three categories – investment in capital assets, restricted, and unrestricted.

When both restricted and unrestricted resources are available for use, it is CPA's policy to use restricted resources first, then unrestricted resources as they are needed.

CASH AND CASH EQUIVALENTS

For purposes of the Statements of Cash Flows, CPA defines cash and cash equivalents to include cash on hand, demand deposits, and short-term investments. As of June 30, 2023 and 2022, cash and cash equivalents were held in various interest-earning and non-interest-earning accounts at River City Bank and in the California Local Agency Investment Fund (LAIF). Amounts restricted pursuant to security and lending agreements are included as cash and cash equivalents on the Statement of Cash Flows.

PREPAID EXPENSES AND DEPOSITS

Contracts to purchase energy may require CPA to provide the supplier with advance payments or security deposits. Deposits consist of collateral deposits required by CAISO and security deposits held by suppliers as required under certain energy contracts entered by CPA. Deposits are generally held for the term of the contract and are classified as current or noncurrent assets depending on the length of time the deposits will be outstanding.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

CAPITAL ASSETS AND DEPRECIATION

CPA's policy is to capitalize furniture and equipment valued over \$5,000 that is expected to be in service for over one year. Depreciation is computed according to the straight-line method over estimated useful lives of three years for electronic equipment and seven years for furniture. Leasehold improvements are depreciated over the shorter of 1) the useful life of the leasehold improvement, or 2) the remaining years of the lease.

LEASE ASSETS AND LIABILITIES

CPA recognizes an asset and liability when it enters certain leasing arrangements. The leased assets are amortized over the term of the leases. The lease liabilities are established at the present value of payments expected to be paid to the lessors during the terms of the lease.

SECURITY DEPOSITS FROM ENERGY SUPPLIERS

Various energy contracts entered into by CPA require the supplier to provide CPA with a security deposit. These deposits are generally held for the term of the contract or until the completion of certain benchmarks. Deposits are classified as current or noncurrent depending on the length of time the deposits will be held.

UNEARNED PROGRAM FUNDS

CPA received PowerShare program funding from the California Public Utility Commission. The amount represents funds received by CPA, but not yet spent on the PowerShare program-specific expenses.

NET POSITION

Net position is presented in the following components:

Investment in capital assets: This component of net position consists of capital assets, lease assets, net of accumulated depreciation and amortization, and is reduced by outstanding borrowings that are attributable to the acquisition, construction, or improvement of those assets. CPA did not have any outstanding borrowings as of June 30, 2023, and 2022 attributable to those assets.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Restricted: This component of net position consists of net assets subject to external constraints on their use imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments or constraints imposed by law through constitutional provisions or enabling legislation.

Unrestricted: This component of net position consists of net position that does not meet the definition of “investment in capital assets” or “restricted.”

OPERATING AND NON-OPERATING REVENUE

Operating revenues include revenues derived from the provision of electricity to retail customers and program revenue earned from the delivery of program activities. Electricity sales are reported net of changes to the allowance for uncollectable accounts. Other revenue consists of revenue that is not related to sales of electricity to CPA customers.

Interest income is considered “non-operating revenue.”

REVENUE RECOGNITION

CPA recognizes revenue on an accrual basis. This includes invoices issued to customers during the reporting period and electricity estimated to have been delivered but not yet billed. Management estimates that a portion of the billed amounts will be uncollectible. Accordingly, an allowance for uncollectible accounts has been recorded.

OPERATING AND NONOPERATING EXPENSES

Operating expenses include the cost of sales and services, administrative expenses, and depreciation on capital assets and amortization of right-to-use lease assets. Expenses not meeting this definition are reported as non-operating expenses.

ELECTRICAL POWER PURCHASED

During the normal course of business, CPA purchases electrical power from numerous suppliers. Electricity costs include the cost of energy and capacity arising from bilateral contracts with energy suppliers as well as wholesale sales and generation credits, and load and other charges arising from CPA’s participation in the CAISO’s centralized market. The cost of electricity and capacity is recognized as “Cost of Electricity” in the Statements of Revenues, Expenses and Changes in Net Position. To comply with the State of California’s Renewable Portfolio Standards (RPS) and other product content targets, CPA acquires RPS-eligible renewable energy evidenced by Renewable Energy Certificates (Certificates) recognized by the Western Renewable Energy

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Generation Information System (WREGIS). CPA obtains Certificates with the intent to retire them and does not sell or build surpluses of Certificates with a profit motive. CPA purchases capacity commitments from qualifying generators to comply with the California Energy Commission's Resource Adequacy Program. The goals of the Resource Adequacy Program are to provide sufficient resources to the CAISO to ensure the safe and reliable operation of the grid in real-time and to provide appropriate incentives for the siting and construction of new resources needed for reliability in the future. CPA complies with external mandates and self-imposed benchmarks.

STAFFING COSTS

CPA pays employees semi-monthly and fully pays its obligations for health benefits and contributions to its defined contribution retirement plan each month. CPA is not obligated to provide post-employment healthcare or other fringe benefits and, accordingly, no related liability is recorded in these financial statements. CPA provides compensated time off, and the related liability is recorded in these financial statements.

INCOME TAXES

CPA is a Joint Powers Authority (JPA) under the provisions of the California Government Code and is not subject to federal or state income or franchise taxes.

USER TAXES AND ENERGY SURCHARGES DUE TO OTHER GOVERNMENTS

CPA is required by governmental authorities to collect and remit user taxes on certain customer sales. These taxes do not constitute revenues or expenses to CPA.

ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

RECLASSIFICATIONS

Certain amounts in the prior-year financial statements have been reclassified for comparative purposes to conform to the presentation of the current-year financial statements.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

3. CASH AND CASH EQUIVALENTS

As of June 30, 2023, CPA maintains its cash in both interest-earning and non-interest-earning bank accounts with River City Bank and in the California Local Agency Investment Fund (LAIF).

Cash balances are subject to the Local Agency Security Program (LASP) administered by the California Department of Financial Protection and Innovation (DFPI) pursuant to California Government Code, Section 53630 through 53686. The LASP is designed to protect government agency deposits and requires banks holding agency deposits to collateralize deposits in excess of \$250,000 with highly rated government securities and/or a letter of credit issued by the Federal Home Loan Deposit Corporation (FHLDC) in amounts equal to 110% and 105% of agency deposits, respectively. Government securities collateralizing agency deposits are required to be held by third-party trust companies with legal and regulatory obligations to the DFPI. The DFPI is the beneficiary of FHLDC letters of credit collateralizing agency deposits. CPA's Board-approved Investment Policy requires that when managing funds, CPA's primary objectives, in the following order of importance, shall be to (1) safeguard the principal of the funds, (2) meet the liquidity needs of CPA, and (3) achieve a return on investment on funds in CPA's control. Risk is monitored on an ongoing basis.

CPA maintains cash with LAIF, managed by the State Treasurer, for the purpose of increasing interest earnings through pooled investment activities. These funds are not registered with the Securities and Exchange Commission but are required to be invested according to the California Government Code. Participants in the pool include voluntary and involuntary participants, such as special districts and school districts for which there are legal provisions regarding their investments. The Local Investment Advisory Board (LIAB) has oversight responsibility for LAIF. LIAB consists of four members as designated by state statute.

FAIR VALUE MEASUREMENT

GASB Statement No. 72, *Fair Value Measurement and Application*, sets forth the framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; and Level 3 inputs are significant unobservable inputs.

In instances where inputs used to measure fair value fall into different levels in the above fair value hierarchy, fair value measurements in their entirety are categorized based on the lowest level input that is significant to the valuation. CPA's assessment of the significance of particular inputs to these fair value measurements requires judgment and considers factors specific to each asset or liability. Deposits and withdrawals from LAIF are made on the basis of \$1 which is substantially equal to fair value.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

3. CASH AND CASH EQUIVALENTS (continued)

As of June 30, 2023 and 2022, CPA held no individual investments subject to classification under the fair value hierarchy.

CUSTODIAL CREDIT RISK

Custodial credit risk for deposits is that in the event of a bank failure, CPA's deposits may not be returned to it. CPA's policy is that deposits be insured by the FDIC. CPA maintains cash in bank accounts, which at times may exceed federally insured limits. Bank accounts are guaranteed by the FDIC up to \$250,000. CPA has not experienced any such losses in its deposit accounts.

CPA manages custodial credit risk for bank deposits during the normal course of business and is consistent with its Investment Policy.

Custodial credit risk for investments is the risk that, in the event of the failure of the counterparty to a transaction, CPA would not be able to recover the value of the investment or collateral securities that are in possession of an outside party. Investment securities are exposed to custodial credit risk if the securities are uninsured, are not registered in CPA's name, and are held by the counterparty. CPA does not believe it is exposed to significant custodial credit risk arising from its investments in LAIF.

4. ACCOUNTS RECEIVABLE

Accounts receivable were as follows:

	2023	2022
Accounts receivable from customers	\$ 161,755,905	\$ 116,582,276
Allowance for uncollectible accounts	(38,496,851)	(20,011,504)
Net accounts receivable	\$ 123,259,054	\$ 96,570,772

The majority of account collections occur within the first few months following customer invoicing. CPA estimates that a portion of the billed amounts will not be collected. The allowance for uncollectible accounts at the end of a period includes amounts billed during the current and prior fiscal years.

The State Budget Act of 2022 appropriated additional funds from the federal American Rescue Plan Act to support the establishment of the California Arrearage Payment Program (CAPP 2022) and extended the eligibility period to cover electricity bills for active residential customers issued between March 4, 2020, and December 31, 2021. CPA's active residential customers received a total of \$10.4 million of 2022 CAPP funding in 2023. The allowance for uncollectable accounts as of June 30, 2022, was adjusted to reflect the 2022 CAPP payment.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

5. LEASE

In June 2017, GASB issued a new standard related to leases, which was codified into GASB Statement No. 87, *Leases*. GASB 87 establishes a single model for lease accounting based on the principle that leases are financings of the right-to-use an underlying asset. It requires government entity lessees to recognize lease obligations as lease liabilities and intangible right-to-use lease assets on the Statement of Net Position, and lease payments will reduce the lease liability and flow through the Statement of Activities as amortization expense and interest expense. A corresponding lease asset is recorded in the Statement of Net Position, which will be amortized over the lease term.

In FY2021-2022, CPA adopted the provisions of GASB Statement No 87. As such CPA recognized a lease obligation and a right-to-use asset for agreements whereby CPA obtained the right to the present service capacity of underlying assets and the right to determine the nature and manner of underlying assets' use for a period of one year or greater. Below is a description of these lease arrangements:

Property Lease

CPA entered into an agreement to lease approximately 11,000 square feet of office space in Los Angeles, California for 8 years, commencing in March 2021. Monthly base rent payments are approximately \$32,000 in the first year of the lease and are subject to 3% annual rent escalations on each anniversary of lease commencement. The lease expires in February 2029. CPA also pays a pro-rata share of operating expenses and property taxes, which are not included in the measurement of the lease liability as they are variable in nature. The Company paid \$20,000 and \$7,000 in FY2022-23 and FY2021-2022, respectively, for those variable costs.

As of June 30, 2023, the Company has reported \$2,202,000 in right-of-use (ROU) intangible assets, net of amortization, and \$2,659,000 in lease liabilities related to this agreement. Amortization expense was \$383,000 and Interest Expense was \$68,000 for the right to use the office space during the fiscal year.

As of June 30, 2022, the Company has reported \$2,585,000 in ROU intangible assets, net of amortization, and \$3,006,000 in lease liabilities related to this agreement. Amortization expense was \$383,000 and Interest Expense was \$85,000 for the right to use the office space during the fiscal year.

Intangible ROU assets and ROU liabilities are recognized based on the present value of future lease payments over the lease term at the commencement date. As the lease does not provide an implicit rate, an incremental borrowing rate of 2.4% was used based on the information available at the adoption of GASB 87 in determining the present value of future payments.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

5. LEASE (continued)

CPA has the option to extend the lease for two additional years. The table below represents the future lease principal and interest payments under this agreement.

Year ended June 30,	Principal	Interest	Total
2024	\$ 403,141	\$ 59,437	\$ 462,578
2025	426,955	49,501	476,456
2026	451,767	38,982	490,749
2027	477,612	27,860	505,472
2028	504,535	16,101	520,636
2029	395,199	3,998	399,197
	<u>\$ 2,659,209</u>	<u>\$ 195,879</u>	<u>\$ 2,855,088</u>

Storage Contract Arrangements

In providing electricity to its customers, CPA has entered into four energy storage agreements which achieved commercial operation as of June 2023. Through these agreements, CPA obtains the right to control certain aspects of the nature and manner and use of the underlying facilities. The monthly payments made by CPA are variable and based on the performance of the underlying assets including the plant's available capacity, operating charging efficiency, and the seller's responsiveness to CPA's charging and discharge instructions. The variable payments under energy storage agreements are recognized as part of the cost of energy on the Statement of Revenues, Expenses, and Changes in Net Position.

Variable payments for the energy storage agreements totaled approximately \$32,023,000 and \$7,799,000 in FY 2022-23 and FY 2021-22, respectively.

6. CAPITAL ASSETS

Capital asset activities for the years ended June 30, 2023 and 2022, were as follows:

Capital Asset	Furniture & Equipment	Office Equipment	Computer Equipment	Website/App Development	Leasehold Improvements	Accumulated Depreciation	Total
Balances at June 30, 2021	159,255	-	-	-	428,398	(97,740)	489,912
Additions	(159,255)	15,053	220,024	244,752	8,587	(144,816)	184,345
Balances at June 30, 2022	<u>\$ 0</u>	<u>\$ 15,053</u>	<u>\$ 220,024</u>	<u>\$ 244,752</u>	<u>\$ 436,985</u>	<u>\$ (242,557)</u>	<u>\$ 674,257</u>
Additions			90,125			(196,706)	(106,581)
Dispositions			(11,721)			(10,983)	(22,704)
Balances at June 30, 2023	<u>\$ 0</u>	<u>\$ 15,053</u>	<u>\$ 298,427</u>	<u>\$ 244,752</u>	<u>\$ 436,985</u>	<u>\$ (450,245)</u>	<u>\$ 544,973</u>

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

6. CAPITAL ASSETS (continued)

Intangible - Right-to-use Lease Asset	Lease Asset - Office	Accumulated Amortization	Total
Balances at June 30, 2021	3,095,195	(127,636)	2,967,559
Additions		(382,908)	(382,908)
Balances at June 30, 2022	\$ 3,095,195	\$ (510,544)	\$ 2,584,651
Additions	-	(382,908)	(382,908)
Balances at June 30, 2023	\$ 3,095,195	\$ (893,452)	\$ 2,201,743

Depreciation and amortization expenses are included under general and administration on the Statements of Revenues, Expenses and Changes in Net Position.

7. DEBT

County of Los Angeles Funding Agreement

In August 2017, CPA and the County of Los Angeles executed a memorandum of understanding (MOU) to provide a non-interest-bearing loan to CPA in an amount not to exceed \$10 million to be repaid on June 30, 2018. In April 2018, the County's Board of Supervisors approved an extension of the repayment term of the loan to June 30, 2020. In August 2018, the County's Board of Supervisors approved a further extension of repayment of the loan to September 30, 2020. The purpose of the loan was to investigate the feasibility of implementing a community choice aggregation program as well as to provide for other working capital needs. In September 2020 CPA repaid the outstanding loan balance of \$9,945,750 to the County of Los Angeles. As of June 30, 2021, there was no outstanding loan balance under the MOU.

In August 2021, CPA and the County of Los Angeles entered into a Funding Agreement under which the County of Los Angeles provided a loan of \$30 million to CPA, and the loan plus applicable interest was repaid in FY 2021-22. As of June 30, 2022, there was no outstanding loan balance under the Funding Agreement.

River City Bank Credit Facility

In August 2018 CPA entered into a \$20 million Credit Agreement with River City Bank. The Credit Agreement is a revolving credit facility that CPA uses to provide letters of credit and to borrow funds to provide working capital. The Credit Agreement expired in August 2019.

In April 2019 CPA entered into the First Amendment to the Credit Agreement with River City Bank (First Amendment). The First Amendment increased the available credit facility amount from \$20 million to \$37 million, extended the term of the agreement through March 31, 2021, and reduced the borrowing rate and collateral posting obligation.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

7. DEBT (continued)

In April 2021 CPA entered into the Amended and Restated Credit Agreement with River City Bank (Restated Credit Agreement). The Restated Credit Agreement renewed the \$37 million credit facility and extended the term to March 31, 2022. This Restated Credit Agreement was terminated in September 2021 pursuant to entering a new credit agreement with JP Morgan Chase Bank.

JP Morgan Chase Bank Credit Facility

In September 2021, CPA entered into an \$80 million Revolving Credit Agreement with JP Morgan Chase and terminated its \$37 million Restated Credit Agreement with River City Bank. The Revolving Credit Agreement provides a revolving borrowing and letter of credit facility which can be used for working capital purposes and to post collateral.

In September 2022, CPA drew \$60 million on its \$80 million JP Morgan Chase credit facility. CPA repaid \$20 million of the loan in September 2022, and an additional \$40 million was repaid in October 2022.

In January 2023, CPA drew \$35 million on its \$80 million JP Morgan credit facility and repaid it in the same month. As of June 30, 2023, CPA had no loans outstanding under the credit facility and is in compliance with credit covenants.

In June 2023, CPA amended the credit agreement with JP Morgan to increase the size of the facility to \$160 million and extend the expiry of the agreement from October 31, 2023 to March 31, 2024. CPA intends to arrange a new bank credit facility to replace its current facility effective April 1, 2024.

Loan principal activity and balances were as follows for the following direct borrowings:

	<u>Beginning</u>	<u>Additions</u>	<u>Payments</u>	<u>Ending</u>
Year ended June 30, 2022				
County of Los Angeles	\$ -	\$ 30,000,000	\$ (30,000,000)	\$ -
Total	<u>\$ -</u>	<u>\$ 30,000,000</u>	<u>\$ (30,000,000)</u>	<u>\$ -</u>
Amounts due within one year				-
Amounts due after one year				<u>\$ -</u>
Year ended June 30, 2023				
JP Morgan	\$ -	\$ 95,000,000	\$ (95,000,000)	\$ -
Total	<u>\$ -</u>	<u>\$ 95,000,000</u>	<u>\$ (95,000,000)</u>	<u>\$ -</u>
Amounts due within one year				-
Amounts due after one year				<u>\$ -</u>

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

8. DEFINED CONTRIBUTION RETIREMENT PLAN

The Clean Power Alliance of Southern California Plan (Plan) is a defined contribution retirement plan established by CPA to provide benefits at retirement to its employees. The Plan is administered by Nationwide Retirement Solutions. Currently, the employer contribution is 6% of the employee's salary plus an additional 4% employer match contribution, for a maximum annual employer contribution to the Plan equal to 10% of the employee's salary. As of June 30, 2023, there were 63 plan members. CPA contributed \$994,000 and \$675,000 during the years ended June 30, 2023 and 2022, respectively. Plan provisions and contribution requirements are established and may be amended by the Board of Directors.

9. RISK MANAGEMENT

CPA is exposed to various insurable risks of loss related to torts; theft of, damage to, and destruction of assets; and errors and omissions. During the year, CPA purchased insurance policies from investment-grade commercial carriers to mitigate risks that include those associated with earthquakes, theft, general liability, errors and omissions, and property damage. Settled claims have not exceeded the CPA's commercial liability in any of the past four years. There were no significant reductions in coverage compared to the prior year.

On July 12, 2018, CPA's Board adopted the Energy Risk Management Policy (ERMP). The ERMP establishes CPA's Energy Risk Program and applies to all power procurements and related business activities that may impact the risk profile of CPA. The ERMP documents the framework by which CPA's staff and consultants will identify and quantify risk, develop and execute procurement strategies, develop controls and oversight monitor, and measure and report on the effectiveness of the CPA's Energy Risk Program. Risks covered by the ERMP include market price risk, credit risk, volumetric risk, operational risk, opt-out risk, legislative and regulatory risk, and other risks arising from operating as a Community Choice Aggregation and participating in California energy markets. The Board approved updates to the ERMP in July 2019, July 2020, July 2021, and July 2022.

CPA maintains other risk management policies, procedures, and systems that help mitigate and manage credit, liquidity, financial, regulatory, and other risks not covered by the ERMP.

Credit guidelines include a preference for transacting with investment-grade counterparties, evaluating counterparties' financial condition, and assigning credit limits as applicable. These credit limits are established based on risk and return considerations under terms customarily available in the industry. In addition, CPA enters into netting arrangements whenever possible and where appropriate obtains collateral and other performance assurances from counterparties.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

10. PURCHASE COMMITMENTS

POWER AND ELECTRIC CAPACITY

In the ordinary course of business, CPA enters into various power purchase and energy storage agreements in order to acquire renewable and other energy and electric capacity. The price and volume of purchased power may be fixed or variable. Variable pricing is generally based on the market price of electricity at the date of delivery. Variable volume is generally associated with contracts to purchase energy from as-available resources such as solar, wind and hydro-electric facilities.

CPA enters into power purchase and energy storage agreements in order to comply with state law and elective targets for renewable and greenhouse gas (GHG) free products and to ensure stable and competitive electric rates for its customers.

The following table represents the expected, undiscounted, contractual commitments for energy storage, power, and electric capacity outstanding as of June 30, 2023:

Year ended June 30,	
2024	\$ 1,038,393,000
2025	\$ 738,052,000
2026	\$ 644,306,000
2027	\$ 567,226,000
2028	\$ 499,751,000
2029 -44	\$ 5,313,260,000
	<u>\$ 8,800,988,000</u>

The totals are rounded to the nearest hundredth.

As of June 30, 2023, CPA had non-cancellable contractual commitments to contract and professional service providers through August 31, 2026, for services yet to be performed. Fees associated with these contracts are based on volumetric activity and are expected to be approximately \$4.2 million.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

11. JOINT VENTURE

In July 2022, CPA's Board of Directors authorized CPA to join California Community Choice Financing Authority (CCCFA) as a Founding Member. CPA joined CCCFA in September 2022 and participates in the Joint Powers Agreement with CCCFA along with Central Coast Community Energy, East Bay Community Energy, Marin Clean Energy, Pioneer Community Energy and Silicon Valley Clean Energy.

CCCFA was formed as a conduit issuer to assist its members by undertaking the financing or refinancing of energy prepayments that can be financed with tax-advantaged bonds on behalf of one or more of the members by, among other things, issuing or incurring bonds and entering into related contracts with its members. No debt, liability, or obligation of CCCFA is considered a debt, liability, or obligation of any member of CCCFA. Any debt or liability incurred by CCCFA on behalf of a member to prepay for renewable energy is not a debt or liability of that member. Furthermore, the assets of CCCFA in the form of prepaid energy or reserves held by the respective bond trustees for any prepayment transaction undertaken on behalf of a member do not constitute an asset or reserve of that member.

In February 2023, CCCFA issued a first set of bonds on behalf of CPA in the par amount of \$998,780,000 and in June 2023 issued a second set of bonds on behalf of CPA in the par amount of \$958,290,000. The proceeds were used to finance energy purchases that will flow to CPA over a term of 30 years. CPA will purchase energy from CCCFA in the same manner as CPA purchases energy from other suppliers. The outstanding purchase commitments related to these financings are included in Note 10.

Each member of CCCFA is responsible for paying an equal portion of CCCFA's general and administrative operating costs as determined by its board. During the year ending June 2023, CPA contributed approximately \$68,000 to CCCFA to assist in its operating activities.

CCCFA was created on June 25, 2021, and its financial statements of CCCFA are available online at <http://www.cccfa.org/keydocuments.html>.

12. FUTURE GASB PRONOUNCEMENTS

The requirements of the following GASB Statements are effective for future fiscal years ending after June 30, 2023:

GASB has approved GASB Statement No. 100, *Accounting Changes and Error corrections – An Amendment of GASB Statement No. 62* and GASB Statement No. 101, *Compensated Absences*. When they become effective, the application of these standards may result in restating of these financial statements. Management is evaluating the effects of these new pronouncements.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

NOTES TO THE BASIC FINANCIAL STATEMENTS

YEARS ENDED JUNE 30, 2023 AND 2022

13. SUBSEQUENT EVENTS

On September 27, S&P Global Ratings issued CPA an Investment Grade Credit Rating of “A-“ with a Stable Outlook. This rating is considered Middle Investment Grade, four notches above the lowest Investment Grade Rating (BBB-) and seven notches below the highest Investment Grade Rating (AAA). This rating is a significant milestone for CPA and management believes it will have a positive impact on CPA’s relationships with energy suppliers.

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
BUDGETARY COMPARISON SCHEDULE
JULY 1, 2022 THROUGH JUNE 30, 2023**

	2022/23 YTD Amended Budget	2022/23 YTD Actual	2022/23 YTD Amended Budget Variance (Under) Over	2022/23 YTD Amended Budget Variance % (Under) Over	2022/23 Annual Amended Budget	2022/23 Remaining Amended Budget	2022/23 Remaining Amended Budget %
Operating revenues							
Revenue - electricity, net	\$ 1,182,869,000	\$ 1,165,886,425	\$ (16,982,575)	99%	\$ 1,182,869,000	\$ 16,982,575	1%
Other revenues	2,742,000	1,890,831	(851,169)	69%	2,742,000	851,169	31%
Total operating revenues	1,185,611,000	1,167,777,256	(17,833,744)	98%	1,185,611,000	17,833,744	2%
Energy costs							
Energy procurement	1,056,282,000	1,053,915,579	(2,366,421)	100%	1,056,282,000	2,366,421	0%
Total energy costs	1,056,282,000	1,053,915,579	(2,366,421)	100%	1,056,282,000	2,366,421	0%
Operating revenues less energy costs	129,329,000	113,861,678	(15,467,322)	88%	129,329,000	15,467,322	12%
Operating Expenditures							
Staffing	13,976,000	13,285,796	(690,204)	95%	13,976,000	690,204	5%
Technical services	1,436,000	1,227,478	(208,522)	85%	1,436,000	208,522	15%
Legal services	1,243,000	689,605	(553,395)	55%	1,243,000	553,395	45%
Other professional services	1,902,000	726,159	(1,175,841)	38%	1,902,000	1,175,841	62%
Communications and outreach	2,018,000	1,019,769	(998,230)	51%	2,018,000	998,230	49%
Mailers	1,346,000	617,507	(728,493)	46%	1,346,000	728,493	54%
Billing data manager	10,518,000	10,476,663	(41,337)	100%	10,518,000	41,337	0%
SCE services	2,116,000	2,306,466	190,466	109%	2,116,000	(190,466)	-9%
Customer programs	4,663,000	1,815,630	(2,847,370)	39%	4,663,000	2,847,370	61%
General and administrations	5,877,000	2,518,280	(3,358,720)	43%	5,877,000	3,358,720	57%
Total operating expenditures	45,095,000	34,683,353	(10,411,647)	77%	45,095,000	10,411,647	23%
Operating income	84,234,000	79,178,325	(5,055,676)	94%	84,234,000	5,055,676	6%
Non-operating revenues (expenditures)							
Interest income	486,000	1,770,273	1,284,273	364%	486,000	(1,284,273)	-264%
Finance and interest expense	(732,000)	(653,566)	78,434	89%	(732,000)	(78,434)	11%
Other Income and Expense	-	(739)	(739)	0%		739	0%
Total non-operating revenues (expenditures)	(246,000)	1,115,968	1,361,968	-454%	(246,000)	(1,361,968)	554%
Change in net position	83,988,000	80,294,292	(3,693,707)	96%	83,988,000	3,693,708	4%
Other uses							
Capital outlay	225,000	78,404	(146,596)	35%	225,000	146,596	65%
Depreciation and Amortization	(622,000)	(601,579)	20,421	97%	(622,000)	(20,421)	3%
Total other uses	(397,000)	(523,175)	(126,175)	132%	(397,000)	126,175	-32%
Change in fund balance	\$ 84,385,000	\$ 80,817,468	\$ (3,567,532)	96%	\$ 84,385,000	\$ 3,567,532	4%



FY 2022-23 Financial Results & Initial 2024 PCIA/SCE Rates Outlook

November 2, 2023



Summary

- ⚡ CPA received a “clean” audit opinion of its FY 2022-23 financial results from its Auditor, Baker Tilly.
- ⚡ Highlights;
 - CPA increased its net position to \$221.5 million over the fiscal year, an increase of \$80.3 million
 - As of June 30, 2023, CPA had \$292.6 million of liquidity, up from \$134 million as of June 30, 2022
- ⚡ On September 27, 2023 CPA received an A - issuer credit rating from S&P Global Ratings, a very positive outcome for CPA
- ⚡ SCE's October update to its 2024 ERRRA Forecast suggests that customer bills will go down in January while bill comparisons to SCE will worsen slightly, though they will still be better than FY 23/24 Board-approved targets



Balance Sheet Components, as of June 30:

A

B

C

D

E

F

2023

% Total

2022

% Total

% Change

ASSETS

1	Current assets							
2	Cash and cash equivalents	\$	132,786,879	32.4%	\$	54,537,672	21.6%	143%
3	Accounts receivable, net of allowance		123,259,054	30.0%		96,570,771	38.3%	28%
4	Accrued revenue		87,229,664	21.3%		55,496,791	22.0%	57%
5	Other receivables		828,416	0.2%		7,659,464	3.0%	-89%
6	Prepaid expenses		46,152,849	11.3%		6,138,404	2.4%	652%
7	Deposits		15,951,306	3.9%		26,115,529	10.4%	-39%
8	Restricted cash		1,200,000	0.3%		2,400,000	1.0%	-50%
9	Total current assets		407,408,168	99.3%		248,918,632	98.7%	64%
10	Noncurrent assets							
11	Capital assets, net of depreciation		544,973	0.1%		674,257	0.3%	-19%
12	Intangible - right-to-use lease asset		2,201,743	0.5%		2,584,651	1.0%	-15%
13	Deposits		88,875	0.0%		88,875	0.0%	0%
14	Total noncurrent assets		2,835,591	0.7%		3,347,784	1.3%	-15%
15	Total assets	\$	410,243,759	100%	\$	252,266,416	100%	63%



Balance Sheet Components, as of June 30:

A		B	C	D	E	F
		2023	% Total	2022	% Total	% Change
LIABILITIES						
16	Current liabilities					
17	Accounts payable	\$ 7,008,961	3.7%	\$ 4,526,315	4.1%	55%
18	Accrued cost of electricity	159,985,884	84.8%	83,629,207	75.3%	91%
19	Other accrued liabilities	2,774,283	1.5%	2,403,579	2.2%	15%
20	User taxes and energy surcharges due to other governments	8,570,857	4.5%	6,026,358	5.4%	42%
21	Security deposits from energy suppliers	194,700	0.1%	1,013,500	0.9%	-81%
22	Unearned program funds	4,352,484	2.3%	3,504,033	3.2%	24%
23	Lease liability, current	403,141	0.2%	346,988	0.3%	16%
24	Total current liabilities	183,290,311	97.1%	101,449,979	91.4%	81%
25	Noncurrent liabilities					
26	Supplier security deposits	3,149,860	1.7%	6,904,000	6.2%	-54%
27	Lease liability, noncurrent	2,256,068	1.2%	2,659,209	2.4%	-15%
28	Total noncurrent liabilities	5,405,928	2.9%	9,563,209	8.6%	-43%
29	Total liabilities	\$ 188,696,239	100%	\$ 111,013,188	100%	70%



Balance Sheet Components, as of June 30:

A		B	C	D	E	F
		2023	% Total	2022	% Total	% Change
DEFERRED INFLOWS OF RESOURCES						
30	Fiscal Stabilization Fund	-		-		
NET POSITION						
31	Investment in capital assets	\$ 87,507	0.04%	\$ 252,712	0.18%	-65%
32	Restricted for collateral	1,200,000	0.54%	2,400,000	1.70%	-50%
33	Unrestricted	220,260,013	99.42%	138,600,516	98.12%	59%
34	Total net position	\$ 221,547,520	100.00%	\$ 141,253,228	100.00%	57%

Select Financial Indicators

	Jun-23	Jun-22	% Change	Description
Working Capital	224,117,857	147,468,653	52%	Current Assets less Current Liabilities
Current Ratio	2.2	2.5	-9%	Current Assets divided by Current Liabilities
Days Sales Outstanding	39	41	-5%	Accounts receivable divided by Sales divided by 365
Equity	221,547,520	141,253,228	57%	Net Position plus Fiscal Stabilization Fund
Equity to Assets %	54%	56%		Equity (Net Position + FSF) divided by Total Assets
Available Cash	129,442,319	46,620,172	178%	Unrestricted cash and cash equivalents less supplier deposits
Available Line of Credit	159,853,000	79,853,000	100%	Total Line of Credit less Borrowing and Letters of Credit
Total Liquidity	289,295,319	126,473,172	129%	Sum of Available Cash and Line of Credit
Days Liquidity on Hand (TTM)	97	58	67%	Total Liquidity divided by trailing 12 month expenses divided by 365
Gross Margin	10%	11%		Operating revenue less energy cost divided by operating revenue
Net Margin	7%	8%		Change in net position divided by operating revenue
Reserve %	20%	18%		Net Position plus Fiscal Stabilization Fund divided by total operating expenses

- ⚡ CPA made important progress towards meeting its Reserve Policy targets
- ⚡ Days liquidity on hand (DLOH) increased from 58 to 97 days. Target range = 120-150 days
- ⚡ The Reserve percentage increased from 18% to 20%. Target range = 30-50%



Budget to Actual Analysis

		A	B	C	D	E
			2022/23 YTD Amended Budget	2022/23 YTD Actual	2022/23 Amended Budget Variance (Under) Over	2022/23 Amended Budget Variance % (Under) Over
Operating revenues						
1	Revenue - electricity, net		\$ 1,182,869,000	\$ 1,165,886,425	\$ (16,982,575)	-1%
2	Other revenues		2,742,000	1,890,831	(851,169)	-31%
3	Total operating revenues		1,185,611,000	1,167,777,256	(17,833,744)	-2%
Energy costs						
4	Energy procurement		1,056,282,000	1,053,915,579	(2,366,421)	0%
5	Total energy costs		1,056,282,000	1,053,915,579	(2,366,421)	0%
6	Operating revenues less energy costs		129,329,000	113,861,678	(15,467,322)	-12%

- ⚡ Revenue from retail sales of electricity and energy procurement were in line with the Amended Budget. Energy procurement costs were in-line the Amended Budget.
- ⚡ Results were negatively impacted by the September 2022 heat wave, gas and energy price shocks in December 2022 and January 2023, higher than budgeted renewable energy costs, and an accrued but yet to be assessed Resource Adequacy compliance penalty.
- ⚡ Operating revenue less energy costs (gross margin) was \$15.5 million or 12% below the Amended Budget

Budget to Actual Analysis

		A	B	C	D	E
			2022/23 YTD Amended Budget	2022/23 YTD Actual	2022/23 Amended Budget Variance (Under) Over	2022/23 Amended Budget Variance % (Under) Over
Operating Expenditures						
7	Staffing		13,976,000	13,285,796	(690,204)	-5%
8	Technical services		1,436,000	1,227,478	(208,522)	-15%
9	Legal services		1,243,000	689,605	(553,395)	-45%
10	Other professional services		1,902,000	726,159	(1,175,841)	-62%
11	Communications and outreach		2,018,000	1,019,769	(998,230)	-49%
12	Mailers		1,346,000	617,507	(728,493)	-54%
13	Billing data manager		10,518,000	10,476,663	(41,337)	0%
14	SCE services		2,116,000	2,306,466	190,466	9%
15	Customer programs		4,663,000	1,815,630	(2,847,370)	-61%
16	General and administrations		5,877,000	2,518,280	(3,358,720)	-57%
17	Total operating expenditures		45,095,000	34,683,353	(10,411,647)	-23%
Operating income			84,234,000	79,178,325	(5,055,676)	-6%

- ⚡ Operating expenses were 23% under the Amended Budget due primarily to non-utilization of contingencies, conservative use of funds, the performance of services later in the year than budgeted, and lower staffing costs



Budget to Actual Analysis

		A	B	C	D	E
			2022/23 YTD Amended Budget	2022/23 YTD Actual	2022/23 Amended Budget Variance (Under) Over	2022/23 Amended Budget Variance % (Under) Over
Non-operating revenues (expenditures)						
18	Interest income		486,000	1,770,273	1,284,273	264%
19	Finance and interest expense		(732,000)	(653,566)	78,434	-11%
20	Other Income and Expense		-	(739)	(739)	0%
21	Total non-operating revenues (expenditures)		(246,000)	1,115,968	1,361,968	-554%
22	Change in net position		<u>83,988,000</u>	<u>80,294,292</u>	<u>(3,693,707)</u>	<u>-4%</u>
Other uses						
23	Capital outlay		225,000	78,404	(146,596)	-65%
24	Depreciation and Amortization		(622,000)	(601,579)	20,421	-3%
25	Total other uses		(397,000)	(523,175)	(126,175)	32%
26	Change in fund balance		<u>\$ 84,385,000</u>	<u>\$ 80,817,468</u>	<u>\$ (3,567,532)</u>	<u>-4%</u>

- ⚡ CPA increased the net position by \$80 million, 4% below the amended budget
- ⚡ Interest income exceeded the budget due to higher interest rates and larger cash balances than budgeted.



CPA Credit Rating

Overview

- ⚡ CPA established the achievement of an investment-grade (IG) credit rating as an important organizational goal
- ⚡ On September 27, S&P Global Ratings published CPA's credit rating report on its website, awarding CPA an "A-" credit rating with a Stable Outlook

Rating Report Highlights

⚡ CPA strengths supporting A- Issuer Credit Rating:

- Continued improvements to CPA's bottom line and rising liquidity position
- Strong governance, including robust financial and operational forecasting and proactive risk management
- A diverse portfolio of energy suppliers and projects
- Cost-of-Service based ratemaking combined with a historically stable customer base
- Low exposure to environmental and non-compliance risks due to CPA's high levels of renewable and carbon-free energy supply
- No outstanding debt

⚡ Areas requiring continued diligence and focus:

- Generate continued surpluses until Reserve Policy targets are met
- Continued Rate Competitiveness
- Low and stable opt outs

Outlook

- ⚡ Current financial projections indicate that CPA can achieve its Reserve Policy targets by June 2026, while maintaining competitiveness with SCE
- ⚡ CPA continues to work with counterparties to improve credit and payment terms. Discussions are now underway to extend CPA's bank line of credit
- ⚡ CPA staff are developing a framework and strategy to maintain the credit rating once CPA's Reserve Policy targets have been met, taking into account some of the risk factors identified in the S&P report

2024 PCIA/SCE Rates: First Look

2024 ERRRA Forecast October Update

- ⚡ On October 13, SCE filed the October update to its 2024 ERRRA Forecast application
- ⚡ The October update is the first detailed look at the 2024 PCIA and SCE's 2024 forecasted generation rate, but is subject to change
 - SCE is expected file corrections to its rate forecasts on November 15
- ⚡ SCE is requesting a January 1, 2024 implementation for its generation rates and the PCIA
- ⚡ Staff has conducted an initial analysis of:
 - (1) The directional impact on customer bills based on the changing PCIA and
 - (2) Bill comparisons based on updated SCE generation rates plus the new 2024 PCIA
- ⚡ **Preliminary takeaway: Customer bills are likely to go down while comparisons with SCE will likely worsen but still be better than the FY 2023/24 Board approved targets**



PCIA Impacts

- ⚡ The proposed 2017 and 2018 vintage PCIA rates in 2024 will continue to be negative and preliminarily decline by another ½ cent, providing customers a PCIA line-item credit of approximately 1 cent
- ⚡ This further PCIA decline means residential CPA customers will see bill reductions of ~1.6% beginning January 2024 with no action required by CPA
- ⚡ The primary driver for the decrease in the 2024 PCIA is 106% higher projected system RA prices and 151% higher RPS prices in 2024, partially offset by 24% lower market forward energy prices

Average CPA Residential Total Bill

Rate Product	Current	As of 1/1/24	% Change
Lean	\$193.70	\$190.50	-1.7%
Clean	\$195.60	\$192.40	-1.6%
100% Green	\$203.30	\$200.10	-1.6%



Competitive Impacts

- ⚡ SCE's average generation rates are preliminarily forecast to decrease by ~8% in 2024
- ⚡ The decreased SCE generation rate will be partially offset by the decreased PCIA, increasing CPA total bill comparisons by ~2%, still below the targets set by the Board during FY23/24 rate setting earlier this year
- ⚡ Lower SCE generation costs are the result of:
 - Lower estimated purchased power costs
 - Higher estimated revenues from RA and REC sales offset by higher costs for retained RA and RECs

Average Total Residential Bill

Rate Product	Jul 2023 Target	Comparison to SCE	Oct 2023	Comparison to SCE	January 2024	Comparison to SCE
SCE Base	\$191.53		\$203.70		\$196.30	
Lean	\$187.70	-2%	\$193.70	-5%	\$190.50	-3.0%
Clean	\$189.60	-1%	\$195.60	-4%	\$192.40	-2.0%
100% Green	\$197.30	+3%	\$203.30	0%	\$200.10	+1.9%



Rates for new member communities

- ⚡ The Board authorized staff to update rates for the new member communities – Hermosa Beach, Monrovia, and Santa Paula – to maintain the target bill comparisons set in June 2023 for FY 2023/24
- ⚡ Staff will be updating these rates as authorized prior to the start of enrollment in March 2024
- ⚡ Based on the October SCE forecast, the new member communities are expected to be able to cover their cost of service at these rates

Next Steps

- ⚡ CPA is responding to SCE's ERRA filing and will monitor any new issues that emerge
 - A number of errors have been identified in SCE's October filing; staff will update the rate analysis after SCE files a November 15 advice letter with corrected rate information
- ⚡ Actual SCE generation rates and the PCIA will be finalized in December, unless the ERRA proceeding is delayed
- ⚡ Staff is beginning to consider CPA's rate setting strategy for fiscal year 2024/25 which begins next July
 - Staff will return in the spring with rate scenarios that consider CPA's Reserve Policy targets, CPA's competitive position and other factors



Thank You! Questions?



Background and Benefits

- ⚡ What is an investment-grade (IG) credit rating?
 - A credit rating is an opinion published by an independent rating agency (S&P, Moody's, or Fitch) that assesses the likelihood an entity will repay its debts
 - Entities with an IG rating are considered the best credit risks and are able to attract financing at the lowest cost and from the greatest number of lenders and investors
- ⚡ Receiving an IG credit rating will yield many benefits to CPA
 - Increases the number and quality of financial institutions willing to finance CPA's long-term renewable and energy storage projects, thus reducing costs for developers and allowing them to provide CPA with a potentially wider variety of lower-cost projects to choose from
 - Increases energy supplier participation in CPA's short-term solicitations for renewable and conventional energy and RA, and potentially expands terms they are willing to offer thus increasing competition and potentially reducing costs
 - Potentially reduces or eliminates certain collateral posting obligations, thus freeing up cash
 - May lower costs associated with CPA's bank line of credit
 - Enhances CPA's reputation as a stable, financially sound leader in the energy industry, leading to greater trust and influence in the state legislative and regulatory arenas

S&P Credit Rating Process

- ⚡ In December 2022, Staff engaged S&P to perform a confidential Credit Assessment for CPA
 - Staff provided financial and operations data to S&P and engaged in credit Q&A with S&P analysts
 - In August 2023, S&P's rating committee determined that CPA was a "medium investment grade" credit, corresponding to an A-/A/A+ credit rating
- ⚡ In September 2023, Staff engaged S&P to deliver a confidential Issuer Credit Rating (ICR), providing CPA with a final credit rating and ratings report
- ⚡ Staff later directed S&P to convert the confidential ICR to a public-facing ICR, which was published on September 27
- ⚡ Total fee of \$50,000 for the credit ratings process
- ⚡ Beginning in September 2024, CPA will pay a \$28,500 annual surveillance fee to S&P to manage and maintain its public-facing ICR

	Moody's	S&P	Fitch	Meaning
Investment Grade	Aaa	AAA	AAA	Prime
	Aa1	AA+	AA+	High Grade
	Aa2	AA	AA	
	Aa3	AA-	AA-	
	A1	A+	A+	Upper Medium Grade
	A2	A	A	
	A3	A-	A-	
	Baa1	BBB+	BBB+	Lower Medium Grade
	Baa2	BBB	BBB	
	Baa3	BBB-	BBB-	
Junk	Ba1	BB+	BB+	Non Investment Grade Speculative
	Ba2	BB	BB	
	Ba3	BB-	BB-	
	B1	B+	B+	Highly Speculative
	B2	B	B	
	B3	B-	B-	
	Caa1	CCC+	CCC+	Substantial Risks
	Caa2	CCC	CCC	Extremely Speculative
	Caa3	CCC-	CCC-	In Default w/ Little Prospect for Recovery
	Ca	CC	CC+	
		C	CC	In Default
			CC-	
	D	D	DDD	



Management Report

To: Board of Directors
From: Ted Bardacke, Chief Executive Officer
Subject: Management Report
Date: November 2, 2023

CPA Organizational Milestones and Awards

CPA achieved two organizational milestones last month – and celebrated two employees who contributed to those milestones with annual employee recognition awards.

First, CPA is finalizing the last transaction necessary to achieve compliance with its 2024 Year Ahead Resource Adequacy requirement despite extremely challenging market conditions and intense competition for resources. In addition to contributing to the reliability of California’s electricity grid, the compliant filing with the California Public Utilities Commission means that CPA is on track to begin service to as many as three new communities in 2025,¹ should those cities decide during the course of November to join CPA. Relatedly, Ted Tardif, Director of Power Origination, received CPA’s annual “Brilliance Award” that recognizes the performance and achievement of a team member who has had a significant impact on CPA. Ted is primarily responsible for short term procurement, including Resource Adequacy and Renewable Energy, and compliance with state reporting requirements for these products.

Second, CPA has made extraordinary strides in both retention and hiring over the past 12 months. October marked the eleventh straight month with CPA experiencing no voluntary staff departures, while over the same period the organization has filled 14 of its 24 open positions, with 2 to 4 more new staff expected to start in November. Relatedly, Mili Shah, People and Culture Manager, received CPA’s annual “Bolt Award” that recognizes a team member who made a significant impact to a process, a project, or

¹ La Cañada Flintridge, Lynwood, and Port Hueneme.

general culture in the workplace. Mili is primarily responsible for recruitment, managing the hiring process, and the onboarding of new staff, among other duties.

Daggett Solar + Storage Grand Opening

CPA recently celebrated the grand opening of its newest Solar + Storage project, the Daggett Clean Energy Complex, located on the site of a decommissioned natural gas power plant just east of Barstow, CA. Developed by Clearway Energy Group, Daggett is 482MW of solar energy production combined with 280MW of energy storage. CPA is the facility's largest offtaker, contracted to purchase 188MW of solar energy and 113.5MW of battery energy storage, enough to power approximately 85,000 homes in Southern California. Daggett is the 9th new renewable energy and/or storage facility built exclusively for, or in part for, CPA to have come online since the organization's inception, out of a total of 34 new build contracts signed to date. CPA expects to have another 10 projects come online in the next 12 months, including several located in our service territory.

To learn more about the Daggett project, read the press release [here](#). Other offtakers include CCAs MCE and East Bay Community Energy, municipal utilities in the cities of Cerritos and Vernon, direct access provider Constellation, and Investor-Owned Utility PG&E.

Preferred Energy Option (Default) Change Update

The second month of official notifications of changes to the preferred energy option in Alhambra, Paramount, and Unincorporated Los Angeles County² -- which went into effect on a customer's meter read date in October -- has produced noticeable but limited changes to customer behavior. Through October 23, 0.16% of customers subject to the default change have opted out of CPA service while 0.18% have changed their rate to Lean Power. No appreciable difference in customer behavior has yet been seen across the three different jurisdictions.

In support of the changes, CPA staff has engaged in the following activities:

² Non-residential customers only.

- Sent two postcards to all impacted customers alerting them to the change. The first postcard was sent in early September and the second postcard was sent in mid October. Both postcards gave information about the environmental benefits of the energy option change, what to expect with rates, and clear instructions on how to select another energy option if desired;
- Mailed and emailed over 500 large business customers in unincorporated Los Angeles in June and July to alert them early to the upcoming change and give instructions on how to select another energy option if desired;
- Created and distributed a toolkit of customized social media assets for use on LinkedIn, Facebook, X(Twitter) and Instagram with copy in English, Spanish, and Chinese to staff in Alhambra, Paramount, and unincorporated Los Angeles County, to enable each city to share the news of the preferred energy option rate change on their websites and social media channels;
- Met with staff from each community at least twice to educate them about the upcoming change, answer questions, and provide the communication toolkit;
- Participated in seven community events in the impacted communities to educate customers about the upcoming preferred energy option change;
- Participated in nine chamber of commerce meetings to share news of the upcoming preferred energy option change;
- Created a dedicated CPA webpage in English, Spanish, and Chinese with information specific to communities changing their energy options, including fact sheets with FAQs and clear directions on how to select another energy option if desired;
- Shared information about the preferred energy option change on CPA's own social media channels;
- Included news of the preferred energy option change as a story in CPA's October newsletter

Monthly Financial Performance

CPA earned \$7.3 million in the month of August, \$7.1 million below budgeted earnings of \$14.4 million. August results were impacted mostly by higher than anticipated energy

costs to import Resource Adequacy into California, higher than budgeted grid operation charges levied by the California Independent System Operator (CAISO), and an accounting adjustment to renewable energy costs. Like in July, cooler than normal temperatures in September means that CPA will likely have below budget earnings for the first quarter of the 2023/24 fiscal year. The monthly financial dashboard is provided as Attachment 1 to this report.

Customer Participation Rate and Opt Actions

As of October 24, 2023, CPA's overall participation rate was 93%, unchanged from the previous month. CPA had 1,006,482 active customers, up 75 customers since September. Opt-out levels for the month – 451 accounts through the third week of October – were down slightly from September and about half the typical monthly opt-out levels during the fourth quarter of the year. New accounts ("move-ins") were lower than closed accounts ("move-outs") by 599 customers in September. Participation rates and active accounts by jurisdiction are provided in Attachment 2 of this report.

Customer Service Center Performance

Incoming calls to CPA's Customer Service Center during October were down compared to the previous month and on par with typical months in the fourth quarter of the year. Through October 24, CPA received 1,939 calls compared to 3,124 calls in September. 95% of calls were answered within 45 seconds, up from 87% in the previous month, and the average wait time was 11 seconds, down from 22 seconds in the previous month.

Contracts Executed Under the Chief Executive Officer's Authority

A list of non-energy contracts executed under the CEO's signing authority is provided in Attachment 3. The list includes all open contracts as well as all contracts, open or completed, executed in the past 12 months.

ATTACHMENTS

1. Monthly Financial Dashboard – August 2023
2. Participation Rates by Jurisdiction
3. Non-Energy Contracts Executed under CEO's Authority

Financial Dashboard

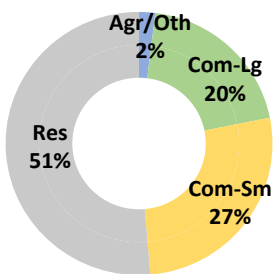
YTD
Aug
2023

Active Accounts
1,005,437

Participation Rate
93.3%

YTD Sales Volume
2,183 GWh

Aug Volume
1,127 GWh



Summary of Financial Results

in \$000,000's	August				Year-to-Date			
	Actual	Budget	Variance	%	Actual	Budget	Variance	%
Operating Revenues	181.4	182.3	-1.0	-0.53%	341.7	350.4	-8.8	-2%
Cost of Energy	170.8	163.7	7.1	4%	314.9	304.3	10.6	3%
Revenues Less Energy Cost	10.6	18.6	-8.0	-43%	26.8	46.1	-19.3	-42%
Operating Expenses	3.3	4.2	-0.9	-22%	6.5	8.5	-2.1	-24%
Operating Income	7.3	14.4	-7.1	-49%	20.3	37.6	-17.3	-46%

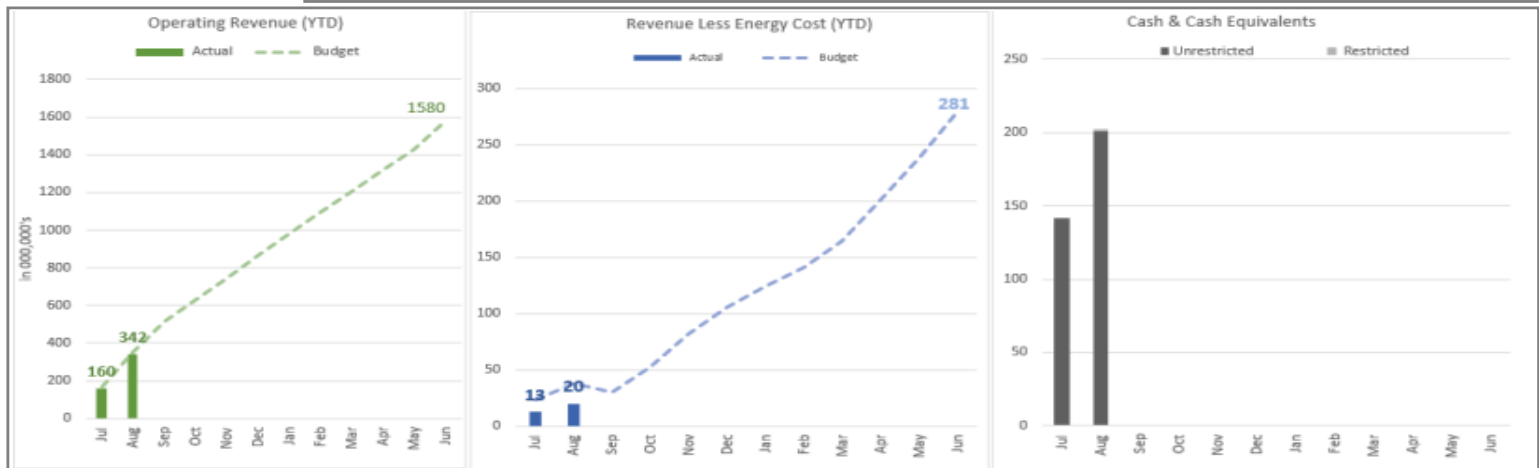
Note: Numbers may not sum up due to rounding.

In August 2023 CPA recorded an operating gain of \$7.3 million, \$7.1 million less than the budgeted operating gain of \$14.4 million provided in the FY 2023/24 budget.

August 2023 revenues were \$181.4 million or 0.5% lower than budget. The cost of energy was \$170 million or 4% more than the FY2023/24 budget. August cost of energy was higher than the budget primarily due to higher than budgeted costs to import Resource Adequacy into California, higher than budgeted grid operation charges levied by the California Independent System Operator (CAISO), and an accounting adjustment to renewable energy costs in August 2023 reflecting an increase in calendar year 2023 renewable energy costs. Operating costs were 22% below budget for the month mainly due to lower than budgeted spending on general and administrative expenses, customer programs and other services, and the non-utilization of contingencies.

As of August 31, 2023, CPA had \$201 million in unrestricted cash and cash equivalents and \$159.853 million available in its bank line of credit representing 111 Days Liquidity on Hand.

CPA is financially sound and in compliance with its bank and other credit covenants.



Definitions:

Accounts: Active Accounts represents customer accounts of active customers served by CPA per Calpine Invoice.

Participation Rate %: Participation Rate represents active accounts divided by eligible CPA accounts

YTD Sales Volume: Year-to-date sales volume represents the amount of energy (in gigawatt hours) sold to retail customers

Revenues: Retail energy sales less allowance for doubtful accounts

Cost of energy: Cost of energy includes direct costs incurred to serve CPA's load

Operating expenses: Operating expenditures include general, administrative, consulting, payroll, and other costs required to fund operations

Net operating income represents the difference between revenues and expenditures before interest income and expense, and capital expenditures

Cash and Cash Equivalents: Includes bank accounts and marketable securities with maturities of less than 90 days.

Year to date (YTD): Represents the fiscal period beginning July 1, 2023

OVERALL CUSTOMER STATUS REPORT

October 25, 2023



PARTICIPATION BY CITY AND COUNTY

Jurisdiction	Preferred Energy Option	Active Accounts	Participation %	Lean %	Clean %	100% Green %
Agoura Hills	100% Green	8,082	88.2%	2.7%	0.4%	97.0%
Alhambra	100% Green	34,064	95.5%	1.7%	0.7%	97.6%
Arcadia	Lean	22,603	95.4%	99.8%	0.1%	0.1%
Beverly Hills	100% Green	18,644	97.4%	2.0%	0.1%	98.0%
Calabasas	100% Green	9,708	93.6%	2.6%	0.3%	97.1%
Camarillo	100% Green	28,427	90.0%	1.5%	0.1%	98.4%
Carson	Clean	29,476	96.3%	1.4%	98.4%	0.2%
Claremont	100% Green	12,682	91.5%	3.0%	0.2%	96.7%
Culver City	100% Green	19,183	95.0%	4.1%	1.1%	94.8%
Downey	Clean	36,730	95.0%	1.6%	98.3%	0.1%
Hawaiian Gardens	Clean	3,628	95.3%	1.1%	98.6%	0.3%
Hawthorne	100% Green	28,444	97.1%	0.5%	1.4%	98.1%
Los Angeles County	100% Green	299,174	94.8%	2.1%	29.4%	68.5%
Malibu	100% Green	7,004	95.1%	3.0%	0.4%	96.5%
Manhattan Beach	100% Green	15,441	96.0%	2.9%	0.2%	96.9%
Moorpark	Clean	11,405	85.7%	3.1%	96.3%	0.6%
Ojai	100% Green	3,510	89.2%	6.2%	1.2%	92.6%
Oxnard	100% Green	55,424	92.8%	4.0%	0.9%	95.1%
Paramount	Clean	15,777	96.7%	0.1%	99.0%	0.9%
Redondo Beach	100% Green	33,253	96.2%	2.1%	0.1%	97.8%
Rolling Hills Estates	100% Green	3,487	91.3%	7.3%	1.6%	91.1%
Santa Monica	100% Green	54,779	95.5%	3.4%	0.8%	95.8%
Sierra Madre	100% Green	4,950	92.0%	5.7%	1.6%	92.7%
Simi Valley	Lean	43,285	89.5%	99.6%	0.1%	0.2%
South Pasadena	100% Green	11,631	95.0%	3.9%	0.7%	95.4%
Temple City	Lean	12,575	95.8%	99.7%	0.1%	0.2%
Thousand Oaks	100% Green	44,431	83.6%	8.0%	1.5%	90.4%
Ventura	100% Green	43,867	89.1%	4.8%	1.6%	93.6%
Ventura County	100% Green	33,295	86.8%	6.6%	1.4%	92.0%
West Hollywood	100% Green	26,495	97.0%	2.5%	0.4%	97.1%
Westlake Village	Lean	3,728	88.3%	99.5%	0.1%	0.5%
Whittier	Clean	31,300	94.1%	1.9%	97.9%	0.2%
Total		1,006,482	93.3%			

OVERALL PARTICIPATION BY ENERGY OPTION

Preferred Energy Option	Participation %	Energy Option	Active Accounts	Participation %
100% Green	93.3%	100% Green	679,686	67.5%
Clean	94.4%	Clean	218,272	21.7%
Lean	91.9%	Lean	108,524	10.8%
Total	93.3%	Agenda Page 255 Total	1,006,482	100.0%

Clean Power Alliance					
Non-energy contracts executed under Chief Executive Officer authority					
Rolling 12 months -- Open contracts shown in Bold					
Vendor	Purpose	Month	NTE Amount	Status	Notes
SAESHE, Inc.	Event support for Street Teams	October 2023	\$7,800	Active	
Langan	GIS services (end date extension only)	October 2023	\$0	Active	
Grand Tower LLC	Storage space lease	September 2023	\$6,000	Active	
Windstream Services, LLC	Office Telephone Service	September 2023	\$12,924	Active	
Sigma Computing	Analytics platform	September 2023	\$35,612	Active	
AiQueous, LLC	Salesforce implementation	August 2023	\$7,375	Active	
Salesforce	Stakeholder Relationship Management application subscription	August 2023	\$15,300	Active	Renewal
Bloom Ads	Media Buying	July 2023	\$50,000	Active	
Nextgrid Strategies	Staff Augmentation for 2023 Clean Energy RFO Evaluation and Contract Negotiations	July 2023	\$100,000	Active	
Advance Dev. LLC	Website Maintenance Services	July 2023	\$75,000	Active	
Workable	Job applicant tracking system	July 2023	\$13,308	Active	
Lexis Nexis	Legal Research Online Platform	July 2023	\$2,492	Active	
Hall Energy Law PC	Energy Procurement Counsel	July 2023	\$125,000	Active	Renewal
Burke, Williams, Sorenson, LLP	Legal Services Agreement (Brown Act, public entity governance issues and other legal services)	July 2023	\$100,000	Active	Renewal
Elite Edge	Financial reporting services	July 2023	\$93,600	Active	
Salesforce	Additional licenses for Stakeholder Relationship Management application subscription	July 2023	\$714	Active	
MBI	Green Leader PR Campaign	July 2023	\$24,853	Active	
Snowflake Inc.	Cloud-Native Elastic Data Warehouse Service	June 2023	\$25,000	Active	
Adobe Inc.	AdobeSign Secure Electronic Signature Service	June 2023	\$3,200	Active	
Baker Tilly	Financial audit services	June 2023	\$50,000	Active	Renewal
IHS Market	Subscription for CAISO forecasts	June 2023	\$17,000	Active	Renewal
Fraser	Marketing contract (final renewal)	June 2023	(\$83,297)	Active	14% decrease to Board approved NTE upon renewal
Swanson Martin Bell	Legal Services Agreement (general liability)	May 2023	\$75,000	Active	
LinkedIn	Subscription for recruiting platform	April 2023	\$20,250	Active	
Lattice	Renewal for Performance management software	April 2023	\$9,000	Active	
AN Catering	Fifth anniversary lunch venue	April 2023	\$17,444	Completed	
Polsinelli, LLP	Legal Service Agreement (Employment, Compliance, General Legal Support related to Commercial Liability, Risk, and Mitigation issues)	April 2023	\$75,000	Active	Renewal

Clean Power Alliance					
Non-energy contracts executed under Chief Executive Officer authority					
Rolling 12 months -- Open contracts shown in Bold					
Vendor	Purpose	Month	NTE Amount	Status	Notes
Chapman & Cutler, LLP	Legal Services (CPA's Credit Agreement)	April 2023	\$55,000	Active	Renewal
Salesforce	Additional licenses for Stakeholder Relationship Management application subscription	April 2023	\$723	Active	
Accuweather	Weather forecasting	March 2023	\$10,176	Active	
goodpr.	Event planning services	March 2023	\$16,000	Completed	
Shute, Mihaly & Weinberger, LLP	Legal Service Agreement (Regulatory, Administrative, Environmental, Energy Procurement, Public Contracting, Public Entity Governance Laws, Issues and/or Proceedings)	March 2023	\$65,000	Active	Renewal
Davis Wright Tremaine	Legal services (regulatory)	March 2023	\$125,000	Active	Renewal
Ntootive	Website development	March 2023	\$20,000	Active	
Municipal Capital Markets	GIC brokerage services	February 2023	\$38,900	Active	Amendment for GIC brokerage services - paid out of Energy Prepay Bond proceeds
Clear Language Company	Minute transcription for board meetings	January 2023	\$20,000	Active	Renewal
Mercer	Retention incentive program development	January 2023	\$50,000	Active	
SBCCOG	Satellite Board meeting venue	January 2023	\$50/hr	Active	
Wrike	Project management software	January 2023	\$5,814	Active	
Ironclad	Contract lifecycle management platform	January 2023	\$16,000	Active	
PrimeGov	Board and committee meeting agenda management software	December 2022	\$16,000	Active	Renewal
DERNetSoft, Inc.	Business customer engagement reporting tool	December 2022	\$53,000	Active	
Ion Objects, Inc.	IT consulting	December 2022	\$4,000	Completed	Amendment for updated project scope
AiQueous, LLC	Salesforce implementation	December 2022	\$7,395	Completed	Amendment to update scope for project completion
ZGlobal	Engineering services	December 2022	\$50,000	Active	
Pinnacle Advocacy	Lobbying services	December 2022	\$66,652	Active	
Omni Government Relations	Lobbying services	December 2022	\$82,492	Active	
Museum of Ventura County	Event space rental for City Manager Lunch	December 2022	\$825	Completed	
S&P	Credit assessment	December 2022	\$37,500	Completed	
Meltwater	Media analytics and monitoring services	November 2022	\$13,750	Active	
Cision	Media/PR wire distribution services	November 2022	\$2,240	Active	
OpenPath	New Office Keycard Access Control System	January 2021	\$1,500	Active	
Crown Castle Fiber LLC	New Office Dedicated Internet Access Service	September 2020	\$ 18,600	Active	