

File No. 201280

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date December 9, 2020

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Requests for Offers Resource Adequacy Supplies</u> |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Resource Adequacy Solicitation Instructions</u> |
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Completed by: Linda Wong

Date December 4, 2020

Completed by: Linda Wong

Date _____

1 [Agreement Approval - Retroactive - Southern California Edison - Sale of Electricity-Related
2 Products - Not to Exceed \$1,273,570]

3 **Resolution retroactively authorizing CleanPowerSF to sell electricity-related products**
4 **to Southern California Edison for a total amount not to exceed \$1,273,570 for a one**
5 **year term of January 1, 2021, through December 31, 2021, under an agreement**
6 **requiring binding arbitration.**

7
8 WHEREAS, State law allows cities and counties to develop community choice
9 aggregation (CCA) programs, through which local governments supply electricity to serve the
10 needs of participating customers within their jurisdictions while the existing utility continues to
11 provide services such as customer billing, transmission, and distribution; and

12 WHEREAS, In May 2016, the San Francisco Public Utilities Commission (PUC)
13 launched a CCA program called CleanPowerSF to provide San Francisco residents and
14 businesses the option to receive cleaner, more sustainable electricity at rates comparable to
15 those offered by Pacific Gas & Electric Company (PG&E); CleanPowerSF uses clean and
16 renewable energy purchased from various facilities, including energy from the City's municipal
17 utility, Hetch Hetchy Power; and

18 WHEREAS, State law requires load serving entities (LSEs) that provide electric service
19 to customers, such as CleanPowerSF and Hetch Hetchy Power, to own or procure certain
20 quantities of electricity-related products known as Resource Adequacy (RA) that is necessary
21 to meet regulatory requirements; the RA requirements are set annually and specify quantities
22 of different types of RA products in a number of different geographical areas that each LSE is
23 required to own or procure; and

24 WHEREAS, In July 2020, the CPUC provided each LSE, including CleanPowerSF, with
25 a preliminary notice of the volumes of RA the LSE is required to own or procure for each

1 month of 2021 and 2022, and on September 18, 2020, the CPUC provided final notice of the
2 actual volumes of each type of RA product that each LSE is required to procure by October
3 31, 2020, in order to meet its RA compliance obligations; and

4 WHEREAS, CleanPowerSF was required to sell excess RA product by the compliance
5 deadline in order to receive the highest possible price for the product and maximize ratepayer
6 value; and

7 WHEREAS, CleanPowerSF issued RA solicitations on August 3, September 2,
8 September 29, and October 16, 2020, and participated in solicitations issued by other LSEs
9 including Southern California Edison's (SCE's) September 17, 2020, solicitation to purchase
10 and sell RA; and

11 WHEREAS, As a result of these solicitations, CleanPowerSF seeks approval for an
12 agreement to sell excess RA product to SCE for the period January 1, 2021, through
13 December 31, 2021, in the amount of \$1,273,570; CleanPowerSF executed this agreement
14 on October 28, 2020, in order to meet the October 31 compliance deadline and seeks
15 retroactive approval here; and

16 WHEREAS, SCE requires the use of the Edison Electric Institute (EEI) form agreement
17 for its RA purchase and sale agreements including a binding arbitration clause; the EEI form
18 agreement is already on file with the Clerk of the Board of Supervisors in File No. 171172, and
19 the Board of Supervisors has previously authorized PUC to use the EEI form agreement for
20 the purchase and sale of electricity and electricity related products including RA; see
21 Ordinance Nos. 75-15, 223-15, 8-18, and 11-20; now, therefore, be it

22 RESOLVED, That the Board of Supervisors retroactively authorizes the General
23 Manager of the Public Utilities Commission to enter into an agreement with binding arbitration
24 to sell RA to SCE in an amount not to exceed \$1,273,570 with the term of January 1, 2021,
25 through December 31, 2021; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors authorizes the General
2 Manager of the Public Utilities Commission to make amendments to the agreements, as
3 needed, that do not materially increase the obligations or liabilities of the City or reduce the
4 benefits to the City.

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<p>Items 2 and 3 Files 20-1245 and 20-1280</p>	<p>Department: Public Utilities Commission (PUC)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • File 20-1245 is a resolution that would approve the following agreements for electricity-related products between San Francisco Public Utilities Commission’s (SFPUC) CleanPowerSF and Calpine Energy Services (Calpine): (1) retroactively amend an agreement to purchase Resource Adequacy (RA) products, increasing the contract amount by \$27,000,000 for a total not to exceed \$30,240,000 and extending the term through December 2029; (2) amend an agreement to purchase renewable energy, increasing the contract amount by \$193,299,120 for a total not to exceed \$242,979,817 and extending the term through December 2029; and (3) approve an agreement to purchase RA products for the period of January 2024 through December 2029 with a total amount not to exceed \$59,400,000. • File 20-1280 is a resolution that would retroactively approve an agreement for CleanPowerSF to sell excess RA products to Southern California Edison (SCE) for the period from January through December 2021 for an amount not to exceed \$1,273,570. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • State law requires all electric service providers, including CleanPowerSF, to maintain certain quantities of RA to ensure sufficient electric generation resources to meet unusually high levels of customer demand. The California Public Utilities Commission (CPUC) provided CleanPowerSF with RA volumes for each month of 2021 and 2022, requiring CleanPowerSF to purchase additional RA products by October 31 to meet its compliance obligations. • CleanPowerSF issued four solicitations for RA supply and participated in solicitations from other electric providers to purchase and sell RA. In response, Calpine submitted offers to increase the RA and renewable energy volumes sold to CleanPowerSF from the Geysers geothermal facility and an offer to sell RA from other facilities. CleanPowerSF also submitted an offer to sell RA to SCE. Under these contracts, CleanPowerSF does not purchase energy from the plants, but rather receives a commitment from the plant to make its power producing capability available to CAISO if the state needs it to ensure electric system reliability. SFPUC is seeking retroactive approval for two agreements due to the October 31 compliance deadline. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Over the terms of the three Calpine agreements, CleanPowerSF would have total expenditures of up to \$332,619,817 through 2029. Over the one-year term of the SCE agreement, CleanPowerSF would receive up to \$1,273,570 in revenue. <p style="text-align: center;">Recommendations</p> <ul style="list-style-type: none"> • Amend the proposed resolution in File 20-1245 to reduce the not-to-exceed amount for the second Calpine agreement by \$609,151, for a total not to exceed \$242,370,666. • Approve the resolution in File 20-1245 as amended and approve the proposed resolution in File 20-1280. 	

MANDATE STATEMENT

City Charter Section 9.118(a) states that contracts entered into by a department, board, or commission that (i) have anticipated revenues of \$1 million or more or (ii) have anticipated revenues of \$1 million or more and require modifications are subject to Board of Supervisors approval.

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

In May 2016, the San Francisco Public Utilities Commission (SFPUC) launched the CleanPowerSF Community Choice Aggregation (CCA)¹ program to provide cleaner and more sustainable electricity at comparable rates to those offered by Pacific Gas & Electric Company (PG&E). CleanPowerSF uses clean and renewable energy purchased from various sources, including SFPUC's Hetch Hetchy Power.

State law requires all electric service providers, including CleanPowerSF, to maintain certain quantities of Resource Adequacy (RA) to ensure sufficient electric generation resources to meet unusually high levels of customer demand. RA requirements are determined by formula using demand forecasts. Retail sellers must also procure different types of RA products from different geographical areas.

In July 2020, the California Public Utilities Commission (CPUC) provided each electric service provider a preliminary notice of RA requirements for each month of 2021 and 2022. On September 18, 2020, CPUC provided final RA volumes, requiring CleanPowerSF to purchase additional RA products by October 31, 2020 to meet its compliance obligations.

CleanPowerSF issued solicitations for RA supply on August 3, September 2, September 29, and October 16, 2020, and participated in solicitations from other electric providers to purchase and sell RA. In response to a solicitation, Calpine Energy Services, LP (Calpine) submitted offers to increase the RA volumes and renewable energy sold to CleanPowerSF from the Geysers geothermal facility and an offer to sell RA from other facilities pursuant to a master power purchase and sale agreement that was approved by the Board of Supervisors in December 2015 (File 15-1123, Ordinance 223-15).² CleanPowerSF also submitted an offer to sell excess RA product to Southern California Edison (SCE).

¹ Community Choice Aggregation (CCA) programs enable local governments to purchase and/or develop power on behalf of the local community.

² In January 2018, the Board of Supervisors approved an ordinance delegating authority under City Charter Section 9.118(b) to the SFPUC General Manager to enter into agreements exceeding 10 years or \$10 million for power and related products and services required for CleanPowerSF (File 17-1172, Ordinance 08-18). The delegated authority applied to power agreements procured through two Requests for Offers (RFO) issued in 2017. Since the proposed

Bids are evaluated using a least cost, best fit methodology. Proposals are evaluated by Utility Specialists on the Origination and Power Supply team and approved by the Deputy Managers of Power Operations and CleanPowerSF. Transactions with a total value greater than \$1 million also require approval of the SFPUC Assistant General Manager of Power.

DETAILS OF PROPOSED LEGISLATION

File 20-1245 is a resolution that would approve the following agreements with Calpine:

1. Retroactively amend an agreement for CleanPowerSF to purchase of RA products from the Geysers geothermal facility, increasing the contract amount by \$27,000,000 for a total not to exceed \$30,240,000 and extending the term seven years through December 2029;
2. Amend an agreement for CleanPowerSF to purchase renewable energy from the Geysers geothermal facility, increasing the contract amount by \$193,299,120 for a total not to exceed \$242,979,817 and extending the term by seven years through December 2029; and
3. Approve an agreement for CleanPowerSF to purchase RA products for the period of January 2024 through December 2029 with a total amount not to exceed \$59,400,000.

According to Ms. Erin Mulberg, SFPUC Power Enterprise Origination and Power Supply, the new agreement with Calpine begins in 2024 because the RA products purchased will not be available before then. As electricity prices generally increase each year, and available RA capacity is expected to tighten in the near and medium-terms as existing plants are decommissioned, SFPUC believes that this agreement will allow CleanPowerSF to secure its required RA capacity at a competitive and stable rate.

File 20-1280 is a resolution that would retroactively approve an agreement for CleanPowerSF to sell excess RA products to SCE for the period from January through December 2021 for an amount not to exceed \$1,273,570.

According to Ms. Mulberg, SFPUC is requesting retroactive approval for two of the agreements because the agreements were already executed to meet the October 31st compliance deadline.

Community Benefits

According to the SFPUC, Calpine's power agreement required a Community Benefits program. Calpine has provided financial contributions to the Hunter Point Family Foundation (Girls 2000) STEM Education program. Calpine has voluntarily agreed to continue this program through 2025.

FISCAL IMPACT

The contract amounts with Calpine of \$30,240,000, \$242,979,817, and \$59,400,000 are based on the bid price per kilowatt (kW) per month and price per megawatt-hour (MWh) multiplied by the

Calpine amendments purchase energy procured through solicitations in 2020, they are not subject to the delegated authority.

total kW of capacity or MWh of renewable energy. The actual bid price varies by the type of electricity-related product.

As noted above, CPUC requires retail sellers to procure different types of RA products from different geographical areas. The energy source for RA products in the existing Calpine agreements is the Geysers geothermal facility in Santa Rosa. According to Ms. Mulberg, the energy source for RA products in the new Calpine agreement will be from its fleet or resources, and will be confirmed 45 days before each monthly RA compliance filing.

Ms. Mulberg states that RA capacity contracts are contracts that commit power plants to be available to the state's grid operator, the California Independent System Operator (CAISO), when the demand for electricity in California is at its highest levels. Under these contracts, CleanPowerSF does not purchase energy from the plants. Instead, CleanPowerSF receives a commitment from the plant to make its power producing capability available to CAISO if the state needs it to ensure electric system reliability.

Over the terms of the three Calpine agreements, CleanPowerSF would have total expenditures of up to \$332,619,817 through 2029. Over the one-year term of the SCE agreement, CleanPowerSF would receive up to \$1,273,570 in revenue. Projected and actual expenditures by year for the Calpine agreements are shown in Table 1 below.

Table 1: Projected and Actual Calpine RA Expenditures by Year

Calendar Year	Contract 1 (Existing)	Contract 2 (Existing)	Contract 3 (New)	Total
2018 (Actual)		\$1,874,569		\$1,874,569
2019 (Actual)	720,000	10,118,503		10,838,503
2020 (Actual and Projected)	720,000	10,535,674		11,255,674
2021 (Projected)	900,000	13,271,400		14,171,400
2022 (Projected)	2,700,000	26,148,600		28,848,600
2023 (Projected)	3,600,000	25,754,400		29,354,400
2024 (Projected)	3,600,000	25,824,960	9,900,000	39,324,960
2025 (Projected)	3,600,000	25,754,400	9,900,000	39,254,400
2026 (Projected)	3,600,000	25,754,400	9,900,000	39,254,400
2027 (Projected)	3,600,000	25,754,400	9,900,000	39,254,400
2028 (Projected)	3,600,000	25,824,960	9,900,000	39,324,960
2029 (Projected)	3,600,000	25,754,400	9,900,000	39,254,400
Total	\$30,240,000	\$242,370,666	\$59,400,000	\$332,010,666

Source: SFPUC

SFPUC has submitted an amended resolution that reduces the not-to-exceed amount of the second Calpine agreement from \$289,599,121 to \$242,979,817 due to actual expenditures to date. According to Ms. Mulberg, underspending was due to decreased power outputs from the Geysers geothermal facility after wildfires in Sonoma County in 2019 and resulting transmission constraints in early 2020. The revised not-to-exceed amount of \$242,979,817 is approximately

\$609,151 greater than total projected expenditures through 2029 of \$242,370,666, as shown in Table 1 above.

According to Ms. Mulberg, these RA and renewable energy purchases will reduce CleanPowerSF's expected power supply costs over the FY 2022-2029, benefiting ratepayers.

RECOMMENDATIONS

1. Amend the proposed resolution in File 20-1245 to reduce the not-to-exceed amount of the second Calpine agreement by \$609,151, for a total not to exceed \$242,370,666.
2. Approve the resolution in File 20-1245 as amended.
3. Approve the proposed resolution in File 20-1280.

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)
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MASTER POWER PURCHASE AND SALES AGREEMENT

TABLE OF CONTENTS

COVER SHEET.....	1
GENERAL TERMS AND CONDITIONS	6
ARTICLE ONE: GENERAL DEFINITIONS	6
ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS.....	11
2.1 Transactions	11
2.2 Governing Terms	11
2.3 Confirmation	11
2.4 Additional Confirmation Terms.....	12
2.5 Recording.....	12
ARTICLE THREE: OBLIGATIONS AND DELIVERIES	12
3.1 Seller’s and Buyer’s Obligations	12
3.2 Transmission and Scheduling	12
3.3 Force Majeure	13
ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE	13
4.1 Seller Failure	13
4.2 Buyer Failure	13
ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES	13
5.1 Events of Default	13
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts	15
5.3 Net Out of Settlement Amounts.....	15
5.4 Notice of Payment of Termination Payment	15
5.5 Disputes With Respect to Termination Payment	15
5.6 Closeout Setoffs	16
5.7 Suspension of Performance.....	16
ARTICLE SIX: PAYMENT AND NETTING	16
6.1 Billing Period	16
6.2 Timeliness of Payment.....	17
6.3 Disputes and Adjustments of Invoices.....	17
6.4 Netting of Payments.....	17
6.5 Payment Obligation Absent Netting	17
6.6 Security	18
6.7 Payment for Options	18
6.8 Transaction Netting.....	18

ARTICLE SEVEN: LIMITATIONS.....	18
7.1 Limitation of Remedies, Liability and Damages	18
ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS	19
8.1 Party A Credit Protection.....	19
8.2 Party B Credit Protection	21
8.3 Grant of Security Interest/Remedies	22
ARTICLE NINE: GOVERNMENTAL CHARGES.....	23
9.1 Cooperation.....	23
9.2 Governmental Charges.....	23
ARTICLE TEN: MISCELLANEOUS	23
10.1 Term of Master Agreement.....	23
10.2 Representations and Warranties.....	23
10.3 Title and Risk of Loss	25
10.4 Indemnity	25
10.5 Assignment	25
10.6 Governing Law	25
10.7 Notices	26
10.8 General.....	26
10.9 Audit	26
10.10 Forward Contract	27
10.11 Confidentiality	27
SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS	28
SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.....	32
EXHIBIT A: CONFIRMATION LETTER.....	39

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: _____ (“Effective Date”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement.” The Parties to this *Master Agreement* are the following:

Name (“_____” or “Party A”)

Name (“Counterparty” or “Party B”)

All Notices:

All Notices:

Street: _____

Street: _____

City: _____ Zip: _____

City: _____ Zip: _____

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Scheduling:

Scheduling:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Payments:

Payments:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: _____

ABA: _____

ABA: _____

ACCT: _____

ACCT: _____

Credit and Collections:

Credit and Collections:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

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

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

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

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

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies Cross Default for Party A:
 Party A: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____
 Cross Default for Party B:
 Party B: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

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

 - Option C (No Setoff)
-

Article 8

Credit and Collateral Requirements 8.1 Party A Credit Protection:
(a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
(b) Credit Assurances:
 Not Applicable
 Applicable
(c) Collateral Threshold:
 Not Applicable
 Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

- Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's
- Other:
Specify: _____

(e) Guarantor for Party A: _____

Guarantee Amount: _____

Article 10

Confidentiality

Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

Other Changes

Specify, if any: _____

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

Party A Name

Party B Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

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

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

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

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

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

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

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

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

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

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

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

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

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

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

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

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

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

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

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

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

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

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

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

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

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

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

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

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

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 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 NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on _____, _____
between _____ (“Party A”) and _____ (“Party B”)
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

Into _____, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Delivery Period: _____
Special Conditions: _____
Scheduling: _____
Option Buyer: _____
Option Seller: _____
Type of Option: _____
Strike Price: _____
Premium: _____
Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____
Title: _____
Phone No: _____
Fax: _____

Name: _____
Title: _____
Phone No: _____
Fax: _____



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**City and County of San Francisco –
Hetch Hetchy Power & CleanPowerSF
Request for Offers
2021-2022 Resource Adequacy Supplies
August 3, 2020**

Background

The San Francisco Public Utilities Commission (SFPUC) - Power Enterprise is a department of the City and County of San Francisco (CCSF). The SFPUC operates Hetch Hetchy Power, a full-service retail utility, and CleanPowerSF, San Francisco’s Community Choice Aggregation Program, serving commercial and residential customers in the City and County of San Francisco. The SFPUC is a member of the WSPP under the name City and County of San Francisco (CCSF).

The SFPUC issues this Request for Offers (RFO) to purchase Resource Adequacy (RA) supplies delivered 2021-2022 for **two counterparties**: 1) Hetch Hetchy Power; and 2) CleanPowerSF.

The SFPUC is seeking the following Resource Adequacy products:

- Local + Flexible RA Capacity
 - Bay Area
 - Humboldt
 - North Coast/North Bay
 - Sierra
 - Stockton
 - Fresno
 - Kern

Bids are requested in \$/kW-month as specified in the Bid Workbook – Exhibit A.

Proposal Timing

RFO Issued	August 3, 2020
Bids Due	5:00 PM PDT, August 12, 2020
Notification of Award	August 14, 2020

Please submit bids to powerpurchasing@sfgwater.org by **5:00 PM PDT on Wednesday, August 12, 2020**. Bids will be evaluated on an ongoing basis and respondents are encouraged to submit bids early.

On or before August 14, the SFPUC will notify shortlisted sellers of their accepted offers to commence contract negotiations.

Enabling Agreement -- Required amendments to WSPP confirmation:

The SFPUC purchases energy under the WSPP agreement. The resulting transactions from this request shall be executed and confirmed using the WSPP confirmation. The SFPUC requires the following amendments to the confirmation for each counterparty:

Counterparty: Hetch Hetchy Power

- **Guaranteed Maximum Cost.**
 - **Controller Certification.** Buyer's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of Buyer are not authorized to request, and Buyer is not required to reimburse Seller for, commodities or services beyond the agreed upon Transaction scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of Buyer are not authorized to offer or promise, nor is Buyer required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller for the City and County of San Francisco ("Controller") is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.
 - **Biannual Budget Process.** For each City biannual budget cycle during the term of this Confirmation, Buyer agrees it to take all necessary action to will include the maximum amount of its annual payment obligations under this Confirmation in its budget submitted to the City's Board of Supervisors for each year of that budget cycle.
- **Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Seller may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco (collectively, "Political Activity") in the performance of this Agreement. Seller agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Seller violates the provisions of this Section, Buyer may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Seller from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Seller's use of profit as a violation of this Section.
- **Nondiscrimination Requirements.**
 - Seller shall comply with the provisions of Chapter 12B of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a) and 12B.2(c)-(k) of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.
 - Seller represents that it does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in the City of San Francisco, on real property owned by the City, or where work is being performed for the Buyer elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.
- **Compliance with Laws.** Each Party shall keep itself fully informed of all applicable federal, state, and local laws, ordinances, or regulations that in any manner affect the performance of this Agreement, and must at all times comply with all such laws, ordinance, or regulations they may be amended from time to time.

- Section 24 of the WSPP Agreement is deleted and replaced with the following: “This WSPP Agreement and any Confirmation shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law.”
- City Vendor Requirements. Notwithstanding any other provision of this Agreement, Buyer shall not be deemed to be in default of this Agreement and no Late Payment Penalty shall be assessed if an invoice under this Agreement cannot be processed by Buyer due to Seller's failure to comply with all applicable City requirements for City contractors, including but not limited to certification of vendors under Chapter 12 of the San Francisco Administrative Code, payment of business license fees or taxes, insurance requirements, registration in the City's vendor payment processing system, or any other current or future City requirement for vendor payment processing. Seller understands and acknowledges that vendor certifications may include annual renewals and additional certification requirements may apply to assignees or changes in ownership or control of Seller.

Counterparty: CleanPowerSF

- **Guaranteed Maximum Cost.**
 - **Controller Certification.** Buyer's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of Buyer are not authorized to request, and Buyer is not required to reimburse Seller for, commodities or services beyond the agreed upon Transaction scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of Buyer are not authorized to offer or promise, nor is Buyer required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller for the City and County of San Francisco (“Controller”) is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.
 - **Biannual Budget Process.** For each City biannual budget cycle during the term of this Confirmation, Buyer agrees it to take all necessary action to will include the maximum amount of its annual payment obligations under this Confirmation in its budget submitted to the City's Board of Supervisors for each year of that budget cycle.
- **Designated Fund.**
 - **Auto-Appropriating Designated Fund.** Buyer's obligations under this Confirmation shall be paid from a SFPUC designated fund that will automatically appropriate CleanPowerSF revenues on an annual basis without further action and which shall be used solely for CleanPowerSF's costs and expenses, including the Buyer's obligations under this Confirmation. Buyer agrees to set CleanPowerSF's rates and charges that are sufficient to maintain revenues necessary to pay all of Buyer's payment obligations under its contracts for the purchase of energy or energy related products for CleanPowerSF. Buyer shall provide Seller with reasonable access to account balance information with respect to the CleanPowerSF designated fund at all times during the Delivery Period.
 - **Limited Obligations.** Buyer's obligations under this Confirmation are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. The obligations are not a charge upon the revenues or general fund of the SFPUC or the City or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City.
- **Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Seller may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco (collectively, "Political Activity") in the performance of this Agreement. Seller agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event

Seller violates the provisions of this Section, Buyer may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Seller from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Seller's use of profit as a violation of this Section.

- **Nondiscrimination Requirements.**
 - Seller shall comply with the provisions of Chapter 12B of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a) and 12B.2(c)-(k) of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.
 - Seller represents that it does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in the City of San Francisco, on real property owned by the City, or where work is being performed for the Buyer elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.
- **Compliance with Laws.** Each Party shall keep itself fully informed of all applicable federal, state, and local laws, ordinances, or regulations that in any manner affect the performance of this Agreement, and must at all times comply with all such laws, ordinance, or regulations they may be amended from time to time.
- **Section 24 of the WSPP Agreement is deleted and replaced with the following:** "This WSPP Agreement and any Confirmation shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law."
- **City Vendor Requirements.** Notwithstanding any other provision of this Agreement, Buyer shall not be deemed to be in default of this Agreement and no Late Payment Penalty shall be assessed if an invoice under this Agreement cannot be processed by Buyer due to Seller's failure to comply with all applicable City requirements for City contractors, including but not limited to certification of vendors under Chapter 12 of the San Francisco Administrative Code, payment of business license fees or taxes, insurance requirements, registration in the City's vendor payment processing system, or any other current or future City requirement for vendor payment processing. Seller understands and acknowledges that vendor certifications may include annual renewals and additional certification requirements may apply to assignees or changes in ownership or control of Seller.

How to Respond

- Preference will be given to entities that are a WSPP member or have an existing Master Agreement in place with either counterparty.
- Provide information summarizing your specific bid(s) by completing Exhibit A.
- Attach any additional information relevant to your bid.
- SFPUC Origination and Power Supply staff will respond with an email to confirm your bid has been received.
- **Responses and/or questions should be addressed to: powerpurchasing@sfgwater.org**

Post-Response Negotiations

SFPUC reserves the right to enter into discussions with respondent to gain clarity on its bid, or to suggest a partial amendment to the offer.

Disclaimer and Confidentiality

SFPUC reserves the right, without qualification and in its sole discretion, to reject any or all offers, accept multiple bids, and to terminate this request for bid in whole or in part at any time. Without limiting the



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foregoing, SFPUC further reserves the right in its sole discretion, to decline to enter into any agreement with any counterparty for any reason.

It is not SFPUC's intent to publicly disclose individual respondent proprietary information obtained in response to this request. This request is intended to provide information for SFPUC to select a bid to purchase energy, it should NOT be construed as a commitment by SFPUC to enter into a contractual agreement, nor will SFPUC pay for information solicited.



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**City and County of San Francisco –
 Hetch Hetchy Power & CleanPowerSF
 Request for Offers
 2021-2022 Resource Adequacy Supplies
 September 2, 2020**

Background

The San Francisco Public Utilities Commission (SFPUC) - Power Enterprise is a department of the City and County of San Francisco (CCSF). The SFPUC operates Hetch Hetchy Power, a full-service retail utility, and CleanPowerSF, San Francisco’s Community Choice Aggregation Program, serving commercial and residential customers in the City and County of San Francisco. The SFPUC is a member of the WSPP under the name City and County of San Francisco (CCSF).

The SFPUC issues this Request for Offers (RFO) to purchase Resource Adequacy (RA) supplies delivered 2021-2022 for **two counterparties**: 1) Hetch Hetchy Power; and 2) CleanPowerSF.

The SFPUC is seeking the following Resource Adequacy products:

- System RA Capacity
 - North System
 - South System
- Local + Flexible RA Capacity
 - Bay Area
 - Humboldt
 - North Coast/North Bay
 - Sierra
 - Stockton
 - Fresno
 - Kern

Bids are requested in \$/kW-month as specified in the Bid Workbook – Exhibit A.

Proposal Timing

RFO Issued	September 2, 2020
Bids Due	5:00 PM PDT, September 10, 2020
Notification of Award	September 14, 2020

Please submit bids to powerpurchasing@sfgwater.org by **5:00 PM PDT on Thursday, September 10, 2020**. **Bids will be evaluated on an ongoing basis and respondents are encouraged to submit bids early.**

On or before September 14, the SFPUC will notify shortlisted sellers of their accepted offers to commence contract negotiations.

Enabling Agreement -- Required amendments to WSPP confirmation:

The SFPUC purchases energy under the WSPP agreement. The resulting transactions from this request shall be executed and confirmed using the WSPP confirmation. The SFPUC requires the following amendments to the confirmation for each counterparty:

Counterparty: Hetch Hetchy Power

- **Guaranteed Maximum Cost.**
 - **Controller Certification.** Buyer's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of Buyer are not authorized to request, and Buyer is not required to reimburse Seller for, commodities or services beyond the agreed upon Transaction scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of Buyer are not authorized to offer or promise, nor is Buyer required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller for the City and County of San Francisco ("Controller") is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.
 - **Biannual Budget Process.** For each City biannual budget cycle during the term of this Confirmation, Buyer agrees it to take all necessary action to will include the maximum amount of its annual payment obligations under this Confirmation in its budget submitted to the City's Board of Supervisors for each year of that budget cycle.
- **Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Seller may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco (collectively, "Political Activity") in the performance of this Agreement. Seller agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Seller violates the provisions of this Section, Buyer may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Seller from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Seller's use of profit as a violation of this Section.
- **Nondiscrimination Requirements.**
 - Seller shall comply with the provisions of Chapter 12B of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a) and 12B.2(c)-(k) of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.
 - Seller represents that it does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in the City of San Francisco, on real property owned by the City, or where work is being performed for the Buyer elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.
- **Compliance with Laws.** Each Party shall keep itself fully informed of all applicable federal, state, and local laws, ordinances, or regulations that in any manner affect the performance of this Agreement, and must at all times comply with all such laws, ordinance, or regulations they may be amended from time to time.

- Section 24 of the WSPP Agreement is deleted and replaced with the following: “This WSPP Agreement and any Confirmation shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law.”
- City Vendor Requirements. Notwithstanding any other provision of this Agreement, Buyer shall not be deemed to be in default of this Agreement and no Late Payment Penalty shall be assessed if an invoice under this Agreement cannot be processed by Buyer due to Seller's failure to comply with all applicable City requirements for City contractors, including but not limited to certification of vendors under Chapter 12 of the San Francisco Administrative Code, payment of business license fees or taxes, insurance requirements, registration in the City's vendor payment processing system, or any other current or future City requirement for vendor payment processing. Seller understands and acknowledges that vendor certifications may include annual renewals and additional certification requirements may apply to assignees or changes in ownership or control of Seller.

Counterparty: CleanPowerSF

- **Guaranteed Maximum Cost.**
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- **Designated Fund.**
 - **Auto-Appropriating Designated Fund.** Buyer's obligations under this Confirmation shall be paid from a SFPUC designated fund that will automatically appropriate CleanPowerSF revenues on an annual basis without further action and which shall be used solely for CleanPowerSF's costs and expenses, including the Buyer's obligations under this Confirmation. Buyer agrees to set CleanPowerSF's rates and charges that are sufficient to maintain revenues necessary to pay all of Buyer's payment obligations under its contracts for the purchase of energy or energy related products for CleanPowerSF. Buyer shall provide Seller with reasonable access to account balance information with respect to the CleanPowerSF designated fund at all times during the Delivery Period.
 - **Limited Obligations.** Buyer's obligations under this Confirmation are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. The obligations are not a charge upon the revenues or general fund of the SFPUC or the City or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City.
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Seller violates the provisions of this Section, Buyer may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Seller from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Seller's use of profit as a violation of this Section.

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 - Seller represents that it does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in the City of San Francisco, on real property owned by the City, or where work is being performed for the Buyer elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.
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How to Respond

- Preference will be given to entities that are a WSPP member or have an existing Master Agreement in place with either counterparty.
- Provide information summarizing your specific bid(s) by completing Exhibit A.
- Attach any additional information relevant to your bid.
- SFPUC Origination and Power Supply staff will respond with an email to confirm your bid has been received.
- **Responses and/or questions should be addressed to: powerpurchasing@sfgwater.org**

Post-Response Negotiations

SFPUC reserves the right to enter into discussions with respondent to gain clarity on its bid, or to suggest a partial amendment to the offer.

Disclaimer and Confidentiality

SFPUC reserves the right, without qualification and in its sole discretion, to reject any or all offers, accept multiple bids, and to terminate this request for bid in whole or in part at any time. Without limiting the



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foregoing, SFPUC further reserves the right in its sole discretion, to decline to enter into any agreement with any counterparty for any reason.

It is not SFPUC's intent to publicly disclose individual respondent proprietary information obtained in response to this request. This request is intended to provide information for SFPUC to select a bid to purchase energy, it should NOT be construed as a commitment by SFPUC to enter into a contractual agreement, nor will SFPUC pay for information solicited.



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**City and County of San Francisco –
Hetch Hetchy Power & CleanPowerSF
Request for Offers
2021-2022 Resource Adequacy Supplies
September 29, 2020**

Background

The San Francisco Public Utilities Commission (SFPUC) - Power Enterprise is a department of the City and County of San Francisco (CCSF). The SFPUC operates Hetch Hetchy Power, a full-service retail utility, and CleanPowerSF, San Francisco’s Community Choice Aggregation Program, serving commercial and residential customers in the City and County of San Francisco. The SFPUC is a member of the WSPP under the name City and County of San Francisco (CCSF).

The SFPUC issues this Request for Offers (RFO) to purchase Resource Adequacy (RA) supplies delivered 2021-2022 for **two counterparties**: 1) Hetch Hetchy Power; and 2) CleanPowerSF.

The SFPUC is seeking the following Resource Adequacy products:

- System RA Capacity
 - North System
 - South System
- Local + Flexible RA Capacity
 - Bay Area
 - Humboldt
 - North Coast/North Bay
 - Sierra
 - Stockton
 - Fresno
 - Kern

Bids are requested in \$/kW-month as specified in the Bid Workbook – Exhibit A.

The SFPUC is willing to accept offers for simultaneous buy/sell transactions, in which prospective counterparties offer to sell Local and/or Flexible Resource Adequacy Products to the SFPUC, and simultaneously purchase System Resource Adequacy Products from the SFPUC.

Proposal Timing

RFO Issued	September 29, 2020
Bids Due	12:00 PM PDT, October 7, 2020
Notification of Award	October 12, 2020

Please submit bids to powerpurchasing@sfgwater.org by **12:00 PM PDT on Wednesday, October 7, 2020**. Bids will be evaluated on an ongoing basis and respondents are encouraged to submit bids early.

On or before October 12, the SFPUC will notify shortlisted sellers of their accepted offers to commence contract negotiations.

Enabling Agreement -- Required amendments to WSPP confirmation:

The SFPUC purchases energy under the WSPP agreement. The resulting transactions from this request shall be executed and confirmed using the WSPP confirmation. The SFPUC requires the following amendments to the confirmation for each counterparty:

Counterparty: Hetch Hetchy Power

- **Guaranteed Maximum Cost.**
 - **Controller Certification.** Buyer's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of Buyer are not authorized to request, and Buyer is not required to reimburse Seller for, commodities or services beyond the agreed upon Transaction scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of Buyer are not authorized to offer or promise, nor is Buyer required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller for the City and County of San Francisco ("Controller") is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.
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Counterparty: CleanPowerSF

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- **Responses and/or questions should be addressed to: powerpurchasing@sfgwater.org**

Post-Response Negotiations

SFPUC reserves the right to enter into discussions with respondent to gain clarity on its bid, or to suggest a partial amendment to the offer.

Disclaimer and Confidentiality



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SFPUC reserves the right, without qualification and in its sole discretion, to reject any or all offers, accept multiple bids, and to terminate this request for bid in whole or in part at any time. Without limiting the foregoing, SFPUC further reserves the right in its sole discretion, to decline to enter into any agreement with any counterparty for any reason.

It is not SFPUC's intent to publicly disclose individual respondent proprietary information obtained in response to this request. This request is intended to provide information for SFPUC to select a bid to purchase energy, it should NOT be construed as a commitment by SFPUC to enter into a contractual agreement, nor will SFPUC pay for information solicited.



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**City and County of San Francisco –
 Hetch Hetchy Power & CleanPowerSF
 Request for Offers
 2021-2022 Resource Adequacy Supplies
 October 16, 2020**

Background

The San Francisco Public Utilities Commission (SFPUC) - Power Enterprise is a department of the City and County of San Francisco (CCSF). The SFPUC operates Hetch Hetchy Power, a full-service retail utility, and CleanPowerSF, San Francisco’s Community Choice Aggregation Program, serving commercial and residential customers in the City and County of San Francisco. The SFPUC is a member of the WSPP under the name City and County of San Francisco (CCSF).

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Bids are requested in \$/kW-month as specified in the Bid Workbook – Exhibit A.

The SFPUC is willing to accept offers for simultaneous buy/sell transactions, in which prospective counterparties offer to sell Local and/or Flexible Resource Adequacy Products to the SFPUC, and simultaneously purchase System Resource Adequacy Products from the SFPUC.

Proposal Timing

RFO Issued	October 16, 2020
Bids Due	12:00 PM PDT, October 21, 2020
Notification of Award	October 21, 2020

Please submit bids to powerpurchasing@sfgwater.org by **12:00 PM PDT on Wednesday, October 21, 2020**. **Bids will be evaluated on an ongoing basis and respondents are encouraged to submit bids early.**

On or before October 21, the SFPUC will notify shortlisted sellers of their accepted offers to commence contract negotiations.

Enabling Agreement -- Required amendments to WSPP confirmation:

The SFPUC purchases energy under the WSPP agreement. The resulting transactions from this request shall be executed and confirmed using the WSPP confirmation. The SFPUC requires the following amendments to the confirmation for each counterparty:

Counterparty: Hetch Hetchy Power

- **Guaranteed Maximum Cost.**
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Counterparty: CleanPowerSF

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 - **Auto-Appropriating Designated Fund.** Buyer’s obligations under this Confirmation shall be paid from a SFPUC designated fund that will automatically appropriate CleanPowerSF revenues on an annual basis without further action and which shall be used solely for CleanPowerSF’s costs and expenses, including the Buyer’s obligations under this Confirmation. Buyer agrees to set CleanPowerSF’s rates and charges that are sufficient to maintain revenues necessary to pay all of Buyer’s payment obligations under its contracts for the purchase of energy or energy related products for CleanPowerSF. Buyer shall provide Seller with reasonable access to account balance information with respect to the CleanPowerSF designated fund at all times during the Delivery Period.
 - **Limited Obligations.** Buyer’s obligations under this Confirmation are special limited obligations of CleanPowerSF payable solely from the revenues of CleanPowerSF. The obligations are not a charge upon the revenues or general fund of the SFPUC or the City or upon any non-CleanPowerSF moneys or other property of the SFPUC or the City.
- **Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Seller may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure in San Francisco (collectively, “Political Activity”) in the performance of this Agreement. Seller agrees to comply with San Francisco Administrative

Code Chapter 12.G and any implementing rules and regulations promulgated by the Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Seller violates the provisions of this Section, Buyer may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Seller from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Seller's use of profit as a violation of this Section.

- **Nondiscrimination Requirements.**
 - Seller shall comply with the provisions of Chapter 12B of the San Francisco Administrative Code. Seller shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a) and 12B.2(c)-(k) of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Seller is subject to the enforcement and penalty provisions in Chapters 12B and 12C.
 - Seller represents that it does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in the City of San Francisco, on real property owned by the City, or where work is being performed for the Buyer elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.
- **Compliance with Laws.** Each Party shall keep itself fully informed of all applicable federal, state, and local laws, ordinances, or regulations that in any manner affect the performance of this Agreement, and must at all times comply with all such laws, ordinance, or regulations they may be amended from time to time.
- **Section 24 of the WSPP Agreement is deleted and replaced with the following:** "This WSPP Agreement and any Confirmation shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law."
- **City Vendor Requirements.** Notwithstanding any other provision of this Agreement, Buyer shall not be deemed to be in default of this Agreement and no Late Payment Penalty shall be assessed if an invoice under this Agreement cannot be processed by Buyer due to Seller's failure to comply with all applicable City requirements for City contractors, including but not limited to certification of vendors under Chapter 12 of the San Francisco Administrative Code, payment of business license fees or taxes, insurance requirements, registration in the City's vendor payment processing system, or any other current or future City requirement for vendor payment processing. Seller understands and acknowledges that vendor certifications may include annual renewals and additional certification requirements may apply to assignees or changes in ownership or control of Seller.

How to Respond

- Preference will be given to entities that are a WSPP member or have an existing Master Agreement in place with either counterparty.
- Provide information summarizing your specific bid(s) by completing Exhibit A.
- Attach any additional information relevant to your bid.
- SFPUC Origination and Power Supply staff will respond with an email to confirm your bid has been received.
- **Responses and/or questions should be addressed to: powerpurchasing@sfgwater.org**

Post-Response Negotiations

SFPUC reserves the right to enter into discussions with respondent to gain clarity on its bid, or to suggest a partial amendment to the offer.

Disclaimer and Confidentiality



525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

SFPUC reserves the right, without qualification and in its sole discretion, to reject any or all offers, accept multiple bids, and to terminate this request for bid in whole or in part at any time. Without limiting the foregoing, SFPUC further reserves the right in its sole discretion, to decline to enter into any agreement with any counterparty for any reason.

It is not SFPUC's intent to publicly disclose individual respondent proprietary information obtained in response to this request. This request is intended to provide information for SFPUC to select a bid to purchase energy, it should NOT be construed as a commitment by SFPUC to enter into a contractual agreement, nor will SFPUC pay for information solicited.



SOUTHERN CALIFORNIA EDISON COMPANY

SEP 2020 RA Solicitation

2020 Resource Adequacy (RA)
Capacity and Import Capability Solicitation

Solicitation Instructions

September 17, 2020

EMAIL INQUIRIES

epm.co.solicitations.ra@sce.com

Keith Oliver – Keith.Oliver@merrimackenergy.com

Wayne Oliver – Wayne.Oliver@merrimackenergy.com

TABLE OF CONTENTS

1. Summary.....	3
2. Products Solicited.....	4
2.1. RA Capacity.....	4
2.2. Import Capability Transfer Purchase and Sales.....	6
3. Solicitation Schedule.....	6
4. Eligibility Requirements.....	7
5. Credit Requirements.....	8
6. Offer Submittal Instructions	9
6.1. Submission of Offers.....	9
6.2. Selection Notification.....	10
6.3. Execution of Confirmations and Certificate of Authority	10
7. Evaluation Criteria	11
7.1. Quantitative Evaluation	11
7.2. Qualitative Evaluation	11
8. Communication & Independent Evaluator.....	11
8.1. Independent Evaluator	12
9. Solicitation Confidentiality.....	12
10. General Information & Reservation of Rights	12
11. Respondent’s Waiver of Claims & Limitation of Remedies.....	15
12. Respondent’s Representations, Warranties & Covenants.....	16
13. Respondent’s Offer & Acknowledgement	18
14. Exhibits.....	19
Exhibit A – SCE Non-Disclosure Agreement	19
Exhibit B1 – SCE Pro Forma RA Confirmation.....	19
Exhibit B2 – SCE Pro Forma Import Capability Transfer Confirmation.....	19
Exhibit C – Certificate of Authority	19
Exhibit D – Offer Workbook for RA Capacity and/or Import Capability Transfer	19
Exhibit E1 – EEI Master Power Purchase & Sale Agreement Cover Sheet.....	19
Exhibit E2 – EEI Paragraph 10 to the Collateral Annex.....	19

Note: These Solicitation Instructions and the Non-Disclosure Agreement (NDA) limit Respondents' ability to engage in communications with any other actual or potential participants in this Solicitation concerning this Solicitation. The NDA is provided in Exhibit A, which must be partially executed and submitted to SCE by Respondent no later than the Offer Submission Deadline, unless a fully executed evergreen NDA between Respondent and SCE already exists.

In the event that a Respondent desires to (a) act as a marketing agent for a third party, (b) act as a credit sleeve for a third party, or (c) otherwise act as an agent or representative of a third party, in each case with respect to any Offer in the Solicitation, such Respondent and the third party should contact SCE and seek a waiver or amendment of such confidentiality provisions, which SCE may or may not grant in its sole discretion. Such Respondent and the third party should be prepared to provide SCE with a written description of the proposed relationship between such parties and the proposed structure of their Offers. SCE reserves the right, in its sole discretion, to disqualify those Respondents that have not complied with the provisions of this paragraph. Additionally, all market participants must take precautions to avoid anti-competitive behavior and to comply with all California and federal antitrust laws.

1. Summary

Southern California Edison Company ("SCE") is conducting this solicitation to facilitate Year-Ahead (YA) Resource Adequacy (RA) compliance showing for year 2021. SCE will therefore prioritize transactions relating to 2021 compliance requirements and require such counterparties to be pre-enabled (i.e. executed EEI with SCE) and for government entities to submit a Certificate of Authority (reference Section 6.3 & Exhibit C) by the offer due date.

SCE seeks offers from parties ("Respondents") to buy, sell, or swap Resource Adequacy ("RA") Capacity and/or Import Capability for Delivery Periods commencing **January 1, 2021 to December 31, 2025**, as further defined in Article 2 of these Solicitation Instructions. This solicitation hereafter will be referenced as the "September 2020 RA Solicitation", "Sep20 RA sol", "RA-Solicitation", "Solicitation", or "Solicitation".

The purpose of this document (the "Solicitation Instructions") is to provide Respondents with the product definition, schedule, submittal instructions, and the terms and conditions of Respondents' participation in this Solicitation. All offers will be reviewed for completeness and conformity, and evaluated on a competitive basis.

Capitalized terms not defined in these Solicitation Instructions have the meanings ascribed to them in the applicable Exhibits hereto or the current California Independent System Operator Corporation (“CAISO”) tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time (the “CAISO Tariff”).

SCE will utilize an independent evaluator, Merrimack Energy (the “IE”), in connection with this Solicitation.

2. Products Solicited

The eligible products for this Solicitation are RA Capacity and RA Import Capability with Delivery Periods shown below, each of which referred to as a “Product” and collectively as the “Products”.

2.1. RA Capacity

The RA Capacity must be from existing generating units that have a Net Qualifying Capacity (“NQC”) assigned by the CAISO and must be able to count toward RA requirement with the California Public Utilities Commission (“CPUC”). New generating units that have not completed construction and do not have an NQC are not eligible to participate in this Solicitation. The following table provides a summary and description of eligible RA Capacity product for this Solicitation.

Solicitation Table 1: RA Capacity

Product	RA Capacity		
Delivery Point	CAISO		
Type	Local or System, with or without Flexible Capacity. (Refer to offer workbook for available local areas and additional details)		
Minimum Volume	1 MW		
Price	Fixed (\$/kW-month)		
Contract Options	SCE Sale	SCE Purchase	SCE Swaps Local (SCE sells) for System (SCE buys)
Offer Increment	Monthly	Monthly	Aug – Oct strip, all months inclusive

Eligible Delivery Periods	Jan-Jul 2021 Nov-Dec 2021, Jan-Jul 2022, and Nov-Dec 2022	Jan 2021 through Dec 2025	Aug – Oct 2021, and/or Aug – Oct 2022
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Offer Variants – Respondents are encouraged to submit multiple offers with varying delivery periods and contract options. These varying offers could include different volume options and delivery terms. Such variations may enhance a Respondent’s ability to receive a final award within the Solicitation. Respondents are not permitted to increase their Offer price for any Product after the Offer Submission Deadline.

SCE Purchase – Respondents submitting Offers to sell RA Capacity to SCE must either own or have a contractual right to the qualifying and deliverable RA Capacity for the delivery period specified. Offers must specify the Unit(s) for the available RA Capacity.

SCE Swap – SCE will sell Local RA Capacity and purchase System RA Capacity. Available Local RA for swap include LA Basin, Big Creek Ventura, San Diego, Bay Area, NCNB, and Fresno. **Important:** Note that Swaps will transact based on the cost difference (premium) between the buy and sell transactions. The independent posting amount if applicable will be based on the SCE sell side of the transaction.

OTC Units – Offers to sell once-through-cooling (“OTC”) to SCE will require CPUC Approval via a Tier 3 Advice Letter. For this reason, offers involving OTC Unit(s) will be limited to Delivery Periods commencing August 1, 2021.

RA Confirmation & EEI – RA purchases and sales will transact through the terms described in the RA Capacity Confirmation (the “SCE Pro Forma RA Confirmation”), attached hereto as Exhibit B1, which shall be a confirmation under an executed EEI Master Power Purchase & Sale Agreement, Cover Sheet, EEI Collateral Annex, and Paragraph 10 to the Collateral Annex if required (collectively “Enabling Agreement”), between SCE and Respondent. For RA Swaps, additional terms will apply as indicated in the SCE Pro Forma RA Confirmation.

Enablement Agreement Requirement – Respondents submitting offers for year-ahead compliance showing (with Delivery Periods between January 2020 and December 2021) must have an effective Enabling Agreement with SCE as of the Offer Submission Deadline, and Respondents are expected to be able to accept SCE’s Pro Forma RA Confirmation.

2.2. Import Capability Transfer Purchase and Sales

RA Import Capability must be for specified CAISO interties that can be used to deliver RA into the CAISO Balance Authority Area. Respondent may submit an Offer to sell to SCE, or buy from SCE, the right to deliver RA from specific CAISO interties into the CAISO Balance Authority Area. These rights are CAISO intertie specific and do not include any RA capacity, energy, or ancillary services.

Table 2: Import Capability Transfer Product

Products	Import Capability Transfer
Intertie Delivery Points	PACI_MSL (COB) / NOB_ITC (NOB) PALOVRDE_ITC (PV) / MEAD_ITC (MEAD)/ MONAIPPDC_ITC (MONA)
Minimum Volume	1 MW
Pricing	Fixed Price (\$/kW-month)
Contract Options	SCE Purchase or SCE Sale
Offer Increment	Monthly
Eligible Delivery Period	January 2021 – December 2021

Respondents submitting an Offer to sell this Product to SCE must either own or have the contractual right to the Product for the Delivery Period specified in Table above.

Import Capability Product shall transact through the terms described in the “SCE Import Capability Transfer Confirmation,” attached hereto as Exhibit B2, and executed in accordance with the EEI Agreement.

3. Solicitation Schedule

The following are key dates associated with this Solicitation.

TIMELINE	EVENT
September 17, 2020	Solicitation launch
September 24, 2020 12:00 PM (Noon) Pacific Time	“Offer Submission Deadline” Respondents must submit completed Offers, a partially executed NDA (if not previously executed), any proposed change to the pro forma Confirmation, and a COA (if applicable).

TIMELINE	EVENT
By October 09, 2020	“Selection Notification” Selection notice will be provided to Respondents identifying the Offers selected. SCE’s selection of an Offer is subject to final SCE management review and approval, consultation with SCE’s Procurement Review Group (“PRG”), and successful execution of the Confirmation.
October 23, 2020	“Contract Execution” for Year-Ahead Compliance Transactions Deadline for Respondent and SCE, as applicable, to execute final Confirmation(s) for Year-Ahead RA compliance transactions.
November 20, 2020	“Contract Execution” for 2023/2024 Product Deadline for Respondent and SCE, as applicable, to execute final Confirmation(s) for all transactions inclusive of a 2023 and/or 2024 delivery period.
January 15, 2021	“Execution Deadline & Solicitation Close” Deadline for Respondent and SCE, as applicable, to execute final Confirmation(s) for all transactions.

Unless stated otherwise in the above table, deadlines will be set at close of business (5:00 p.m. pacific time). SCE reserves the right to revise this schedule at any time and in SCE’s sole discretion.

4. Eligibility Requirements

Respondents to this Solicitation must comply with the requirements in these Solicitation Instructions. Respondents that fail to comply with the requirements in these Solicitation Instructions may be deemed ineligible and their Offers may not be considered.

SCE, in its sole discretion, may change the terms, requirements, and schedule of this Solicitation.

By participating in this Solicitation, the Respondent specifically acknowledges the following:

1. If Respondent is deemed eligible to submit an Offer, any Offer submitted by Respondent is considered a final Offer and cannot be modified by Respondent. SCE however reserves the right to clarify and further refine all offers at its sole

discretion, including but not limited to Product type, parameters, price and quantity.

2. Respondents may enter into limited negotiations to execute an agreement with SCE. Respondents are strongly discouraged from making any substantive changes to the form of Confirmations attached as Exhibits to these Solicitation Instructions (collectively, the "Agreements"). Extensive modifications to these Agreements will not be accepted. SCE, in its sole discretion, will determine whether any proposed modification or alteration to these Agreements are material and reserves the right to decline to execute any agreement with a selected Respondent for any reason.

Mutually inclusive Offers across generating units that have the **same** attributes are allowed (e.g., Offer A for generating Unit 1 (Big Creek-Ventura) with flexible capacity and Offer B for generating Unit 2 (Big Creek-Ventura) with flexible capacity). If making a mutually inclusive Offer across generating units, Respondent must also submit discrete Offers for those generating units. SCE will have the option to either select the mutually inclusive Offer or the discrete Offers separately.

5. Credit Requirements

SCE requires that Respondents post collateral (either cash or a letter of credit) for SCE's exposure above an unsecured credit line, if any. Only investment grade-rated Respondents are eligible for an unsecured credit line. Alternatively, a Respondent may be eligible for an unsecured credit line by providing a guaranty from an investment grade-rated corporate parent (the "Guaranty"). A form of such guaranty can be provided by SCE upon request. SCE will not accept a Guaranty from third parties that are not affiliated with the Respondent. Respondents that are not rated or are rated below investment grade shall be required to post collateral for all of SCE's exposure in addition to an independent amount.

SCE is a California load-serving utility with investment grade credit ratings and substantial tangible net worth. Any Offer that requires SCE to post collateral will be rejected by SCE.

SCE reserves the right to disqualify Respondents that are unwilling or unable to meet these credit requirements.

Use of a funds transfer agent and a Funds Transfer Agent Agreement ("FTAA") in order to fulfill payment obligations may not fulfill SCE's collateral requirements. Respondents in such case will have to arrange for additional collateral.

6. Offer Submittal Instructions

IMPORTANT - The primary method for exchange of information or documents concerning this Solicitation, including any such exchange concerning the preparation or submission of Offers to SCE, will be with the PowerAdvocate® website:

<https://www.poweradvocate.com/appNavigator?navType=bidevent&okey=108649>

All participants interested in submitting Offers Solicitation will need to pre-register with PowerAdvocate®. Participants who do not have an existing PowerAdvocate® account must first register to create a username and password with PowerAdvocate® to receive access to the Solicitation materials (event code 108649). Users with an existing PowerAdvocate® account can readily access the Solicitation site and associated materials. For additional information on registering on PowerAdvocate®, please visit:

https://www.poweradvocate.com/WebHelp_Sourcing_Intel_Supplier/Content/Resources/Sourcing_Intel_Supplier_Guide.pdf

SCE strongly encourages participants to register with PowerAdvocate® well before Offers are due. PowerAdvocate® registrants should submit offers under the parent company of the entity, not its contractors, subcontractors, consultants, or agents.

For any registration or access issues, please contact support@poweradvocate.com

6.1. Submission of Offers

In order to have a complete and conforming Offer, Respondent must upload the following documents ("Solicitation Documents") to the PowerAdvocate® website by the Offer Submittal Deadline.

1. A fully completed Offer Workbook or Workbooks;
2. A partially executed Non-Disclosure Agreement (NDA), unless Respondent already has in place an evergreen NDA with SCE (please note this on offer submittal);

3. A completed pro forma RA Confirmation (Exhibit B1), and/or a completed pro forma Import Capability Transfer Confirmation (Exhibit B2) with all the relevant data fields filled in. Only limited modification to these confirmations may be considered. Given the timeline associated with the offers required to satisfy year-ahead compliance obligations, modifications to SCE's pro forma for such transactions are not preferred;
4. If Respondent is a government entity, an unexecuted draft Certificate of Authority including all applicable exhibits.

All documents will be made available through the PowerAdvocate® site. All forms uploaded for consideration must be in their original format, i.e., not converted to a Portable Document Format (PDF); provided, signature pages of the NDA may be uploaded as a PDF. Failure to provide the listed information may result in the Offer being deemed non-conforming and may disqualify the Offer from further consideration.

SCE will not accept Offers received after the Offer Submittal Deadline. SCE will only consider submissions that, as of the Offer Submittal Deadline, constitute complete and conforming Offers. By responding to this Solicitation, each Respondent agrees to be bound by all terms, conditions and other provisions of this Solicitation (including these Solicitation Instructions) and any changes or supplements to it that may be issued by SCE.

6.2. Selection Notification

By the Selection Notification date, SCE will notify Respondents if their Offers have been contingently selected. Upon such contingent selection, such Offer becomes binding on Respondent and Respondent may not modify, alter, withdraw or otherwise revise such Offer. SCE selection is contingent upon consultation with SCE's Procurement Review Group ("PRG"), final SCE management review and approval, successful negotiation of the transaction documents, and SCE's execution and delivery of the applicable transaction documents.

6.3. Execution of Confirmations and Certificate of Authority

If Respondent is a government entity, Respondent agrees to execute a Confirmation and Certificate of Authority consistent with the terms of the Offer(s) and conditions as may be mutually acceptable. The Certificate of Authority must be executed by the Respondent on the same date as the RA Confirmation is

partially executed by the Respondent. The Confirmation will only be considered executed once authorized officers of both SCE and the Respondent have executed and delivered the Confirmation.

7. Evaluation Criteria

This Solicitation will utilize a single pricing value process to assess of all offers based on SCE's most recent market forecast. All Offers will initially be assessed for conformance with the requirements set forth in these Solicitation Instructions. Respondents are responsible for the accuracy of all figures, calculations, and representations. In addition to the foregoing, there will be both quantitative and qualitative considerations involved with evaluating Offers in accordance with the SCE Bundled Procurement Plan (BPP). Any Offer within this Solicitation will be considered a final Offer which cannot be modified by Respondent, and which shall be subject to SCE's acceptance, execution and delivery, as determined by SCE in its sole discretion.

7.1. Quantitative Evaluation

The valuation of each Offer considers cash flow components for both cost and revenue. These components are then netted and discounted to yield a Net Present Value ("NPV") for each Offer. The NPV is compared to other Offers or potential combinations of Offers to find the "Least Cost" selection set which meets SCE's minimum procurement obligation. SCE will then select a set of Offers with the goal of minimizing the cost to SCE's customers, while meeting the defined needs, subject to a set of constraints such as counterparty volume limits and inclusivity.

7.2. Qualitative Evaluation

In addition to the quantitative factors described above, there are other factors which may impact the selection of an Offer. These may include, among other factors, project viability, location within a Disadvantaged Community ("DAC"), flexible capacity attribute, local capacity attribute, changes to the Solicitation Documents, counterparty concentration and creditworthiness.

8. Communication & Independent Evaluator

As described for offer submittal, the primary communication method concerning this Solicitation will be by PowerAdvocate® using the link provided in Section 6 above. SCE

may, in its sole discretion, decline to respond to any email or other inquiry about the Solicitation without liability or responsibility.

8.1. Independent Evaluator

Questions regarding the integrity of the evaluation process or the role of the IE may be referred to Wayne Oliver or Keith Oliver of Merrimack Energy at the following e-mail address: Wayne.Oliver@merrimackenergy.com and Keith.Oliver@merrimackenergy.com.

9. Solicitation Confidentiality

With respect to SCE and the IE, information provided by Respondent to SCE and the IE for purposes of this Solicitation will be subject to (i) a fully executed Confidentiality Agreement and (ii) all applicable CPUC disclosure requirements including, CPUC D.06-06-066.

10. General Information & Reservation of Rights

- a) Any transaction resulting from this Solicitation will be documented in an executed applicable Confirmation under an executed Enabling Agreement between SCE and Respondent, as applicable.
- b) SCE may, in its sole discretion, enter into transactions with one or more Respondents submitting Offers.
- c) SCE may, in its sole discretion, request a Respondent to modify their price, Contract Quantity, and/or RA attributes Offered, or otherwise issue a counteroffer during the negotiation phase in this Solicitation.
- d) SCE may execute RA Confirmations with selected Respondents at any time during the negotiation phase or may choose to execute none at all.
- e) SCE retains the right, as determined by SCE in its sole discretion, to: (a) reject any Offer in the event the Offer does not provide adequate benefit to SCE's customers; (b) formulate and implement appropriate criteria for the evaluation and selection of Offers; and (c) negotiate with any Respondent in order to maximize the value for SCE's customers.

- f) In addition to the limitations on Offers set forth in these Solicitation Instructions, SCE reserves the right, in its sole discretion, to limit the number of Offers that can be submitted by any Respondent.
- g) Respondents are required to meet all the terms and conditions of the Solicitation to be eligible to compete in the solicitation process. Respondents are required to submit all requested information and follow all instructions contained in these Solicitation Instructions, including, but not limited to, submitting conforming Offers and Solicitation Documents in compliance with the Solicitation Schedule.
- h) By participating in this Solicitation, including, without limitation, by submitting an Offer, Respondent agrees to all terms, conditions, representations, warranties, and covenants in these Solicitation Instructions. Other than the representations, warranties and covenants made by Respondent in these Solicitation Instructions and the executed Confidentiality Agreement between SCE and Respondent, submittal of any document pertaining to this Solicitation, including, without limitation, one or more Offers, or receipt of any contingent selection, is not intended to, and does not, constitute a binding agreement of, or establish any obligation of SCE.
- i) SCE reserves the right, at any time and during this Solicitation in its sole discretion, to abandon, cancel, or otherwise terminate this Solicitation, to change any dates specified in this Solicitation, to change the basis for the evaluation of Offers, to terminate further participation in this process by any party, to accept any Offer, to enter into any agreement, to evaluate the qualifications of any Respondent or the terms and conditions of any Offer, to reject any or all Offers, to prohibit or limit mutually exclusive and mutually inclusive Offers, to change any form or document used in this Solicitation, waive any irregularities, and otherwise modify the Solicitation in any way, without notice and without assigning any reasons and without liability of Edison International, SCE, or any of their respective subsidiaries, affiliates, employees, officers, directors, other agents, and representatives.

SCE shall have no obligation to consider any Offer submitted by a Respondent. SCE will not reimburse any Respondent for any of its expenses related to this Solicitation under any circumstances, regardless of whether the Solicitation proceeds to execution of any transactions or is abandoned, canceled, terminated, or modified in any way, and regardless of whether or not SCE enters into a transaction with the Respondent. SCE shall not be

deemed to have accepted any such Offer, and shall not be bound by any term thereof, unless and until the Confirmation is fully executed and delivery by both Parties, including execution of such Confirmation by an authorized representative of SCE with respect to such Offer. With respect to Respondents who do not have applicable Enabling Agreements executed and effective prior to the time such Respondent submits an Offer, SCE shall not be deemed to have accepted any such Offer, and shall not be bound by any term thereof, unless and until an authorized representative of SCE executes a Confirmation and an Enabling Agreement with the Respondent. The establishment, update, or modification of any regulatory requirement which potentially impacts SCE's decision regarding selection of Offers may result in SCE revising any portion of any document related to this Solicitation, including, without limitation, the elimination of one or more products sought hereunder and/or revising the schedule set forth herein.

- j) SCE encourages Women-Owned, Minority-Owned, and Disabled Veteran-Owned Business Enterprises and Lesbian, Gay, Bisexual and/or Transgender Business Enterprises ("Diverse Business Enterprise(s)") to participate in the Solicitation. To be considered as a Diverse Business Enterprise, Respondent must provide a copy of a valid certificate that verifies Respondent's Diverse Business Enterprise status. Information on SCE's diversity supplier program can be found at: <https://www.sce.com/wps/portal/home/partners/buying-selling/supplier-diversity/>.

Diverse Business Enterprises are welcome to submit Offers into this Solicitation and FTAA's may be considered. However, depending on the term, quantity, and the resulting exposure related to any Offers, an FTAA may not fulfill SCE's collateral requirement in which case additional collateral will have to be arranged.

Further, as provided in Section 6.3 of CPUC General Order 156, SCE's Supplier Diversity efforts include encouraging its Respondent's to develop plans to utilize Diverse Business Enterprises subcontractors. SCE can help Respondent's with identifying Diverse Business Enterprises for subcontracting opportunities.

11. Respondent's Waiver of Claims & Limitation of Remedies

By participating in this Solicitation, including, without limitation, by submitting an Offer:

- a) Respondent acknowledges and agrees that it is knowingly, voluntarily, and completely waiving any rights under statute, regulation, state or federal constitution, or common law to assert any claim, complaint, or other challenge in any regulatory, judicial, or other forum, including, without limitation, the CPUC (except as expressly provided below), the Federal Energy Regulatory Commission ("FERC"), the Superior Court of the State of California ("State Court") or any U.S. District Court ("Federal Court") concerning or related in any way to this Solicitation or any unexecuted documents related to this Solicitation, including, without limitation, all exhibits, attachments, and appendices thereto ("Waived Claims").
- b) Respondent acknowledges and agrees that if it asserts any Waived Claim at the CPUC, FERC, State Court, or Federal Court, or otherwise in any forum, to the extent that Respondent's Offer has not already been disqualified, SCE is entitled to automatically disqualify such Offer from further consideration in the Solicitation or otherwise, and further, SCE may elect to terminate the Solicitation.
- c) Respondent acknowledges and agrees that the sole forum in which Respondent may assert any challenge with respect to the conduct or results of the Solicitation is at the CPUC and that: (1) the sole means of challenging the conduct or results of the Solicitation is a complaint filed under Article 4, Complaints and Investigations, of Division 2, Chapter 2 of Title 20, Public Utilities and Energy, of the California Code of Regulations, (2) the sole basis for any such complaint shall be that SCE allegedly failed in a material respect to conduct the solicitation generally consistent with these Solicitation Instructions; and (3) the exclusive remedy available to Respondent in the case of such a complaint shall be an order of the CPUC that SCE engaged in conduct that the CPUC determines was not generally consistent with these Solicitation Instructions or any documents related to this Solicitation (including exhibits, attachments, and appendices).
- d) Respondent expressly waives any and all other remedies, including, without limitation, compensatory and/or exemplary damages, restitution, injunctive relief, interest, costs and/or attorneys' fees. Unless SCE elects to do otherwise in its sole discretion, during the pendency of such a complaint, the Solicitation

- and any related regulatory proceedings related to the Solicitation will continue as if the complaint had not been filed, unless the CPUC issues an order suspending the Solicitation or SCE has elected to terminate or suspend the Solicitation or any portion thereof.
- e) Respondent acknowledges and agrees that if Respondent asserts any Waived Claim, SCE shall be entitled to seek immediate dismissal of Respondent's claim, complaint, or other challenge, with prejudice, by filing a motion to dismiss (or similar procedural device) supported by the language in these Solicitation Instructions and that Respondent will not challenge or oppose such a motion to dismiss (or similar procedural device).
 - f) Respondent acknowledges and agrees that if it asserts any Waived Claim, and if SCE successfully has that claim dismissed or transferred to the CPUC, Respondent shall pay SCE's full costs and expenses incurred in seeking such dismissal or transfer, including, without limitation, reasonable attorneys' fees and expenses.
 - g) Respondent agrees to indemnify and hold SCE harmless from any and all claims by any other party asserted in response to the assertion of any Waived Claim by Respondent and for reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by SCE or as a result of a Respondent's complaint filing at the CPUC resulting from the Solicitation.
 - h) Except as expressly provided in the documents related to this Solicitation, nothing herein, including, without limitation, Respondent's waiver of any Waived Claims as set forth above, shall in any way limit or otherwise affect the rights and remedies of SCE.
 - i) In the event Respondent is deemed eligible by SCE to submit an Offer, Respondent submits an Offer, SCE notifies Respondent that SCE accepts such Offer and there is a dispute related to the terms of any such Offer, such dispute shall be resolved in accordance with the terms of the dispute resolution provisions set forth in the Solicitation Documents which were part of such Offer.

12. Respondent's Representations, Warranties & Covenants

By participating in this Solicitation, including, without limitation, by submitting an Offer, Respondent (A) agrees to be bound by the conditions of the Solicitation, including the

terms of these Solicitation Instructions; and (B) makes the following representations, warranties, and covenants to SCE, which representations, warranties, and covenants shall be deemed to be incorporated in their entireties into each of Respondent's Offers:

- a) Respondent has read, understands, and agrees to be bound by all terms, conditions, and other provisions of the Solicitation Documents.
- b) Respondent has had the opportunity to seek independent legal and financial advice of its own choosing with respect to the Solicitation, the Solicitation Documents, and these Solicitation Instructions, including any exhibits to such documents.
- c) Respondent has obtained all necessary authorizations, approvals and waivers, if any, required by Respondent to submit its Offer and, (a) required to enter into and execute, if necessary, any necessary Enabling Agreements in the form of the applicable Enabling Agreements negotiated with SCE and (b) required to enter into a Transaction with SCE under the applicable executed Enabling Agreement (if required) for the respective products, in the form of the Confirmation, as applicable, negotiated with SCE.
- d) Respondent's Offer complies with all applicable laws and regulations.
- e) Respondent (a) has not engaged, and covenants that it will not engage, in any communications with any other actual or potential participant in the Solicitation concerning this solicitation, price terms in Respondent's Offer, or related matters, without disclosure to SCE and a waiver by SCE of any applicable confidentiality provisions, including, but not limited to those set forth in the Confidentiality Agreement and these Solicitation Instructions, and (b) has not engaged in collusion or other unlawful or unfair business practices in connection with this Solicitation.
- f) Each Offer submitted by Respondent (a) is an Offer subject only to SCE's contingent selection, in SCE's sole discretion, and (b) in the event there is any dispute related to the terms of any such Offer, such dispute shall be resolved in accordance with the terms of the dispute resolution provisions set forth in the Solicitation Documents which were part of such Offer.
- g) The information and documents submitted by Respondent to SCE in connection with this Solicitation are true and accurate as of the date of Respondent's Offer submittal. Respondent covenants that it will promptly update such information upon any material change thereto.

13. Respondent's Offer & Acknowledgement

By participating in this Solicitation, including, without limitation, by submitting an Offer, Respondent acknowledges and agrees that:

- a) SCE may rely upon all of Respondent's representations, warranties, and covenants in this Solicitation (including, without limitation, in these Solicitation Instructions, in the Solicitation Documents and in any Offer submitted by Respondent);
- b) SCE may disclose information as set forth in the Confidentiality Agreement and as described in these Solicitation Instructions; and
- c) In SCE's evaluation of Offers pursuant to this Solicitation, SCE has the right to disqualify a Respondent that is unwilling or unable to meet SCE's credit requirements, or any other requirements of this Solicitation, as determined by SCE in its sole discretion.

BY PARTICIPATING IN THIS E-SOLICITATION, INCLUDING, WITHOUT LIMITATION, BY SUBMITTING AN OFFER, RESPONDENT ACKNOWLEDGES AND AGREES THAT ANY BREACH BY RESPONDENT OF ANY OF THE REPRESENTATIONS, WARRANTIES AND COVENANTS IN THESE E-SOLICITATION INSTRUCTIONS AND ALL OTHER E-SOLICITATION DOCUMENTS SHALL CONSTITUTE GROUNDS FOR IMMEDIATE DISQUALIFICATION OF SUCH RESPONDENT, IN ADDITION TO ANY OTHER REMEDIES THAT MAY BE AVAILABLE TO SCE UNDER APPLICABLE LAW, AND DEPENDING ON THE NATURE OF THE BREACH, MAY ALSO BE GROUNDS FOR TERMINATING THE E-SOLICITATION IN ITS ENTIRETY, OR FOR PROHIBITING RESPONDENT FROM PARTICIPATING IN FUTURE SOLICITATIONS OR PLACING ADDITIONAL REQUIREMENTS ON RESPONDENT IN FUTURE SOLICITATIONS.

14. Exhibits

Exhibit A – SCE Non-Disclosure Agreement

Exhibit B1 – SCE Pro Forma RA Confirmation

Exhibit B2 – SCE Pro Forma Import Capability Transfer Confirmation

Exhibit C – Certificate of Authority

Exhibit D – Offer Workbook for RA Capacity and/or Import Capability Transfer

Exhibit E1 – EEI Master Power Purchase & Sale Agreement Cover Sheet

Exhibit E2 – EEI Paragraph 10 to the Collateral Annex

TO: Angela Calvillo, Clerk of the Board

FROM: Megan Imperial, Policy and Government Affairs

DATE: November 9, 2020

SUBJECT: Retroactive Approval Sale of Electricity-Related Products – Public Utilities Commission – Not to Exceed \$1,273,570

Attached please find a proposed Resolution retroactively authorizing CleanPowerSF to sell electricity-related products to Southern California Edison for a total not to exceed \$1,273,570 with the term of January 1, 2021 through December 31, 2021 under an agreement requiring binding arbitration.

The following is a list of accompanying documents:

1. Board of Supervisors Resolution
2. CCSF – CPSF RFO – RA Supply (Aug. 3rd, 2020)
3. CCSF – CPSF RFO – RA Supply (Sept. 2nd, 2020)
4. CCSF – CPSF RFO – RA Supply (Sept. 29th, 2020)
5. CCSF – CPSF RFO – RA Supply (Oct. 16th, 2020)
6. Southern California Edison's (SCE's) RA solicitation (Sept. 17th, 2020)
7. EEI Purchase and Sale Agreement

Please contact Megan Imperial at (415) 654-1654 if you need any additional information on these items.

London N. Breed
Mayor

Sophie Maxwell
President

Anson Moran
Vice President

Tim Paulson
Commissioner

Ed Harrington
Commissioner

Harlan L. Kelly, Jr.
General Manager



From: [Imperial, Megan M](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [Scarpulla, John \(PUC\)](#)
Subject: SFPUC - [Retroactive Approval Sale of Electricity-Related Products – Public Utilities Commission – Not to Exceed \$1,273,570]
Date: Monday, November 9, 2020 9:07:54 AM
Attachments: [1. BOS Resolution.docx](#)
[2. CCSF-CPSF RFO RA 2021-2022 Aug.3.2020.pdf](#)
[3. CCSF-CPSF RFO RA 2021-2022 Sept.2.2020.pdf](#)
[4. CCSF-CPSF RFO RA 2021-2022 Sept.29.2020.pdf](#)
[5. CCSF-CPSF RFO RA 2021-2022 Oct.16.2020.pdf](#)
[6. SEP2020 RAeSOL Instructions Sept.17.2020.pdf](#)
[7. EEI Purchase and Sale Agrmt.pdf](#)
[8. Cover Letter.doc](#)

Hi BOS Legislative Team,

Attached is the proposed legislation concerning “Resolution retroactively authorizing CleanPowerSF to sell electricity-related products to Southern California Edison for a total not to exceed \$1,273,570 with the term of January 1, 2021 through December 31, 2021 under an agreement requiring binding arbitration.”

The electronic attachments are listed below:

1. Board of Supervisors Resolution
2. CCSF – CPSF RFO – RA Supply (Aug. 3rd, 2020)
3. CCSF – CPSF RFO – RA Supply (Sept. 2nd, 2020)
4. CCSF – CPSF RFO – RA Supply (Sept. 29th, 2020)
5. CCSF – CPSF RFO – RA Supply (Oct. 15th, 2020)
6. Southern California Edison’s (SCE’s) RA solicitation (Sept. 17, 2020)
7. EEI Purchase and Sale Agreement
8. Cover Letter

Staff Contact: [Megan Imperial, Policy & Government Affairs Analyst] [415-654-1654]

Thanks in advance

Megan

Megan M. Imperial 竜芽願
Policy & Government Affairs, Local Analyst
San Francisco Public Utilities Commission
mimperial@sfwater.org
Mobile: 415-654-1654
Pronouns: She, Her, Hers, Ella

“Radical simply means “grasping things at the root.” - Angela Davis

From: [Cho, Theresa \(CAT\)](#)
To: [Imperial, Megan \(PUC\)](#); [BOS Legislation, \(BOS\)](#); [BOS Legislation, \(BOS\)](#)
Cc: [Scarpulla, John \(PUC\)](#); [MUJELLER, THERESA \(CAT\)](#); [Mulberg, Erin \(PUC\)](#); [Hyams, Michael \(PUC\)](#)
Subject: RE: SFPUC - [Retroactive Approval Sale of Electricity-Related Products – Public Utilities Commission – Not to Exceed \$1,273,570]
Date: Tuesday, November 10, 2020 11:49:07 AM
Attachments: [image001.png](#)

Apologies for missing the meeting – my computer froze and I could not get on the app. As Megan noted, we have referenced the form contract already on file with the Board in previous resolutions for a contract with SCE as well as a contract with PG&E.

Theresa

Theresa Cho
Deputy City Attorney
Office of City Attorney Dennis Herrera
City and County of San Francisco
(415) 554-6549 direct
www.sfcityattorney.org

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From: Imperial, Megan M <MImperial@sfgwater.org>
Sent: Tuesday, November 10, 2020 11:44 AM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Scarpulla, John (PUC) <JScarpulla@sfgwater.org>; Mueller, Theresa (CAT) <Theresa.Mueller@sfcityatty.org>; Cho, Theresa (CAT) <Theresa.Cho@sfcityatty.org>; Mulberg, Erin (PUC) <EMulberg@sfgwater.org>; Hyams, Michael (PUC) <MHyams@sfgwater.org>
Subject: RE: SFPUC - [Retroactive Approval Sale of Electricity-Related Products – Public Utilities Commission – Not to Exceed \$1,273,570]

Hi Jocelyn and Lisa,

Appreciate you both hoping on a call with us! Per our discussion, the Executed Agreement is pursuant to confidentiality provisions and we've pointed to the Form contract on file with the BOS as was done in the previous retroactive approval.

Thanks in advance
Megan

Megan M. Imperial 菟芽願

Policy & Government Affairs, Local Analyst
San Francisco Public Utilities Commission
mimperial@sfgwater.org
Mobile: 415-654-1654
Pronouns: She, Her, Hers, Ella

“Radical simply means “grasping things at the root.” - Angela Davis

From: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Sent: Tuesday, November 10, 2020 10:29 AM
To: Imperial, Megan M <MImperial@sfgwater.org>; BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Scarpulla, John <JScarpulla@sfgwater.org>; MUELLER, THERESA (CAT) <Theresa.Mueller@sfcityatty.org>; CHO, THERESA (CAT) <Theresa.Cho@sfcityatty.org>; Mulberg, Erin <EMulberg@sfgwater.org>; Hyams, Michael <MHyams@sfgwater.org>
Subject: RE: SFPUC - [Retroactive Approval Sale of Electricity-Related Products – Public Utilities Commission – Not to Exceed \$1,273,570]

CAUTION: This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Megan,

I am available this morning to discuss. Please let me know the call-info or if it will be through Teams. Thank you.

Jocelyn Wong

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102
T: 415.554.7702 | F: 415.554.5163
jocelyn.wong@sfgov.org | www.sfbos.org

(VIRTUAL APPOINTMENTS) To schedule a “virtual” meeting with me (on Microsoft Teams), please ask and I can answer your questions in real time.

Due to the current COVID-19 health emergency and the Shelter in Place Order, the Office of the Clerk of the Board is working remotely while providing complete access to the legislative process and our services



Click [here](#) to complete a Board of Supervisors Customer Service Satisfaction form

The [Legislative Research Center](#) provides 24-hour access to Board of Supervisors legislation, and archived matters since August 1998.

Disclosures: Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information provided will not be redacted. Members of the public are not required to provide personal identifying information when they communicate with the Board of Supervisors and its

committees. All written or oral communications that members of the public submit to the Clerk's Office regarding pending legislation or hearings will be made available to all members of the public for inspection and copying. The Clerk's Office does not redact any information from these submissions. This means that personal information—including names, phone numbers, addresses and similar information that a member of the public elects to submit to the Board and its committees—may appear on the Board of Supervisors' website or in other public documents that members of the public may inspect or copy.

From: Imperial, Megan M <MImperial@sfgwater.org>
Sent: Tuesday, November 10, 2020 10:21 AM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Scarpulla, John (PUC) <JScarpulla@sfgwater.org>; MUELLER, THERESA (CAT) <Theresa.Mueller@sfcityatty.org>; CHO, THERESA (CAT) <Theresa.Cho@sfcityatty.org>; Mulberg, Erin (PUC) <EMulberg@sfgwater.org>; Hyams, Michael (PUC) <MHyams@sfgwater.org>
Subject: Re: SFPUC - [Retroactive Approval Sale of Electricity-Related Products – Public Utilities Commission – Not to Exceed \$1,273,570]

Hi Jocelyn and BOS legislative team,

Regarding the CPSF Executed Agreement I'm happy to hop on a call with you all and city attorney's office to further discuss.

Thanks,
Megan

Sent from my iPhone

On Nov 10, 2020, at 08:43, Imperial, Megan M <MImperial@sfgwater.org> wrote:

Hi Jocelyn,

We accept these edits. I will also work on getting you those two supporting pieces ASAP.

Thanks,
Megan

Sent from my iPhone

On Nov 9, 2020, at 14:27, BOS Legislation, (BOS) <bos.legislation@sfgov.org> wrote:

CAUTION: This email originated from **outside** of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Greetings,

Please see attached for proof of clerical edits made to the titles and throughout the body of the legislation. Kindly review and confirm these changes are acceptable. We are also seeking the following:

- CleanPowerSF Executed Agreement - October 28, 2020
- Form 126. Please follow through to this [link to complete the electronic version](#) and submit a pdf copy to us upon completion.

Thank you,

Jocelyn Wong

San Francisco Board of Supervisors

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco, CA 94102

T: 415.554.7702 | F: 415.554.5163

jocelyn.wong@sfgov.org | www.sfbos.org

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[<image001.png>](#)

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From: Imperial, Megan M <MImperial@sfgov.org>
Sent: Monday, November 9, 2020 9:03 AM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Scarpulla, John (PUC) <JScarpulla@sfgov.org>
Subject: SFPUC - [Retroactive Approval Sale of Electricity-Related Products – Public Utilities Commission – Not to Exceed \$1,273,570]

Hi BOS Legislative Team,

Attached is the proposed legislation concerning “Resolution retroactively authorizing CleanPowerSF to sell electricity-related products to Southern California Edison for a total not to exceed \$1,273,570 with the term of January 1, 2021 through December 31, 2021 under an agreement requiring binding arbitration.”

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7. EEI Purchase and Sale Agreement
8. Cover Letter

Staff Contact: [Megan Imperial, Policy & Government Affairs Analyst]
[415-654-1654]

Thanks in advance
Megan

Megan M. Imperial 龍芽願
Policy & Government Affairs, Local Analyst
San Francisco Public Utilities Commission
mimperial@sfgov.org
Mobile: 415-654-1654
Pronouns: She, Her, Hers, Ella

“Radical simply means “grasping things at the root.” - Angela Davis

<201280.docx>



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 201280

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Megan Imperial	415-654-1654
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
PUC Public Utilities Commission	MImperial@sfgwater.org

5. CONTRACTOR	
NAME OF CONTRACTOR Southern California Edison	TELEPHONE NUMBER 626-278-2474
STREET ADDRESS (including City, State and Zip Code) 2244 Walnut Grove Ave. Rosemead, CA, 91770	EMAIL Benny.Wu@sce.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 201280
DESCRIPTION OF AMOUNT OF CONTRACT \$1,273,570		
NATURE OF THE CONTRACT (Please describe) Authorizing CleanPowerSF to sell electricity-related products to Southern California Edison for a total not to exceed \$1,273,570 with the term of January 1, 2021, through December 31, 2021, under an agreement requiring binding arbitration.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Beliveau-Dunn	Jeanne M.	Board of Directors
2	Camunez	Michael C.	Board of Directors
3	Chang	Vanessa C.L.	Board of Directors
4	Morris	James T.	Board of Directors
5	O'Toole	Timothy T.	Board of Directors
6	Payne	Kevin M.	Board of Directors
7	Pizarro	Pedro J.	Board of Directors
8	Smith	Carey A.	Board of Directors
9	Stuntz	Linda G.	Board of Directors
10	Sullivan	William P.	Board of Directors
11	Taylor	Peter J.	Board of Directors
12	Trent	Keith	Board of Directors
13	Pizarro	Pedro J.	CEO
14	Payne	Kevin M.	CEO
15	Anderson	Jill C.	Other Principal Officer
16	Bauder	Douglas R.	Other Principal Officer
17	Choi	Caroline	Other Principal Officer
18	Do	Alisa	Other Principal Officer
19	Ferree	Gregory M.	Other Principal Officer

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20	Foley	Beth M.	Other Principal Officer
21	Grigaux	Paul J.	Other Principal Officer
22	Hasbrouck	Jennifer	Other Principal Officer
23	Herrington	Phil	Other Principal Officer
24	Inlander	Todd L.	Other Principal Officer
25	Ma	Albert	Other Principal Officer
26	Marelli	Michael	Other Principal Officer
27	Martinez	Andrew S.	Other Principal Officer
28	Montoya	Michael D.	Other Principal Officer
29	Moss	Aaron D.	Other Principal Officer
30	Niemiec	James W.	Other Principal Officer
31	Peterman	Carla J.	Other Principal Officer
32	Petmecky	William (Tres)	Other Principal Officer
33	Powell	Steven D.	Other Principal Officer
34	Schilling	Natalie	Other Principal Officer
35	Takayesu	Erik	Other Principal Officer
36	Thompson	Christopher	Other Principal Officer
37	Trapp	Jaqueline	Other Principal Officer
38	Ulrich	Marc L.	Other Principal Officer

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39	walsh	william v.	Other Principal Officer
40	wood	Andrea L.	Other Principal Officer
41	wood	Daniel	Other Principal Officer
42	woodward	Natalia	Other Principal Officer
43			
44			
45			
46			
47			
48			
49			
50			
<input type="checkbox"/>	Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.		

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

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

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
---	---------------------------