

**AGENDA**  
**SONOMA CLEAN POWER AUTHORITY**  
**BUSINESS OPERATIONS COMMITTEE**  
**SPECIAL MEETING**  
**WEDNESDAY, July 31, 2014**  
**4:30 P.M.**

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**Sonoma Clean Power Authority Offices**  
**50 Old Courthouse Square, Suite 605, Santa Rosa, California**

**I. CALL TO ORDER**

**II. BUSINESS OPERATIONS COMMITTEE REGULAR CALENDAR**

1. Report out from Business Operations Committee Chair - Findings from Power Ad Hoc Committee meeting held on July 31, 2014, regarding a contract for the purchase of power.
2. Committee review and recommendation to staff on proposed contract.

**III. PUBLIC COMMENT ON MATTERS NOT LISTED ON THE AGENDA**

(Comments are restricted to matters within the Committee jurisdiction. The Committee will hear public comments at this time for up to thirty minutes. Please be brief and limit your comments to three minutes.)

**IV. ADJOURN**

**DISABLED ACCOMMODATION:** If you have a disability which requires an accommodation, an alternative format, or requires another person to assist you while attending this meeting, please contact the Clerk at (707) 978-3463, as soon as possible to ensure arrangements for accommodation.



Local. Renewable. Ours.

50 Old Courthouse Square, Suite 605  
Santa Rosa, CA 95404

## Staff Report

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To: Sonoma Clean Power Authority Business Operations Committee

From: Kelly Foley, General Counsel, and Geof Syphers, CEO

Item: Supply contract for power

Date: July 31, 2014

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### Requested Actions

Review and recommend a power contract to supply the power needed for all remaining customers in Windsor, Cotati, Sebastopol, Santa Rosa, Sonoma and all unincorporated areas of Sonoma County.

### Background

This contract covers the power needed to supply the remaining 148,000 mostly residential customers starting in December 2014 and running through December 2016. SCPA has adopted policies requiring the program to buy power in advance of service commencement to these remaining customers to facilitate budgetary planning and reduce the risk of mid-year rate adjustments.

### Commercial Terms

The proposed contract is with Constellation. SCP has established a relationship with Constellation to provide the majority of our power through 2016 by setting up a Secured Account into which all SCP power sales revenues are deposited; SCP is able to access funds in the Secured Account after each monthly invoice from



Constellation has been paid. This relationship is necessary because SCP has no credit rating and cannot yet post large collateral amounts, which would be required under typical industry contract terms. Beginning in 2017, staff anticipates that a more traditional and competitive credit arrangement can be established with SCP's primary energy supplier(s).

The volume of power to be purchased is shown in Exhibits A and B.

**Exhibit A: Phase 2 Energy Contract Quantity (MWh/mo)**

Month	2014	2015	2016
1	-	102,189	113,935
2	-	91,640	110,151
3	-	86,760	100,776
4	-	84,684	99,888
5	-	76,591	90,225
6	-	78,086	93,522
7	-	95,137	102,294
8	-	93,937	98,487
9	-	91,896	97,938
10	-	91,583	97,994
11	-	104,131	109,591
12	51,774	112,725	118,834
Total	51,774	1,109,359	1,233,635

**Exhibit B: Phase 2 Renewable Contract Quantity (MWh/yr)**

Year	Compliance Category 1 (MWh)	Compliance Category 2 (MWh)	Compliance Category 3 (MWh)
2014	3,746	8,558	0
2015	149,474	202,553	0
2016	166,130	224,946	0



Note that the volumes of renewable energy in Exhibit B are additional to the volumes delivered from the Calpine geothermal supply agreement and the Phase 1 Constellation agreement.

The amount of additional collateral to be posted is determined by staff to be a favorable offer and aligns with our expectations.

### **Impact on Rates for Fiscal Year 2014 and Beyond**

The proposed contract would have no impact on rates for Fiscal Year 2014, as the cost of energy is consistent with the amount assumed when we established our current rates. The impact on FY 2015 and 2016 rates is also positive, and is slightly lower than our pro forma expectations, meaning:

- As hoped, no rate increase is required in January 2015;
- Consistent with pro forma estimates, this contract supports competitive rates in FY 2015 and 2016, however actual rates in those years will also depend on purchases related to the additional power needed to serve new cities, including Cloverdale and possibly Rohnert Park and Petaluma.

### **Legal Contract Structure and Review**

This contract is based on the same terms and conditions from the Phase 1 purchase, and uses the same Master Agreement. In addition, the Phase 2 Confirm uses the exact same form as the Phase 1 Confirm, and only changes pertinent details related to volumes, prices and collateral associated with procurement of additional energy products.

The contract was reviewed by SCPA General Counsel, Kelly Foley, for legal and power market issues. CEO Syphers reviewed the contract to verify volumes, prices and fiscal impact. Outside consultants at Pacific Energy Advisors, reviewed the



contract for technical accuracy and power market terms. No outside counsel was retained to review this Confirm because no material legal terms were altered.

For Seller's Use Only	
Trade Date	
Seller's ID	

**CONFIRMATION**

Reference:  
 Master Power Purchase and Sale Agreement  
 Between Exelon Generation Company, LLC ("Seller")  
 And Sonoma Clean Power Authority ("Buyer")  
 As of \_\_\_\_\_, 2014 (the "Effective Date")  
 Transaction Date: \_\_\_\_\_, 2014

**RECITALS:**

**WHEREAS**, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the "CCA");

**WHEREAS**, Buyer is an independent public agency formed in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) and established by that certain Joint Powers Agreement, effective as of December 4, 2012 ("Joint Powers Agreement");

**WHEREAS**, pursuant to California Public Utilities Code Section 366.2, the Buyer submitted Buyer's CCA Implementation Plan ("Implementation Plan") and Statement of Intent to the CPUC;

**WHEREAS**, the CPUC approved the Implementation Plan on October 4, 2013;

**WHEREAS**, Buyer issued a Request for Proposals for Shaped Energy, Renewable Energy and Resource Adequacy Capacity for Buyer serving as the CCA;

**WHEREAS**, Buyer selected Seller to supply the requested Product for Buyer serving as the CCA;

**WHEREAS**, Buyer will in turn supply the Product for use by the Customers; and

**WHEREAS**, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product, including, subject to satisfaction of the conditions herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **DEFINITIONS.** Defined terms shall have the meanings set forth in this Confirmation or as set forth below:

"Additional Carbon Free Energy Quantity" means the quantity of Carbon Free Energy that is in excess of the Renewable Energy Quantity to be delivered by Seller to Buyer hereunder, as set forth in Exhibit D and provided in accordance with Section 2.4.

"Adopted Policies" means policies regarding the operation of Buyer which have been approved by Buyer's board of directors, including but not limited to those policies entitled: (i) "Bad Debt"; (ii) "Customer Confidentiality"; (iii) "Fees"; (iv) "Deposits"; and (v) "Establishment and Reestablishment of Credit", as such policies are amended, restated, supplemented or otherwise modified by Buyer's board of directors.

"Ancillary Services" shall have the meaning ascribed to such term under the Tariff.

"Applicable Law" means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.

"Buyer Facilities" shall have the meaning set forth in Section 10 hereof.

"CAISO" means the California Independent System Operator Corporation or the successor organization to the functions thereof.

"CAISO Charges" mean those amounts (other than Imbalance Charges) billed by CAISO and associated with the procurement and delivery at the Delivery Point of any Product through the CAISO market to Buyer as such charges may be adjusted from time to time pursuant to the Tariff. Such charges shall include, but are not limited to, Grid Management Charges, Ancillary Services charges, Unaccounted for Energy charges, CRRs, Bid Cost Recovery and Neutrality charges, in each case as defined by the CAISO.

"California RPS" or "California Renewables Portfolio Standard" means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (7<sup>th</sup> Ed.), as may be subsequently modified by the CEC, and the California Public

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Utilities Commission (“CPUC”) as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.11-01-025, D.11-12-052, and D.12-06-038, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“Capacity” means the net generating capability of a generating resource or generating resources. Capacity is expressed in MW.

“Capacity Requirement” means Capacity as required for Buyer to meet its Resource Adequacy Requirement for the SCP Customer Load.

“Carbon Free Energy” means Energy deliveries from Carbon Free Sources.

“Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the Western Energy Coordinating Council area and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency (“CARB”) pursuant to the California Global Warming Solutions Act of 2006.

“Category 1 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 2 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(2) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 3 Renewable” means the Green Attributes that satisfies the requirements of Section 399.16(b)(3) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“CEC” means the California Energy Commission.

“Commercially Reasonable Efforts” for the purposes of this Confirmation, “commercially reasonable efforts” or acting in a “commercially reasonable manner” shall not require a Party to undertake extraordinary or unreasonable measures.

“CRRs” means Congestion Revenue Rights as defined in the Tariff.

“CPUC” means the California Public Utilities Commission.

“Customers” means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the SCP Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the Member Agencies, and identified to Seller pursuant to this Confirmation.

“Debt Service” means the obligations payable by Buyer for interest on loans outstanding and any principal repayments and any capital leases, but excluding any interest on or principal repayments of inter-company working capital loans between Buyer and one or more of its Affiliates.

“Debt Service Coverage Ratio” means, as of any date of calculation, the ratio of (a) EBITDA to (b) Debt Service, for the preceding twelve (12) month period ending on such date of calculation; provided, however, that, for any date of calculation where preceding twelve (12) months of data are not available to Buyer, all preceding months of data for the Delivery Period that are available to Buyer shall be used to compute the calculation.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Delivery Point” has the meaning set forth in Section 4.

“EBITDA” means net income plus interest, taxes, depreciation, and amortization, calculated according to GAAP.

“Effective Date” shall have the meaning set forth in the Reference Section at the beginning of this Confirmation.

“Energy” means real (not reactive) electric energy in the form of three-phase alternating current having a nominal frequency of approximately 60 cycles per second, a harmonic content consistent with the requirements of the Institute of Electrical and Electronic Engineers Standard No. 519, and a voltage content consistent with the guidelines applied by the Control Area in which the applicable generating resource resides, provided that Energy supplied to Buyer under this Confirmation shall have the characteristics of electrical energy that is available and flowing at the Delivery Point. Energy is measured in MWh.

“Energy Contract Price” shall mean the price (\$/MWh) to be paid by Buyer to Seller for the Energy Contract Quantity delivered hereunder, as set forth on Exhibit A.

“Energy Contract Quantity” shall mean the quantity of Energy to be delivered by Seller to Buyer hereunder, as set forth on Exhibit A.

“ERR” shall mean an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.

“Execution Date” means the date that this Confirmation was executed, specified as the Transaction Date in the Reference section at the beginning of this Confirmation.

“Exhibits” shall be those certain Exhibits A – D, which are attached hereto and made a part thereof.

“FERC” means the Federal Energy Regulatory Commission.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from a Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;<sup>1</sup> (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

“Imbalance Charge” means any scheduling penalties, imbalance penalties, overpull or unauthorized overrun penalties, operational flow order penalties, cash out charges, banking charges or similar penalties, fees or charges, assessed by, or oversupply credits or payments due with respect to a failure to comply with balance and/or scheduling requirements of any applicable entity, specifically excluding any distribution charges imposed by PG&E on the delivery of the Energy hereunder.

“Losses” means the difference between (1) the quantity of Energy delivered by PG&E to all Customers prior to application of PG&E’s distribution loss factor and (2) the wholesale quantity of Energy delivered by PG&E to all Customers as filed by Buyer with CAISO.

“Member Agencies” means the parties to the Joint Powers Agreement and the jurisdictions participating in the SCP Program pursuant to the Joint Powers Agreement, including but not limited to the Cities of Cotati, Santa Rosa, Sebastopol, Sonoma, the Town of Windsor, the County of Sonoma, and the Sonoma County Water Agency.

“MW” means megawatt.

“MWh” means megawatt-hour.

“Pass-Through Charges” shall have the meaning set forth in Section 5.4 below.

“PG&E” means Pacific Gas and Electric Company, its successors and assigns.

“Phase(s)” means specifically defined period(s) of time throughout the Delivery Period during which additional Customers are incorporated into the SCP Customer Load in accordance with the SCP Program, with the first such period of time being Phase 1.

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

"Power Content Label" shall mean that annual filing by Sonoma Clean Power or its delegate, to the California Energy Commission pursuant to the CEC's Power Source Disclosure Program in effect as of the Effective Date hereof.

"Product" shall have the meaning set forth in Section 2.1 below.

"Project" shall mean the Renewable Energy Source(s) used to provide Renewable Energy hereunder.

"Prudent Industry Practice" means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers' warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Laws, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practice shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

"REC Contract Price" shall mean the price (\$/REC) to be paid by Buyer to Seller for RECs delivered hereunder, as set forth on Exhibit B.

"REC Contract Quantity" shall mean the quantity of RECs to be delivered by Seller to Buyer hereunder, as set forth on Exhibit B.

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

"Renewable Energy" means Energy and/or Green Attributes generated from Renewable Energy Sources.

"Renewable Energy Certificates" or "RECs" has the meaning set forth in California Public Utilities Code Section 399.12(f) and CPUC decision 08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder.

"Renewable Energy Source" means an ERR.

"Resource Adequacy" or "RA" means the local, system, and flexible resource adequacy requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

"Resource Adequacy Capacity Price" shall mean the price (\$/KW-month) to be paid by Buyer to Seller for Resource Adequacy delivered hereunder, as set forth on Exhibit C.

"Resource Adequacy Capacity Contract Quantity" shall mean the quantity of Resource Adequacy (MW) to be delivered by Seller to Buyer hereunder, as set forth on Exhibit C.

"Resource Adequacy Requirement" means those resource adequacy requirements that Buyer is required to comply with pursuant to Applicable Law.

"Scheduling Coordinator" or "SC" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator" as set forth in the Tariff.

"SC Services" means those scheduling coordinator services described in Appendix I, attached hereto and incorporated herein.

"SCP Customer Load" means the wholesale electric load requirements of Customers, without deduction for Losses. SCP Customer Load shall be deemed to include all Customers that have not opted out of the SCP Program on any given day during the Delivery Period.

"SCP Program" means the community choice aggregation program operated by Buyer.

"Security Agreements" mean collectively the following agreements: (a) that certain Blocked Account Control Agreement between Buyer, Seller and a financial institution which maintains the accounts described therein; (b) that certain Security Agreement between Buyer and Seller, as may be amended from time to time; and (c) any such other documents executed in connection therewith.

"System Power" refers to the Energy resource mix for electricity in the State of California net of electricity sold to consumers as specific purchases.

"Tariff" shall mean means the tariff and protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," as amended, supplemented or replaced by CAISO from time to time.

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

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

## 2. **PRODUCT.**

2.1 **Seller Delivery Obligation.** Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the “Product,” which is comprised of:

- (a) a quantity of Energy, including the Additional Carbon Free Energy, determined in accordance with Sections 2.4, 5.1 and 6.1;
- (b) a quantity of Renewable Energy determined in accordance with Section 5.2 and 6.2;
- (c) a quantity of Capacity determined in accordance with Section 5.3 and 6.3;
- (d) Ancillary Services required to supply the foregoing electrical Energy identified in this Section 2.1 to the Delivery Point; and
- (e) SC Services.

2.2 **Change in Law.** If due to any action by the CPUC or any Governmental Authority, or any change in Applicable Law (a “Change in Law”) occurring after the Execution Date that results in material changes to Buyer’s or Seller’s obligations with regard to Energy and all other Products sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, or otherwise modifies the California RPS or language required to conform to the California RPS, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder or Buyer’s compliance with California RPS obligations in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within sixty (60) days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder or compliance with California RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected. These change in law provisions are independent of those set forth in the RPS Standard Terms and Conditions immediately below.

2.3 **Renewable Energy.**

(a) **RPS Standard Terms and Conditions.**

### **STC 6: Eligibility**

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

### **STC REC-1: Transfer of Renewable Energy Credits**

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

### **STC REC-2: Tracking of RECs in WREGIS**

Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under this contract.

**STC 17: Governing Law**

This Agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

- 2.4 **Additional Carbon Free Energy.** During the Delivery Period, Seller shall provide the Additional Carbon Free Energy Quantity to Buyer such that the Additional Carbon Free Energy Quantity can be represented on the SCP Power Content Label as being supplied from Carbon Free Source(s), based on the guidelines for the Power Content Label in place as of the Effective Date hereof. The Additional Carbon Free Energy Quantity shall not include any Category 3 Renewables except as mutually agreed by the Parties.
- 2.5 **No New Construction Without Environmental Review.** To the extent that Seller constructs any new facilities to meet its supply obligation hereunder, Seller covenants and agrees that the construction and operation of such facility(ies) will be in accordance with any and all Applicable Law.
- 2.6 **Resources.** The Energy provided under this Confirmation may be procured from unit-specific sources, provided such resources are not coal or nuclear, under terms and conditions to be agreed between the Parties. To the extent unit-specific resources have not been agreed to by the Parties, Seller will use System Power and Carbon Free Energy to provide the required Energy and in addition, the Parties acknowledge that Seller will supply System Power from time to time to satisfy any Energy required hereunder so long as the Carbon Free Energy requirements are satisfied at the end of each calendar year. Set forth on Exhibit D is Seller's list of resources that Seller intends to utilize to provide Carbon Free Energy to Buyer hereunder. Seller may update this resource list from time to time by delivering a revised list of Carbon Free Sources to Buyer.
- 2.7 **REC Delivery.** Throughout the Delivery Period, following generation of the Renewable Energy by the Project(s), Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with REC Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for the SCP Customer Load or to evidence the provision of Carbon Free Energy. Seller shall comply with all Applicable Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. The Parties acknowledge and agree that, as of the Effective Date, the WREGIS Certificates associated with the REC Contract Quantity for a month are not available for transfer to Buyer until ninety (90) days after the end of such month. Seller shall transfer such WREGIS Certificates in a timely manner after such WREGIS Certificates are available for transfer to Buyer for Buyer's sole benefit. Upon receiving written or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within five (5) Business Days. Upon either Party's receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized, that Party will immediately notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and completed. Each Party agrees to provide copies of its records to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.
- 2.8 **Retirement of RECs.** To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations ("CCR") Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 with respect to such Renewable Energy, Buyer agrees to retire the RECs purchased from Seller hereunder for each renewable generation period in accordance with Title 17 CCR Section 95852(b)(3)(D).
- 3. **DELIVERY PERIOD.** This Confirmation shall be in full force and effect as of the Transaction Date. The terms set forth herein shall apply from the Start Date through the End Date, which entire period will comprise the Delivery Period. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof:

<b>Start Date:</b>	<b>End Date:</b>
December 1, 2014	December 31, 2016

4. **LOCATION AND DELIVERY POINT.**

<b>Market Area</b>	<b>Delivery Point</b>	<b>Buyer's Local Utility</b>
CAISO	PG&E DLAP	PG&E

5. **PRICING.**

- 5.1 **Energy Contract Price and Payment.** For each month during the Delivery Period, the Buyer will pay the Seller an amount equal to the Energy Contract Quantity multiplied by the Energy Contract Price specified in Exhibit A. For avoidance of doubt, the Energy Contract Price includes the costs of the Additional Carbon Free Energy. Seller shall

forecast and schedule SCP Customer Load in accordance with Appendix I. As set forth in Section 5.4 below, to the extent that the actual SCP Customer Load exceeds or is less than the hourly Energy Contract Quantity, then the hourly energy variances will be settled at the day ahead and real time CAISO market prices as reflected in the CAISO settlements statement.

- 5.2. REC Contract Price and Payment. For each month during the Delivery Period, the Buyer will pay the Seller an amount equal to the applicable REC Contract Price (per Compliance Category) specified in Exhibit B, which is in addition to the Energy Contract Price, multiplied by the portion of the REC Contract Quantity (per Compliance Category) transferred from Seller to Buyer through WREGIS during such month. Seller and Buyer shall mutually agree on the procedure for adjusting the amount of Renewable Energy provided to Buyer hereunder in order for Buyer to satisfy the California RPS requirements for the SCP Customer Load. To the extent that Buyer requires such adjustments to its Renewable Energy requirements, (i) Buyer shall provide written notice to Seller of such adjustments and (ii) Seller shall use commercially reasonable efforts to purchase additional Renewable Energy (in which case Buyer shall reimburse Seller for its actual cost to purchase such additional Renewable Energy) or re-market excess Renewable Energy for the benefit of Buyer (in which case Seller shall credit Buyer's account for the revenues obtained by Seller for remarketing such excess Renewable Energy, provided that Buyer shall remain responsible to pay Seller for the quantities represented in Exhibit B), in each case, in accordance with procedures to be mutually agreed upon by Seller and Buyer. Seller shall not enter into any such transactions to purchase additional Renewable Energy or re-market excess Renewable Energy without Buyer's written approval.
- 5.3. Resource Adequacy Capacity Contract Price and Payment. For each month during the Delivery Period, the Buyer will pay the Seller an amount equal to the Resource Adequacy Capacity Price specified in Exhibit C multiplied by the applicable monthly Resource Adequacy Capacity Contract Quantity. Seller and Buyer shall mutually agree on the procedure for adjusting the amount of Capacity provided to Buyer hereunder in order for Buyer to satisfy its Capacity Requirement. To the extent that Buyer requires such adjustments to its Capacity requirements, (i) Buyer shall provide written notice to Seller of such adjustments and (ii) Seller shall use commercially reasonable efforts to purchase additional Capacity (in which case Buyer shall reimburse Seller for its actual cost to purchase such additional Capacity) or re-market excess Capacity for the benefit of Buyer (in which case Seller shall credit Buyer's account for the revenues obtained by Seller for remarketing such excess Capacity; provided that Buyer shall remain responsible to pay Seller for the quantities represented in Exhibit C), in each case, in accordance with procedures to be mutually agreed upon by Seller and Buyer. Seller shall not enter into any such transactions to purchase additional Capacity or re-market excess Capacity without Buyer's written approval.
- 5.4. Pass-Through Charges. Seller shall be responsible for bidding and scheduling the loads of Buyer in accordance with Prudent Utility Practice and Applicable Law, including the Tariff. Seller shall pass through to Buyer all other costs or credits included in the CAISO invoice and charged or credited to Seller in serving as Buyer's Scheduling Coordinator that are not otherwise specified in the terms and conditions as provided herein ("Pass-Through Charges"), including but not limited to: all CAISO Charges, Imbalance Charges, day-ahead energy prices, and real-time energy prices associated with Energy volumes above or below the Energy Contract Quantity, including volumes associated with inter-scheduling coordinator trades from Buyer Facilities. The Parties agree and acknowledge that Buyer's Customers will remain responsible for payment of delivery charges for transmission, distribution, public goods and other non-bypassable surcharges charged directly to Customers by PG&E. Upon reasonable advance notice, Buyer may request a review of the relevant records of Seller to confirm the accuracy of any costs or credits passed-through to Buyer hereunder. Seller shall maintain at all times and use commercially reasonable efforts to provide such records for Buyer's review during normal business hours and copies of such records at Buyer's cost and subject to any applicable confidentiality restrictions.

## 6. **CONTRACT QUANTITIES.**

- 6.1. Energy. Energy Contract Quantities and the Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A attached hereto.
- 6.2. RECs. REC Contract Quantities and REC Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit B. The Renewable Energy sold by Seller to Buyer shall also include any and all Green Attributes associated with such Renewable Energy.
- 6.3. Resource Adequacy. Resource Adequacy Capacity Contract Quantities and Resource Adequacy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit C.
- 6.4. Phasing. Not less than once per twelve (12) month rolling period throughout the Delivery Period, Buyer shall enter into additional Transactions with Seller or other third parties in order to reflect the incremental SCP Customer Load and associated Energy Contract Quantities, REC Contract Quantities, and Resource Adequacy Capacity Contract Quantities and Energy Contract Prices, REC Contract Prices and Resource Adequacy Contract Prices for each such subsequent SCP Customer Load to achieve the hedge percentages set forth in the Adopted Policies; provided, however that in no event shall the Buyer have procured (i) less than ninety-five percent (95%), or (ii) more than one hundred five percent (105%) of the quantity of Product required to serve the total SCP Customer Load based on Buyer's Long-Term Forecast for the for the subsequent twelve (12) month period.

7. **MONTHLY BILLING SETTLEMENT.** Seller's monthly invoice to Buyer shall be settled in accordance with this Section 7.
- 7.1. **Collection of Customer Payments.** In accordance with the Security Agreements, Buyer shall direct PG&E to deposit into a lockbox account, in favor of Seller, all of the proceeds of all of the Customer account receipts (net of the amounts to be paid to PG&E) received from the sale of the Product to the Customers. Seller shall receive, in accordance with the Security Agreements, payments for its invoices due and payable, and after Seller's invoice is paid and agreed to reserves have been funded, the amounts remaining in such lockbox shall be immediately released to Buyer or its designee in accordance with the Security Agreements. The Parties agree that the lockbox account shall be in the name of Buyer, and any interest earned thereon shall accrue to Buyer, as more fully set forth in the Security Agreements.
- 7.2. **Monthly Invoice Timeline.** Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not later than the fifteenth (15th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-fifth (25th) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-fifth (25th) day of the month.
8. **COMPLIANCE REPORTING.** Buyer shall be responsible for submitting compliance reports with respect to, including but not limited to California RPS, Resource Adequacy, and Carbon, to the CPUC for the SCP Customer Load and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic demonstration compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product. Seller shall be responsible for submitting periodic Resource Adequacy plans to the CAISO on behalf of Buyer.
9. **LOAD SERVED.** The services and the Product described under this Confirmation shall be provided to the Customers selected by Buyer for each Phase of its SCP Program, as further described in SCP's Implementation Plan and Statement of Intent, dated August 2013. Prior to the commencement of Phase 2, and during subsequent Phases, the Customers will be switched to the SCP Program over an approximately thirty (30) day period in accordance with the applicable meter read cycle for such Customer. At the end of each month, Buyer shall provide to Seller updated aggregate account information for Customers to be served during the upcoming month. Buyer shall provide to Seller a daily report of Customer sales based on the meter data reported by PG&E, and Buyer shall submit, or cause to be submitted, settlement quality meter data to the CAISO. Seller shall prepare invoices to the Buyer based on such daily reports.
10. **BUYER FACILITIES.** Nothing in this Confirmation shall limit Buyer's ability to develop its own generation facilities or purchase energy from other parties ("Buyer Facilities"). At Buyer's request and upon ninety (90) days written notice provided by Buyer, Seller shall schedule or accept inter-scheduling coordinator trades from Buyer Facilities, as a Scheduling Coordinator, and directly pass through the benefits of such schedules to Buyer. Unless the Parties mutually agree otherwise, the Buyer Facilities shall not displace energy related products or wholesale hedge positions entered into by Seller on behalf of SCP Customer Load requirements. Any incremental costs and expenses incurred by Seller in performing its obligations under this Section 10 shall be billed to Buyer as Pass-Through Charges. Seller shall use commercially reasonable efforts to minimize any such incremental costs and expenses.
11. **CUSTOMIZED PRICING.** From time to time, Buyer may request Seller to prepare customized pricing options for certain large commercial and industrial customers identified by Buyer and to engage in discussions with such customers to help them understand their SCP Program service options. Examples of these types of products may include, but need not be limited to fixed price offers of varying term lengths, variable price offers, block, or component pass-through products. These products would be offered on an opt-in basis and, to the greatest extent possible, these products will be priced on the individual customer's usage characteristics. Buyer may also request Seller to develop one or more proposals to provide data management and customer services (including facilitating EDI transactions with PG&E for enrollment, usage history, billing, etc.) for such customers. The focus of these customized pricing options for individual customers will be the large commercial and industrial rate classes. However, in order to maximize customer attraction and/or retention as part of the SCP Program, Buyer may also request that Seller develop special energy supply product offerings to other customer segments, including medium commercial or residential/small business customers. Any such offerings by Seller will be presented to SCP Customers only upon the prior written approval of Buyer and Buyer reserves the right in its sole discretion to request and cause to be presented to its Customers competitive proposals for any such services from third-party suppliers. The Parties acknowledge and agree that any customized pricing options, proposals, product offerings prepared or developed by Seller pursuant to this Section 11 shall only be binding on the Parties upon the mutual written agreement of the Parties.
12. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations hereunder, Seller shall act in good faith and in the best interest of Buyer, and shall perform all work in a manner consistent with Prudent Utility Practices.
13. **CONFIDENTIAL INFORMATION.** Seller shall take all reasonable steps necessary to ensure that confidential information about customers of Buyer that Seller receives remains confidential. Seller acknowledges that the confidential information about customers of Buyer that it will have access to under this Confirmation could give it, Seller's affiliates or any third party an unfair competitive advantage in the event that Seller, Seller's affiliates or any third party were to compete with Buyer in

the provision of energy, renewable energy, or other related services to its Customers. SELLER AGREES THAT IT WILL NOT USE OR SHARE ANY INFORMATION IT RECEIVES REGARDING BUYER'S CUSTOMERS FOR ANY PURPOSE OTHER THAN PROVIDING SERVICES UNDER THIS CONFIRMATION. Seller shall not use such customer information to compete with Buyer in any manner and expressly agrees that for a period of three (3) years after the termination of this Confirmation, Seller will not directly or indirectly, on its own behalf or on behalf of any person, corporation, partnership, venture or other business entity, (i) solicit or attempt to solicit any Customers or (ii) circumvent, attempt to circumvent, bypass or otherwise exclude Buyer from the provision of energy, renewable energy or other related services to such Customers; provided, however, that Buyer agrees and acknowledges that as of the date hereof, Seller's affiliate(s) supplies electricity to certain customers located within the jurisdictional boundaries of the Member Agencies and Buyer further agrees and acknowledges that nothing contained herein prevents such Seller affiliate(s) from continuing to serve those customers or from soliciting or attempting to solicit any Customers in accordance with its normal course of business, including soliciting a Customer as part of a solicitation that includes such Customer's accounts that are located both within and outside of the jurisdictional boundaries of the Member Agencies. Upon the written request of Buyer, Seller shall return all such customer information to Buyer and destroy any copies of such information remaining in its possession.

14. **MARKETING/INDEMNIFICATION.** Buyer is solely responsible for statements in any of its marketing materials or other public claims made by Buyer related to Buyer's purchase of Product hereunder and for ensuring that such statements comply with applicable federal and state requirements. In addition to, and not in lieu of, any indemnification provisions of the Master Agreement, Buyer agrees to defend, indemnify and hold harmless Seller from and against all claims arising out of or related to the marketing/advertising materials of Buyer related to this Confirmation or the Product transferred hereunder, except to the extent that such claims are due to the negligence, willful fraud, misconduct or deceit of Seller. This indemnification and hold harmless includes but is not limited to tort claims for damages to persons or property, allegations of copyright infringement, plagiarism, unfair competition, trademark infringement, violations of the Lanham Act, defamation, invasion of privacy or governmental or regulator actions.

15. **SECURITY PROVISIONS.**

15.1. **Compliance with Security Agreements and Adopted Policies.** During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Agreements and the Adopted Policies. Buyer shall give Seller copies of any revisions to the Adopted Policies not less than thirty (30) days prior to the effectiveness of such revisions. Upon the occurrence of an event of default (after giving effect to any applicable cure periods) by Buyer under any Security Agreement or a termination of any Security Agreement by Seller due to Buyer's failure to perform in accordance with the terms thereof, such event shall constitute an Event of Default of Buyer in accordance with Article V of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such failure to perform.

15.2. **Buyer Reporting Requirements.** During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the reports required below and shall also provide Seller with any clarifications requested regarding such reports and such other information that Seller reasonably requests regarding Buyer's financial performance, Buyer's performance of its obligations under this Confirmation or any Security Agreement or the ongoing viability of the CCA. In the event Buyer fails to provide Seller with any required reports or such additional information or clarifications requested by Seller and such failure is not remedied within fifteen (15) Business Days of Seller's written request therefore, such failure shall be an Event of Default of Buyer in accordance with Article V of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such failure to perform; provided, however, that should any such reports, additional information or clarifications not be available on a timely basis due to a delay in preparation or certification, or otherwise outside of the reasonable control of Buyer, such delay shall not be an Event of Default of Buyer so long as Buyer diligently pursues the preparation and delivery of the required reports, additional information or clarifications.

(a) **Monthly Reports.** The following reports shall be provided by Buyer to Seller not later than twenty (20) days following the end of each calendar month for items (i) through (viii) below, and each report shall be with regard to such previous calendar month or other period as applicable:

- (i) Monthly and year to date consolidated and consolidating financial statements for such month prepared in accordance with generally accepted accounting principles. Such financial statements shall include, at a minimum, a detailed profit and loss statement, balance sheet, statement of cash flows, a monthly and year to date financial projections showing line item and total variances between such financial projections and actual results and an executive summary describing the causes of any variances which are +/- 5% between the monthly financial statements and the financial projections. Such report shall be in the format as Seller may reasonably require from time to time;
- (ii) Certification by an authorized representative of Buyer of Buyer's Debt Service Coverage Ratio;
- (iii) Customer deposit report including a complete and detailed report of all collateral Buyer is holding from any Customer in the format agreed to between the Parties but shall not include the identity or

personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer's identity;

- (iv) Customer on-bill prepayment report including a complete and detailed report of all Customer on-bill payments that were deposited into the Primary Secured Account (as defined in the Security Agreements);
  - (v) Cash reconciliations and bank statements for each of Buyer's banking accounts;
  - (vi) Summary of payments made by Customers or other entities to Buyer and a summary of delinquent accounts regarding Customers, such information to be provided on an aggregate basis (i.e. not by Customer) and shall include information segregated for delinquencies for each of the following time periods: 30 days, 60 days, 90 days and 120 days, plus the total account receivable balance owed to Buyer from its Customers;
  - (vii) Summary of all Customers added or deleted from the list of Customers served by Buyer, such information shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer's identity;
  - (viii) Certificate of compliance with Adopted Policies and adherence to the requirement of no distributions to any member of Buyer; and
  - (ix) Summary of all net meter data, grossed-up meter data and the difference between the two amounts on a daily and hourly interval basis.
- (b) Annual Reports. The following report shall be provided by Buyer to Seller not later than 120 days following the end of Buyer's fiscal year, shall be with regard to such previous fiscal year and shall be as follows: Buyer's financial reports consisting of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, and statement of cash flows on a consolidating basis (as applicable), each as prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

**15.3 Debt Service Coverage Ratio Covenant.** During the Delivery Period, Buyer shall establish and maintain a Debt Service Coverage Ratio of at least 1.1 to 1.0 (measured as of the last Business Day of each applicable calendar month). If at any time Buyer fails to maintain such Debt Service Coverage Ratio for two (2) consecutive months (in each case, measured as of the applicable calculation date (as described in Section 15.2(a) above)), such event shall constitute an Event of Default of Buyer in accordance with Article V of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such event.

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated November 19, 2013 (the "Master Agreement") between Buyer and Seller, 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. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the "Agreement."

<p><b>This Confirmation is subject to the Appendix and Exhibits identified below and that are attached hereto:</b></p> <p><b>Appendix I - Schedule of Schedule Coordinator Services</b> <b>Exhibit A – Energy Contract Quantity and Price Schedule</b> <b>Exhibit B – Renewable Energy Contract Quantity and Price Schedule</b> <b>Exhibit C – Resource Adequacy Capacity Contract Quantity and Price Schedule</b> <b>Exhibit D – Schedule of Seller’s Carbon Free Resources</b></p>
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**EXELON GENERATION COMPANY, LLC**

**SONOMA CLEAN POWER AUTHORITY**

**Sign:** \_\_\_\_\_

**Sign:** \_\_\_\_\_

**Print:** \_\_\_\_\_

**Print:** \_\_\_\_\_

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

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

**Appendix I**  
**Scheduling Coordinator Services**

<i>For Seller's Use Only</i>	
Trade Date	
Seller's ID	

Reference:  
 Master Power Purchase and Sale Agreement  
 Between Exelon Generation Company, LLC ("Seller")  
 And Sonoma Clean Power Authority ("Buyer")  
 As of \_\_\_\_\_, 2014 (the "Effective Date")  
 Transaction Date: November \_\_\_\_\_, 2014

Pursuant to the Confirmation entered into between Buyer and Seller date \_\_\_\_\_, 2014, Seller shall provide the scheduling coordinator services set forth on this Appendix I (collectively, the "SC Services"). Any capitalized terms used in this Appendix I but not otherwise defined in this Appendix I or the Confirmation shall have the meanings ascribed to such terms in the Tariff or the Master Agreement, as applicable.

**1. Forecasting.**

- (a) **Short Term Forecasting.** Seller shall be responsible for preparing and submitting short-term load forecasts of Energy and Capacity for terms of less than one year as Buyer's 'Scheduling Coordinator' necessary to meet its energy supply obligations to Buyer (the "Short-Term Forecast"). The Parties shall mutually agree from time to time on the assumptions and models to be included in the Short-Term Forecast and the Long-Term Forecasts (defined below) prepared hereunder. Such forecasts shall be inclusive of estimated Losses from the Delivery Point to Customers' meters. Buyer shall provide settlement quality meter data, resource data and load data as reasonably requested by Seller necessary for the preparation of the forecasts. Seller shall not be liable for any costs or losses incurred by or charged to Buyer as a result of Seller's forecasting obligations so long as Seller has performed its obligations in accordance with Prudent Industry Practices and the Agreement. In the event a Governmental Authority requests clarification of forecasts provided by Seller hereunder or otherwise requires Buyer to substantiate such forecasts, Seller shall in good faith assist Buyer in responding to such request and assist Buyer in defending the reasonableness of such forecasts (such assistance shall exclude payment of any costs or expenses incurred by Buyer in responding to such inquiries).
- (b) **Long Term Forecasting.** Buyer shall prepare appropriate long-term load forecasts for Energy and Capacity for terms of one year and greater and Seller will assist and coordinate with Buyer in its preparation of such long-term load forecasts and Buyer shall submit such long-term load forecasts as required by the CPUC, CEC the CAISO or any other applicable regulatory body, including those required of a CCA (including all updates and revisions, (the "Long-Term Forecast") and promptly provide Seller with a copy thereof, provided that every ninety (90) days Buyer shall provide Seller with either a new Long-Term Forecast or a statement that no changes to the most recent Long-Term Forecast have occurred. Seller shall have the right to request clarification regarding any change made to the Long-Term Forecast.
2. **Load Balancing.** Buyer shall be responsible for and shall pay, and shall reimburse or credit Seller if Seller pays, all Imbalance Charges resulting from the supply of Product.
3. **Scheduling.** Seller shall be responsible for submitting schedules and bidding Product in accordance with the obligations of a Scheduling Coordinator as defined by the CAISO, including the scheduling and bidding for loads of all Customers served by Buyer. Seller shall perform the scheduling and bidding services in accordance with the Tariff, protocols and business practices. Seller shall establish a separate 'Scheduling Coordinator' identification to isolate CAISO charges related to providing energy supply services to Buyer, and Seller shall be responsible for any collateral postings required by the CAISO in conjunction with scheduling the SCP Customer Load.
- (a) **Day Ahead Forecasting.** Seller shall submit day-ahead forecasts of SCP Customer Load on a daily basis ("Day-Ahead Forecasts"), based on a methodology to be agreed upon between Buyer and Seller. Day-Ahead Forecasts shall be based upon Customer information provided to Seller, historical load patterns, and Seller weather forecasts. Seller shall provide Buyer with daily Day-Ahead Forecasts upon the prior written request of Buyer, and to implement reasonable modifications to daily forecasting methodology. Variances between Day-Ahead Forecast and the actual SCP Customer Load will be settled at CAISO real-time prices as reflected in the CAISO settlements statement.
- (b) **Monthly Summary Report / Filing.** On or before the fifteenth (15<sup>th</sup>) day of each month (or the next Business Day thereafter if the fifteenth (15<sup>th</sup>) day of the month is not a Business Day) following the end of each month during the term, Seller will e-mail to Buyer electronic reports summarizing the activities during the prior month, which reports shall be in form and substance reasonably satisfactory to Buyer and Seller (the "Monthly Report"). The monthly reports will be supported by appropriate documentation. Seller shall file with CAISO all schedules and meter data reports required to be filed by the Scheduling Coordinator for Buyer.

- (c) Seller Excused. In addition to any excuses for performance otherwise expressly provided for in the Agreement, Seller shall be excused from performing its obligations under this Appendix I to the extent that (i) any failure by Buyer to perform any of its obligations hereunder, delays or interferes with Seller performing its obligations under this Appendix I and (ii) the occurrence of disruptions of the CAISO system that prohibit Seller from meeting its scheduling obligations hereunder, including a disruption that prohibits Seller from making hourly changes during scheduling periods.
  - (d) Buyer Facilities. Seller shall not be obligated to act as Scheduling Coordinator for generating facilities that are Buyer's Facilities except under a separate agreement, which shall be subject to mutual agreement of the Parties. To the extent Buyer's Facilities are being scheduled by a party other than Seller, Seller shall coordinate with such scheduling entity to accept inter-SC schedules in compliance with the CAISO scheduling protocols.
4. Congestion Revenue Rights. Seller shall assist Buyer (at Buyer's cost) with obtaining CRRs through the CAISO relating to mitigating Buyer's congestion costs.

5. **Buyer's Obligations**.

- (a) Information for Scheduling. Buyer acknowledges that Seller will be communicating information that Seller receives from Buyer to the CAISO. **BUYER AGREES THAT IT WILL INDEMNIFY AND HOLD HARMLESS SELLER AND SELLER'S AFFILIATES WITH RESPECT TO ANY FINES OR PENALTIES THAT MAY BE ASSESSED AGAINST SELLER BY THE CAISO FOR INACCURATE INFORMATION THAT BUYER REPORTED TO SELLER IN WRITING (INCLUDING ELECTRONIC COMMUNICATIONS)**. Buyer acknowledges that Seller will be requesting that Buyer confirm the accuracy and completeness of the information and consistency with Buyer's operational plans and that Seller may refuse to provide the SC Services at any time Seller does not receive that confirmation, and Seller shall have no liability hereunder for such refusal to provide the SC Services.
  - (b) Meter Data. Buyer shall establish its ability to perform, or have performed by a third party on Buyer's behalf, all metering requirements necessary for Seller to comply with the requirements of the Tariff in connection with providing services. Buyer shall actively intervene with third parties, as necessary and appropriate, on Seller's behalf to ensure that Seller has all reasonable access to relevant meters, associated Assets and facilities and meter data as is necessary for Seller to comply with the requirements of the Tariff. Buyer shall submit to the CAISO, or cause to be submitted to the CAISO, any meter data required by the CAISO related to Buyer's schedules consistent with the CAISO's Settlement and Billing Protocol and Metering Protocol. Buyer shall comply with the CAISO's annual meter data quality audit.
  - (c) Contact List. Buyer shall provide Seller with a 24-hour emergency contact list.
  - (d) Information. Buyer shall timely provide any information as reasonably required by Seller to perform the SC Services.
6. **Scheduling Fees**. Buyer shall be obligated to pay to Seller the following fee under this Appendix I, which shall be in addition to the Pass-Through Charges specified in Section 5.4:
- (a) Volumetric Scheduling Fee. An amount, if any, listed in Exhibit A in \$/MWh times the load served on a monthly basis.

7. **Monthly Settlement**.

- (a) Third Party Costs. On or before the fifteenth (15<sup>th</sup>) day of each month (or the next Business Day thereafter if the fifteenth (15<sup>th</sup>) day of the month is not a Business Day), Seller shall assemble all third party charges incurred for services performed by Seller during the previous month pursuant to Section 5 of this Appendix I for inclusion in the Monthly Report. If actual third party charges are not available for inclusion in the Monthly Report, Seller may estimate such charges, with appropriate invoice adjustments to be made when actual charges are known.
- (b) CAISO Settlements. On or before the fifteenth (15<sup>th</sup>) day of each month (or the next Business Day thereafter if the fifteenth (15<sup>th</sup>) day of the month is not a Business Day), Seller shall provide Buyer with an estimate of the amount of CAISO settlement costs attributable to Buyer based upon the most recent CAISO invoice received by Seller as of the invoice date. Seller shall pay any settlement costs incurred by Seller on behalf of Buyer and incorporated within invoices from the CAISO on or before the due date in accordance with the Tariff for inclusion in the Monthly Report.
- (c) Payment Information. On or before the fifteenth (15<sup>th</sup>) day of each month (or the next Business Day thereafter if the fifteenth (15<sup>th</sup>) day of the month is not a Business Day), Seller shall deliver to Buyer a statement, which may be based on reasonable estimated amounts if actual amounts are not available, in electronic form and in writing setting forth amounts due Buyer or Seller, as the case may be, under this Appendix I. Seller and Buyer shall net all amounts due between Buyer and Seller arising under this Appendix I and amounts owed between the Parties pursuant to the Confirmation pursuant to Section 6.4 of the Master Agreement. Payments required pursuant to this Annex I shall be made in accordance with the payment provisions of the Master Agreement applicable to the Confirmation.
- (d) Disputes. Seller shall use commercially reasonable efforts to engage the CAISO dispute process on Buyer's behalf for any erroneous charges identified by Seller or Buyer in the CAISO settlements.

8. **Obligations Several / Relationship.** The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Appendix I shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Appendix I.

9. **Authorized Representatives.** Each Party shall designate in writing one or more persons as its authorized representative(s) to act on its behalf in carrying out the provisions of this Appendix I. The Parties shall be bound by the oral and written communications, directions, requests, decisions and other actions taken by their respective authorized representative.

10. **Buyer's Representation and Indemnity.** Buyer acknowledges that Seller will be communicating information that Seller receives from Buyer to the CAISO. Buyer covenants and agrees with Seller that all information provided to Seller by Buyer, its officers and employees will be true, complete and consistent with Buyer's operational plans and in compliance with rules and requirements of the CAISO and FERC. By giving an operational instruction, Buyer shall be deemed to make a representation and warranty that the information included in such instruction is accurate and consistent with Buyer's operational plans and in compliance with CAISO and FERC rules. Buyer agrees that it will indemnify and hold harmless Seller and Seller's Affiliates with respect to any fines or penalties that may be assessed against Seller by the CAISO or FERC for inaccurate information that Buyer reported to Seller or the failure of Buyer (or its agent) to comply with CAISO or FERC rules or regulations or any obligations. Buyer acknowledges that Seller will be requesting that Buyer confirm (i) the accuracy and completeness of the information; (ii) consistency with Buyer's operational plans and (iii) compliance with the CAISO and FERC rules or regulations. Seller may refuse to provide the services set forth on this appendix at any time Seller does not receive that confirmation.

11. **No Dedication of Facilities.** Neither the services performed by Seller under this Appendix I nor either Party's actions or inactions under this Appendix I shall constitute or be construed as a dedication of the systems or assets, or any portion thereof, of either Party to the public or to the other Party.

12. **Control.** Buyer agrees, upon request of Seller, to submit a letter of concurrence in support of any affirmative statement by Seller that this contractual arrangement does not transfer "ownership or control of generation capacity" from Buyer to Seller, as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42.

13. **Terminating Seller's Designation as Scheduling Coordinator.** Buyer may terminate Seller as Scheduling Coordinator if (i) Seller materially fails to fulfill its obligations as a Scheduling Coordinator under this Confirmation, (ii) Buyer provides Seller with written notice setting forth in reasonable detail the nature of such failure and (iii) such failure is not remedied within thirty (30) days after Seller's receipt of such notice. In the event of such termination, the Parties agree to take any other action necessary to terminate the designation of Seller as Scheduling Coordinator, including Seller submitting a letter to the CAISO resigning as Scheduling Coordinator under this Confirmation and amending this Confirmation to reflect such termination. Buyer's ability to terminate Seller as Scheduling Coordinator as provided for in this Section 13 shall be Buyer's only remedy in the event of a material failure on the part of Seller to fulfill its obligations as a Scheduling Coordinator under this Confirmation if not remedied within the time period prescribed herein and such failure shall not constitute an Event of Default of Seller under Section 5.1 of the Master Agreement.