



**Silicon Valley Clean Energy Authority
Board of Directors Meeting**

Wednesday, February 8, 2017
7:00 pm

Cupertino Community Hall
10350 Torre Avenue
Cupertino, CA

Rod Sinks, Chair
City of Cupertino

Rob Rennie, Vice Chair
Town of Los Gatos

Liz Gibbons
City of Campbell

Daniel Harney
City of Gilroy

Jeannie Bruins
City of Los Altos

Courtenay C. Corrigan
Town of Los Altos Hills

Burton Craig
City of Monte Sereno

Steve Tate
City of Morgan Hill

John McAlister
City of Mountain View

Dave Cortese
County of Santa Clara

Howard Miller
City of Saratoga

Jim Griffith
City of Sunnyvale

svcleanenergy.org

333 W El Camino Real
Suite 290
Sunnyvale, CA 94087

AGENDA

Call to Order

Roll Call

Public Comment on Matters Not Listed on the Agenda

The public may provide comments on any item not on the Agenda. Speakers are limited to 3 minutes each.

Consent Calendar (Action)

- 1a) Approve Minutes of the January 11, 2017, Board of Directors Meeting
- 1b) Adopt Amended Conflict of Interest Code
- 1c) Approve Agreement with Maher Accountancy for Accounting Services

Regular Calendar

- 2) Executive Committee Report (Discussion)
- 3) CEO Report (Discussion)
- 4) Treasurer Report (Discussion)
- 5) Elect Chair and Vice Chair (Action)
- 6) Appoint Board Executive Committee Members (Action)
- 7) Approve Master Transaction and Confirmation Agreement with Regenerate Power LLC (Action)
- 8) Approve Confirmation Agreements with NRG and Shell to acquire Resource Adequacy Capacity for 2017 (Action)
- 9) Approve Risk Management Policy related to Congestion Revenue Rights Market (Action)



Rod Sinks, Chair
City of Cupertino

10) Establish and Fund Rate Stabilization Reserves, Working Capital Reserves (Discussion)

Rob Rennie, Vice Chair
Town of Los Gatos

11) SVCE Website Update (Discussion)

Liz Gibbons
City of Campbell

Board Member Announcements and Direction on Future Agenda Items

Daniel Harney
City of Gilroy

Adjourn

Jeannie Bruins
City of Los Altos

Courtenay C. Corrigan
Town of Los Altos Hills

Burton Craig
City of Monte Sereno

Steve Tate
City of Morgan Hill

John McAlister
City of Mountain View

Dave Cortese
County of Santa Clara

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**Silicon Valley Clean Energy Authority
Board of Directors Meeting**

Wednesday, January 11, 2017
7:00 pm

Santa Clara County Board Room
70 West Hedding Street, 1st Floor
San Jose, CA

DRAFT MINUTES

Call to Order

Chair Sinks called the meeting to order at 7:01 p.m.

Chair Sinks led the salute to the flag.

Roll Call

Present:

Chair Rod Sinks, City of Cupertino
Vice Chair Rob Rennie, Town of Los Gatos
Director Jeannie Bruins, City of Los Altos
Alternate Director John Harpootlian, Town of Los Altos Hills
Director Burton Craig, City of Monte Sereno
Alternate Director Anthony Eulo, City of Morgan Hill
Director John McAlister, City of Mountain View
Director Dave Cortese, County of Santa Clara
Director Howard Miller, City of Saratoga
Director Jim Griffith, City of Sunnyvale
Director Liz Gibbons, City of Campbell
Director Daniel Harney, City of Gilroy

Absent:

None.

Public Comment on Matters Not Listed on the Agenda

Public comment was considered following the Consent Calendar.

Chair Sinks opened public comment.

Bruce Karney, President of Carbon Free Mountain View, informed the Board that SVCE buttons were left on the dais for Board members and that Carbon Free Mountain View created a Google Group, *Carbon Free Silicon Valley*.

Chair Sinks closed public comment.

Consent Calendar

General Counsel Greg Stepanicich responded to a question regarding Item 1b.

MOTION: Alternate Director Anthony Eulo moved and Director Miller seconded the motion to approve the Consent Calendar.

FRIENDLY AMENDMENT: Director Bruins requested the following amendments to Item 1a) Approve Minutes of the December 14, 2016, Board of Directors Meeting:

- Rearrange the order of the listed Consent Calendar items to make it clear that Item 1d was pulled from consent for discussion
- Amend Item 4 to reflect that the motion was made to approve Resolution 2016-14 amending the ongoing meeting place and time of the Board of Directors
- Amend Item 6 to include the resolution number, Resolution 2016-15, in the motion and refer to the resolution number going forward for future minutes

Alternate Director Eulo and Director Miller accepted the friendly amendment.

The motion carried 11-0-1 (Director Craig abstained).

- 1a) Approve Minutes of the December 14, 2016, Board of Directors Meeting**
- 1b) Approve Agreement with Braun Blaising McLaughlin & Smith, P.C. to support SVCE on regulatory matters**
- 1c) Approve Extension of Agreement with the City of Mountain View for Administrative and Fiscal Services and Reimbursement**

Regular Calendar

2) Executive Committee Report

Chair Sinks reported that the Executive Committee had not met since December 7, 2016. Chair Sinks reported that members of the Board and staff have been meeting with various legislators including Senator Jerry Hill, Assemblymember Marc Berman, and Assemblymember Anna Caballero to discuss Community Choice Energy. Chair Sinks stated that CEO Tom Habashi would present the items of appointing a new Chair, Vice Chair, and Executive Committee at the February Board meeting.

Chair Sinks opened public comment.
No speakers.
Chair Sinks closed public comment.

3) CEO Report

CEO Habashi presented the CEO report which included an update on new hires, current employee salaries, a power supply source update, a revised 10 year pro forma and advisory committees. CEO Habashi stated the selection of the Board Chair and Vice Chair and the Executive Committee Members will be addressed at the February Board meeting. CEO Habashi responded to Board questions.

Chair Sinks opened public comment.
No speakers.
Chair Sinks closed public comment.

4) Adopt Resolution Approving Rate Schedules effective April 1, 2017 through December 31, 2018 (Action)

Don Bray, Manager of Account Services, presented the staff report and responded to Board questions.

Following discussion, the Board requested the following amendments to Resolution 2017-01:

In the second reference to Whereas, "**WHEREAS**, staff recommended at the June 8, 2016 Board Meeting that the Authority's customer generation rates will be 1% lower than Pacific Gas & Electric's Generation rates in place as of January 2017," include language that this statement is reflective of the default service. It was also requested to include the product names in each Exhibit title and make reference to the products in the corresponding sections of the resolution.

MOTION: Director Bruins moved and Director Miller seconded the motion to adopt Resolution 2017-01 approving rate schedules effective April 1, 2017, including the amendments as indicated by the Board.

Director Bruins noted that going forward resolutions should be addressed by number.

Greg Stepanicich, General Counsel, recommended that the *Whereas* clause refer to the default service option and the body of the resolution refer to the product name "GreenStart" and "GreenPrime".

The Board added a request to include language in the second reference to *Whereas* reflecting that the Board took action to set the policy as opposed to "staff recommended at the June 8, 2016 Board Meeting"; CEO Habashi confirmed this request.

Chair Sinks opened public comment.

No speakers.

Chair Sinks closed public comment.

The motion carried unanimously.

Following action on Item 4, Director Cortese left the meeting.

5) SVCE Energy Risk Management Policy

CEO Habashi presented the staff report and provided information regarding the formation of a Risk Oversight Committee. CEO Habashi responded to Board questions. General Counsel Stepanicich provided additional information.

Director Gibbons recommended one and two-year Risk Oversight Committee assignments to keep continuity in the group, and requested a report twice per year. CEO Habashi confirmed that there would be a six-month report included in the CEO report.

Chair Sinks opened public comment.

No speakers.

Chair Sinks closed public comment.

6) Approve SVCE Financial Policies

Don Eckert, Director of Administration and Finance, presented the staff report and responded to Board questions.

The following suggestions and comments were given to staff:

FP1 – Accounting Policy

Board members requested language in the policies that states formal action or consideration be given for contract renewals as opposed to automatic renewals.

CEO Habashi confirmed that this will be addressed in the Purchasing Policy.

FP2 – Budget Policy

Board discussion included a request for consideration of a two-year budget in the future, a request that language be consistent regarding reference to the corporate year, a request for clearer language on Item 5 regarding the final budget document that would be issued to the public and a 30-day timeline for distribution, clarification regarding communications from the CEO if budgetary control limitations need to be exceeded due to unforeseen circumstances, and a request to reevaluate the \$500,000 figure authorized to the CEO for such instances and make a recommendation that aligns with current business.

Chair Sinks summarized the request to staff to reevaluate the \$500,000 threshold in Item 11 to reflect business done prior to engaging in facilities business.

FP3 – Capital Projects Policy

Board discussion included a recommendation that project cost estimates include a line item for contingency, a request for clarification in Item 4 regarding the definition of a capital project, clarification regarding whether the contingency amount is included in the contract amount or if it is in addition to the contract amount, a request for an evaluation on the ongoing operational or maintenance cost so the long-term costs are understood, in Item 6, a request to remove the last word “District”, and a request for a standard Project Pro-Forma sheet.

CEO Habashi summarized the Board comments to have staff list all capital project expenditures including contract amount, staff time and a 15% contingency. CEO Habashi confirmed that staff will have the authority to spend up to that amount inclusive of the contingency, and similar language would be included in the policy.

FP4 – Debt Limitations Policy

Board discussion included a suggestion that there may not be a need for a Debt Limitations Policy because the contingency will need to be evaluated differently depending on the project.

FP5 – Customer Generation Rates

Board discussion included a request that the “2.0x” in Item 3 be written in words rather than numerically.

FP6 – Purchasing Policy

Board discussion included that the \$100,000 threshold was too high and a request that the figures in the Procurement Standards be reevaluated. A suggestion was made to reach out to city finance departments to review their thresholds for approval.

FP7 – Purchasing Card Policy

Board discussion included the importance of purchasing card oversight and guidelines.

Following discussion, CEO Habashi stated staff will revise the policies and bring them back for Board approval in February.

Chair Sinks opened public comment.

No speakers.

Chair Sinks closed public comment.

MOTION: Director Gibbons moved and Director Craig seconded the motion to return the discussion on Financial Policies to the Board in February.

The motion carried unanimously with Director Cortese absent.

7) Approve Customer Confidentiality Policy

Don Bray, Manager of Account Services, presented the staff report.

MOTION: Alternate Director Eulo moved and Director Miller seconded the motion to approve the SVCEA Customer Confidentiality Policy 'Notice for Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information'.

Chair Sinks opened public comment.

No comment.

Chair Sinks closed public comment.

The motion carried unanimously with Directors Cortese and McAlister absent.

Alternate Director Eulo requested Board Member Announcements be heard prior to consideration of Item 8.

8) Approve Resolution to Adopt SVCE Net Energy Metering Rate Schedule, and Approve Customer Phase-In Approach

General Counsel Stepanicich stated there was a question regarding conflicts of interest for Board members who have solar facilities on their residences or businesses. Stepanicich stated those members would be a beneficiary of the policy and therefore it would be a conflict of interest. Stepanicich inquired as to which Board members should abstain from the item. By show of hands; six of the 11 Board members present would need to abstain from voting on the item due to a conflict of interest.

General Counsel Stepanicich stated that in order to create a quorum, a random selection method would be administered under the Rule of Necessity, which would allow two Board members who would have otherwise abstained, to participate in the vote on the matter.

Chair Sinks called a five-minute recess at 9:00 p.m.

The Board reconvened at 9:03 p.m. with Director Cortese absent.

General Counsel Stepanicich administered the random selection process and Directors Bruins and Craig were randomly selected to participate. A quorum was met and the remaining members with a conflict of interest were asked to leave the room at 9:06 p.m.

Manager of Account Services Bray presented the item and responded to Board questions. CEO Habashi provided additional information and responded to Board questions.

Board members provided comments regarding rate costs, the \$5,000 maximum accrued credit balance for current NEM customers, true-up dates, roll out timing and tracking solar customers who decide to opt out.

CEO Habashi summarized Board comments to staff, which included a request for a report to the Board on the opt up and opt out responses and a request for recommended community outreach ideas once the reasoning behind customer opt outs is received.

Chair Sinks opened public comment.

Bruce Karney spoke regarding his experience working for Solar City and provided feedback on the enrollment schedule for solar customers.

Sri S., Sunnyvale resident, spoke in support of automatic enrollment of NEM customers and stated the potential for confusion in the monthly and annual billing cycles.

Chair Sinks closed public comment.

MOTION: Director Bruins moved and Director Gibbons seconded the motion to approve Resolution 2017-02 establishing the Silicon Valley Clean Energy Net Energy Metering Rate Schedule NEM-SVCE,

effective February 1, 2017 as presented, with a direction to staff to bring back information including all who have opted out.

The motion carried unanimously.

Board Member Announcements

Board Member Announcements were considered following Item 7.

Director Bruins announced that the City of Los Altos chose to opt-up to GreenPrime at their January 10, 2017 meeting.

Vice Chair Rennie reported that he and Outreach Specialist Pamela Leonard presented to the Rotary Club of Los Gatos.

Director Miller reported that he met with Outreach Specialist Leonard and two Chinese newspapers for an article on SVCE.

Director Harney reported that he and Misty Mersich are working on an SVCE article for the *Gilroy Life* newspaper scheduled to publish on January 28, 2017.

Chair Sinks reported that he went to the California Public Utilities Commission and visited high schools in Cupertino to provide information regarding SVCE.

Following Board Member Announcements, the Board considered Item 8.

Adjourn

Chair Sinks adjourned the meeting at 10:10 p.m.



Staff Report – Item 1b

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 1b: Adopt Amended Conflict of Interest Code

Date: 2/8/2017

RECOMMENDATION

Adopt the attached Resolution 2017-03, adopting an amended Conflict of Interest Code.

BACKGROUND & DISCUSSION

At the May 11, 2016 meeting of the Board of Directors, the SVCE Board adopted a Conflict of Interest Code as required by Government Code section 82011(b). Since then, SVCE developed an organization chart including several classifications that will be required to file a Statement of Interest to comply with the code. These classifications include:

Account Services Manager
Community Outreach Manager
Director of Administration & Finance
Director of Marketing & Public Affairs
Director of Power Resources
Finance Manager
General Counsel & Director of Government Affairs
Regulatory/Legislative Analyst

Government Code Section 82011(b) requires the Santa Clara Board of Supervisors to be the code reviewing body for the Authority's Conflict of Interest Code. After the Board of Directors adopts the amended Conflict of Interest Code, staff will forward the attached resolution and the Authority's amended Conflict of Interest Code to Santa Clara County for approval. The Board of Supervisors is required to act upon the Conflict of Interest Code within 90 days after receiving the Code for review. The Board of Supervisors may approve the Code as submitted, make revisions, or return the proposed Code to the Authority's Board of Directors for review and resubmission back to the Board of Supervisors for approval.

ATTACHMENTS

1. Resolution 2017-03 Amending the Authority's Conflict of Interest Code

RESOLUTION NO. 2017-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SILICON VALLEY CLEAN ENERGY AUTHORITY AMENDING THE AUTHORITY'S CONFLICT OF INTEREST CODE

WHEREAS, the Silicon Valley Clean Energy Authority ("Authority") was formed on March 31, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Santa Clara County; and

WHEREAS, the Political Reform Act, Government Code Section 81000, *et seq.*, (the "Political Reform Act") requires each public agency in California, including the Authority, to adopt and promulgate a conflict of interest code; and

WHEREAS, the Fair Political Practices Commission (the "FPPC") has adopted a regulation that contains the terms of a Model Conflict of Interest Code (the "Model Code"), codified at 2 California Code of Regulations Section 18730. The Model Code can be incorporated by reference by the Authority in its Conflict of Interest Code; and

WHEREAS, the Board of Directors of the Silicon Valley Clean Energy Authority has previously adopted a conflict of interest code pursuant to Resolution No. 2016-01 which was amended by Resolution No. 2016-03; and

WHEREAS, the Silicon Valley Clean Energy Authority desires to update its conflict of interest code to add new designated positions.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Silicon Valley Clean Energy Authority rescinds Resolution No. 2016-03 and adopts the following attached Conflict of Interest Code including its Appendices of Designated Positions and Disclosure Categories.

BE IF FURTHER RESOLVED that The Board of Directors of the Authority hereby directs the Secretary of the Board to coordinate the preparation of a revised Conflict of Interest Code in succeeding even-numbered years following notice and instructions from the County of Santa Clara as the code-reviewing body for the Authority, in accordance with the requirements of Government Code Sections 87306 and 87306.5. Future revisions to the Conflict of Interest Code should reflect changes in employee or official designations. If no revisions to the Code are required, the Authority shall submit a response as indicated in the instructions provided by the County of Santa Clara no later than October 1st of the same year, stating that amendments to the Authority's Conflict of Interest Code are not required.

ADOPTED AND APPROVED this 8th day of February, 2017.

Chair

ATTEST:

Clerk

SILICON VALLEY CLEAN ENERGY AUTHORITY CONFLICT OF INTEREST CODE

The Political Reform Act (Government Code § 81000, *et seq.*, hereinafter referred to as the Act) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission (“FPPC”) has adopted a regulation (2 California Code of Regulations § 18730) which contains the terms of a standard conflict of interest code, which can be incorporated by reference in an agency’s code. After public notice and hearing, the standard code may be amended by the FPPC to conform to amendments in the Act. Therefore, the terms of 2 California Code of Regulations § 18730 and any amendments to it duly adopted by the FPPC are hereby incorporated by reference. This regulation and the text here designating positions and establishing disclosure categories shall constitute the conflict of interest code of the Silicon Valley Clean Energy Authority (“Authority”).

The most current version of 2 Cal. Code of Regs. Section 18730 is available on the website of the Fair Political Practices Commission (<http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter7/Article2/18730.pdf>).

Individuals holding a designated position shall file their Statements of Economic Interests with the Authority’s Filing Official, which will make the Statements available for public inspection and reproduction subject to Government Code section 81008. If Statements are received in signed paper format, the Authority’s Filing Official shall make and retain a copy and forward the original Statements to the Filing Officer, the County of Santa Clara Clerk of the Board of Supervisors. If Statements are electronically filed using the County of Santa Clara’s Form 700 e-filing system, both the Authority’s Filing Official and the County of Santa Clara Clerk of the Board of Supervisors will receive access to the e-filed Statements simultaneously.

**SILICON VALLEY CLEAN ENERGY AUTHORITY
CONFLICT OF INTEREST CODE**

APPENDIX "A"

DESIGNATED POSITIONS

<u>Designated Position</u>	<u>Assigned Disclosure Category</u>
Member of Board of Directors	1
Alternate Member of Board of Directors	1
Chief Executive Officer	1
General Counsel (Contract)	1
Account Services Manager	1
Community Outreach Manager	1
Director of Administration & Finance	1
Director of Marketing & Public Affairs	1
Director of Power Resources	1
Finance Manager	1
General Counsel & Director of Government Affairs	1
Regulatory/Legislative Analyst	1
Consultant	2
Newly Created Position	*

* Newly Created Position

A newly created position that makes or participates in the making of governmental decisions that may foreseeably have a material effect on any financial interest of the position-holder, and which specific position title is not yet listed in the Authority's conflict of interest code is included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the code, subject to the following limitation: The

Chief Executive Officer of the Authority may determine in writing that a particular newly created position, although a “designated position,” is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the broadest disclosure requirements, but instead must comply with more tailored disclosure requirements specific to that newly created position. Such written determination shall include a description of the newly created position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this conflict-of-interest code. (Gov. Code Section 81008.)

As soon as the Authority has a newly created position that must file Statements of Economic Interests, the Authority's Filing Official shall contact the County of Santa Clara Clerk of the Board of Supervisors Form 700 division to notify it of the new position title to be added in the County's electronic Form 700 record management system, known as eDisclosure. Upon this notification, the Clerk's office shall enter the actual position title of the newly created position into eDisclosure and the Authority's Filing Official shall ensure that the name of any individual(s) holding the newly created position is entered under that position title in eDisclosure.

Additionally, within 90 days of the creation of a newly created position that must file Statements of Economic Interests, the Authority shall update this conflict-of-interest code to add the actual position title in its list of designated positions, and submit the amended conflict of interest code to the County of Santa Clara Office of the County Counsel for code-reviewing body approval by the County Board of Supervisors. (Gov. Code Sec. 87306.)

**SILICON VALLEY CLEAN ENERGY AUTHORITY
CONFLICT OF INTEREST CODE**

APPENDIX "B"

DISCLOSURE CATEGORIES

Designated positions must report financial interests in accordance with the assigned disclosure categories.

Category 1: Persons in this category shall disclose:

(a) investments and business positions in business entities, and income (including gifts, loans, and travel payments) from sources that contract with the Authority, or that provide, plan to provide, or have provided during the previous two years, facilities, goods, technology, equipment, vehicles, machinery, or services, including training or consulting services, of the type utilized by the Authority; and

(b) all interests in real property located: in whole or in part within the jurisdiction of the Silicon Valley Clean Energy Authority, or within two miles of the borders of any of the parties to the Joint Powers Agreement for the Authority, or within two miles of any land owned or used by the Authority.

Category 2: Each Consultant, as defined for purposes of the Political Reform Act, shall disclose pursuant to the broadest disclosure category in the Authority's conflict of interest code subject to the following limitation: The Chief Executive Officer of the Authority may determine in writing that a particular consultant, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to comply fully with the disclosure requirements of the broadest disclosure category, but instead must comply with more tailored disclosure requirements specific to that consultant. Such a written determination shall include a description of the consultant's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer's written determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code.



Staff Report – Item 1c

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 1c: Approve Agreement with Maher Accountancy for Accounting Services

Date: 2/8/2017

RECOMMENDATION

Authorize the CEO to execute the Service Agreement for accounting services with the firm Maher Accountancy, not to exceed \$130,500 through March 31, 2018.

BACKGROUND

Accurate financial reporting and strong internal controls are of high importance to both the SVCEA Board of Directors and Staff. While SVCEA is building the organization and preparing for commissioning, the ability to leverage another resource with community choice aggregator financial reporting experience, assisting with daily transactions and placing cash disbursement duties off-site helps staff achieve those goals of strong reporting and internal controls.

ANALYSIS & DISCUSSION

Maher Accountancy provides many years of experience in financial matters concerning Community Choice Aggregators that SVCEA can leverage. Current clients include Marin Clean Energy and Sonoma Clean Power and includes relationships with Calpine Energy Solutions which is SVCEA's customer data management consultant.

Maher Accountancy shall provide accounting services and financial operational assistance to the Authority for a monthly fee of \$9,750. Services will include:

1. Maintenance of the General Ledger including reconciling customer data management reports of customer activity and accounts receivable and reconciliation of the Authority's financial institution for cash activity and balances.
2. Assist staff with the development of the operating budget.
3. Manage accounts payable by providing a cloud-based accounts payable document management system that enhances internal controls.
4. Manage compliance with fiscal provisions of vendor contracts including the verifying of time periods, rates, and financial limits before payment is released.
5. Monitor expenditure budget compliance and make timely suggestions and budget amendments when necessary.
6. Financial reporting including periodic and year-to-date accrual basis financial statements.
7. Present financial information to the Board of Directors, as needed.
8. Assist in treasury function.
9. File various compliance reports for state and local agencies, such as user taxes, energy surcharges and state controller reports.

Agenda Item: 1c**Agenda Date: 2/8/2017**

10. File annual information returns such as 1099/1096's.

Maher Accountancy shall also assist with coordination of an independent auditor for the annual audit and prepare annual financial statements for a fee of \$13,500.

FISCAL/BUDGETARY IMPACT

Maher Accountancy would essentially be performing the duties of the Financial Manager position that is currently budgeted. While this agreement is in effect, SVCEA would defer the hiring of that position and result in no budgetary impact.

ATTACHMENTS

1. Service Agreement with Maher Accountancy

**AGREEMENT BETWEEN THE SILICON VALLEY CLEAN ENERGY AUTHORITY AND
MAHER ACCOUNTANCY FOR
ACCOUNTING SERVICES**

THIS AGREEMENT, is entered into this 8th day of February, 2017, by and between the SILICON VALLEY CLEAN ENERGY AUTHORITY, an independent public agency, ("Authority"), and Maher Accountancy, whose address is 1101 Fifth Avenue, Suite 200, San Rafael, CA 94901 (hereinafter referred to as "Consultant") (collectively referred to as the "Parties").

RECITALS:

A. Authority is an independent public agency duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) ("Act") with the power to conduct its business and enter into agreements.

B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

C. Authority and Consultant desire to enter into an agreement for accounting services upon the terms and conditions herein.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this Agreement shall commence on February 8, 2017, and shall terminate on March 31, 2018, unless terminated earlier as set forth herein.

2. **SERVICES TO BE PERFORMED**

Consultant shall perform each and every service set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference.

3. **COMPENSATION TO CONSULTANT**

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed one hundred and thirty thousand and five hundred dollars (\$130,500.00). Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

4. **TIME IS OF THE ESSENCE**

Consultant and Authority agree that time is of the essence regarding the performance of this Agreement.

5. **STANDARD OF CARE**

Consultant agrees to perform all services required by this Agreement in a manner commensurate with the prevailing standards of specially trained professionals in the San Francisco Bay Area and agrees

that all services shall be performed by qualified and experienced personnel.

6. **INDEPENDENT PARTIES**

Authority and Consultant intend that the relationship between them created by this Agreement is that of an independent contractor. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's services. None of the benefits provided by Authority to its employees, including but not limited to, unemployment insurance, workers' compensation plans, vacation and sick leave are available from Authority to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Consultant. Payments of the above items, if required, are the responsibility of Consultant.

7. **NO RECOURSE AGAINST CONSTITUENT MEMBERS OF AUTHORITY.**

Authority is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated March 31, 2016, and is a public entity separate from its constituent members. Authority shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Authority's constituent members in connection with this Agreement.

8. **NON-DISCRIMINATION**

Consultant agrees that it shall not harass or discriminate against a job applicant, an Authority employee, or Consultant's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, sexual orientation, or any other protected class. Consultant agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS AND INDEMNIFICATION**

Consultant shall, to the fullest extent allowed by law and without limitation of the provisions of this Agreement related to insurance, with respect to all services performed in connection with the Agreement, indemnify, defend, and hold harmless the Authority and its members, officers, officials, agents, employees and volunteers from and against any and all liability, claims, actions, causes of action, demands, damages and losses whatsoever against any of them, including any injury to or death of any person or damage to property or other liability of any nature, whether physical, emotional, consequential or otherwise, arising out of, pertaining to, or related to the performance of this Agreement by Consultant or Consultant's employees, officers, officials, agents or independent contractors. Such costs and expenses shall include reasonable attorneys' fees of counsel of Authority's choice, expert fees and all other costs and fees of litigation. The acceptance of the Services by Authority shall not operate as a waiver of the right of indemnification. The provisions of this Section survive the completion of the Services or termination of this Agreement.

10. **INSURANCE:**

A. **General Requirements.** On or before the commencement of the term of this Agreement, Consultant shall furnish Authority with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed

in Exhibit "C," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit Consultant's indemnification obligations under this Agreement, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide written notice to the Authority, Attention: Chief Executive Officer." Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to Authority and licensed to do insurance business in the State of California. Endorsements naming the Authority as additional insured shall be submitted with the insurance certificates.

B. Subrogation Waiver. Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to his/her/its insurance for recovery. Consultant hereby grants to Authority, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or Authority with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of Consultant may acquire against Authority by virtue of the payment of any loss under such insurance.

C. Failure to secure or maintain insurance. If Consultant at any time during the term hereof should fail to secure or maintain the foregoing insurance, Authority shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. Additional Insured. Authority shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. Sufficiency of Insurance. The insurance limits required by Authority are not represented as being sufficient to protect Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

F. Maximum Coverage and Limits. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be the minimum coverage and limits specified in this Agreement, or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

11. CONFLICT OF INTEREST

Consultant warrants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it will not employ any person having such an interest. Consultant agrees to advise Authority immediately if any conflict arises and understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant to make certain governmental decisions or serve in a staff Authority, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. **PROHIBITION AGAINST TRANSFERS**

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of Authority. Any attempt to do so without such consent shall be null and void, and any assignee, sublessee, pledgee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from Authority under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to Authority by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Consultant is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

13. **SUBCONTRACTOR APPROVAL**

Unless prior written consent from Authority is obtained, only those persons and subcontractors whose names are attached to this Agreement shall be used in the performance of this Agreement.

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in substantial conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

Consultant agrees to include within their subcontract(s) with any and all subcontractors the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Consultant shall agree to be bound to Consultant and Authority in the same manner and to the same extent as Consultant is bound to Authority under this Agreement. Subcontractors shall agree to include these same provisions within any sub-subcontract. Consultant shall provide a copy of the Indemnity and Insurance provisions of this Agreement to any subcontractor. Consultant shall require all subcontractors to provide valid certificates of insurance and the required endorsements prior to commencement of any work and will provide proof of compliance to Authority.

14. **REPORTS**

A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Consultant pursuant to or in connection with this Agreement, shall be the exclusive property of Authority. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to Authority the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of Authority, and all publication rights are reserved to Authority. Consultant may retain a copy of any Report furnished to the Authority pursuant to this Agreement.

B. All Reports prepared by Consultant may be used by Authority in execution or implementation of: (1) The original Project for which Consultant was hired; (2) Completion of the original Project by others; (3) Subsequent additions to the original project; and/or (4) Other Authority projects as Authority deems appropriate in its sole discretion.

C. Consultant shall, at such time and in such form as Authority may require, furnish reports concerning the status of services required under this Agreement.

D. Reports required to be provided on paper by this Agreement shall be printed on recycled paper. All Printed Reports shall be copied on both sides of the paper except for one original, which shall be single sided. All Reports shall also be provided in electronic format in PDF format.

E. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement shall be made available to any individual or organization by Consultant without prior approval by Authority.

15. **RECORDS**

Consultant shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by Authority that relate to the performance of services under this Agreement, in sufficient detail to permit an evaluation of the services and costs. All such records shall be maintained in accordance with generally accepted administrative practices and shall be clearly identified and readily accessible. Consultant shall provide free access to such books and records to the representatives of Authority or its designees at all proper times, and gives Authority the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a minimum period of five (5) years after Consultant receives final payment from Authority for all services required under this agreement.

If supplemental examination or audit of the records is necessary due to concerns raised by Authority's preliminary examination or audit of records, and the Authority's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of contract or failure to act in good faith, then Consultant shall reimburse Authority for all reasonable costs and expenses associated with the supplemental examination or audit.

16. **PARTY REPRESENTATIVES**

The Chief Executive Officer shall represent the Authority in all matters pertaining to the services to be performed under this Agreement. Michael Maher, CPA shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

17. **CONFIDENTIAL INFORMATION**

Consultant shall maintain in confidence and not disclose to any third party or use in any manner not required or authorized under this Agreement any and all proprietary or confidential information held by Authority or provided to Consultant by Authority.

18. **NOTICES**

All notices, demands, requests or approvals to be given under this Agreement shall be given in writing and conclusively shall be deemed served when delivered personally or on the second business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided.

All notices, demands, requests, or approvals shall be addressed as follows:

TO AUTHORITY:
333 W. El Camino Real, Ste. #290
Sunnyvale, CA 94087
Attention: Chief Executive Officer

TO CONSULTANT:
Michael Maher, CPA
Maher Accountancy
1101 Fifth Avenue, Suite #200
San Rafael, CA 94901

19. **TERMINATION**

In the event Consultant fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant shall be deemed in default in the performance of this Agreement. If Consultant fails to cure the default within the time specified and according to the requirements set forth in Authority's written notice of default, and in addition to any other remedy available to the Authority by law, the Chief Executive Officer may terminate the Agreement by giving Consultant written notice thereof, which shall be effective immediately. The Chief Executive Officer shall also have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) calendar days' prior written notice to Consultant as provided herein. Upon receipt of any notice of termination, Consultant shall immediately discontinue performance.

Authority shall pay Consultant for services satisfactorily performed up to the effective date of termination. If the termination is for cause, Authority may deduct from such payment the amount of actual damage, if any, sustained by Authority due to Consultant's failure to perform its material obligations under this Agreement. Upon termination, Consultant shall immediately deliver to the Authority any and all copies of studies, sketches, drawings, computations, and other material or products, whether or not completed, prepared by Consultant or given to Consultant, in connection with this Agreement. Such materials shall become the property of Authority.

20. **COMPLIANCE**

Consultant shall comply with all applicable local, state and federal laws.

21. **CONFLICT OF LAW**

This Agreement shall be interpreted under, and enforced by the laws of the State of California. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the County of Santa Clara, State of California.

22. **ADVERTISEMENT**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from Authority to do otherwise.

23. **WAIVER**

A waiver by Authority of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

24. **INTEGRATED CONTRACT**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by a written document signed by both Authority and Consultant.

25. **AUTHORITY**

The individual(s) executing this Agreement represent and warrant that they have the legal Authority and authority to do so on behalf of their respective legal entities.

26. **INSERTED PROVISIONS**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

27. **CAPTIONS AND TERMS**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed as of the date set forth above.

CONSULTANT
Maher Accountancy

By _____
Title _____
Date _____

SILICON VALLEY CLEAN ENERGY
AUTHORITY
A Joint Powers Authority

By _____
Title _____
Date _____

RECOMMENDED FOR APPROVAL

Don Eckert, Director of Administration
& Finance

APPROVED AS TO FORM:

Counsel for Authority

ATTEST:

Authority Secretary

Exhibit A
Scope of Services

Monthly Financial Operational Assistance:

1. Develop operating budget in collaboration with management and technical consultants.
2. Maintain the general ledger by:
 - a. Posting billings, accrued revenue, cash receipts, accounts payable, cash disbursements, payroll, accrued expenses, etc.
 - b. Prepare or maintain the following monthly analysis regarding general ledger account balances:
 - i. Reconciliation to statements from Authority's financial institution for cash activity and balances;
 - ii. Reconcile customer data manager reports of customer activity and accounts receivable;
 - iii. Estimated user fees earned but not billed as of the end of the reporting period;
 - iv. Schedule of depreciation of capital assets;
 - v. Aged schedule of accounts payable;
 - vi. Schedules of details regarding all remaining balance sheet accounts.
3. Manager accounts payable: Consultant utilizes a cloud-based accounts payable document management system to provide for documentation of management review, proper segregation of duties, and access to source data. Consultant ensures that required authorization is documented and that account coding is correct. SVCEA staff then authorizes the release of payment by an independent payment service in order to provide an additional safeguard.
4. Manage compliance with fiscal provisions of vendor contracts: Before submitting vendor invoices for management approval, Consultant verifies that a vendor invoice with contract provisions regarding time periods, rates, and financial limits.
5. Monitor expenditure budget compliance. Consultant monitors budget available and will make timely suggestions for any necessary budget amendments.
6. Provide periodic and year-to-date accrual basis financial statements with comparison to projections.
7. Provide modified accrual basis financial statement with comparison to budget.
8. Filing annual information returns such as form 1099/1096's.
9. Present financial information to Board of Directors, as needed.
10. Assist the treasury function.
11. Provide services to meet the requirements of applicable laws and regulations relating to the provisions of accounting services for Authority.
12. File various compliance reports for state and local agencies, such as user taxes, energy surcharges, and state controller reports.

Prepare annual financial statements and coordination with independent auditor.

Exhibit B
Compensation

Authority shall compensate Consultant for professional services in accordance with the terms and conditions of this Agreement based on the rates and compensation schedule set forth below. Compensation shall be calculated based on the hourly rates set forth below up to the not to exceed budget amount set forth below.

The compensation to be paid to Consultant under this Agreement for all services described in Exhibit “A” and reimbursable expenses shall not exceed a total of one hundred and thirty thousand and five hundred dollars (\$130,500), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Authority unless previously approved in writing by Authority.

<u>Task</u>	<u>Not to Exceed Amount</u>
Monthly Accounting Services	\$117,000 (fixed fee of \$9,750/month)
Prepare annual financial statements and coordinate with external auditor.	13,500
Total	\$130,500

Invoices

Monthly Invoicing: In order to request payment, Consultant shall submit monthly invoices to the Authority describing the services performed and the applicable charges.

Reimbursable Expenses

Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by Authority and shall only be reimbursed to the extent consistent with Authority’s travel policy. Payment issuance costs charged by cloud based accounts payable services will be borne by SVCEA.

Additional Services

Consultant shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from Authority’s Chief Executive Officer prior to commencement of any additional services. Consultant shall submit, at the Chief Executive Officer’s request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation.

Exhibit C
Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with Authority named as additional insured.

Consultant shall maintain the following minimum insurance coverage:

A. **COVERAGE:**

- (1) **Workers' Compensation:**
Statutory coverage as required by the State of California.
- (2) **Liability:**
Commercial general liability coverage with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage. ISO occurrence Form CG 0001 or equivalent is required.
- (3) **Automotive:**
Comprehensive automotive liability coverage with minimum limits of \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
- (4) **Professional Liability**
Professional liability insurance which includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least \$1,000,000.



Staff Report – Item 3

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 3: CEO Report

Date: 2/8/2017

REPORT

SVCEA New Hires

Hilary Staver will be joining us on February 13 as our Regulatory/Legislative Analyst. She comes to us from Energy and Environmental Economics, Inc. located in San Francisco where she was involved in several projects including greenhouse gas emissions modeling, rate design, energy resource valuation and regulatory briefings. She has an undergraduate degree from the University of Maryland and a Masters of Environmental Science from Yale where she majored in energy economics. We'll be interviewing soon for the Account Representative position and are currently advertising for the Community Outreach Manager, Director of Power Resources and Administrative Assistant.

Financial Policies

At the January 11, 2017 meeting, the Board moved to postpone approval of the financial policies until the February meeting. Staff is still working on the edits of the policies that were presented to the Board and plans to reintroduce it, along with the Reserve Policy, for approval at the March 2017 meeting.

California Public Utilities Commission En Banc on CCA

On February 1, 2017, the California Public Utilities Commission (CPUC) held an all-day en banc hearing to address issues related to CCAs. There were three panels addressing specific issues, namely resource planning, energy efficiency and the future of the power generation in California. CCA programs are expanding throughout California and the CPUC is attempting to address the investor owned utilities and the commissions role going forward. Notes summarizing the key points of this hearing are in Attachment 2.

Enrollment in SVCE

We are in the midst of sending the third week of mailing notifications to customers scheduled to be enrolled in phase one of the program. The following table shows the opt-up and opt-out by customer class. In future reports, we plan to include this information broken down by member city and reasons for opting out.

Enrollment Notices To Date: 27,631

	Opt Up	Opt Out
Residents	14	30
Commercial	1	6

Reason for Opting Out: Dislike being auto-enrolled

Agenda Item: 3

Agenda Date: 2/8/2017

Open House

Our office at 333 W. El Camino, Suite 290 is fully furnished and offices are slowly being occupied by new employees. We are hosting an open house on Friday, February 10 to celebrate. Stop by between 2:00 p.m. and 4:00 p.m. on that date and celebrate with us.

SVCEA Contract/Agreement Update

Attachment 3 is a summary of SVCEA's contracts and agreements since April 2016 including expiration date, life-to-date spending and remaining balance. This report will be a part of the monthly CEO report moving forward.

CEO Agreements Executed

The following agreements have been executed by the CEO, consistent with the authority delegated by the Board:

- 1) The City of Cupertino Video Division: Production agreement for audio visual services at 2017 Board Meetings, an estimated \$797.50 per production.
- 2) WSPP Inc.: WSPP membership fee, \$25,000.
- 3) Bryce Consulting, Inc.: Extension of agreement for recruitment services; new term set to expire May 1, 2017.

ATTACHMENTS

1. Agenda Planning Document, March – August 2017
2. February 1, 2017 CPUC en banc CCA notes
3. SVCEA Contract and Agreement Update

	MAR	APR	MAY	JUN	JUL	AUG
MILESTONES		Launch- Phase 1			Launch Phase 2	
		Ph 1 Notice #3 (30 days after) Ph 2 Notice #1	Ph 1 Notice #4 (60 days after) Ph 2 Notice #2		Enrollment Date Ph 2 Notice #3 (30 days after) Ph 3 Notice #1	Ph 2 Notice #4 (60 days after) Ph 3 Notice #2
	March 8, 2017	April 12, 2017	May 10, 2017	June 14, 2017	July 13, 2017	August 9, 2017
ADMINISTRATION, POLICIES	Update on Operation Launch	Update on Operation Launch	Approve Strategic Plan			FY 2017-18 Budget discussion
	Finance Policies, Reserve Policy	IT Policies	Update operation launch	Update operation launch	Update operation launch	Update operation launch
	Communications Plan		HR Policies			
STAFFING	Staff Appointments	Staff Appointments	Staff Appointments	Staff Appointments	Staff Appointments	Staff Appointments
CONTRACTS						

CPUC en banc hearing on CCAs

February 1, 2017 @ 9:30 am

CPUC auditorium

Staff Presentation: Suzanne Casazza

CCAs do procurement; IOU do transmission, distribution, and billing

Customers receive four written notices to opt-out

Opt-out rates tend to be under 5%

Joint Powers Agency – allows CCAs to expand

Start with requesting load data and doing a feasibility study; 90 days for CPUC to review proposed implementation plan for new CCA

AB 117 been in effect for over ten years, but there is a SB 790 in 2011 that required the CPUC to develop a Code of Conduct for CCAs

MCE launched in 2010; first

Reasons for CCA explosion: 1) Increased local control over rates and power mix are desirable,

2) There are now mature CCAs that can serve as proof of concept

CCAs must make annual and monthly RA filings

CCAs can administer their own EE programs and design TOU rates

Panel 1: Reliability and Supply issues

Moderator: Prof. Severin Borenstein, U.C. Energy Institute at Haas

Panelists: Dawn Weitz, Chief Executive Officer, MCE

Matt Freedman, Staff Attorney, TURN

Emily Shults, Vice President, Energy Procurement, SDG&E

Opening Statements

Dawn Weitz, Chief Executive Officer, MCE

- CCAs have many 10+ year contracts
- CCAs pay for their own ancillary services
- The market for smaller-scale utilities has expanded to meet CCA demand
- CCAs help the IOUs get a higher percentage of renewables because IOU renewable contracts are fixed even though demand is decreasing
- CCA IRPs: load forecasting...
- Cal CCA Assn: portfolio diversity, matching
- CAs are directly impacted by the duck curve
- Pool pumps, thermostats, and some other home devices can be controlled remotely by MCE for decentralized DR
 - Due to the small size of MCE members – mostly residential and small commercial, DR programs need to be automated because can't call hundreds of small users every time you need to shift some load
- There are strong market signals pushing CCAs to match load to procured supply through storage and other programs, so there are strong incentive for load forecasting to be sound

- MCE planning to offer multiple TOU rates
- How is MCE affected by rooftop solar: 75 MW of rooftop solar and 9500 NEM customers in MCE territory; in the long term rooftop solar...
- Departure of load due to rooftop solar is happening very gradually and has not created an impact on procurement because MCE plans for increasing solar penetration and does not procure energy for NEM customers
 - How to deal with an accelerated solar growth explosion: still not going to be a problem according to her

Matt Freedman, Staff Attorney, TURN

- Surpluses in energy procurement have occurred at the IOUs, so IOU procurement prices are higher than market rate
- This time period resembles the 90s enthusiasm for competition before the energy crisis; need to be sure to avoid the mistakes of last time
- CCA performance has been underwhelming: high reliance on out-of-state resources, unbundled RECs, and short-term contracts
- Lancaster is most disappointing: only 5% of retail sales will be from new fully additional renewable projects
- Best on additionality is MCE: by 2019 over a third of their demand will be met by new local renewable projects
- SCP: about 14% of retail sales from new renewable resources in the near future, but has large dependence (41% this coming year) on large out-of-state hydro
- SF Clean Energy: jury still out
- Overwhelming focus on percentage of renewables and GHG indexes obscures the question of whether CCAs are actually helping to develop new, additional renewable resources
- In the short term, the explosion of CCAs means a trade-off of long-term procurement of new renewable resources by IOUs for short-term procurement from existing renewables by CCAs
- Ask for notes; he has good data
- Valley of Death for new renewable resource development if CCAs take a large portion of demand but don't have the credit to finance new projects

Emily Shults, Vice President, Energy Procurement, SDG&E

- IOU view on customer choice: traditionally IOUs handled procurement through the LTPP process
- Can't have cost transfer onto remaining bundled customers

Q&A

Borenstein: How do procurement requirements differ for IOUs and CCAs?

- Shults: 2400 MW of new local capacity; IOUs have more stringent long-term planning requirements

- Weitz: CCAs do not have incentives to procure short-term; CCAs are currently over-complying with all state regulations, but the concerns about additionality of renewable contracts and out-of-state resources are not associated with any actual statutes. CCAs would be happy to comply if these concerns were translated into actual policies. Same goes for the type of information about procurement that's made available to the public. CAM (Cost Allocation Mechanism) makes CCA customers pay twice for procurement. CPUC needs to set new standards to address these concerns so CCAs know what is expected of them. (Point is made that some of this may need to come from the legislature rather than the CPUC.)
- Freedman: RPS process has focused on the large IOUs and simply accepted whatever plans from CCAs; CPUC needs to apply IRP standards as stringently to CCAs as they do to IOUs

*****Key takeaway: The issue of CCAs raises the larger question of what approach CA wants to take towards IRP. If the CPUC is only going to heavily oversee the IRP proceedings of the IOUs but not the CCAs, the growing penetration of CCAs will eventually render the IRP process useless.*****

[Look up the MCE IRP plan]

- Shults: It's critical to require the CCAs to participate just as rigorously as the IOUs in the IRP process

Borenstein: We must make sure not to repeat the mistakes of the pre-energy crisis era when DA providers were not required to be POLR. He's not confident in long-term durability of CCAs.

- Weitz: clarifies that CCAs do submit RPS compliance reports and that these are approved by both the CPUC and the CEC. The involvement of local governments in CCA formation and operations gives them good incentives for long-term customer stewardship.
- Borenstein response: it's not hard to find communities that have made bad mistakes even though they have good intentions (pension management, etc.). There needs to be consideration of what will happen if a CCA collapses
- Freedman: Local govts are not willing to backstop the obligations of their CCAs, which makes credit for new projects difficult for CCAs. Look out for the next price excursion; it could cause mass defection from CCAs. Investors may eventually become more comfortable financing CCA projects just because the model endures and becomes familiar. Could return to merchant generator model in which projects are built without long-term contracts. CCAs could also band together to do group procurement.
- Freedman: Make sure that resource planning stays in-state and doesn't shift responsibility to the ISO, because the ISO is under FERC jurisdiction and Trump controls FERC now.
- Weitz: MCE has seen situations in which MCE rates are higher than PG&E's and it has not caused mass exit. (State was forced to be POLR during energy crisis.)

Borenstein: How will customers know if their CCA rates are higher than the IOU's?

- Freedman: there are different restrictions on advertising for IOUs and CCAs. If the discrepancy is short-term people probably won't figure it out, but they will eventually if the difference is sustained.
- Weitz: The advertising restrictions on IOUs are there for good reason because PG&E mounted a massive smear campaign against MCE at its outset.

*****Key takeaway: The concept of additionality in renewable resource development is not currently captured by statutory requirements, but is an important determinant of how CCAs enhance or impede the broader CA mitigation effort. It is possible for a CCA to provide 100% renewable or zero-carbon energy and still not be driving much new renewable development. How can we help CCAs build credit quickly and otherwise move towards contracting their own new renewable projects?*****

Local government responses:

- Rick Tegolia, Atherton City Council: helped launched Peninsula Clean Energy, speaks in support of it, CCA was not marketed on lower cost, it was marketed on clean energy.
 - Wright Solar, 200 MW project being built for Peninsula Clean Energy.
- Councilmember Jeff Hales from Peninsula Clean Energy,
- Vice Mayor John Keaner, PCIA working group, PCE also, make the process more transparent
- Genine Windeshowsen, Placer County: make PCIA and consumer information more transparent and available
- **Jan Pepper**, Los Altos City Council – part of SVCE [*find her and say hi*], CCAs will not hamper statewide mitigation efforts because SVCE was formed specifically to help the cities achieve their climate goals; cities and counties are fiscally conservative, not like the ESPs of the energy crisis area
- Jeff Sparks, Scott Weiner's aide – Senator Weiner supports CCAs

Panel 2: Customer-facing Issues

Moderator: Mitchell Shapson, Staff Attorney, CPUC

Panelists: Geof Syphers, Chief Executive Officer, Sonoma Clean Power
Tony Brunello, President and Founder, More than Smart
Aaron Johnson, Vice President, Customer Energy Solutions, PG&E
Merrian Borgeson, Senior Scientist, Energy program, NRDC

On Energy Efficiency:

Borgeson: 140133 - CCA's can get Public Good Charge funds: elected minister, applied to administer [*can't find what 140133 was referring to; is that a proceeding number?*]; Implement thorough contracting with IOUs, competitive solicitations, others; To date very little EE activity on CCAs b/c they're just getting started, w/ MCE as exception - \$2 million last year, focused on

multifamily and small business customers; NRDC wants CCAs be more involved in EE and tailor programs to their local communities

Cmsnr. Picker: emphasizes that 100% “clean” renewable energy is not enough to ensure that long-term mitigation is maximized

- Syphers: CCAs are in a good position to be responsive to local needs; on EE, SCP starts with asking what is good for reducing emissions and costs; single point of contact in VT? [*check for case study*]; SCP’s number one goal is fuel switching: water heaters, TE, etc; IOUs are conflicted on fuel switching b/c they also sell gas

Johnson: oversees PG&Es customer programs: EE, DR, TE, TOU; need statewide administrators for these programs; there is room for CCAs in this space, but: 1) EE must be competitively sourced, 2) accountability for delivering results must be distributed fairly (currently rests with IOUs; should include CCAs in equal measure)

On Distributed Energy Resources:

Brunello: Locational net benefits are key; How do we link better with local permitting? How do we streamline local permitting in areas where the locational net benefits are highest? [*Tony is a technical guy. Remember that.*]

Syphers: CCAs are promulgating PACE; 15% line limitation on DER is not logical anymore and should be reexamined and raised; TOU periods need to be updated to encourage energy use in early afternoon as solar penetration increases; 12.5 MW of solar owned by SCP, 100 MW of customer-owned solar; federal tax credit has been crucial to solar growth, and public ownership may become more prevalent if federal tax credits expire;

Johnson: AC cycling has potential; make sure that providers can integrate across all processes

Borgeson: need to make authority and system of responsibilities clear when IOUs and CCAs are both administering their own EE and DER programs

Cmsnr. Picker: How to target distributed resources at “soft spots” in the grid that can support large amounts of DER?

- Syphers: Yep, CCAs can do; SCP has been working with PG&E to develop a hot spot map of TE prioritization;

Cmsnr. Clifford: What’s the best practice for prioritizing DER programs?

- Syphers: CCA’s have low site acquisition costs due to higher community engagement; data sharing between CCAs and IOUs is critical; 3-9 months for CCAs to go from idea to implementation, and this nimbleness should be viewed as a complement to IOU work rather than competition; CCAs can play a huge role in jumpstarting new ideas through quick implementation of pilots;
- Johnson: in charging infrastructure, the more players the better; PG&E worked with MCE and SCP on the EV charging pilot filing; utility-CCA partnership going to be very helpful

- Syphers: CPUC vs ISO roles; VGI is a critical solution to the duck curve

Cmsnr. Peterman: appreciates the IOU-CCA cooperation even though CCAs weren't required to participate

Borgeson: Why did SCP choose to do all the cooperation with PG&E on TE?

- Geof: because we care about finding the cheapest way to decarbonize the grid in the long run

Johnson: On DR, utility is stepping away from directly running DR programs directly in favor of capacity payments; RENS (regional energy networks); but in EE it's still involved in multiple levels of programs

*****Key takeaway: A big question on EE and DER is how to integrate CCAs and other new entities into administering these programs while avoiding duplication and inefficiency.*****

Geof: the price signals coming out of the ISO are good, and the ISO has been good about coordinating with and educating the CCAs

Aaron on low-income and CARE: care = 30-35% discount on rates for low-income ratepayers; this still applies under CCA jurisdiction but the discount is applied only through T&D rates, which thus see a higher than 30% discount; CCAs could theoretically provide additional discounts on the generation portion; PG&E doesn't calculate CCA rates unless they ask, PG&E just does the billing. PG&E would prefer to have the CCAs provide public comparisons of customer costs under PG&E vs CCA rates because PG&E has only one fixed set of rates but there are many CCAs and they are not obligated to mimic PG&E rate structures; suggests that the CCAs provide all the data on comparisons and PG&E just displays the data

Syphers: people want rate stabilization and transparency; low-income matters a lot to CCAs; access to real-time use data would be very helpful for developing additional low-income programs

Panel 3: Looking to the Future

Moderator: Mark Ferron, CAISO Board of Governors*

Panelists: Barbara Hale, Asst. General Manager, San Francisco Public Power Enterprise
Colin Cushnie, Vice President, Energy Procurement & Management, SCE
Elizabeth Echols, Director, ORA
Jan Smutny-Jones, CEO, Independent Energy Producers Assoc.

*Ferron is wearing the hat of an energy futurist, NOT representing the CAISO

Ferron central thesis: Grid needs to be decentralized, decarbonized, and diversified. What role can CCAs play?

Hale: CCA values are very aligned with state values on social and environmental issues, and can leverage the value of local government.

Cushnie: question of whether development of new renewable resources at the CCA scale will be efficient; POLR role current held by utilities, but there is a question of whether that should change as CCAs proliferate; SCE currently willing to be POLR with adequate cost recovery; SCE is modernizing the grid to enable customer choice; SCE does not oppose CCAs, just wants to ensure bundled customer indifference to parting load, which is not currently in place (\$60-70 million extra costs to remaining bundled customers for every 10% of load departure).

Echols: concerned with fair cost allocation; PCIA should not go on indefinitely; growth of CCAs is a good thing, but need to make sure that we get the math right on cost indifference to ensure fairness to all customers

Smutny-Jones: There is significant uncertainty in CA right now about where the utility sector is going, and that impacts developers negatively; there is a credit challenge in CCAs and that's a real setback; it's unclear where the IRP process is going; risk profile differs for different parts of the state; looking forward to how these obstacles can be overcome.

Cmsnr. Randolph: How can the process of CCAs building up credit be accelerated?

- Smutny-Jones: Early CCA success stories may speed the process for later CCAs; possibility of backstop from another public entity in CCA territory; wires charge that can serve as a backstop (bp from elsewhere in the country)
- Hale: CCAs recognize that this is a challenge; MCE is not representative of the timeline going forward because they were the first CCA in CA and had to do a lot of education and groundbreaking; working with the financial community to establish collateral arrangements (RFO; SVCE also did one of these); Look at PCE's track record for an example of a quicker timeline (started serving in October, already signing long-term contracts for new solar projects)

Cmsnr. Peterman: What are your thoughts on changing the POLR responsibilities?

- Smutny-Jones: CA program is based on bilateral contracts and it's very important that these be honored, by transferring them if necessary
- Hale: Currently CCAs must give one year advance notice before voluntarily terminating service and must cover all costs incurred by the transition, so the former CCA customers pay special rates rather than going back onto the regular IOU rates; the scenario of a CCA going dramatically belly-up and incurring catastrophic costs for bundled IOU customers is thus unrealistic; large fluctuations in the PCIA rates are one of the primary threats to CCA solvency so PCIA stabilization and transparency are desirable; IRP is an important best practice for a disciplined approach to improvement;

Cmsnr. Aceves: Enterprise CCA vs. JPA CCA's; what's the advantage/disadvantage?

- Hale: Not a big difference between the models in terms of priorities; enterprise CCAs are operated as a department of a city government, but often still expected to be financially independent; credit community may view the models differently (how??)

Cmsnr. Aceves: Are there disadvantages to CCAs joining late in the game in terms of PCIA?

- Hale: Hopefully not if IOU load forecasts and procurement are managed responsibly; IOUs should not be renewing large pre-CCA contracts; CCAs open to new methods of helping IOUs minimize PCIA.
- Cushnie: Current PCIA doesn't fully capture transition costs, so as CCA penetration increases the remaining bundled customers see higher and higher costs and have even more incentive to defect to CCAs; responding to Hale's accusation of renewing pre-CCA contracts, emphasizes that all long-term contract renewals are approved by the CPUC
- Smutny-Jones: it is absolutely critical that contracts be honored; doesn't care who pays

Cmsnr. Clifford: How much should we be worried about the fact that initial CCA growth is concentrated in wealthy coastal areas, and do we expect that to change?

- Cushnie: Lancaster isn't wealthy and they're SCE's only CCA; interest in CCAs is not driven only by wealthy environmental concerns, but also by cost reduction and local air quality, so there is lots of interest from less wealthy areas.
- Hale: Even existing CCA territories are not homogeneously wealthy; momentum depends more on dedicated community outreach and enthusiasm than wealth.

Ferron: What are the obstacles to moving to a common platform with complete transparency about non-top-secret data transparency

- Echols: Even if complete public transparency is impossible, the information should be available at least to CCAs and utilities.
- Smutny-Jones: distribution costs are up and will continue to increase because the complexity of our distribution grid and system is increasing, doesn't have to be a bad thing

[Deadline for public comment is Feb 23rd]

Public official comments:

- Mayor of South San Francisco: my city is low-income and has above-average rates of CARE participation but has only a 1% opt-out rate; has been working with a working group
- Jocelyn Menalo, mayor of Daly City, participates in PCE: good experience with CCA so far
- Rod Sinks: SVCE chair: step back, why do IOU customers pay so much more than muni customers; the divergence is indicative of the value of the CCA model



CEO REPORT - FEBRUARY 2017
CONTRACTS UPDATE - (SPENT IS LIFE TO DATE)
(RED = EXPIRED)

Vendor Name	Purchase Type	Expiration	Amount	Spent	Remaining Balance	% Consumed	Remarks
HUMAN RESOURCES/RECRUITING							
Bryce Consulting	Recruitment	10/30/2016	\$11,500	\$11,500	\$0	100%	Compensation Survey & Benefits Package Design
Bryce Consulting	Recruitment	5/1/2017	\$25,000	\$17,388	\$7,612	70%	Contract extended to May.
			\$36,500	\$28,888	\$7,612	79%	
HR TO GO	Human Resource Services		\$23,520	\$2,021	\$21,499	9%	Human Resource and Payroll Services. \$1,650/Month Fee for HR and \$11/month/payroll check for Payroll.
LEGAL & REGULATORY							
Nixon Peabody	Legal		\$14,000	\$0	\$14,000	0%	Provide legal opinion on validity of Authority to enter into credit agreement with River City Bank.
Lean Energy	Regulatory	6/30/2017	\$75,000	\$11,830	\$63,170	16%	Legislative and Regulatory support
Troutman Sanders LLP	Legal	6/30/2017	\$75,000	\$24,625	\$50,376	33%	Legal services for the Power Supply Contracts.
Richards/Watson/Gershon	Legal	9/30/2017	\$190,000	\$101,992	\$88,008	54%	Legal Services for Operating Rules and Regulations. Agreement amended 11/11/16 to \$190,000 with a termination date of 9/30/17
Braun Blasing MacLaughlin and Smith	Legal		\$25,000	\$23,439	\$1,561	94%	Legal Services for Power Procurement
MEMBERS SUPPORT							
City of Cupertino	Marketing Services	1/31/2017	\$155,000	\$77,127	\$77,873	50%	Various Administrative Services. Contract amended to extend termination date to end of January 2017.
City of Sunnyvale	Operational Support	4/30/2017	\$225,000	\$174,923	\$50,078	78%	Various Administrative and Fiscal Services
County of Santa Clara	Facility Support	11/30/2016	\$25,000	\$0	\$25,000	0%	Various Administrative Services
City of Mountain View	Fiscal Services	1/31/2017	\$25,000	\$17,145	\$7,855	69%	Administrative and Fiscal Services. Agreement amended to extend time to January 31, 2017
MARKETING & COMMUNICATIONS							
M.I.G.	Communications	6/30/2017	\$242,100	\$65,601	\$176,499	27%	Amendment executed in December to extend time period.
Ad-Vantage Marketing	Printing/Mailing Services	12/30/2017	\$389,936	\$5,145	\$384,791	1%	Printing & Mailing Services for Phase I, II, III, IV
Calpine Energy Solutions	Marketing & Communication	3/1/2020					Data Management and Customer Service. Various Monthly Fees.
OPERATIONS							
Pacific Energy Advisors	Power Supply	6/30/2017	\$265,000	\$182,554	\$82,446	69%	Support for Power Supply Risk Management, Load Forecasting & Portfolio Management Services.
Zglobal	Risk Management	10/21/2021					Various Monthly Fees.
ADMINISTRATIVE							
Sunnyvale Village Associates	Facility Lease	1/31/2022		\$60,178			Lease for Property. \$25,375/month & Security Deposit of \$28,560. Lease increases each year.
The Well Connected Office	IT Support	9/30/2017	\$20,000	\$4,596	\$15,404	23%	IT support for SVCEA staff
Del Gavio		9/30/2017	140,000	134,600.94	\$5,399	96%	Furniture.
River City Bank		12/21/2017		77,000			Loan Agreement



Staff Report – Item 4

To: Silicon Valley Clean Energy Authority Board of Directors

From: Don Eckert, Director of Administration & Finance

Item4: Treasurer Report

Date: 2/8/2017

REPORT

This is the initial treasury report to the SVCEA Board of Directors reviewing Fiscal Year 2016-17 for the period October 2016 through January 2017.

CASH POSITION

SVCEA’s cash position at month end was \$865,507 as shown in the table below.

SVCEA Working Capital	
Beginning Balance	\$954,141
Deposits	\$194,359
Withdrawals	\$282,992
Ending Balance, 1/31/2017	\$865,507

The Deposit of \$194,359 was the result of the City of Sunnyvale closing SVCEA’s Union Bank account and transferring remaining balance into River City Bank.

The average burn rate for the past two months is \$200,000 per month. Assuming the burn rate remains near that level, combined with the non-revolving line of credit, results in sufficient cash to fund operations until operating cash is received in mid-to late-May.

FINANCING

SVCEA has a \$2 million non-revolving line of credit of which SVCEA will initiate a draw of \$500,000 in February to fund a deposit as required by the California Independent System Operator (CAISO) to partake in the congestion revenue rights market.

SVCEA also has an \$18 million revolving line of credit of which \$1 million was drawn in December to reside in a lockbox and \$1.9 million was drawn to fund a debt service reserve.

BUDGET

Staff will review the budget and consider the rates update from PG&E and a re-forecast of expenses to present an amended budget at the March meeting.

EXPENSE HIGHLIGHTS

Personnel Services

- The Director of Marketing and Public Affairs and the Administrative Analyst started in January. The Regulatory and Legislative Analyst begins in February.
- The Benefits line item was impacted by the rollout of the Public Agency Retirement System (PARS) benefit that includes 10% contribution by SVCEA to match the employees' contribution. Healthcare benefits enrollment occurred in January and is effective February 1.

Operations

- Year-to-date costs is for Pacific Energy Advisors to assist with power supply contracts.

General & Administrative

- The Fees line item includes \$77,000 to obtain the lines of credit and \$100,000 for the CPUC
- Lease costs for the building begin in February. Costs-to-date include operating expenses shared by the landlord.
- Furniture was received and assembled in December and January. The variance to budget is timing.

Professional Services

- The majority of program development costs are contributions by the City of Mountain View, City of Sunnyvale, City of Cupertino and the County of Santa Clara.
- Legal services include assistance with administrative matters and power supply.

Marketing & Communications

- Printing and mailing costs will be well below the original budget. The first phase of notifications occurred in late-January.

Non-Operating

- SVCEA did incur interest expenses related to funding the lockbox.

ATTACHMENTS

1. Fiscal Year To Date (Oct.-Jan.) 2016-2017 Revenue and Expense Report



SILICON VALLEY CLEAN ENERGY AUTHORITY
FISCAL YEAR TO DATE (OCT - JAN) 2016-17
REVENUE AND EXPENSE REPORT
PRELIMINARY & UNAUDITED

<u>Description</u>	<u>FYTD 2016-17</u> <u>Actual</u>	<u>FY 2016-17</u> <u>Budget</u>	<u>Budget</u> <u>Consumed</u> <u>%</u>
Operating Revenue	<u>-</u>	<u>37,700,000</u>	
Operating Expenses			
Personnel Services			
Salaries & Wages	143,244	1,662,000	
OT	1,525		
Holiday	2,031		
Misc. Pay	9,198	39,000	
Payroll Taxes	11,154		
Fringe Benefits	10,274	332,400	
Total Personnel Services	<u>\$177,426</u>	<u>\$2,033,400</u>	<u>8.7%</u>
Operations			
Power Supply	-	24,754,000	
PG&E Service Fees	-		
Professional Services	97,226		
Data Management	-	700,000	
Total Operations	<u>\$97,226</u>	<u>\$25,454,000</u>	<u>0.4%</u>
General & Administrative			
Lease	6,771	140,000	
Office Supplies	2,500		
Fees	181,470	150,000	
Advertising	1,000		
Memberships & Dues	2,875		
Insurance	4,419		
Furniture	89,753	140,000	
Software/Hardware	4,724	40,000	
Travel	1,559	27,000	
Miscellaneous	1,110	45,000	
Total General & Administrative	<u>\$296,181</u>	<u>\$542,000</u>	<u>54.6%</u>
Professional Services			
Legal/Regulatory	89,050		
Recruitment/HR	19,221		
Program Development	190,380		
IT Services	4,596		
Total Professional Services	<u>\$303,248</u>	<u>\$345,000</u>	<u>87.9%</u>
Marketing & Communications			
Notifications	5,145	940,000	
Community Outreach		160,000	
Marketing & Promotions		200,000	
Energy Programs			
Total Marketing & Communications	<u>\$5,145</u>	<u>\$1,300,000</u>	<u>0.4%</u>
Total Operating Expenses	<u>\$879,226</u>	<u>\$29,674,400</u>	<u>3.0%</u>
Total Operating Expenses w/o Power Supply	<u>\$879,226</u>	<u>\$4,920,400</u>	<u>17.9%</u>



Operating Surplus/(Deficit)	<u>-\$879,226</u>	<u>\$8,025,600</u>	<u>-11.0%</u>
Non-Operating Income/(Expense)			
Interest Expense	(2,368)	(60,000)	
Investment Income	-	-	
Total Non-Operating	<u>-\$2,368</u>	<u>-\$60,000</u>	<u>3.9%</u>
Net Margin	<u>-\$881,594</u>	<u>\$7,965,600</u>	
Capital Investment	\$0	\$0	
Balance Available for Reserves & Other Uses	<u>-\$881,594</u>	<u>\$7,965,600</u>	



Staff Report – Item 5

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 5: Elect Chair and Vice Chair

Date: 2/8/2017

RECOMMENDATION

Elect the Chair and Vice Chair for the Board of Directors.

BACKGROUND & DISCUSSION

Section 4.11.1 of the SVCEA Joint Powers Agreement specifies that the Directors shall select, from among themselves, a Chair who shall be the presiding officer of all board meetings, and a Vice Chair, who shall serve in the absence of the Chair. The Agreement also specifies that the term of office continues for one year and there is no limit on the number of terms held by either office.



Staff Report – Item 6

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 6: Appoint an Executive Committee to the Board of Directors

Date: 2/8/2017

RECOMMENDATION

Appoint an Executive Committee of the Board of Directors to provide policy, administrative, and operational oversight to the Silicon Valley Clean Energy Authority, to be comprised of the Chair, Vice Chair, and four additional Board members.

BACKGROUND & DISCUSSION

The SVCEA Joint Power Agreement Section 4.6 specifies that the Board may establish an executive committee consisting of a smaller number of Directors and that the Board may delegate to the executive committee such authority as the Board might otherwise exercise, subject to limitations specified in the Agreement or in the Operating Rules and Regulations.

The duties of the Executive Committee will continue to be to review and provide advice to the Chief Executive Officer and the entire Board on policy, operational and organizational matters and perform such other responsibilities, tasks or activities as delegated to it by the Board.



Staff Report – Item 7

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 7: Approve Master Transaction and Confirmation Agreement with Regenerate Power LLC

Date: 2/8/2017

RECOMMENDATION

Authorize the Chief Executive Officer to execute a Master EEI Agreement and Confirmation with Regenerate Power LLC for the purchase of renewable energy.

BACKGROUND & DISCUSSION

SVCE received a proposal from Regenerate Power LLC in response to its request for proposals for energy and scheduling services issued on August 15, 2016. The Regenerate Power proposal is for the sale of renewable energy from a new solar photovoltaic generator being built in the Imperial Valley region in Southern California.

SVCE reviewed the Regenerate Power proposal in conjunction with the other bids that had been submitted in the RFP and deemed the project to be competitively priced. SVCE staff and consultants have negotiated an agreement to purchase renewable energy from Regenerate Power for a five year term beginning January 1, 2018 and continuing through December 31, 2021. The project(s) will be located within the Imperial Valley Irrigation District Balancing Area in Southern California. The energy will be scheduled by the seller on a day-ahead basis into the California Independent System Operator (CAISO) Balancing Area and will meet the definition of Category 1 Renewable Energy.

For all renewable energy delivered pursuant to the contract, SVCE will pay Regenerate Power the specified contract price and be credited by Regenerate Power the CAISO day ahead market price for the energy scheduled on SVCE's behalf. Congestion costs would be borne by SVCE. These costs have been evaluated based on historical CAISO pricing data and were incorporated in the bid comparison. SVCE would be able to reduce or eliminate congestion costs associated with these energy deliveries if it is successful in requesting an allocation of Congestion Revenue Rights from the CAISO. However, this was not assumed in the bid evaluation and would represent upside potential for SVCE.

The specified contract volumes of renewable energy that SVCE will purchase through this agreement represent approximately 11% of SVCE's projected Category 1 renewable energy needs from 2018 through 2021. This relatively small size transaction corresponds with SVCE's strategy of managing risk through maintenance of a diverse portfolio of supply contracts.

The form of the agreement is very similar to the EEI Master Agreement and Confirmation previously approved in connection with a purchase of renewable energy from 3Phases Energy LLC. Modifications were made to

Agenda Item: 7**Agenda Date: 2/8/2017**

reflect the unique commercial terms of the agreement with Regenerate Power, including the Delivery Point, Scheduling, and Pricing provisions.

CONCLUSION

The proposed agreement with Regenerate will provide SVCE with renewable energy from California based solar generators at competitive prices for the period from 2018-2021.

ATTACHMENTS

1. Master Power Purchase and Sale Agreement between Regenerate Power LLC, and Silicon Valley Clean Energy Authority
2. Master Power Purchase and Sale Agreement EEI Cover Sheet

EXECUTION COPY [REDACTED VERSION]

CONFIRMATION

Reference:

Master Power Purchase and Sale Agreement
Between Regenerate Power LLC, a Delaware company (“Seller”)

And

Silicon Valley Clean Energy Authority, a California joint powers authority (“Buyer”)
dated _____

Transaction Date: _____ (the “Effective Date”)

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 a California joint powers authority, which has established Silicon Valley Clean Energy for purposes of delivering CCA service to certain customers located within the County of Santa Clara;

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

WHEREAS, the CPUC certified the Implementation Plan on September 27, 2016;

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 subject to satisfaction of the conditions herein; and

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**. Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

“ACS” means “asset-controlling supplier” as that term is defined in the Cap and Trade Regulations.

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

“California 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 (8th Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission (“CPUC”) as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038 and D.14-12-023, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“Cap and Trade Regulations” means 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 pursuant to the California Global Warming Solutions Act of 2006.

“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 WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. Carbon Free Source does not include any Category 3 Renewables, ACS resources or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility.

“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 Renewable Energy Credits that satisfy 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.

“Change in Law” has the meaning set forth in Section 2.2 hereof.

“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.

“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.

“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 Silicon Valley Clean Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of San Mateo.

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

“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 hereof.

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

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

“Energy” means electrical energy, measured in MWh.

“Energy Contract Price” means 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” means the quantity of Energy set forth in Exhibit A, which will be delivered to the CAISO by Seller and scheduled with Buyer as an IST.

“Exhibits” shall be those certain Exhibits, which are attached hereto and made a part hereof.

“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.

“IID” means Imperial Irrigation District.

“Implementation Plan” has the meaning set forth in the Recitals hereof.

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

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

“Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

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

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

“Project” shall mean the Eligible Renewable Energy Resource(s) used to provide Renewable Energy hereunder.

“Prudent Industry Practices” 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 Law, 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 Vintage” means the date of Energy generation found on a WREGIS Certificate.

“Renewable Energy” means Energy and associated Renewable Energy Credits generated by an Eligible Renewable Energy Resource.

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

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

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO 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.

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

“Security Documents” has the meaning set forth in the Master Agreement.

“Silicon Valley Clean Energy Program” means the community choice aggregation program operated by Buyer.

“Specified Sources of Power” means electricity that is traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

“Tariff” 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.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

“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 one or more of the following:

- (a) the quantity of Energy specified in Section 7.1;
- (b) the quantity of Renewable Energy specified in Section 7.2; and
- (c) the quantity of Carbon Free Energy specified in Section 7.3.

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 Effective Date that results in material changes to Buyer’s or Seller’s obligations with regard to the 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 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 below and in Section 2.8.

2.3 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.

- 2.4 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.
- 2.5 Resources. For Renewable Energy and Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power. For other Energy deliveries, if any, Seller may use Unspecified Sources of Power to provide the required Energy hereunder; provided that any Energy delivered under this Confirmation (including incremental energy associated with Category 2 Renewable products) shall not be procured from unit-specific sources that are nuclear or coal-fired resources. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.
- 2.6 Delivery of WREGIS Certificates. 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 the Renewable Energy Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer. Prior to the start of each calendar quarter, Seller shall provide Buyer with an indicative, non-binding forecast of the amount of RECs it expects to deliver during such calendar quarter. Such indicative, non-binding forecast shall also identify, if known to Seller, the Eligible Renewable Energy Resource(s) that Seller expects to generate the RECs.

Seller shall comply with all Applicable Law, 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 Renewable Energy Contract Quantity for a month are not available for transfer to Buyer until approximately 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 fourteen (14) days to the extent that the WREGIS Certificates included in such transfer conform to the specifications reflected in this Confirmation. In the event that certain WREGIS Certificates fail to conform to the specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall promptly replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage and that meet the specifications reflected in this Confirmation; provided, however, that if replacement WREGIS Certificates are not immediately available, Seller may provide replacements once available, but in any event shall provide replacement WREGIS Certificates to Buyer within ninety (90) days after Seller's rejection of such non-conforming WREGIS Certificates.

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.

2.7 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).

2.8 RPS Adjustment. The Parties acknowledge that the RPS Adjustment is currently applicable to the Category 2 Renewable Product. In the event that the regulatory requirements for application of the RPS Adjustment change after the Effective Date and such change causes an increase in the greenhouse gas emissions intensity associated with the Category 2 Renewable Product, the Parties agree to discuss in good faith amendments to this Transaction to mitigate the increase in the greenhouse gas emissions intensity. In the event that the Parties are unsuccessful in revising or amending this Transaction or unable to agree upon a mutually acceptable resolution within thirty (30) days after the request of either Party to amend the Transaction pursuant to this Section 2.8 by either Party, either Party may, by written notice to the other, immediately terminate the undelivered portion of Renewable Energy Contract Quantities of Category 2 Renewable Product without penalty, termination payment or liability of either Party.

3. DELIVERY PERIOD. This Confirmation shall be in full force and effect as of the Effective 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.

Start Date:	End Date:
January 1, 2018	December 31, 2021

4. DELIVERY POINT.

Product	Delivery Point
Energy	Not Applicable
Renewable Energy	
Carbon Free Energy	Not Applicable

5. SCHEDULING. At its sole expense, Seller shall be responsible for providing, or arranging for a third party to provide, Scheduling Coordinator service for the Project during the Delivery Term. The Product shall be scheduled by Seller via an import from IID to the CAISO or dynamic transfer. On a day ahead basis, Seller shall provide notice via e-mail to Buyer identifying the volume of Product to be provided for the following day.

6. PRICING.

- 6.1 Energy Contract Price and Payment. For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Energy Contract Quantity delivered and scheduled in accordance with this Confirmation multiplied by the Energy Contract Price specified in Exhibit A.
- 6.2 Renewable Energy Contract Price and Payment. For each MWh of Product delivered to Buyer hereunder in the invoiced month, the difference of (A) the Renewable Energy Contract Price as specified in Exhibit B, minus (B) the Day Ahead Locational Marginal Price applicable to the Delivery Point for the applicable Project for the Settlement Interval in which such Energy was delivered.
- 6.3 Carbon Free Energy Price and Payment. For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Carbon Free Energy Contract Quantity delivered in such month multiplied by the Carbon Free Energy Price specified in Exhibit C plus b) the Day-Ahead LMP at the Delivery Point for each MWh of the Carbon Free Energy Contract Quantity delivered and scheduled in accordance with this Confirmation in such month.

7. CONTRACT QUANTITIES.

- 7.1 Energy. Energy Contract Quantities and the Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A.
- 7.2 Renewable Energy. Renewable Energy Contract Quantities and Renewable Energy 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 Renewable Energy Credits associated with such Renewable Energy.
- 7.3 Carbon Free Energy. Carbon Free Energy Contract Quantities and Carbon Free Energy Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit C.

8. MONTHLY BILLING SETTLEMENT.

- 8.1 Collection of Customer Payments. In accordance with the Security Documents, Buyer shall direct PG&E to deposit into a lockbox account, 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 Documents, 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 Documents. 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 Documents.
- 8.2 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.

9. **COMPLIANCE REPORTING.** Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on behalf of Silicon Valley Clean Energy 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 compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product.
10. **NO RESTRICTION.** Nothing in this Confirmation shall limit Buyer's ability to develop its own generation facilities ("Buyer Facilities") or prevent Buyer from purchasing energy from other parties or Seller from selling energy to other parties.
11. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Utility Practices.

12. SECURITY PROVISIONS.

12.1 **Compliance with Security Documents.** During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Documents. Upon the occurrence of an Event of Default (after giving effect to any applicable cure periods) by Buyer under any Security Document or a termination of any Security Document 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 Five of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such failure to perform.

12.2 **Buyer Reporting Requirements.** During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the report(s) required below and shall also provide Seller with any clarifications requested regarding such report(s) 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 Document or the ongoing viability of the CCA.

(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 (vi) below, and each report shall be with regard to such previous calendar month or other period as applicable:

- (i) 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;
- (ii) 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 Documents);
- (iii) Cash reconciliations and bank statements for each of Buyer's banking accounts;
- (iv) 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;

- (b) Annual Reports. The following report shall be provided by Buyer to Seller not later than 180 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.

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____, 201__ (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.”

This Confirmation is subject to the Exhibits identified below and that are attached hereto:
Exhibit A – Energy Contract Quantity and Price Schedule
Exhibit B – Renewable Energy Contract Quantity and Price Schedule
Exhibit C – Carbon Free Energy Contract Quantity and Price Schedule

SILICON VALLEY CLEAN ENERGY AUTHORITY, a California joint powers authority

Sign: _____
 Print: _____
 Title: _____

Sign: _____
 Print: _____
 Title: _____

Exhibit A

Energy Contract Quantity and Price Schedule

The Energy Contract Quantity is 0 MWhs.

Exhibit B

Renewable Energy Contract Quantity and Price Schedule

REC Contract Quantity and Price		
Year	Category 1 Renewable (MWh)	Category 1 Renewable Contract Price (\$/MWh)
2018		
2019		
2020		
2021		

Exhibit C

Carbon Free Energy Contract Quantity and Price Schedule

The Carbon Free Contract Quantity is 0 MWhs.

EXECUTION COPY [REDACTED VERSION]
01/24/2017

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase and Sale Agreement (Version 2.1, modified 4/25/00) ("Master Agreement") is made as of the following date _____, 201__ ("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: Regenerate Power LLC
("Regenerate Power LLC" or "Party A")

Name: **Silicon Valley Clean Energy Authority**, a
California joint powers authority ("Silicon Valley Clean
Energy" or "Party B")

All Notices:

Street: 228 Hamilton Avenue, 3rd floor

City: Palo Alto, CA94301

Attn: Reyad Fezzani _____

Phone: (650) 319-7770 _____

Facsimile:(650) 319-7775 _____

E-mail: [REDACTED] _____

Duns: _____

Federal Tax ID Number: [REDACTED] _____

All Notices:

Street: 333 W. El Camino Real, Suite 290

City: Sunnyvale, CA Zip: 94087

Attn: Tom Habashi _____

Phone: (408) 721-5301 _____

Facsimile: _____

E-mail: [REDACTED] _____

Duns: _____

Federal Tax ID Number: [REDACTED] _____

Invoices:

Attn: Reyad Fezzani _____

Phone: (650) 319-7770 _____

Facsimile: (650) 319-7775 _____

Email: [REDACTED] _____

Invoices:

Attn: **Silicon Valley Clean Energy Authority** _____

Finance _____

Phone: (408) 721-5301 _____

Facsimile: _____

Scheduling:

Attn: _____

Phone: _____

Facsimile: _____

Email: _____

Scheduling:

Phone: (916) 221-4327 _____

Address: 604 Sutter Street, Suite 250, _____

Folsom, CA 95630 _____

Email: [REDACTED] _____

Payments:

Attn: Reyad Fezzani _____

Phone: (650) 319-7770 _____

Facsimile: (650) 319-7775 _____

E-mail: [REDACTED] _____

Payments:

Attn: **Silicon Valley Clean Energy Authority Finance** _____

Phone: (408) 721-5301 _____

Facsimile: _____

E-mail _____

Wire Transfer:

BNK: [REDACTED] _____

ABA: [REDACTED] _____

ACCT: [REDACTED] _____

Wire Transfer:

BNK: _____

ABA: _____

ACCT: _____

Credit and Collections:

Attn: Reyad Fezzani _____

Phone: (650) 319-7770 _____

Facsimile: (650) 319-7775 _____

Credit and Collections:

Attn: **Silicon Valley Clean Energy Authority Finance** _____

Phone: (408) 721-5301 _____

Facsimile: _____

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

Attn: Reyad Fezzani _____
Phone: (650)319-7770 _____
Facsimile (650)319-7775 _____

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

Attn: _____
Phone: _____
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 N/A Dated N/A Docket Number N/A

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 [REDACTED]
 _____ Cross Default Amount \$ _____
 Cross Default for Party B:
 Party B: Silicon Valley Clean Energy Authority Cross Default Amount [REDACTED]
 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: (A) (1) The annual report containing audited consolidated financial statements for such fiscal year of Silicon Valley Clean Energy as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at www.svcleanenergy.com, and (2) quarterly unaudited financial statements for Silicon Valley Clean Energy as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. 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. The statements shall consist of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, statement of cash flows on a consolidating basis (as applicable), including the associated notes. Audited statements shall be audited by an independent certified public accountant. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30. (B) If and for so long as all undelivered (or partially undelivered) Transactions (in aggregate) hereunder are greater than 200,000 MWh or have a remaining term or tenor greater than six (6) months, Party B shall provide the following information to Party A at or before the times specified: (a) within 140 days after the end of each fiscal year: (1) by customer class (residential, commercial and industrial), the number and volume of customers that elected to opt out of Party B's service, and (2) total retail customers by class (residential, commercial and industrial) by number and volume in the service territory; and (b) within 140 days after the end of each fiscal year, forecast retail sales and supply under contracts for the next five (5) fiscal years.

(b) Credit Assurances:

- Not Applicable
 Applicable

(c) Collateral Threshold:

- Not Applicable
 Applicable

If applicable, complete the following:

Party B Collateral Threshold: Shall be US [REDACTED]; 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: \$0

Party B Rounding Amount: [REDACTED]

(d) Downgrade Event:

- Not Applicable
 Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if the Credit Rating of [*Party B or Party B's Guarantor*] falls below BBB- from S&P or below Baa3 from Moody's, or if [*Party B or Party B's Guarantor*] is not rated by either S&P or Moody's.
- Other:
Specify:

(e) Guarantor for Party B: NONE

Guarantee Amount: Not Applicable

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: [REDACTED]

Party A Independent Amount: \$0

Party A Rounding Amount: [REDACTED]

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if the Credit Rating of Party A's Guarantor falls below BBB- from S&P or below Baa3 from Moody's, or if Party A's Guarantor is not rated by any Ratings Agency.

- 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

Cover Sheet: Schedule M

The Cover Sheet is revised by deleting the reference "Section 8.6" and replacing it with "Section 8.4".

Article One: General Definitions

Section 1.1 is revised by adding the following sentence to the end of the definition:

“Notwithstanding the foregoing, the public entities that are designated as “Parties” under the Joint Powers Agreement (referred to herein as “members” of Party B) shall not constitute or otherwise be deemed an “Affiliate” of Party B for the purposes of this Master Agreement or any Confirmation.”

Section 1.12 is revised to read as follows:

“1.12 “Credit Rating” means, with respect to any entity, the rating then assigned by Moody’s, S&P or any other rating agency agreed by the Parties as set forth in the Cover Sheet, to such entity’s senior unsecured long-term debt obligations (not supported by insurance provider enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by Moody’s or as an issuer or corporate credit rating by S&P or another rating by any other rating agency agreed by the Parties as set forth in the Cover Sheet. In the event that the Party or its Guarantor has multiple ratings, the lower rating shall prevail.”

The following defined term is added as Section 1.26A:

“1.26A “Joint Powers Agreement” means the Joint Powers Agreement, effective as of March 31, 2016, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

Section 1.27 is revised by (A) deleting the word “transferable” in the first line and replacing it with “non-transferable”, (B) deleting the words “credit rating” in third line and replacing it with “long term debt rating or deposit rating”, and (C) adding the phrase “and at least \$10 billion in total assets” in the third line immediately after the word “Moody’s”.

The following defined term is added as Section 1.49A:

“1.49A “Ratings Agency” means S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.”

Section 1.50 is revised to read as follows:

“1.50 “Recording” has the meaning set forth in Section 2.5.”

Section 1.52 is deleted in its entirety as replaced with the following:

“1.52 “S&P” means S&P Global Market Intelligence, a division of S&P Global Inc., or its successor.”

Article Two: Transaction Terms and Conditions

Section 2.1 is revised by deleting the word “A” in the first line thereof and replacing it with the following: “Subject to Section 2.3, a”.

Section 2.3 is deleted in its entirety and replaced with the following:

“2.3 Confirmation. A Transaction shall be entered into only by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties (“Confirmation”). Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Confirmations may not be

amended or modified except by an instrument in writing signed by both of the Parties”.

Section 2.4 is amended by deleting the words “either orally or” in the seventh line thereof.

Section 2.5 is revised by deleting the last two sentences thereof in their entirety.

Article Four: Remedies for Failure to Deliver/Receive

Each of Section 4.1 and Section 4.2 are revised so that the words “five (5) Business Days” in the fifth line of each section are deleted and replaced with “two (2) Business Days”.

Article Five: Events of Default; Remedies

Section 5.1(a) is revised to delete “three (3) Business Days” and replace it with “five (5) Business Days”.

Section 5.1(g) is revised (A) by adding “(after giving effect to any applicable notice requirement or grace period)” in the second line after the word “continuation”, (B) by adding “required to be made under one or more agreements for such Party or any other party specified in the Cover Sheet,” in the eleventh line before the word “individually”, and (C) by adding the following phrase at the end of the section “provided, an Event of Default shall not occur under this Section 5.1(g) if, as demonstrated to the reasonable satisfaction of the other Party, the Event of Default or the failure to pay is the result of a failure to pay caused by an error or omission of an administrative or operational nature, funds were available to such Party to enable it to make the relevant payment when due, and such relevant payment is made within three (3) Business Days following receipt of written notice from the party to whom the payment is owed”.

Section 5.1(h)(ii) is revised to add the phrase “or any other agreement between Party A or its Affiliate and Party B or its Affiliates,” after the word “Agreement”.

Section 5.1(h)(v) is revised by adding the phrase “made in connection with this Agreement” after “any guaranty”.

The “.” at the end of subparagraph (v) of Section 5.1(h) is replaced with “;” and the following two paragraphs are added to the end of Section 5.1:

- “(i) a Letter of Credit Failure that is not cured within five (5) Business Days after the occurrence thereof; or
- (j) a default, event of default, termination event, breach or any other similar event (howsoever expressed) that has not been remedied within the applicable grace period under any other agreement or instrument (including without limitation commodity or financial derivative agreements or transactions) between a Party or its Affiliate and the other Party or its Affiliate, that results in the other party being entitled under the terms of such other agreement to terminate and liquidate transactions and arrive at a net settlement payment thereunder by invoking a process similar in substance to the process described in Sections 5.2, 5.3 and 5.6 regardless of the defined terms used to describe the same.”

Section 5.2 is revised by reversing the placement of “(i)” and “to”.

Clause (b) of Section 5.3 is revised so that the phrase “plus, at the option of the Non-Defaulting Party, any cash then available to the Defaulting Party pursuant to Article Eight,” is inserted after the first occurrence of the words “Non-Defaulting Party”.

Section 5.3 is amended by adding the following sentence at the end of the section:

“Notwithstanding the immediately preceding sentence, no Termination Payment shall be due or payable to the Defaulting Party.”

The following is added as a new Section 5.8:

“5.8 Letter of Credit Failure. For the purposes of this Article Five, “Letter of Credit Failure” shall mean, with respect to a Party that has provided a Letter of Credit as Performance Assurance:

- (a) a failure to renew or substitute a Letter of Credit by no later than fifteen Business Days prior to expiry thereof;
- (b) the issuer of such Letter of Credit fails to maintain a Credit Rating of at least “A-” by S&P or at least “A3” by Moody’s and fails to maintain at least \$10 billion in total assets;
- (c) the issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit if such failure continues after the lapse of any applicable grace period;
- (d) the issuer of such Letter of Credit disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit;
- (e) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) at any time during the term of the Agreement or any outstanding Transaction; or
- (f) any event analogous to an event specified in Subsection 5.1(d) or (f) of this Agreement occurs with respect to the issuer of such Letter of Credit.

However, no Letter of Credit Failure will occur with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned in accordance with the terms of this Agreement.”

Article Six: Payment and Netting

Section 6.3 is amended by changing “twelve (12) months” to “twenty-four (24) months” in lines 3, 16 and 18.

Section 6.4 is revised by adding the following sentence to the end of the section:

“In the event the Parties are transacting under additional agreements, all transactions completed in the same month shall be netted against each other using the procedure described above.”

Article Eight: Credit and Collateral Requirements

Section 8.1(a) is revised so that the figures “120” and “60” in each of Options (A) and (B) are replaced with the figures “140” and “90” respectively.

Section 8.1(b) is revised to delete in lines 5 and 7 “three (3) Business Days” and replace it with “five (5) Business Days”.

Section 8.1(d) is amended by (i) changing “three (3) Business Days” to “five (5) Business Days”, and (ii) adding, before the comma in line five, “or fails to maintain such Performance

Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing, and does not restore such Performance Assurance within five (5) Business Days of receipt of notice”.

Section 8.2(a) is revised so that the figures “120” and “60” in each of Options (A) and (B) are replaced with the figures “140” and “90” respectively.

Section 8.2(b) is revised to delete in lines 5 and 7 “three (3) Business Days” and replace it with “five (5) Business Days”.

Section 8.2(c) is revised by adding the following paragraph after the first paragraph:

“Party A may at any time and from time to time (including at the time of a request by Party B for Performance Assurance) give notice to Party B of its intent to increase the amount of the guarantee provided by Party A’s Guarantor up to the amount set forth in the table on the Cover Sheet opposite the lowest Credit Rating for Party A’s Guarantor. No such increase shall become effective until Party A shall have provided Party B with a new guaranty or an amended guaranty (in form and substance acceptable to Party B). If the operation of the foregoing results in the sum of Party A Performance Assurance and Party A’s Collateral Threshold being in excess of its Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount) Party A shall be deemed to have requested that the Party A Performance Assurance be reduced accordingly.”

Section 8.2(d) is amended by (i) changing “three (3) Business Days” to “five (5) Business Days”, and (ii) adding, before the comma in line five, “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing, and does not restore such Performance Assurance within five (5) Business Days of receipt of notice”.

Section 8.2(e) is deleted in its entirety and replaced with the following:

“(e) If specified on the Cover Sheet, Party A shall, at the request of Party B, deliver to Party B a guarantee in a form and an amount agreed to by both Parties and Party A’s Guarantor, which shall be delivered to Party B on or before ten (10) Business Days after the date on which the Parties and Party A’s Guarantor have agreed to the form and amount of the guarantee. In the event the Parties (each acting reasonably) and Party A’s Guarantor cannot agree to the form and amount for the guarantee to be delivered by Party A within ten (10) Business Days of Party B’s request, Party A may deliver Performance Assurance to Party B in substitution for the guarantee. For greater certainty, it shall not be an Event of Default if Party A does not deliver a guarantee to Party B absent a request by Party B and the agreement of the Parties and Party A’s Guarantor as to the form and amount of such guarantee.”

Article Ten: Miscellaneous

Section 10.2(iii) is revised by inserting the text “(including, with respect to Party B, the Joint Powers Agreement)” immediately after the words “governing documents”.

Section 10.11 is revised to read as follows:

“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 (i) the terms or conditions of a Transaction or any other information exchanged relating to a Transaction or potential Transaction, or (ii) the completed Cover Sheet to 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 (a) 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, or (b) to the extent necessary to provide commercial terms of a Transaction, except the details pertaining to Seller or Buyer or either Party's name, to a third party for the sole purpose of calculating a published index; 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. This Section 10.11 is in addition to, and not in substitution for, any other written assurances of non-disclosure between and executed by the Parties."

The following is added as Section 10.12:

"10.12 Waiver. FERC Standard of Review.

(A) Absent the agreement of all parties to the proposed change, the standard of review for changes to any provision of this Agreement (including all Power Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the parties herein, whether proposed by a party, a non-party or FERC acting *sua sponte*, shall solely be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and NRG Power Marketing LLC v. Maine Public Utility Commission, 558 U.S. 165 (2010) (the "Mobile-Sierra" doctrine).

(B) The parties, for themselves and their successors and assigns, (y) agree that "public interest" standard of review shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the parties in connection with this Agreement and (z) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard of review, provided that this standard of review and the other provisions of this Section 10.13 shall only apply to proceedings before the FERC or appeals thereof.

(C) In addition, and notwithstanding the foregoing clauses (A) and (B), to the fullest extent permitted by applicable law, each party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any provision of this Agreement (including any applicable Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the parties, it being the express intent of the parties that, to the fullest extent permitted by applicable law, neither party shall unilaterally seek to obtain from FERC any relief changing the rate(s) and/or other material economic terms and conditions of their agreement(s), as set forth in this Agreement and in any Transactions or Confirmations, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then

this Section 10.13 shall not apply, provided that, consistent with this Section 10.13 neither party shall seek any such changes except under the “public interest” standard of review and otherwise as set forth in clauses (A) and (B) above.

The following is added as Section 10.13:

“10.13 Index Transactions. If the Contract Price for a Transaction is determined by reference to a Price Source, then:

- (a) Market Disruption. If a Market Disruption Event occurs on any one or more days during a Determination Period (each day, a “Disrupted Day”), then:
 - (i) The fallback Floating Price, if any, specified by the Parties in the relevant Confirmation shall be the Floating Price for each Disrupted Day.
 - (ii) If the Parties have not specified a fallback Floating Price, then the Parties will endeavor, in good faith and using commercially reasonable efforts, to agree on a substitute Floating Price, taking into consideration, without limitation, guidance, protocols or other recommendations or conventions issued or employed by trade organizations or industry groups in response to the Market Disruption Event and other prices published by the Price Source or alternative price sources with respect to the Delivery Point or comparable Delivery Points that may permit the Parties to derive the Floating Price based on historical differentials.
 - (iii) If the Price Source retrospectively issues a Floating Price in respect of a Disrupted Day (a “Delayed Floating Price”) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Disrupted Day. If a Delayed Price is issued by the Price Source in respect of a Disrupted Day after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment unless the Parties expressly agree otherwise.
 - (iv) If the Parties cannot agree on a substitute Floating Price and the Price Source does not retrospectively publish or announce a Floating Price, in each case, on or before the fifth Business Day following the first Trading Day on which the Market Disruption Event first occurred or existed, then the Floating Price for each Disrupted Day shall be determined by taking the arithmetic mean of quotations requested from four leading dealers in the relevant market that are unaffiliated with either Party and mutually agreed upon by the Parties (“Specified Dealers”), without regard to the quotations with the highest and lowest values, subject to the following qualifications:
 - A. If exactly three quotations are obtained, the Floating Price for each such Disrupted Day will be the quotation that remains after disregarding the quotations having the highest and lowest values.

- B. If fewer than three quotations are obtained, the Floating Price for each such Disrupted Day will be the average of the quotations obtained.
 - C. If the Parties cannot agree upon four Specified Dealers, then each of the Parties will, acting in good faith and in a commercially reasonable manner, select up to two Specified Dealers separately, and those selected dealers shall be the Specified Dealers.
- (v) Unless otherwise agreed, if at any time the Parties agree on a substitute Floating Price for any Disrupted Day, then such substitute Floating Price shall be the Floating Price for such Disrupted Day, notwithstanding the subsequent publication or announcement of a Delayed Floating Price by the relevant Price Source or any quotations obtained from Specified Dealers.
- (b) Definitions. For the purposes of this Section 10.14, the following terms shall have the following meanings:
- (i) “Determination Period” means each calendar month a part or all of which is within the Delivery Period of a Transaction.
 - (ii) “Exchange” means, in respect of a Transaction, the exchange or principal trading market specified as applicable to the relevant Transaction.
 - (iii) “Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.
 - (iv) “Market Disruption Event” means, with respect to any Price Source, any of the following events:
 - A. the failure of the Price Source to announce, publish or make available the specified Floating Price or information necessary for determining the Floating Price for a particular day;
 - B. the failure of trading to commence on a particular day or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange, RTO or in the market specified for determining a Floating Price;
 - C. the temporary or permanent discontinuance or unavailability of the Price Source;
 - D. the temporary or permanent closing of any Exchange or RTO specified for determining a Floating Price; or
 - E. a material change in the formula for or the method of determining the Floating Price by the Price Source or a material change in the composition of the Product.
 - (v) “Price Source” means, in respect of a Transaction, a publication or such other origin of reference, including an Exchange or RTO, containing or reporting or making generally available to market participants (including by electronic means) a price, or prices or

information from which a price is determined, as specified in the relevant Transaction.

- (vi) "RTO" means any regional transmission operator or independent system operator.
 - (vii) "RTO Transaction" means a Transaction in which the Price Source is an RTO.
 - (viii) "Trading Day" means a day in respect of which the relevant Price Source ordinarily would announce, publish or make available the Floating Price.
- (c) Corrections to Published Prices. If the Floating Price published, announced or made available on a given day and used or to be used to determine a relevant price is subsequently corrected by the relevant Price Source (i) within 30 days of the original publication, announcement or availability, or (ii) in the case of RTO Transactions only, within such longer time period as is consistent with the RTO's procedures and guidelines, then either Party may notify the other Party of that correction and the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after such notice is effective, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction. Notwithstanding the foregoing, corrections shall not be made to any Floating Prices agreed upon by the Parties or determined based on quotations from Specified Dealers pursuant to paragraph (a) above unless the Parties expressly agree otherwise.
- (d) Rounding. When calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged."

The following is added as Section 10.14:

"10.14 Counterparts / Electronic Delivery.

This Agreement may be executed in counterparts each of which is an original, and all of which shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement and any Confirmation by facsimile or electronic mail transmission (in portable document format (PDF)) shall be as effective as delivery of a manually executed signature page."

The following is added as Section 10.15:

"10.15 Joint Powers Authority.

Party A hereby acknowledges and agrees that Party B is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Party B shall solely be responsible for

all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Party B's members in connection with this Agreement.”

Schedule M: Governmental Entity or Public Power System

Section A of Schedule M is hereby amended by deleting the defined term “Act” and replacing it with the following:

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

Section E of Schedule M is hereby amended by inserting the text “Governmental Entity or” immediately after the word “cover” in the second sentence of Section 3.6.

Section G of Schedule M is hereby deleted in its entirety and replaced with the following:

“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 CALIFORNIA SHALL APPLY.””

Schedule P: Products and Related Definitions

The following definition and provision are added to Schedule P:

1. “CAISO Energy” means with respect to any Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the California Independent System Operator (“CAISO”) (as amended from time to time, the “Tariff”) for which the only excuse for failure to deliver or receive is an “Uncontrollable Force” (as defined in the Tariff). A CAISO “Schedule Adjustment” (defined as a schedule change implemented by the CAISO that is neither caused by, or within the control of, either Party) shall not constitute an Uncontrollable Force (as defined in the Tariff).

2. Other Products and Service Levels: In addition to the Products set out in Schedule P, the Parties may agree to use a product or service level defined by a different agreement (i.e., the Tariff, the WSPP Agreement, etc.) for a particular Transaction under this Master Agreement. If so, then the Transaction shall be subject to all the terms of this Master Agreement, except that (1) the product or service level definition, (2) force majeure, uncontrollable force definitions or other excuses for performance, (3) applicable regional reliability requirements and guidelines, and (4) other terms and conditions as mutually agreed in writing, shall have the meaning given to them in the different agreement or in the applicable Confirmation.

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

AUTHORITY,

SILICON VALLEY CLEAN ENERGY

a California Joint Powers Authority

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.



Staff Report – Item 8

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 8: Approve Confirmation Agreements with NRG and Shell to acquire Resource Adequacy Capacity for 2017

Date: 2/8/2017

RECOMMENDATION

Authorize the Chief Executive Officer to execute agreements for the purchase of Resource Adequacy Capacity as necessary to meet SVCE's regulatory obligations, with terms consistent with those contained in the attached agreements.

BACKGROUND & DISCUSSION

SVCE must ensure sufficient generation capacity is available to reliably meet the electric needs of its customers. Under the state's Resource Adequacy program, all load serving entities must commit to making electric generators available for dispatch by the California Independent System Operator (CAISO). Resource Adequacy Capacity is a separate product from energy, and no entitlements to energy or other attributes are conveyed through purchase of Resource Adequacy Capacity. The Resource Adequacy Capacity obligation is equivalent to 115% of the projected load serving entity's peak demand for each month. A portion of the total Resource Adequacy obligation must be met with Resource Adequacy Capacity meeting certain locational and operational attributes in order to support local area reliability and ensure that sufficient amounts of flexible generating units are available for dispatch by the CAISO.

SVCE will need to make month-ahead and year-ahead filings to the California Public Utilities Commission (CPUC) demonstrating its compliance with the Resource Adequacy program. SVCE initiated compliance with the Resource Adequacy program in December 2016, by submitting its 2017 load forecast to the California Energy Commission. In January 2017, SVCE received its initial Resource Adequacy Compliance obligations for 2017 from the CPUC. The first monthly compliance filing will be due on February 15 for the April compliance month, and SVCE will need to have contracts in place prior to that filing deadline.

SVCE staff and consultants have negotiated Resource Adequacy contracts with NRG Power Marketing (NRG) and Shell Energy North America (Shell) sufficient to meet the April compliance obligation as well as portions of SVCE's monthly obligations for the remainder of 2017. The agreements differ in form, but include industry standard terms and conditions for Resource Adequacy contracts. The primary differences are due to the fact that SVCE has an existing Master EEI Agreement in place with Shell that covers general terms and conditions for all transactions between the parties, whereas SVCE has no Master EEI Agreement in place with NRG, so such terms are incorporated into the NRG Confirmation Agreement.

Additional contracts with these or other sellers will be completed throughout the year as SVCE's final monthly requirements become known, and it is anticipated that these purchases can be made using a Master EEI Agreement or Confirmation Agreement.

CONCLUSION

SVCE has a regulatory compliance obligation necessitating execution of contracts for Resource Adequacy Capacity prior to the February 15, 2017 deadline for SVCE's first compliance demonstration filing. Board authorization for purchase of Resource Adequacy Capacity and approval of the attached forms of agreement, will enable compliance with SVCE's Resource Adequacy obligations.

ATTACHMENTS

1. Confirmation letter between NRP Power Marketing LLC and Silicon Valley Clean Energy
2. Master Power Purchase and Sale Agreement Confirmation Letter between Shell Energy North America (US), L.P. and Silicon Valley Clean Energy (Hydro)
3. Master Power Purchase and Sale Agreement Confirmation Letter between Shell Energy North America (US), L.P. and Silicon Valley Clean Energy (Solar Photovoltaic)

**CONFIRMATION LETTER
BETWEEN
NRG POWER MARKETING LLC
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This confirmation letter ("Confirmation") confirms the transaction (the "Transaction") between NRG Power Marketing LLC ("Seller") and Silicon Valley Clean Energy Authority ("Buyer"), each individually a "Party" and together the "Parties", dated as of January 17, 2017 (the "Confirmation Execution Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") with a Cover Sheet immediately below and ending prior to "Article I Transaction" containing the elections and other changes contained herein as if the Parties have executed the EEI Agreement (with such Cover Sheet the "Master Agreement"). The Parties agree that the only transactions to be concluded pursuant to such Master Agreement shall be the Transaction documented in this Confirmation. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

Name: NRG Power Marketing LLC
("Party A")

Name: Silicon Valley Clean Energy Authority
("Party B")

All Notices:

NRG Power Marketing LLC
Street: 804 Carnegie Center
City: Princeton, NJ Zip: 08540
Attn: Contract Administration
Telephone: 609-524-4543
Facsimile: 609.524.4540
Duns: 02-825-5979
Federal Tax ID Number: 41-1910737

All Notices:

Street: 333 W. El Camino Real, Suite 290
City: Sunnyvale, CA Zip: 94087
Attn: Tom Habashi
Phone: 408-721-5301
Facsimile:
Email: tomh@svcleanenergy.org
Duns:
Federal Tax ID Number: 81-2158638

Invoices:

NRG Power Marketing LLC
Street: 804 Carnegie Center
City: Princeton, NJ Zip: 08540
Attn: Accounting – Physical Power
Telephone: 713.795.6038
Facsimile: 713.795.7482

Invoices:

Attn: Silicon Valley Clean Energy Authority
Finance
Phone: 408-721-5301

Scheduling:

NRG Power Marketing LLC
Street: 804 Carnegie Center
City: Princeton, NJ Zip: 08540
Attn: Scheduling Desk
Telephone: 609.524.4558
Facsimile: 609.524.4540

Scheduling:

Phone: 916-221-4327
Address: 604 Sutter Street, Suite 250
Folsom, CA 85630
Email: eric@zglobal.biz

Payments:

NRG Power Marketing LLC
Street: 804 Carnegie Center
City: Princeton, NJ Zip: 08540
Attn: Accounting – Physical Power
Telephone: 713.795.6038
Facsimile: 713.795.7482

Payments:

Attn: Silicon Valley Clean Energy Authority
Finance
Phone: 408-721-5301
Facsimile:
Email:

Wire Transfer:

Bank Name: Bank of New York Mellon
Bank ABA: 043000261
Account Name: NRG Power Marketing
LLC
Account Number: 1850867ATTN:

Wire Transfer:

Confirmation Specialist - Power
Telephone: (609) 524-4788
Facsimile: (609) 525-4779

Credit and Collections:

NRG Power Marketing LLC
Street: 804 Carnegie Center
City: Princeton, NJ Zip: 08540
Attn: Director, Credit Risk
Telephone: 609.524.4846
Facsimile: 609.524.4605

Credit and Collections:

Attn: Silicon Valley Clean Energy Authority
Finance
Phone: 408-721-5301
Facsimile:
Email:

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

NRG Power Marketing LLC
Street: 804 Carnegie Center
City: Princeton, NJ Zip: 08540
Attn: Asst. General Counsel
Telephone: 609.524.4500
Facsimile: 609.524.4501

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

The Parties hereby agree that the General Terms and Conditions set forth as Article One through Article Ten of the Master Agreement are hereby incorporated by references as if set forth in full

herein and the following elections and modifications are hereby designated as the "Cover Sheet" to the Master Agreement:

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 Eight

Credit and Collateral Requirements 8.1 Party A Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: None

(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: None.

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B Specify: NRG Energy Inc.

Option C Specify: None

(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 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 A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
 Applicable

If applicable, complete the following: N/A

- 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

- Option A: Confidentiality Applicable. If not checked, inapplicable.

Schedule M

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

Other Changes

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

hereby incorporated herein as if set forth in full.

2. Section 1.1 is revised by adding the following sentence to the end of the definition:

"Notwithstanding the foregoing, the public entities that are designated as "Parties" under the Joint Powers Agreement (referred to herein as "members" of Party B) shall not constitute or otherwise be deemed an "Affiliate" of Party B for the purposes of this Master Agreement or any Confirmation."

3. The following defined term is added as Section 1.26A:

"1.26A "Joint Powers Agreement" means the Joint Powers Agreement, effective as of March 31, 2016, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated."

4. The following is added as Section 10.12:

"10.12 Joint Powers Authority.

Party A hereby acknowledges and agrees that Party B is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement and is a public entity separate from its members. Party B shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Party B's members in connection with this Agreement."

5. Section 10.2(ii) of the Master Agreement shall be modified by inserting "Except for the conditions precedent described in Section 2.2 of this Confirmation," at the beginning of the first sentence in such section.

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

"THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE

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

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

ARTICLE 1 TRANSACTION

1.1 Product

Seller shall sell and Buyer shall receive and purchase, the Capacity Attributes of the Units (collectively, the “Product”), and Seller shall deliver the Product as either a Firm RA Product or a Contingent Firm RA Product, as selected in Section 1.1(a) or 1.1(b), below. Seller shall deliver the Product with Flexible RA Attributes only if selected in Section 1.1(c), below. Product does not confer to Buyer any right to dispatch or receive the energy or ancillary services from the Units. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.

a) Firm RA Product

Seller shall provide Buyer with the Product in the amount of the Contract Quantity. If the Units are not available to provide any portion of the Product for any reason, Seller shall provide Buyer with Alternate Capacity from one or more Replacement Units pursuant to Section 2.2. If Seller fails to provide Buyer with Alternate Capacity pursuant to Section 2.2, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of this Agreement.

b) Contingent Firm RA Product

Seller shall provide Buyer with the Product in the amount of the Contract Quantity. If the Units are not available to deliver any portion of the Product required under this Agreement, then Seller shall provide Buyer with Alternate Capacity from one or more Replacement Units pursuant to Section 2.2. If Seller fails to provide Buyer with such Alternate Capacity pursuant to Section 2.2, then Seller shall be liable for damages and/or indemnify Buyer for penalties, fines or costs pursuant to the terms of this Agreement. If the Units provide less than the Contract Quantity due to the events in Sections 1.1(b)i.-ii., then Seller may, but is not required to, provide Buyer with Alternate Capacity, and Seller is not liable for damages and/or required to indemnify Buyer for penalties, fines or costs pursuant to the terms of this Agreement.

- i. Planned Outage: Seller shall not schedule a Planned Outage in the Summer Period during the Delivery Period. Seller may schedule a Planned Outage in the Non-Summer Period during the Delivery Period, provided that Seller notifies Buyer of the Planned Outage no later than fifteen (15) Business Days before the relevant deadline for the corresponding Compliance Showing applicable to that Showing Month. If a Unit is scheduled for a Planned Outage for the applicable Showing Month and Seller has not elected to arrange for Alternate Capacity to be delivered, the Unit Contract Quantity shall be reduced by the amount of unavailable Capacity Attributes (excluding Flexible RA Attributes); the Flexible RA Quantity shall be reduced by the amount of the unavailable amount of Flexible RA Attributes.

- ii. Reduction in Unit NQC: Seller's obligation to deliver the Contract Quantity for any Showing Month shall be reduced in the event the Unit NQC is reduced from the Unit NQC as specified in Appendix B. In such an event, the Unit Contract Quantity for such Unit shall be reduced by the difference in the Unit NQC as specified in Appendix B and the then current Unit NQC.

c) Flexible RA Attributes

If selected, Seller shall deliver Flexible RA Attributes in an amount specified in Section 1.3, Contract Quantity. Seller's obligation to deliver the Flexible RA Quantity for any Showing Month shall be reduced in the event the Unit EFC is reduced from the Unit EFC as specified in Appendix B.

1.2 Delivery Period

The Delivery Period shall be: April 1, 2017 through May 31, 2017 and October 1, 2017 through December 31, 2017 inclusive, unless terminated earlier in accordance with the terms of this Agreement.

1.3 Contract Quantity

The Contract Quantity for each day of each applicable Showing Month is as follows:

Contract Quantity (MWs)

Showing Month	Quantity w/out Flexible RA (MWs)	Quantity with Flexible RA (MWs)	Contract Quantity (MWs)
April 2017	0	190	190
May 2017	0	51	51
October 2017	0	100	100
November 2017	0	100	100
December 2017	0	100	100

**ARTICLE 2
DELIVERY OBLIGATIONS**

2.1 Adjustments to Contract Quantity

Seller's obligation to deliver the applicable Contract Quantity for each day of each Showing Month may be reduced by Seller in the event of Force Majeure. In the event Seller is unable to provide the applicable Contract Quantity for any portion of a Showing Month because of Force Majeure, Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such

Showing Month from Replacement Units, provided that Seller provides and identifies such Replacement Units in accordance with Section 2.2.

2.2 Alternate Capacity

If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason (including without limitation due to one of the reasons specified in Section 2.1), or if Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Buyer, provide Buyer with replacement Product from one or more Replacement Units in an amount such that the total amount of Product provided to Buyer from the Unit and Replacement Units for each day of the Showing Month is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

- (a) Seller shall notify Buyer of its intent to provide replacement Product and identify Replacement Units meeting the above requirements no later than fifteen (15) Business Days before the relevant deadlines for Buyer's Compliance Showings related to such Showing Month; and
- (b) the designated Replacement Unit is accepted by the CAISO as a substitute for the original Unit.

Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 2.2, then any such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

2.3 Delivery of Product

Seller shall provide Buyer with the Expected Contract Quantity of Product for each day of each Showing Month consistent with the following:

Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans in accordance with the Tariff to identify and confirm the Expected Contract Quantity provided to Buyer for each day of each Showing Month so that the total amount of Expected Contract Quantity identified and confirmed for each day of such Showing Month equals the Expected Contract Quantity for such day of such Showing Month. In the event that, following the submission of a Supply Plan, the CAISO notifies Buyer that it will not be credited for any portion of the Expected Contract Quantity identified in such Supply Plan, Buyer shall promptly notify Seller and the Parties will confer and correct the Supply Plan as appropriate to properly effect the delivery of the Product.

2.4 Damages for Failure to Provide Capacity

If Seller fails to provide Buyer with the Expected Contract Quantity of Product for any day of any Showing Month, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Expected Contract Quantity not provided by Seller with capacity having equivalent Capacity Attributes as the Expected Contract Quantity not provided by Seller ("Replacement Capacity"). Buyer may enter into purchase transactions with one or more parties to replace any portion of Expected Contract Quantity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual price paid by Buyer for any Replacement

Capacity times its applicable quantity, plus (B) each Capacity Replacement Price times the amount of the Expected Contract Quantity neither provided by Seller nor purchased by Buyer pursuant to Section 2.4(a) for all applicable portions of the Showing Month, and (ii) the Expected Contract Quantity not provided for all applicable portions of the Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

2.5 Indemnities for Failure to Deliver Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from Seller's failure to provide any portion of the Expected Contract Quantity for any portion of the Delivery Period. With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation. Seller will have no obligation to Buyer under this Section 2.5 in respect of the portion of the Expected Contract Quantity for which Seller has paid damages under Section 2.4 hereof.

2.6 Reserved

2.7 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product acquired under this Confirmation.

**ARTICLE 3
PAYMENT**

3.1 Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a payment to Seller, after the applicable Showing Month, as follows:

$$\text{Payment} = (A \times B \times 1,000)$$

where:

A = applicable Contract Price for the Delivery Period

B = *Contract Quantity as specified in Section 1.3*

The Monthly Payment calculation shall be rounded to two decimal places. If delivery of Flexible RA Attributes in Section 1.1(c) is selected, the amount of Flexible RA Quantity actually delivered shall not impact the payment calculation in this section.

CAPACITY FLAT PRICE TABLE

Delivery Period	RA Capacity Flat Price (\$/kW-month)
April 2017	\$0.50
May 2017	\$0.60
October 2017	\$0.60
November 2017	\$0.60
December 2017	\$0.60

3.2 Allocation of Other Payments and Costs

- (a) Seller shall retain any revenues it may receive from the CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, and (iv) any revenues for black start or reactive power services.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity (including any capacity revenues from RMR Contracts for the Unit, Capacity Procurement Mechanism, or its successor, and RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(iv)).
- (c) In accordance with Section 3.1 of this Confirmation and Article Six of the Master Agreement,
 - (i) all such Buyer revenues described in this Section 3.2, but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts Buyer may owe to Seller under this Confirmation; and
 - (ii) all such Seller, or a Unit's SC, owner, or operator revenues described in this Section 3.2, but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit's SC, owner, or operator fails to remit those revenues to Seller. If Buyer fails to pay such revenues to Seller, Seller may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts it may owe to Buyer under this Confirmation.
- (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of Product for each day of each Showing Month provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.
- (e) Seller agrees that the Unit is subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated under Section 40.9 of the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.

**ARTICLE 4
RESERVED**

**ARTICLE 5
OTHER BUYER AND SELLER COVENANTS**

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

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable Compliance Obligations; provided that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, facility enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer Compliance Obligations, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

5.2 Seller's Representations, Warranties and Covenants

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

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;
- (c) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and the Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC for that Unit;
- (f) Seller has notified the SC of the Unit that Seller has transferred the Contract Quantity with respect to each day of each Showing Month to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff and this Confirmation;
- (g) Seller has notified the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.
- (h) Seller agrees that no portion of the Product will be from a coal or nuclear resource.

**ARTICLE 6
CONFIDENTIALITY**

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose the sale of the Contract Quantity under this Transaction to any Governmental Body, the CPUC, the CAISO in order to support its Compliance Showings, if applicable, and Seller may disclose the transfer of the Contract Quantity and the applicable Expected Contract Quantity for each day of each Showing Month under this Transaction to the SC of the Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information.

**ARTICLE 7
COLLATERAL REQUIREMENTS**

7.1 Seller Collateral Requirements

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7.2 Buyer Collateral Requirements

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ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE REFERENCED IN THE OPENING PARAGRAPH:

NRG Power Marketing LLC

Silicon Valley Clean Energy Authority

By:

Virginia C. Farrow

By:

Name:

Virginia C. Farrow

Name:

Title:

Portfolio Director

Title:

1/25/17

APPENDIX A DEFINED TERMS

"Alternate Capacity" means replacement Product which Seller has elected to provide to Buyer in accordance with the terms of Section 2.2.

"Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

"Availability Incentive Payments" has the meaning set forth in the Tariff.

"Availability Standards" has the meaning set forth in the Tariff.

"Buyer" has the meaning specified in the introductory paragraph of this Confirmation.

"CAISO" means the California Independent System Operator or any successor entity performing the same functions.

"Buyer" has the meaning specified in the introductory paragraph of this Confirmation.

"Capacity Attributes" means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:

- (a) RA Attributes,
- (b) Local RA Attributes,
- (c) Flexible RA Attributes (if elected in Section 1.1c), and
- (d) other current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services, ramp up or down at a given rate, and flexibility or dispatch-ability attributes), certificates, tags, credits, howsoever entitled, including any accounting construct or framework applied to any Compliance Obligations.

"Capacity Flat Price" means the price specified in the Capacity Flat Price Table in Section 3.1.

"Capacity Replacement Price" means the market price for the quantity of Product not provided by Seller under this Confirmation as determined in a commercially reasonable manner. For purposes of this Transaction and Confirmation, the "Capacity Replacement Price" shall be deemed to be the "Replacement Price" as defined in Section 1.51 of the Master Agreement.

"Compliance Obligations" means the RAR, Local RAR, Flexible RAR, and other resource adequacy requirements associated with the Capacity Attributes as established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.

"Compliance Showings" means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), (c) Flexible RAR compliance or advisory showings (or similar or successor showings), and (d) other Capacity Attributes compliance or advisory showings (or similar or successor showings), in each case, an LSE is required to make to the CPUC pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

"Confirmation Effective Date" has the meaning specified in the introductory paragraph of this Confirmation.

"Contingent Firm RA Product" has the meaning specified in Section 1.1(b).

"Contract Price" means, for any Showing Month, the product of the Capacity Flat Price and the Price Shape for such period.

"Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MW's) set forth in the table in Section 1.3 which Seller has agreed to provide to Buyer from the Unit for each day of such Showing Month.

"CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

"CPUC Filing Guide" is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

"Delivery Period" has the meaning specified in Section 1.2.

"EEI Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

"Expected Contract Quantity" means, with respect to any particular day of any Showing Month of the Delivery Period, the Contract Quantity of Product for such day of such Showing Month including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity with respect to for such day, but less any reductions to Contract Quantity for such day specified in Section 2.1 with respect to which Seller has not elected to provide Alternate Capacity.

"Firm RA Product" has the meaning specified in the Section 1.1(a).

"Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body having jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and Local RA Attributes.

"Flexible RA Quantity" means the amount of Flexible RA Attributes associated with the Product to be delivered by Seller to Buyer by each Unit as set forth in Section 1.1(c).

"Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.

"GADS" means the Generating Availability Data System, or its successor.

"Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

"Local Capacity Area" has the meaning set forth in the Tariff.

"Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

"LSE" means load-serving entity.

"Master Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

"Monthly Payment" has the meaning specified in Section 3.1.

"NERC" means the North American Electric Reliability Corporation, or its successor.

"Net Qualifying Capacity" has the meaning set forth in the Tariff.

"Non-Availability Charges" has the meaning set forth in the Tariff.

"Planned Outage" means any outage, including Maintenance Outages, that are designated "Approved Planned" in the SLIC System.

"Price Shape" means the Price Shape specified in the Monthly Payment Price Shape Table in Section 3.1.

"Product" means the Capacity Attributes of the Unit, provided that:

- (a) Product does not include any right to the energy or ancillary services from the Unit;
- (b) any change by the CAISO, CPUC or other Governmental Body that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Transaction; and
- (c) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Body defines new or re-defines existing Local Capacity Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area.

"RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.

"Replacement Capacity" has the meaning specified in Section 2.4.

"Replacement Unit" means a generating unit meeting the requirements specified in Section 2.2.

"Resource Category" shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

"SC" has the meaning set forth in the Tariff.

"Seller" has the meaning specified in the introductory paragraph of this Confirmation.

"Showing Month" shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

"Supply Plan" has the meaning set forth in the Tariff.

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

"Term" shall have the following meaning: The "Term" of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (a) the expiration of the Delivery Period or (b) the date the Parties' obligations under this Agreement have been satisfied.

"Unit" shall mean the generation assets described in Appendix B (including any Replacement Units), from which Product is provided by Seller to Buyer.

"Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

"Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit.

**APPENDIX B
UNIT INFORMATION**

Name: Sunrise Power Project AGGREGATE II

Location: Fellows, CA

CAISO Resource ID: SUNRIS_2_PL1X3

Unit NQC (as of the Confirmation Effective Date): 586.02 MW

Unit EFC (as of the Confirmation Effective Date): 461.02 MW

Resource Type: GEN

Resource Category (1, 2, 3 or 4): 4

Current CAISO Zone (NP15, ZP26 or SP15): ZP26

Local Capacity Area (if any, as of Confirmation Effective Date): NA

Flexible Category: 1

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:
None

Run Hour Restrictions: None

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SHELL ENERGY NORTH AMERICA (US), L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Shell Energy North America (US), L.P.**, a Delaware limited partnership ("Seller") and Silicon Valley Clean Energy Authority ("Buyer"), and each individually a "Party" and together the "Parties", dated as of January 30, 2017 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of November 28, 2016, along with any annexes (including Paragraph 10 of the Collateral Annex, as applicable) and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.
- 1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

- 1.14 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.15 “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.16 “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.17 “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23 “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 “LRA” means Local Regulatory Authority as defined in the Tariff.
- 1.27 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.28 “Master Agreement” has the meaning specified in the introductory paragraph hereof.

- 1.29 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.30 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.31 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.32 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Unit Firm" in the Master Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.33 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.34 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.35 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.36 "Product" has the meaning specified in Article 3 hereof.
- 1.37 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.38 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.
- 1.39 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.40 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.41 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.42 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.43 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.44 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.45 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.46 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

- 1.47 “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.48 “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.49 “Transaction” for purposes of this Agreement means the Transaction (as defined in the Master Agreement) that is evidenced by this Agreement.
- 1.50 “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.51 “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.52 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ARTICLE 2. UNIT INFORMATION

Name	Colgate Hydro Unit 2
Location	Yuba County, CA
CAISO Resource ID	COLGAT_7_UNIT 2
Unit SCID	YCWA
Unit NQC	Varies By Month
Unit EFC	Varies By Month
Resource Type	Hydro
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	1
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	PG&E Other
Product Attributes (RA Attributes, LAR Attributes, Flexible RA Attributes)	Flexible RA Attributes
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, RA Attributes or LAR Attributes and, if applicable, Flexible RA Attributes for a Contingent Firm RA Product, as specified in Section 3.2 below (the “Product”). The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right

to sell any RA Capacity from a Unit in excess of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

Seller shall provide Buyer with the Designated RA Capacity of RA Attributes, LAR Attributes and, if Section 3.3 is selected, Flexible RA Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of a Non-Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event or in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines. The Product is a Contingent Firm RA Product, and with respect to this Contingent Firm RA Product, "Contingent Firm" shall have the same meaning as "Unit Firm" in the Master Agreement.

3.3 Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of Flexible RA Attributes from the Unit(s) in the amount of the applicable Contract Quantity.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: October 1, 2017 through October 31, 2017 and December 1, 2017 through December 31, 2017

4.2 Delivery Point.

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity. The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Month	RAR or LAR Contract Quantity (MWs)	RAR or LAR with Flexible RAR Contract Quantity (MWs)
January	N/A	0
February	N/A	0
March	N/A	0
April	N/A	0
May	N/A	0
June	N/A	0
July	N/A	0
August	N/A	0
September	N/A	0
October	N/A	25
November	N/A	0
December	N/A	50

4.4 Adjustments to Contract Quantity

- (a) **Planned Outages:** If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) **Invoice Adjustment:** In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) **Reductions in Unit NQC and/or Unit EFC:** Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity.

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer

in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.

- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the relevant deadlines for submission of the Supply Plans applicable to that Showing Month (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so; and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;

- (b) Seller’s failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator’s failure to timely submit accurate Supply Plans that identify Buyer’s right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit’s Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

Contract Month	RA Capacity Price (\$/kW-month)
January	N/A
February	N/A
March	N/A
April	N/A
May	N/A
June	N/A
July	N/A
August	N/A
September	N/A
October	\$2.10
November	N/A
December	\$2.10

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller’s account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any

Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. [RESERVED]

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR,

LAR and Flexible RAR, including all performance obligations and penalties related thereto, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

7.2 Seller Representations and Warranties

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been granted, pledged, assigned, sold or otherwise committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been, granted, pledged, assigned, sold or otherwise committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market, or confer any RAR, LAR or Flexible RAR benefits upon, any party other than Buyer;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER’S RE-SALE OF PRODUCT

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

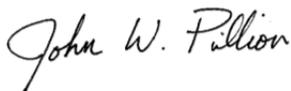
ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer’s written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Buyer as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SHELL ENERGY NORTH AMERICA (US), L.P.

SILICON VALLEY CLEAN ENERGY AUTHORITY



By: _____

By: _____

Name: John W. Pillion

Name: _____

Title: Confirmations – Team Lead

Title: _____

Date: 01/30/2017

Date: _____

**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SHELL ENERGY NORTH AMERICA (US), L.P.
AND
SILICON VALLEY CLEAN ENERGY AUTHORITY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Shell Energy North America (US), L.P.**, a Delaware limited partnership ("Seller") and Silicon Valley Clean Energy Authority ("Buyer"), and each individually a "Party" and together the "Parties", dated as of January 30, 2017 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of November 28, 2016, along with any annexes (including Paragraph 10 of the Collateral Annex, as applicable) and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.
- 1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

- 1.14 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.15 “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.16 “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.17 “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23 “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 “LRA” means Local Regulatory Authority as defined in the Tariff.
- 1.27 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.28 “Master Agreement” has the meaning specified in the introductory paragraph hereof.

- 1.29** “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.30** “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.31** “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.32** “Non-Excusable Event” means any event, other than a Planned Outage and those events described under the definition of “Unit Firm” in the Master Agreement that excuse Seller’s performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller’s failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.33** “Notification Deadline” has the meaning specified in Section 4.5 hereof.
- 1.34** “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.35** “Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.36** “Product” has the meaning specified in Article 3 hereof.
- 1.37** “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.38** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.
- 1.39** “RAR” means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.40** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.41** “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.42** “Replacement Unit” has the meaning specified in Section 4.5.
- 1.43** “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.44** “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.45** “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.46** “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

- 1.47 “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.48 “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.49 “Transaction” for purposes of this Agreement means the Transaction (as defined in the Master Agreement) that is evidenced by this Agreement.
- 1.50 “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.51 “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.52 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ARTICLE 2. UNIT INFORMATION

Name	RE Tranquility
Location	Cantua Creek, CA
CAISO Resource ID	TRNQLT_2_SOLAR
Unit SCID	RETQ
Unit NQC	Varies By Month
Unit EFC	Varies By Month
Resource Type	Solar Photovoltaic
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	N/A
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	PG&E Other
Product Attributes (RA Attributes, LAR Attributes, Flexible RA Attributes)	RA Attributes
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	N/A
Run Hour Restrictions	N/A

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, RA Attributes or LAR Attributes and, if applicable, Flexible RA Attributes for a Contingent Firm RA Product, as specified in Section 3.2 below (the “Product”). The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right

to sell any RA Capacity from a Unit in excess of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

Seller shall provide Buyer with the Designated RA Capacity of RA Attributes, LAR Attributes and, if Section 3.3 is selected, Flexible RA Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of a Non-Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event or in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines. The Product is a Contingent Firm RA Product, and with respect to this Contingent Firm RA Product, "Contingent Firm" shall have the same meaning as "Unit Firm" in the Master Agreement.

3.3 Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of Flexible RA Attributes from the Unit(s) in the amount of the applicable Contract Quantity.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: July 1, 2017 through September 30, 2017, inclusive.

4.2 Delivery Point.

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity. The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Month	RAR or LAR Contract Quantity (MWs)	RAR or LAR with Flexible RAR Contract Quantity (MWs)
January	0	0
February	0	0
March	0	N/A
April	0	N/A
May	0	N/A
June	0	N/A
July	50	N/A
August	50	N/A
September	25	N/A
October	0	N/A
November	0	N/A
December	0	N/A

4.4 Adjustments to Contract Quantity

- (a) **Planned Outages:** If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) **Invoice Adjustment:** In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) **Reductions in Unit NQC and/or Unit EFC:** Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity.

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer

in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.

- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the relevant deadlines for submission of the Supply Plans applicable to that Showing Month (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so; and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;

- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

Contract Month	RA Capacity Price (\$/kW-month)
January	N/A
February	N/A
March	N/A
April	N/A
May	N/A
June	N/A
July	\$2.10
August	\$2.10
September	\$2.10
October	N/A
November	N/A
December	N/A

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any

Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. [RESERVED]

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR,

LAR and Flexible RAR, including all performance obligations and penalties related thereto, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

7.2 Seller Representations and Warranties

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been granted, pledged, assigned, sold or otherwise committed by Seller to satisfy any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been granted, pledged, assigned, sold or otherwise committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market, or confer any RAR, LAR or Flexible RAR benefits upon, any party other than Buyer;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER’S RE-SALE OF PRODUCT

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

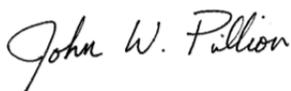
ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer’s written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Buyer as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SHELL ENERGY NORTH AMERICA (US), L.P.

SILICON VALLEY CLEAN ENERGY AUTHORITY



By: _____

By: _____

Name: John W. Pillion

Name: _____

Title: Confirmations – Team Lead

Title: _____

Date: 01/30/2017

Date: _____



Staff Report – Item 9

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 9: Approve Risk Management Policy related to Congestion Revenue Rights Market

Date: 2/8/2017

RECOMMENDATION

Approve the attached Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets;

Direct the Risk Oversight Committee to work with the CEO to finalize the Energy Risk Management, Energy Trading and Authority, Credit Risk and Energy Hedge policies and seek Board approval of a comprehensive Energy Risk Management Policy in April 2017; and

Authorize the Chief Executive Officer to execute a CRR Entity Agreement and deposit \$500,000 with the California Independent System Operator.

BACKGROUND & DISCUSSION

SVCE is entitled to receive from the California Independent System Operator (CAISO) an allocation of valuable market instruments known as Congestion Revenue Rights (CRRs). CRRs offset congestion costs associated with scheduling energy in the CAISO markets. If the congestion costs are positive along a transmission path covered by a CRR, the CRR will result in a credit to its holder, and if congestion costs are negative, the CRR will result in a charge to its holder. In this way, CRRs can hedge SVCE's congestion cost exposure.

Under CAISO rules, load serving entities such as SVCE are able to request an allocation of CRRs on a monthly and annual basis based on the amount of load served. SVCE is also eligible to receive a transfer of CRRs from PG&E through the CAISO load migration process. Staff has begun the process of applying to become a CRR entity with the CAISO. In order to obtain CRRs, SVCE will need to execute a CRR Entity Agreement with the CAISO and meet certain minimum market participation standards. These include the requirement to meet minimum financial standards and to have in place a Risk Management Policy meeting certain minimum criteria.

The minimum financial standards will require that SVCE post a \$500,000 deposit with the CAISO until it achieves \$10 million in assets or \$1 million in net assets. After at least one of the asset thresholds is met, the \$500,000 deposit will be refunded to SVCE.

SVCE will need to post the deposit and submit a Board approved Risk Management Policy before the CAISO will tender a CRR Agreement. There is a minimum 90-day lead time from when the CRR Agreement is executed and when SVCE will receive CRRs. Assuming the application is completed in February, SVCE could obtain CRRs starting in May.

Agenda Item: 9**Agenda Date: 2/8/2017**

SVCE has an available credit line with River City Bank that can be drawn upon to fund the required deposit. A proposed Energy Risk Management (ERM) policy was presented to the SVCE Board on January 11, 2017, and staff has developed additional policies to incorporate into the ERM policy, relating to Trading Authority, Credit Risk and Energy Hedge. Staff intends to discuss these policies with the Risk Oversight Committee over the next two months and seek Board approval of a comprehensive ERM policy in April 2017.

As a supplement to the ERM policy, staff has developed a risk management policy related to transactions in the CAISO markets that is limited to CRR transactions and meets the minimum criteria set forth by the CAISO. Board approval of this policy will facilitate SVCE's ability to receive CRRs at the earliest opportunity, while additional time is devoted to consideration of the overall ERM policy.

CONCLUSION

Approval of the attached Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets, along with granting the CEO authority to execute the CRR Entity Agreement and fund the required deposit, will allow SVCE to obtain these benefits at the earliest opportunity, while allowing time for additional consideration to be given to a comprehensive Energy Risk Management Policy.

ATTACHMENTS

1. Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets

**Risk Management Procedures and Controls for Transactions
in the California Independent System Operator Markets**



January 30, 2017

Table of Contents

1	Overview	3
2	Roles and Responsibilities	3
3	Risk Exposure and Controls	3
3.1	Credit Risk.....	4
3.2	Liquidity Risk.....	4
3.3	Market Risk	4
4	Monitoring and Reporting	5
4.1	Monitoring.....	5
4.2	Reporting.....	5
5	Training	6

DRAFT

1 Overview

This Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets (Risk Management Policy or RMP) establishes criteria and processes for transacting in the CAISO markets. The CAISO markets in which SVCE participates and to which these policies apply include the following:

- Congestion Revenue Rights

The Risk Management policy consists of the following components:

1. Roles and Responsibilities
2. Risk Exposure and Controls
3. Training
4. Monitoring and Reporting

2 Roles and Responsibilities

SVCE's Risk Management Policy ensures appropriate segregation of responsibility for policy approval, valuation and reporting, and trading.

The SVCE Board of Directors is responsible for approving the Risk Management policy and procedures.

The Enterprise Risk Management Oversight Committee is responsible for overseeing modifications to and implementation of SVCE's CRR policy and processes.

The Trading Group (Front Office) is responsible for executing CRR transactions, consistent with this CRR policy. In addition, the Front Office is tasked with complying with all controls, limits and procedures and immediately reporting to the Middle Office discrepancies or deviations from accepted practices, policies or procedures, including breaches of established trading and risk limits, unauthorized trading activities and failure of controls.

The Risk Group (Middle Office) is responsible for valuing and monitoring SVCE's CRR positions. The Middle Office is also responsible for providing CRR reports to the ERM Oversight Committee and, within 24 hours of discovery, notifying the ERM Oversight Committee of transactions that are inconsistent with this CRR policy.

The Settlement Group (Back Office) is responsible for verifying that trades executed by the Front Office are executed in compliance with this CRR policy. The Back Office is also responsible for immediately reporting to the Middle Office discrepancies or deviations from accepted practices, policies or procedures, including breaches of established trading and risk limits, unauthorized trading activities and failure of controls.

3 Risk Exposure and Controls

SVCE uses CRRs for the purpose of hedging congestions costs associated with serving its retail load. SVCE participates in the CAISO CRR allocation process to obtain CRRs that protect against and minimize congestion costs. CRR positions are limited to the Seasonal Eligible Quantity and Monthly Eligible Quantity caps as provided by the CAISO with all allocation CRRs signing to PG&E DLAP or one of PG&E’s corresponding SLAPs. All CRR transactions are executed and managed by SVCE’s Scheduling Coordinator, and confirmation of such transactions are provided to SVCE personnel who are independent from the CRR trading function.

The table below lists authorized trading limits for personnel authorized to transaction on behalf of SVCE. The limits are expressed in terms of Value at Risk at the 95% confidence interval.

Product	Transaction Horizon	Transaction Length	Purchases		Sales	
			\$ Limit (Authorized Personnel)	MW Limit (Authorized Personnel)	\$ Limit (Authorized Personnel)	MW Limit (Authorized Personnel)
CAISO CRRs	Month	1 Month	\$1,200,000	500	N/A	N/A
	Quarter	3 Months	\$3,600,000	500		
	Year	1 Year	\$15,000,000	500		
	Long Term	Up to 10 Years	Approval Required by SVCE Board	Approval Required by SVCE Board		

SVCE’s CRR policy addresses relevant risks as follows:

3.1 Credit Risk

Credit risk refers to the potential for non-payment or default by the counterparty to a transaction. SVCE’s CRRs are financially settled with the CAISO through SVCE’s Scheduling Coordinator. CRR credit risk is mitigated due to the credit policies and procedures in place at the CAISO and the credit provisions governing SVCE’s agreement with its Scheduling Coordinator.

3.2 Liquidity Risk

Liquidity risk refers to the potential inability of a party to close out a position at prevailing market prices due to a lack of buyers or sellers for the specific product being liquidated. SVCE can liquidate its CRR positions by selling into the CAISO monthly and annual CRR auction markets. SVCE’s CRR position limits are small in relation to the overall market, and liquidation is unlikely to adversely impact market prices.

3.3 Market Risk

Market risk refers to potential cost exposure resulting from changes in market prices for the underlying commodity. CRRs have positive value when congestion exists between

the source and the sink associated with the CRR path such that locational marginal prices are lower at the sources than at the sink. CRRs have negative value when the opposite is true. SVCE uses CRRs to hedge against congestion costs, which are negatively correlated with CRR values, such that the potential adverse financial impacts of changes in CRR values and congestion costs are mitigated. SVCEA intends to obtain Congestion Revenue Rights (CRRs) through the CRR allocation process with the initial objective of attaining an allocation of CRRs that have consistently cleared with positive value in both the day-ahead market and in the auctions.

4 Monitoring and Reporting

4.1 Monitoring

CRR values shall be monitored at regular intervals, with such intervals selected in consideration of the risk characteristics of SVCE's CRR holdings, but no less frequently than monthly. CRR's shall be valued using prevailing industry practices including historical congestion analyses, forward pricing and volatility assessments, and auction clearing prices. SVCE's Scheduling Coordinator will use its internal valuation systems to assess potential congestion and make recommendations to the Front Office for requesting CRRs in the monthly and annual allocation process. The Front Office shall enter all CRR transactions into a trade capture system, and the Back Office shall ensure that trade details recorded in the trade capture system are accurately reflected in the settlement system and shall report any discrepancies to the Middle Office and if necessary, the Risk Oversight Committee.

The value of SVCE's CRR portfolio will be monitored by SVCE Middle Office personnel using internal mark-to-market valuation models, run on a monthly basis. Value at Risk, or the amount that the value of the CRR can be expected to vary within a confidence interval) will be reported at the 95% Confidence interval. Changes in market value and Value at Risk shall be reported as set forth in 4.2. The Back Office will review and validate realized CRR value during the weekly settlement process, and include discrepancies relative to expected values, if any, in a weekly exception report.

SVCE Middle Office personnel responsible for monitoring the value of SVCE's CRR holdings shall be independent from those Front Office personnel engaged in transacting in the CAISO's CRR markets.

4.2 Reporting

CRR positions and market value shall be reported by the Middle Office on a monthly basis to the SVCE Chief Executive Operator and Director of Administration and Finance. Reports shall include current CRR positions, changes in CRR positions (volumes and dollar amounts) from the prior month, the realized value of SVCE's CRR portfolio in the prior month, the estimated market value of SVCE's CRR holdings, and Value at Risk. Any material change in such CRR values or risks, including credit, liquidity, and market risks, shall be identified and summarized in the aforementioned report.

On an interval appropriate to each specific CAISO market, but in no circumstance on less than a monthly basis, the Middle Office shall monitor all CAISO transactions for conformance to expected outcomes. To the extent the Middle Office identifies contingencies that are likely to result in an impact exceeding 5% of gross revenues, SVCE shall report such contingencies and their proposed resolution to the ERM Oversight Committee. These contingencies shall include market value changes as well as consideration of credit risk and liquidity risk.

5 Training

SVCE employees, contractors and agents transaction in CAISO markets shall meet all training requirements set forth in the CAISO Tariff, Business Practices, or applicable CAISO Operating Agreement. Further, all such personnel shall certify that they have read and understand this Risk Management policy and the delegations of authority before being authorized to transact on behalf of SVCE.

Reviewed and Approved by:

Tom Habashi – CEO SVCE

Date

Policy History
Version: 1.0
Established: January 30, 2017
Last review:



Staff Report – Item 10

To: Silicon Valley Clean Energy Authority Board of Directors

From: Tom Habashi, CEO

Item 10: Establish and Fund Rate Stabilization Reserve and Working Capital Reserve

Date: 2/8/2017

RECOMMENDATION

Adequate Reserves will enable the Authority to satisfy working capital requirements, procure energy at competitive rates, adhere to loan covenants, cover unanticipated expenditures, and support rate stability.

The base case financial pro-forma indicates that SVCEA should accumulate sufficient operating surplus in calendar years 2017 and 2018 for the purpose of:

1. Establish a Working Capital Reserve of 90 days for operating expenses, not including power supply costs. This reserve would be approximately \$4 million.
2. Retire all debt and lines of credit.
3. Establish a Rate Stabilization/Contingency Fund to mitigate rate increases due to volatility in the power markets, PCIA charges, and economic downturns and allow the elimination of the revolving line of credit.

BACKGROUND

In March 2016, SVCE was formed as a Community Choice Aggregation program, tasked with the acquisition of electricity in the wholesale market to meet the demands of the residents and businesses in its service territory.

In June 2016, to recover SVCE's anticipated cost and to ensure its financial viability and competitive position, the SVCE Board approved to offer the same rate schedules currently being offered by PG&E while setting the generation rates at 1% below PG&E's published rates as of January 1, 2017. In addition, the Board approved, barring unforeseen significant market changes, to hold these rates steady through the end of 2018.

During the same meeting in June 2016, the SVCE Board approved to set aside 5% of revenue to pay back SVCE member cities for the contributions that they made to initiate the program and to fund reserves that would be used to stabilize rates.

ANALYSIS & DISCUSSION

Operational Expenses

There are many variables that can impact the cost of operation of SVCE, the most impactful being the cost of power supply, which constitutes nearly 95% of total SVCE operational expenses. There are many factors that could impact and significantly alter that cost including:

Agenda Item: 10**Agenda Date: 2/8/2017**Actual versus forecast consumption

In the Implementation Plan, submitted to the CPUC in July 2016, SVCE assumed that 15% of the customers will opt out to remain bundled customers of PG&E. Staff has since revised this assumption to reflect the positive response demonstrated by customers served by Peninsula Clean Energy (1-2% opt out rate thus far). Hedging supply prices are based on forecasted consumption which are certain to be different than the actual consumption. Hourly, the SVCE scheduling coordinator will be transacting energy to balance SVCE supply and demand which will alter the forecast of supply cost.

Change in spot market prices

SVCE has hedged nearly 100% of its forecasted needs for 2017 and 2018. However, we only hedged a portion of demand for the following 2 years and less than 50% of our needs for 2021. Deviations in future prices of natural gas is the major driver of market prices and can have a large impact on supply cost.

Regulatory mandates

Regulatory requirements aimed to curb greenhouse gases have a sizable impact on SVCE supply cost. The increasing mandates for renewable resources, and dictating that these resources be built in California, is likely to add to future supply cost.

Operational Revenue

For the first several years of operation, nearly 100% of SVCE revenue will be realized from the sale of electricity to its customers. There are several factors that can impact revenues such as forecast of sales, uncollectibles, etc. The most significant impact to SVCE revenue is PG&E's Power Charge Indifference Adjustment (PCIA). The PCIA has risen more than 150% in the past two PG&E rate filings in Jan 2016 and Jan 2017. To illustrate the significance of that increase, if SVCE was in operation in the past two years, the increase in PCIA would have reduced SVCE's revenues by over \$125 million.

ANALYSIS

SVCE should keep sufficient reserves to address the various risks we face and to keep rates at stable and competitive levels. To calculate reserve level, staff will focus this analysis on the variables that will have the greatest impact on revenues and operational costs, namely PCIA and electricity spot market prices. These variables will change, subject to future scenarios. This report devises four self-consistent future scenarios:

Base Case

Assumes that the PCIA will continue at its current level and that supply cost will increase at the normal inflation rate. There is minimal change to the PCIA and supply cost will increase marginally as shown in the latest pro forma shared with the Board at the January 2017 meeting. Although not reflected in the table, it is anticipated that rates would adjust in 2019 to recover costs, plus anticipated investments in capital projects and energy programs.

BASE CASE (In Thousands)							
	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>Total</u>
REVENUES	\$152,385	\$252,917	\$264,290	\$276,076	\$288,289	\$300,944	\$1,534,901
OPERATING EXPENSES	\$9,880	\$15,265	\$15,654	\$16,054	\$16,466	\$16,891	\$90,210
POWER SUPPLY	<u>\$108,700</u>	<u>\$182,983</u>	<u>\$186,977</u>	<u>\$195,687</u>	<u>\$202,968</u>	<u>\$210,322</u>	<u>\$1,087,637</u>
SURPLUS/(DEFICIT)	\$33,804	\$54,669	\$61,660	\$64,336	\$68,854	\$73,731	\$357,053

Best Case

Assumes that spot market prices will begin to rise, prompting PG&E to begin a steady reduction in PCIA to reflect the higher value of their supply portfolio and the termination of their current, more expensive contracts. In this scenario, supply cost for SVCE will rise by 2% in 2019, 3% in 2020 and 5% annually thereafter. Meanwhile, PCIA will fall at the rate of 5% annually starting 2018 and rates will fall beginning in

Agenda Item: 10**Agenda Date: 2/8/2017**

2019 to recover costs including capital and energy program investments. The following table illustrates the Best Case Scenario.

BEST CASE (In Thousands)							
	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>Total</u>
REVENUES	\$152,385	\$257,071	\$272,432	\$288,046	\$303,934	\$320,118	\$1,593,985
OPERATING EXPENSES	\$9,880	\$15,265	\$15,654	\$16,054	\$16,466	\$16,891	\$90,210
POWER SUPPLY	<u>\$108,700</u>	<u>\$182,983</u>	<u>\$190,716</u>	<u>\$201,557</u>	<u>\$213,117</u>	<u>\$220,838</u>	<u>\$1,117,912</u>
SURPLUS/(DEFICIT)	\$33,804	\$58,823	\$66,062	\$70,434	\$74,350	\$82,389	\$385,863

Regulatory Bias Case

Assumes that spot market price will hold steady and that PG&E will continue to make acquisitions that will prove to be uncompetitive and secure additional increases in PCIA. In this scenario, supply cost will increase as per financial pro forma, while the PCIA will increase steadily at the annual rate of 10%. Over the next six years, the PCIA would reduce revenues by approximately \$600 million. The table below illustrates the Regulatory Bias Scenario.

REGULATORY BIAS CASE (In Thousands)							
	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>Total</u>
REVENUES	\$152,385	\$244,608	\$246,755	\$248,299	\$249,147	\$249,196	\$1,390,389
OPERATING EXPENSES	\$9,880	\$15,265	\$15,654	\$16,054	\$16,466	\$16,891	\$90,210
POWER SUPPLY	<u>\$108,700</u>	<u>\$182,983</u>	<u>\$186,977</u>	<u>\$195,687</u>	<u>\$202,968</u>	<u>\$210,322</u>	<u>\$1,087,637</u>
SURPLUS/(DEFICIT)	\$33,804	\$46,360	\$44,124	\$36,558	\$29,712	\$21,983	\$212,541

Worst Case

This assumes that spot market prices will continue to decline, thereby reducing SVCE power supply cost by 2% in 2019, 3% in 2020 and 5% annually thereafter. Meanwhile, PG&E will continue to make long term commitments to expensive resources, resulting in PCIA increase at the annual rate of 20% for the next 5 years and 10% thereafter. The table below illustrates the Worst Case Scenario with a deficit projected in 2021.

WORST CASE (In Thousands)							
	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>Total</u>
REVENUES	\$152,385	\$236,299	\$227,549	\$214,982	\$197,742	\$174,791	\$1,203,748
OPERATING EXPENSES	\$9,880	\$15,265	\$15,654	\$16,054	\$16,466	\$16,891	\$90,210
POWER SUPPLY	<u>\$108,700</u>	<u>\$182,983</u>	<u>\$186,902</u>	<u>\$195,511</u>	<u>\$202,461</u>	<u>\$209,796</u>	<u>\$1,086,353</u>
SURPLUS/(DEFICIT)	\$33,804	\$38,051	\$24,993	\$3,418	\$21,186	\$51,896	\$27,184

FINANCIAL ANALYSIS

Under the Base Case scenario:

Projected Cumulative Operating Surplus end of 2018	\$88.5 million
Repayment of initial contribution to member cities	<\$2.7>
Funding of Working Capital Reserve	<\$4.0>
Balance available for Rate Stabilization/Contingency Fund	\$81.7 million

CONCLUSION

The Base Case financial pro-forma indicates that SVCEA should accumulate sufficient net revenue in calendar years 2017 and 2018 to retire the line of credit, pay back the initial \$2.7 million seed contribution made by the member cities, fund a working capital reserve and have remaining funds to address revenue shortfall for three consecutive years of the Worst Case scenario. Therefore, in 2019, staff recommends that rates are adjusted to reflect anticipated cost of service as forecasted in late 2018.