CLEAN ENERGY ALLIANCE **AGENDA**

Board of Directors Regular Meeting Agenda
July 30, 2026, 2:00 p.m.
Leucadia Wastewater District, Board Room
1960 La Costa Ave, Carlsbad, CA 92009

Members of the public can observe the livestream of the meeting via Teams by clicking:

https://teams.microsoft.com/meet/247208529041647?p=So3AuESGY5ew0GFJcv
or telephonically by dialing:
+1 312-625-2555,,779604592#
Phone Conference ID: 779 604 592#

Members of the public can provide public comment in writing or orally in person as follows:

Written Comments: If you are unable to participate in person and you wish to make a comment, you may submit written comments prior to and during the meeting via email to: clerk@thecleanenergyalliance.org. All written comments will be posted online and become part of the meeting record. To ensure announcement of receipt of your written comments during the meeting, please submit all written comments by 12:00 p.m. prior to the commencement of the meeting. Public comments received in writing will not be read aloud at the meeting.

Oral Comments: Members of the public can address the Board on items on the agenda at the time the item is being addressed or during Public Comments for topics that are not listed on the agenda. Speakers are limited to three (3) minutes each. In conformance with the Brown Act, no Board action can occur on items presented during Public Comment.

If you desire to speak during Public Comment, please fill out a speaker card and submit it to the Board Clerk. When you are called to speak, please come forward to the podium and state your name. To address the Board regarding an item on the agenda, please fill out a speaker card and submit it to the Board Clerk before the Board Chair announces the item.

CALL TO ORDER

ROLL CALL

FLAG SALUTE

APPROVAL OF AGENDA

BOARD COMMENTS & ANNOUNCEMENTS

PUBLIC COMMENT

APPROVAL OF MINUTES
Minutes of the Regular Meeting held June 25, 2026

Presentations:

Consent Calendar

Item 1: **Clean Energy Alliance Treasurer's Report for May 2026**

RECOMMENDATION:
Receive and file the Clean Energy Alliance Treasurer's Report for May 2026.

Item 2: **Amending the Clean Energy Alliance Position Control Listing and the Clean Energy Alliance Salary Schedule**

RECOMMENDATION:
Adopt Resolution No. 2026-035 Amending the Clean Energy Alliance (CEA) Position Control Listing and the CEA Salary Schedule

Item 3: **Notice to Board – Adoption of Out-of-Region Remote Work Administrative Policy**

RECOMMENDATION:
That the Clean Energy Alliance Board of Directors accept and receive this notice of adoption of an Out-of-Region Remote Work Administrative Policy.

Item 4: **Approving the Professional Services Agreements with Chapman and Cutler LLP and Authorizing Execution of the Agreement**

RECOMMENDATION:
Adopt Resolution No. 2026-036 approving the proposed Professional Services Agreements (Agreement) with Chapman and Cutler LLP to provide prepay and disclosure counsel services, and authorize the Chief Executive Officer to execute the Agreement.

Reports

Item 5: **Clean Energy Alliance Chief Executive Officer Operational and Administrative Report**

RECOMMENDATION:
Receive and file the report.

Item 6: **Programs Report**

RECOMMENDATION:
Receive and file the report.

Item 7: **Risk Oversight Committee Report**

RECOMMENDATION:
Receive and file the report.

Public Hearings

Item 8: Amending Clean Energy Alliance Rate Schedule to Update the Wholesale Market Access Tariff Rate Effective August 1, 2026

RECOMMENDATION:
1) Conduct the Public Hearing: Open the Public Hearing, Receive Public Testimony, and Close the Public Hearing
2) Approve Resolution No. 2026-037 Amending Clean Energy Alliance Rate Schedule to update the Wholesale Market Access Tariff Rate to $.10000 per kWh Effective August 1, 2026.

New Business

Item 9: Regulatory Update

RECOMMENDATION:
Receive the Regulatory update from Keyes and Fox.

Item 10: Awarding and Approval of 25-Year Energy Storage Service Agreement with GEM A-CAES LLC and Authorizing Execution of the ESSA

RECOMMENDATION:
Adopt Resolution No. 2026-038 awarding and approving a 25-Year Energy Storage Service Agreement (ESSA) with GEM A-CAES LLC for CEA's 60MW portion of an advanced compressed air energy storage facility and authorizing the Chief Executive Officer to execute the ESSA.

Item 11: Legislative Update from Staff

RECOMMENDATION:
Receive the update.

BOARD MEMBER REQUESTS FOR FUTURE AGENDA ITEMS

NEXT MEETING: The Regular Board Meeting is scheduled for August 27, 2026, Leucadia Wastewater District, 1960 La Costa Ave., Carlsbad, CA 92009.

If you are an individual with a disability and need a reasonable modification or accommodation pursuant to the Americans with Disabilities Act ("ADA"), please contact clerk@thecleanenergyalliance.org prior to the meeting for assistance.

Board of Directors Regular Meeting Agenda
June 25, 2026, 2:00 p.m.
Leucadia Wastewater District, Board Room
1960 La Costa Ave, Carlsbad, CA 92009

CALL TO ORDER: Chair Melendez called to order the Regular Meeting of the Clean Energy Alliance at 2:00 p.m.

ROLL CALL: Board Members: Spelich, Bhat-Patel, Sannella, Becker, Melendez.
Alternate Board Member Joyce joined the meeting at 2:07 p.m.
Board Members Absent: Garcia

FLAG SALUTE: Chair Melendez led the flag salute.

APPROVAL OF AGENDA: No changes.

BOARD COMMENTS & ANNOUNCEMENTS: None.

PUBLIC COMMENT: None

APPROVAL OF MINUTES
Minutes of the Regular Meeting held May 28, 2026

Motion by Board Member Bhat-Patel, seconded by Board Member Becker, to approve the Consent Calendar. Motion carried, 5/0/2 (Joyce, Garcia - Absent).

Presentations:

City of Carlsbad Proclamation

Alternate Board Member Joyce arrived at 2:07 p.m.

Consent Calendar

Item 1: Clean Energy Alliance Treasurer's Report for April 2026

RECOMMENDATION:
Receive and file the Clean Energy Alliance Treasurer's Report for April 2026.

Item 2: Consideration of Resolution No. 2026-029, Approving an Exception to Competitive Solicitation Requirements, Awarding a Professional Services Agreement to Pacific Energy Advisors and Authorizing the Chief Executive Officer to Execute the Agreement

RECOMMENDATION:
Adopt Resolution No. 2026-029, awarding a new Professional Services Agreement to Pacific Energy Advisors at a cost not to exceed $300,000 per year through June 2029, authorizing the

Chief Executive Officer to execute the agreement, and approving an exception to Policy CEA-07 (Non-Energy Procurement Policy) for competitive solicitation requirements.

Item 3: Consideration of Resolution No. 2026-030, Approving an Exception to Competitive Solicitation Requirements, Approving Amendment No. 4 to the Agreement with Andy Stern for Chief Financial Officer Consultant Services Effective July 1, 2026, through December 31, 2027 and Authorizing the Chief Executive Officer to Execute the Amendment

RECOMMENDATION:
Adopt Resolution 2026-030, approving Amendment No. 4 to the Agreement for Professional Services with Andy Stern for CFO Consultant Services for an amount not to exceed $156,000 per fiscal year, effective July 1, 2026, through December 31, 2027, authorizing the Chief Executive Officer to sign all documents, subject to General Counsel approval, and approving an exception to Policy CEA-07 (Non-Energy Procurement Policy) for competitive solicitation requirements.

Item 4: Consider Adoption of Resolution No. 2026-031 approving the Edison Electric Institute Master Power Purchase and Sale Agreement, 10-year EEI Confirmations, and associated contract documents with Desert Community Energy and Authorizing Execution of the Agreements

RECOMMENDATION:
Adopt Resolution No. 2026-031 approving the proposed Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement, 10-year EEI Confirmations, and associated contract documents with Desert Community Energy, referred to herein collectively as "VAMO Agreements", in near final form for California RPS-eligible electric energy and associate Green Attributes, and authorize the Chief Executive Officer to execute the agreements in forms acceptable to Transactions Counsel.

Item 5: Consider Adoption of Resolution No. 2026-032 Approving Amendment No. 4 to the Professional Services Agreement with Maher Accountancy for CEA Accounting Services, Authorizing Execution of the Amendment and Approving an Exception to Competitive Solicitation Requirements

RECOMMENDATION:
Adopt Resolution No. 2026-032, approving Amendment No. 4 to the Professional Services Agreement with Maher Accountancy for CEA Accounting Services, for an amount not to exceed $172,400 for the period from July 1, 2026, through June 30, 2027, and $178,800 for the period from July 1, 2027, through June 30, 2028, authorizing the Chief Executive Officer to sign all documents, subject to General Counsel approval, and approving an exception to competitive solicitation requirements.

Motion by Board Member Bhat-Patel, seconded by Board Member Becker, to approve the Consent Calendar. Motion carried, 6/0/1 (Garcia - Absent).

Reports

Item 6: Clean Energy Alliance Chief Executive Officer Operational and Administrative Report

RECOMMENDATION:
Receive and file the report.

CEO Greg Wade provided an update on various programs and highlighted the "Understanding Your Bill" webinar.

CEA Board received report.

Public Hearings

Item 7: AB 2561 - Status of Vacancies, Recruitment and Retention Efforts

<u>RECOMMENDATION</u>:

1) Conduct the Public Hearing: Open the Public Hearing, Receive Public Testimony, and Close the Public Hearing
2) Accept report on the status of CEA employee vacancy rates and recruitment and retention efforts

CEO Greg Wade provided an update on the various positions at CEA. The staff grew to a total of 17 employees.

Chair Melendez opened the Public Hearing at 2:24 p.m.

Chair Melendez closed the Public Hearing at 2:24 p.m.

Motion by Chair Melendez, seconded by Board Member Becker, to close the public hearing. Motion carried, 6/0/1 (Garcia - Absent).

New Business

Item 8: Regulatory Update

<u>RECOMMENDATION</u>:

Receive the Regulatory update from Keyes and Fox.

Keyes and Fox Partner Tim Lindl provided the update and answered questions from the Board.

CEA Board received the report.

Item 9: Consider Adoption of Resolution No. 2026-033 Approving Clean Energy Alliance 2026 Integrated Resource Plan

<u>RECOMMENDATION</u>:

Adopt Resolution No. 2026-033 approving Clean Energy Alliance's 2026 Integrated Resource Plan.

CEO Greg Wade presented the item.

Board Member Bhat-Patel left the dais at 2:40 p.m.

Board Member Bhat-Patel returned to the dais at 2:45 p.m.

Motion by Board Member Bhat-Patel seconded by Board Member Becker to approve Resolution No. 2026 033. Motion carried, 6/0/1 (Garcia - Absent).

Item 10: Consider Adoption of Resolution No. 2026-034 Approving the Fiscal Year 2026/2027 Budget

RECOMMENDATION:
Adopt Resolution No. 2026-034 Adopting the Fiscal Year 2026/2027 Budget.

Chief Finance Officer Andrew Stern and Finance Manager Kristina Byrd presented the report.

Board Member Becker left the dais at 3:09 p.m.

Motion by Chair Melendez seconded by Board Member Bhat-Patel to approve Resolution No. 2026-034. Motion carried, 5/0/2 (Garcia, Becker - Absent).

BOARD MEMBER REQUESTS FOR FUTURE AGENDA ITEMS: None

ADJOURNMENT: **3:34 p.m.**

NEXT MEETING: The Regular Board Meeting is scheduled for July 30, 2026, Leucadia Wastewater District, 1960 La Costa Ave., Carlsbad, CA 92009.

If you are an individual with a disability and need a reasonable modification or accommodation pursuant to the Americans with Disabilities Act ("ADA"), please contact clerk@thecleanenergyalliance.org prior to the meeting for assistance.

Staff Report

DATE: July 30, 2026

TO: Clean Energy Alliance Board of Directors

FROM: Andy Stern, Interim Chief Financial Officer/Treasurer

ITEM 2: Clean Energy Alliance Treasurer's Report

RECOMMENDATION:

Receive and File Clean Energy Alliance (CEA) Interim Treasurer's Report for May 2026.

BACKGROUND AND DISCUSSION:

This report provides the Board with the following financial information through May 31, 2026:

- Statement of Financial Position (Unaudited and preliminary) – Reports assets, liabilities, and financial position of the CEA as of May 31, 2026.
- Statement of Revenues, Expenses and Changes in Net Position (Unaudited and preliminary) for the period ended May 31, 2026.
- Budget to Actuals Comparison Schedule (Unaudited and preliminary) – Reports actual revenues and expenditures compared to the annual amended budget as of May 31, 2026.
- List of Payments Issued – Reports payments issued for May 2026.

As of May 31, 2026, liabilities represent invoices and estimated accruals for energy and services received but not yet paid.

FISCAL IMPACT:

As of May 31, 2026, CEA's reported Unrestricted Net Position was $77,485,165.

Submitted for Board consideration:

Gregory Wade
Chief Executive Officer

ATTACHMENTS:

A. Treasurer's Report for May 2026

CLEAN ENERGY ALLIANCE
STATEMENT OF NET POSITION
As of May 31, 2026

ASSETS	
Current assets	
Cash and cash equivalents	$ 63,093,572
Accounts receivable, net of allowance	27,089,363
Accrued revenue	17,188,717
Other receivables	70,597
Prepaid expenses	8,405,410
Deposits	1,035,938
Total current assets	116,883,597
Noncurrent assets	
Deposits	8,578
Total noncurrent assets	8,578
Total assets	116,892,175
LIABILITIES	
Current liabilities	
Accrued cost of electricity	30,934,544
Accounts payable	768,093
Deferred revenue	687,120
Other accrued liabilities	530,391
Security deposits - energy suppliers	288,462
Total current liabilities	33,208,610
Noncurrent liabilities	
Security deposits - energy suppliers	6,198,400
Total liabilities	39,407,010
NET POSITION	
Unrestricted	$ 77,485,165

These financial statements do not contain note disclosures, have not been subjected to an audit or review or compilation engagement, and no assurance is provided on them.

CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
Eleven Months Ended May 31, 2026

OPERATING REVENUES	
Electricity sales, net	$ 346,430,130
Miscellaneous income	2,993
Total operating revenues	346,433,123
OPERATING EXPENSES	
Cost of electricity	280,954,793
Contract services	6,503,349
Staff compensation	2,413,530
Other operating expenses	1,197,020
Total operating expenses	291,068,692
Operating income (loss)	55,364,431
NONOPERATING REVENUES (EXPENSES)	
Investment income	1,280,856
Interest expense	(539,233)
Nonoperating revenues (expenses), net	741,623
CHANGE IN NET POSITION	56,106,054
Net position at beginning of year	21,379,111
Net position at end of period	$ 77,485,165

These financial statements do not contain note disclosures, have not been subjected to an audit or review or compilation engagement, and no assurance is provided on them.

BUDGET TO ACTUALS COMPARISON SCHEDULE

At its June 2025 board meeting, the CEA Board approved the Fiscal Year (FY) 2025/26 budget approving $346,904,000 in total operating expenses. For the year-to-date, $291,069,000 of operating expenses have been expended. Revenues from electricity sales for the year-to-date reached $346,433,000. Nonoperating activity was a net income of $742,000. The overall change in net position for the year-to-date was an increase of $56,106,000.

The Budget to Actuals Comparison Schedule is shown below.

CLEAN ENERGY ALLIANCE
BUDGETARY COMPARISON SCHEDULE
Eleven Months Ended May 31, 2026

	Year-To-Date				Annual		
			Variance fav. (unfav.)				
	Actual	Budget	Amount	%	Annual Budget	Budget Less Actual YTD	Budget Remaining / Budget %
Electricity Sales, net	$ 346,433,123	$ 345,629,807	$ 803,316	0%	383,146,909	36,713,786	10%
Operating Expenses							
Cost of Energy	280,954,793	306,706,051	25,751,258	8%	333,540,321	52,585,528	16%
Other Operating Expenses	10,113,898	12,262,955	2,149,057	18%	13,363,246	3,249,348	24%
Total Operating Expenses	291,068,691	318,969,006	27,900,315	9%	346,903,567	55,834,876	16%
Operating Income (Loss)	55,364,432	26,660,800	28,703,632	108%	36,243,342	(19,121,090)	
Total Nonoperating Income/(Expense)	741,622	(348,131)	1,089,753	313%	(380,692)	(1,122,314)	295%
Change in Net Position	$ 56,106,054	$ 26,312,669	$ 29,793,385		$ 35,862,650	$ (20,243,404)	

These financial statements do not contain note disclosures, have not been subjected to an audit or review or compilation engagement, and no assurance is provided on them.

LIST OF PAYMENTS ISSUED

The report on the following page provides the details of payments issued by CEA for the month. All payments were within approved budget.

Payment Date	Vendor	Bill Memo	Amount
05/01/2026	cQuant.io Inc/ZEMA	Subscription Fee for the term starting 04/01/2026 and ending 03/31/2027	201,319.68
05/01/2026	Sentinel Energy Center	JULY 2026 Contract	905,580.00
05/04/2026	PARTICIPATE ENERGY FUND LLC	Mar'2026 PPA Period03042026-04032026	2,524.35
05/04/2026	SAAVI ENERGY SOLUTIONS, LLC.	August 2026 - Firm Resource Adequacy - (August 2026) Prepayment	327,000.00
05/04/2026	SAAVI ENERGY SOLUTIONS, LLC.	August 2026 - Firm Resource Adequacy - (August 2026) Prepayment	769,500.00
05/04/2026	SDG&E (Procurement)	JULY 2026 - RA Sales Billing Period: Jul 01, 2026, to Jul 31, 2026	365,155.10
05/04/2026	SDG&E (Procurement)	MAR 2026 - RA Billing Period: Mar 01, 2026 to Mar 31, 2026 - FALBRK true up	12,221.80
05/04/2026	THE ENERGY AUTHORITY (ENERGY SETTLEMENTS)	April 2026 - CAISO Weekly Statement of Activity (4/10/26-4/16/26) Total	171,767.63
05/05/2026	River City Bank CC	MARCH 2026 CC Statement	1,410.30
05/05/2026	USPS	First-Class Mail and First-Class Package Service	502.33
05/06/2026	CALPINE ENERGY SOLUTIONS (Data MGR)	March 2026 - Services	297,672.30
05/07/2026	BRENTECH INCORPORATED	19 Annual Subscription for ESET EndPoint Protect AdvancedSales Tax	1,977.00
05/07/2026	EMPOWER (401a)	Employee Retirement -05/05/26	11,476.36
05/07/2026	EMPOWER (457b)	Employee Retirement -05/05/2026	6,459.68
05/07/2026	Neyenesch Printers	6,000 Business Cards - 6 Names	677.86
05/07/2026	STERN, ANDREW	For the period from April 1, 2026 through April 30, 2026	13,000.00
05/07/2026	Summit Advocacy LLC	APRIL 2026 Lobbying Consulting Services	7,000.00
05/07/2026	The Bayshore Consulting Group, Inc	APRIL 2026 - CEA Consulting	2,581.25
05/08/2026	CINDY KREBS CONSULTING, INC.	Final Billing	28,000.00
05/08/2026	HERNANDEZ QUANTITATIVE SYSTEMS	1 Strategic Advisory Services per SAS Agreement (50% upon Notice to Proceed) $4999.50	4,999.50
05/11/2026	Hall Energy Law PC	MAR 2026 - Fees for Professional Services	6,890.00
05/11/2026	THE ENERGY AUTHORITY (CHANNELSIDE)	April 2026 - CAISO Weekly Statement of Activity (4/17/26-4/23/26) Total	7,433.59
05/11/2026	THE ENERGY AUTHORITY (ENERGY SETTLEMENTS)	April 2026 - CAISO Weekly Statement of Activity (4/17/26-4/23/26) Total	669,025.57
05/12/2026	ATRIA WORKSPACE (AVANTI)	June 2026 Rent	8,741.20
05/12/2026	BRAUN BLAISING SMITH WYNNE	MAR 2026 - General Matters	14.18
05/12/2026	CalCCA	8 Annual Conference Registration Operational Member Tickets	1,400.00
05/12/2026	FABICK, EMILY	Expense Report - Mar 18, 2026 to May 4, 2026	423.11
05/12/2026	FABICK, EMILY	Expense Report - Feb 3, 2026 to Feb 4, 2026	77.89
05/12/2026	knowbe4 inc.	KnowBe4 Security Awareness Training Subscription Platinum	780.00
05/12/2026	Neyenesch Printers	1,281 Move Notice Mailing 4/21 and 4/28	345.80
05/12/2026	Reynolds, Tiffany	ER Sep 20, 2025 to Apr 25, 2026	463.01
05/12/2026	SDRMA	June 2026 Benefits Coverage	21,477.10
05/18/2026	HOWARD, ROB	Expense Reimbursement - Aug 6, 2025, to Nov 12, 2025	2,154.23
05/18/2026	Maher Accountancy	May 2026 - Accounting, cash disbursements and related tasks during the month of May 2026	13,000.00
05/18/2026	Reynolds, Tiffany	ER - Apr 30, 2026 to May 7, 2026	411.71
05/18/2026	san diego human resources consulting inc.	HR Services May HR Advisory Services	2,900.00
05/18/2026	THE ENERGY AUTHORITY (CHANNELSIDE)	April 2026 - CAISO Weekly Statement of Activity (4/12426-4/30/26) Total	53,584.52
05/18/2026	THE ENERGY AUTHORITY (ENERGY SETTLEMENTS)	April 2026 - CAISO Weekly Statement of Activity (4/24/26-4/30/26) Total	203,146.56
05/19/2026	Ana Marie Alarcon	ER May 12, 2026	2,575.83
05/19/2026	Maher Accountancy	Dec-2025 through April 2026 - Access to Bill.com	12,021.10
05/19/2026	SDG&E(Service Fees)	For services rendered under Schedule CCA for period April 1, 2026 to April 30, 2026.	62,348.09
05/19/2026	USPS	First-Class Mail and First-Class Package Service	1,250.09
05/20/2026	CALIFORNIA CHOICE ENERGY AUTHORITY	March-May 2022 - Reimbursement for shared costs of Hall Energy M/T Reliability	15,184.51
05/20/2026	EDF TRADING NORTH AMERICA	April 2026 - Capacity Purchase	392,500.00
05/20/2026	ES 1A Group 2 Opco, LLC	APRIL 2026 - Resource Adequacy	108,360.00

Payment Date	Vendor	Bill Memo	Amount
05/20/2026	PECKHAM, DANIEL	Dan Peckham - May 12, 2026 to May 18, 2026	971.74
05/20/2026	SDG&E (Procurement)	Billing Period: Apr 01, 2026 to Apr 30, 2026	3,310,849.20
05/20/2026	SEMPRA	APRIL 2026 - Capacity Purchases	881,250.00
05/20/2026	WESTERN POWER & STEAM II, LLC	JULY 2026 RA	592,000.00
05/20/2026	WREGIS	Transfer	147.42
05/22/2026	Keyes & Fox LLP	April 2026 - Transactional legal services	34,731.01
05/22/2026	Keyes & Fox LLP	April 2026 - Transactional legal services	3,612.00
05/22/2026	NewGen Strategies & Solutions	April 2026 -Project: CEA SDG&E ERRA REGULATORY SUPPORT 2024-2026	1,930.00
05/22/2026	Tripepi, Smith & Associates, Inc.	April 2026 - Retainer Communications and Marketing Services	3,406.25
05/26/2026	BURKE, WILLIAMS & SORENSEN, LLP	March 2026 - Legal services	17,049.72
05/26/2026	Citadel energy marketing llc	APRIL 2026 - CAISO DA	1,127,457.56
05/26/2026	Constellation Generation Company, LLC	MARCH 2026 - Power Purchase	1,981,562.22
05/26/2026	EMPOWER (401a)	Employee Retirement -05/20/26	11,476.36
05/26/2026	EMPOWER (457b)	Employee Retirement -05/20/2026	6,927.58
05/26/2026	LEAPFROG POWER, INC.	May 2026 - RA	17,921.80
05/26/2026	MORGAN STANLEY CAPITAL GROUP, INC.	April 2026 - Energy	1,578,559.16
05/26/2026	NRG (Formerly DIRECT ENERGY)	MAR 2026	2,991,086.00
05/26/2026	Pacific Energy Advisors, Inc	APRIL 2026 - Technical Consulting Advisors & Channelside	49,000.00
05/26/2026	Powerex	May 2026 - PCC1 installment 6 of 12 (2026)	61,687.50
05/26/2026	Resi Station LLC (Renew Home)	APRIL 2026 - Proxy Demand Response CEA	3,780.00
05/26/2026	Shell Oil North America	JULY 2025 - Power	3,870,544.90
05/26/2026	Tecolote Wind LLC	April 2026 - Resource Adequacy Benefits	129,125.00
05/26/2026	THE ENERGY AUTHORITY (CHANNELSIDE)	April 2026 - CAISO Weekly Statement of Activity (5/1/26-5/7/26) Total	40,780.10
05/26/2026	THE ENERGY AUTHORITY (ENERGY SETTLEMENTS)	April 2026 - CAISO Weekly Statement of Activity (5/1/26-5/7/26) Total	258,846.15
05/27/2026	BRENTECH INCORPORATED	5 Targus Laptop Briefcase	177.79
05/27/2026	THE ENERGY AUTHORITY (SERVICES FEES ONLY)	April 2026 - Resource Management Monthly Fees	21,440.03
05/27/2026	Villaseñor, Karen	Expense Report - Apr 4, 2026 to May 18, 2026	984.16
05/27/2026	WADE, GREG	May 2026 - Expense Reimbursement	595.11
05/28/2026	NRG (Formerly DIRECT ENERGY)	APRIL 2026 Carbon Free	557,151.00
Multiple	Multiple customers	NEM Cash Out	471,175.67

CLEAN ENERGY ALLIANCE

Staff Report

DATE: July 30, 2026

TO: Clean Energy Alliance Board of Directors

FROM: Greg Wade, Chief Executive Officer

ITEM 2: Consider Approval of Resolution No. 2026-035 Amending the Clean Energy Alliance Position Control Listing and the Clean Energy Alliance Salary Schedule

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RECOMMENDATION:

That the Clean Energy Alliance (CEA) Board of Directors (Board) adopt Resolution No. 2026-035 Amending the Clean Energy Alliance (CEA) Position Control Listing and the CEA Salary Schedule.

BACKGROUND AND DISCUSSION:

On June 25, 2026, CEA Board approved the Fiscal Year (FY) 2026/27 Budget. Included with the approval of the FY 2026/27 Budget, the Board authorized an additional four (4) full-time positions in FY 2026/27 (FY27). These include the positions of Rates Specialist or Analyst, Marketing Specialist or Analyst and a Human Resources position, with a fourth position to be determined to support operational needs. Based upon the Board's prior authorization, CEA's Position Control Listing and Salary Schedule must be updated to include these positions. Additionally, to allow for promotional opportunities for these positions, it is recommended that a manager position be added for both the rates and marketing classifications. As such, the following positions and corresponding salary ranges are proposed to be added to CEA's Position Control Listing and Salary Schedule:

JOB TITLE:	ANNUAL SALARY RANGE:
• Marketing Specialist	$80,000 - $125,000
• Marketing Analyst	$85,000 - $150,000
• Marketing Manager	$118,000 - $194,000
• Rates Specialist	$80,000 - $125,000
• Rates Analyst	$85,000 - $150,000
• Rates Manager	$118,000 - $194,000

For the FY 2026/27 Budget, CEA's operational expenditures are forecasted to account for approximately 3.8% of CEA's Total Expenditure Budget with power supply accounting for the other 96.2%. Costs for Staffing, which include salaries, benefits, and retirement are budgeted at approximately $4.6 million. Pursuant to prior Board authorization, CEA will start the upcoming Fiscal Year 2026/2027 with 17 full-time employees compared to starting the prior year at 10 full-time employees.

FISCAL IMPACT:

There is sufficient funding in the approved FY 2026/27 Budget to accommodate the full cost of four (4) additional full-time positions as authorized by the Board. For the authorized position not yet identified, operational needs will be assessed in the coming months for consideration of this position by the Board at a future time.

Submitted for Board consideration:

____
Gregory Wade
Chief Executive Officer

ATTACHMENTS:

A. Resolution No. 2026-035 Amending the Clean Energy Alliance (CEA) Position Control Listing and Salary Schedule

CLEAN ENERGY ALLIANCE
RESOLUTION NO. 2026-035

A RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN ENERGY ALLIANCE AMENDING THE POSITION CONTROL LISTING AND SALARY SCHEDULE

WHEREAS, Clean Energy Alliance (CEA) is a joint powers agency formed on November 4, 2019, under the Joint Exercise of Power Act, California Government Code section 6500 *et seq*., among the Cities of Carlsbad, Solana Beach and Del Mar created by the cities of Carlsbad, Del Mar and Solana Beach; and

WHEREAS, on June 29, 2023, the CEA Board of Directors (Board) adopted Resolution No. 2023-005 adopting the Fiscal Year 2023/24 Budget which included salary and benefits for employees; and

WHEREAS, on August 31, 2023, the Board adopted Resolution No. 2023-006 approving the salary schedule for CEA's new positions; and

WHEREAS, on November 9, 2023, the Board adopted Resolution No. 2023-012 establishing and approving the CEA Position Control Listing; and

WHEREAS, on January 30, 2025, the Board adopted Resolution No. 2025-006 approving an amendment to the CEA Position Control Listing; and

WHEREAS, on June 26, 2025, the Board adopted Resolution No. 2025-028 approving an amendment to the CEA Position Control Listing; and

WHEREAS, on January 29, 2026, the Board adopted Resolution No. 2026-003 approving an amendment to the CEA Position Control Listing; and

WHEREAS, on February 26, 2026, the Board adopted Resolution No. 2026-012 approving an amendment to the CEA Position Control Listing; and

WHEREAS, on June 25, 2026, the CEA Board adopted Resolution No. 2026-034 approving the Fiscal Year (FY) 2026/2027 Budget which authorized four (4) new positions necessitating amendment of the CEA Position Control Listing & Salary Schedule to include these positions as well as adding a manager classification for each position.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of Clean Energy Alliance, as follows:

Section 1. The Board of Directors of the Clean Energy Alliance hereby amends the Position Control Listing and Salary Schedule to add the following positions as follows:

POSITION:	**ANNUAL SALARY RANGE:**
Marketing Specialist	\$80,000 - \$125,000
Marketing Analyst	\$85,000 - \$150,000
Marketing Manager	\$118,000 - \$194,000
Rates Specialist	\$80,000 - \$125,000
Rates Analyst	\$85,000 - \$150,000
Rates Manager	\$118,000 - \$194,000

The foregoing Resolution was passed and adopted this 30th day of July 2026, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

____
Katie Melendez, Board Chair

ATTEST:

____
Ana Marie Alarcon, Clerk to the Board

Staff Report

DATE: July 30, 2026

TO: Clean Energy Alliance Board of Directors

FROM: Gregory Wade, Chief Executive Officer

ITEM 3: Notice to Board – Adoption of Out-of-Region Remote Work Administrative Policy

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RECOMMENDATION:

That the Clean Energy Alliance (CEA) Board of Directors (Board) accept and receive this notice of adoption of an Out-of-Region Remote Work Administrative Policy.

BACKGROUND AND DISCUSSION:

On September 25, 2025, the CEA Board Board) adopted Resolution No. 2025-043 that delegated authority to the Chief Executive Officer (CEO) to adopt and modify CEA's Administrative Policies that relate to operational issues. Pursuant to Resolution No. 2025-043, this authority also required the CEO to report to the Board at the next regular Board Meeting the establishment and/or modification of any administrative policy.

Attached to this staff report is Administrative Policy CEA-027 (Policy) which establishes guidelines for employees participating in remote work from locations outside CEA's primary service area but within the State of California. Remote work is an arrangement under which an employee performs some or all of their assigned duties at an alternate worksite that is not a CEA facility using secure technology to remain accessible and productive.

In today's labor market, including within other Community Choice Aggregation (CCA) programs, employees working outside the region in which a CCA operates is not uncommon. The specific skillsets required by CCAs and the ability for many of these skilled employees to carry out their work remotely, including via Teams, Zoom, SharePoint and Microsoft 365 and other platforms has become increasingly commonplace. Having a select number of employees located in other areas within the state, therefore can provide operations benefits. For example, having an employee located in the bay area where many regulatory proceedings and legislative activities take place, can benefit CEA and reduce travel costs by having that employee attend such proceedings.

With this in mind, this Policy established management-authorized work option that may be approved when the position, employee, and operational needs support such an arrangement. Remote work under this Policy is not an entitlement, does not alter the at-will or other terms and conditions of employment, and may be modified or revoked at any time at the discretion of the CEO.

As a public-serving energy provider operating under California Public Utilities Commission oversight, CEA must also ensure that any remote work arrangement maintains regulatory compliance, protects data security and confidentiality, and supports the continuity of CEA operations.

FISCAL IMPACT:

There is no fiscal impact with this action.

Submitted for Board consideration:

____

Gregory Wade
Chief Executive Officer

ATTACHMENTS:

A. Out-of-Region Remote Work Administrative Policy No. CEA-027

Clean Energy Alliance Administrative Policy

SUBJECT: **Out-of-Region Remote Work Policy**			EFFECTIVE DATE: **June 1, 2026**
POLICY #: **CEA-027**	SUPERSEDES **N/A**	STAFF CONTACT **Gregory Wade**	# OF PAGES: **10**

1.0 PURPOSE

The purpose of this Out-of-Region Remote Work Policy ("Policy") is to establish guidelines for employees participating in remote work from locations outside CEA's primary service area but within the State of California. Remote work means an arrangement under which an employee performs some or all of their assigned duties at an alternate worksite that is not a CEA facility using secure technology to remain accessible and productive.

Remote work is a management-authorized work option that may be approved when the position, employee, and operational needs support such an arrangement. Remote work under this Policy is not an entitlement, does not alter the at-will or other terms and conditions of employment, and may be modified or revoked at any time at the discretion of the Chief Executive Officer (CEO).

As a public-serving energy provider operating under California Public Utilities Commission oversight, CEA must ensure that any remote work arrangement maintains regulatory compliance, protects data security and confidentiality, and supports the continuity of CEA operations.

2.0 SCOPE

This Policy applies to eligible employees occupying positions that the CEO has determined may be performed remotely outside the CCA service territory but within the State of California.

3.0 ELIGIBILITY

Out-of-region in-state remote work may be approved only for employees whose positions and individual work performance are suited to a remote work arrangement and may be approved based on:

- Consistency with Essential Position Functions of: An employee may be considered eligible for remote work when the essential duties of the position can be effectively performed from a remote location without materially impairing CEA's operations, internal coordination, public engagement, or regulatory responsibilities. In evaluating whether a position is suitable for remote work, CEA may consider the nature of the employee's job duties, including whether the position requires regular in-person attendance at Board meetings, stakeholder meetings, team meetings, trainings, operational meetings, or other activities that are best performed in-person.

- Required In-Person Attendance: Positions that require frequent in-person presence, direct public interface, physical access to office resources, or regular on-site collaboration will generally not be eligible for remote work.

- Demonstrated Ability to Work Independently: To be eligible for remote work, an employee should have demonstrated the ability to work independently, communicate effectively, meet deadlines, and maintain satisfactory performance and productivity standards on a consistent basis as determined by the employee's supervisor.

- Successful Completion of Probationary Period: CEA may also require that the employee have successfully completed any applicable introductory or probationary period before becoming eligible for consideration for remote work.

- Employees Subject to Discipline May Not Be Eligible: An employee who is subject to active disciplinary action, significant performance concerns, or a performance improvement plan may be deemed ineligible for remote work until those issues have been satisfactorily resolved.

- Employee Must Have Access to Reliable Internet: The employee must be able to maintain a secure, reliable internet connection and use CEA-approved systems, equipment, and security protocols in order to perform work remotely in a manner that protects confidential information and supports continuity of operations.

- No Undue Burden: The employee's remote work arrangement must not create an undue burden on coworkers, supervisors, operational workflows, or CEA's ability to respond to business, regulatory, or public service needs.

- Approval Not Guaranteed: Eligibility to request remote work does not guarantee approval, and all decisions regarding eligibility and approval remain within CEA's sole discretion based on operational needs, business considerations, and organizational priorities. CEA reserves the right to determine that certain positions, classifications, or job assignments are not appropriate for remote work, even if some duties of the position can be performed remotely. CEA also reserves the right to change eligibility determinations at any time. Prior approval of remote work does not guarantee future continued eligibility.

- Supervisors May Adopt Additional Eligibility Requirements: CEA supervisors may adopt additional remote procedures, guidelines, or requirements, provided they are consistent with the intent of this Policy and are approved in advance by the CEO.

Employees who do not comply with this Policy may have their remote authorization modified or revoked and may be subject to disciplinary action, up to and including termination. This Policy does not apply to requests for reasonable accommodation by qualified individuals with disabilities under the Americans with Disabilities Act or the California Fair Employment and Housing Act. Employees seeking remote work as a reasonable accommodation shall follow CEA's procedures for requesting disability-related accommodations.

4.0 APPROVAL PROCESS

- Employee Must Complete Remote Location Request Form: An employee seeking approval for remote work must submit a completed Remote Work Location Request Form identifying the employee's proposed California residence and remote work location.

- Evaluation of Compatibility with CEA Operational Needs: CEA may request additional information or documentation as necessary to evaluate the request and determine whether the proposed arrangement is consistent with this Policy and CEA's operational needs.

- Supervisor Approval Required: The employee's direct supervisor shall review the request and evaluate whether the proposed remote work arrangement is appropriate based on the employee's job duties, performance, communication needs, operational impact, and ability to meet CEA's business, regulatory, and public service obligations.

- CEO Approval Required: Following supervisory review, the request must be approved by the CEO before the employee may begin working remotely.

- Case-by-Case Discretionary Review: Approval of any remote work arrangement is within CEA's sole discretion, will be made on a case-by-case basis, and may be granted, denied, conditioned, modified, or rescinded based on operational needs, business considerations, or compliance concerns.

- Written Remote Agreement May be Required: CEA may require an employee approved for remote work to execute a written remote work agreement or acknowledgment confirming the terms, conditions, and expectations applicable to the arrangement before the arrangement becomes effective.

- California Work Location: All approved remote work locations under this Policy must remain within the State of California. Any request to work from a location outside California on a permanent basis must be separately and expressly authorized by the CEO and is not permitted under this Policy absent such authorization.

- Ongoing Compliance: Employees approved for remote work remain subject to this Policy and all other applicable CEA policies, procedures, and performance expectations. Failure to comply with the approved arrangement or applicable CEA requirements may result in modification or revocation of the remote work arrangement and may subject the employee to disciplinary action, where appropriate.

5.0 WORK LOCATION REQUIREMENTS

- California Residence Requirement: Employees approved for remote work must maintain their primary residence and remote work location within the State of California.

- Designated Remote Space: The employee must maintain a designated workspace that is suitable for the performance of official CEA business and that permits the employee to work in a manner that is safe, secure, professional, and consistent with CEA's operational and confidentiality requirements.

- Workspace Noise and Privacy: The designated remote workspace should be reasonably quiet, private, and free from distractions to enable the employee to perform assigned duties, participate in telephone and video conferences, and maintain effective communication with supervisors, coworkers, stakeholders, and other business contacts during working hours.

- Notice of Location Change: Employees must promptly notify their supervisor and CEO of any change in residence or remote work location, and no employee may perform work from a new remote location unless and until that location has been reviewed and approved in accordance with this Policy.

- Availability During Business Hours: Employees approved for remote work must remain available and accessible during core business hours from 8:00 a.m. to 5:00 p.m. Pacific Time, Monday through Friday, unless another schedule has been expressly approved by CEA.

- Responsiveness to Business Communications: During working hours, employees must be reachable by email, telephone, video conference, and other CEA-approved communication methods, and must respond to work-related communications within a reasonable time consistent with their job duties and operational expectations.

- Remote Work and Leave Usage: Remote work is not a substitute for dependent care, sick leave, or other leave. Employees who are unable to devote appropriate time and attention to their assigned duties during working hours must follow normal leave and absence reporting procedures.

- Compliance with Applicable Laws and CEA Policies: Employees working remotely remain responsible for complying with all applicable California labor laws and all CEA policies, procedures, and workplace expectations, including those relating to attendance, timekeeping, confidentiality, records management, information security, meal breaks, rest periods, overtime and performance.

- Additional Worksite Standards: CEA may require additional work location standards or documentation, as necessary, to confirm that the employee's remote worksite remains appropriate for the conduct of CEA business and consistent with this Policy.

6.0 TRAVEL & ON-SITE EXPECTATIONS

Employees approved for remote work remain responsible for attending in-person meetings, events, and work activities as required by CEA in order to support operational needs, collaboration, regulatory obligations, and public service responsibilities and will be required to travel to the primary office or other service location for:

- Board meetings
- Public or stakeholder meetings
- Team collaboration sessions
- Regulatory or operational needs
- Events
- Meetings deemed necessary by the CEO or supervisor

The expected frequency of on-site attendance will vary depending on the employee's position, business needs, and direction from CEA management, and may be adjusted at any time based on operational, regulatory, or organizational needs. Approval to work remotely does not eliminate or reduce an employee's obligation to appear in person when such attendance is necessary to perform the essential functions of the position or to meet CEA's service, governance, and regulatory requirements.

Failure to meet required travel or on-site attendance expectations, or failure to report in person when directed, may result in modification or revocation of the employee's remote work approval and may subject the employee to disciplinary action, where appropriate.

7.0 TRAVEL COSTS & REIMBURSEMENT

CEA will not reimburse travel expenses for required travel to meet minimum on-site requirements provided for under Section 6.0. Approved travel for other work-related matters, conferences or meetings will be subject to CEA's Travel and Expense Policy.

8.0 COMPENSATION & TAX CONSIDERATIONS

- California Residence Requirement: Employees approved for remote work must reside and work within the State of California, unless expressly authorized otherwise by the CEO.

- Consistent Compensation Structure: Compensation structures for employees approved for remote work shall remain consistent with position requirements and similarly situated employees working within CEA's service region.

- Employee Tax Responsibility: It is the responsibility of each employee participating in remote work to determine any personal tax implications associated with the remote work arrangement.

9.0 DATA SECURITY & CONFIDENTIALITY

Employees approved for remote work must maintain data security and confidentiality at all times while performing CEA business remotely, and remain subject to all CEA policies and applicable law governing confidentiality, cybersecurity, electronic systems, privacy, and records management. Employees approved for remote work must:

- Use strong passwords, secure systems, and CEA-approved methods to access and store CEA data.

- Use company-issued devices and systems unless other arrangements are expressly authorized by CEA.

- Connect through secure networks and secure VPN access when handling CEA data remotely.

- Not use unsecured public Wi-Fi to access, transmit, or store CEA information unless an approved secure connection is in place.

- Not leave CEA-owned property, including but not limited to equipment, records, documents, files and other materials in a vehicle unattended.

- Follow cybersecurity practices aligned with the National Institute of Standards and Technology standards.

- Securely maintain and store property and confidential materials maintained at a remote worksite. Any incident of loss, theft, damage, malfunction, or unauthorized use or access must be reported to CEA at the first reasonable opportunity.

- Comply with CEA's adopted Protection of Confidential Information and Privacy & Confidentiality Policies and all other CEA policies at their remote location.

10.0 PUBLIC SECTOR COMPLIANCE

As a publicly governed agency, CEA employees approved for out-of-region remote work must comply with all applicable laws, regulations, and CEA policies relating to public agency operations, including transparency, records management, and lawful use of public resources including, but not limited to:

- California Public Records Act: Public records created, received, maintained, or stored while working remotely, regardless of physical form or whether maintained on a personal device or other equipment used for CEA business, are subject to disclosure, retention, preservation, and production requirements under the California Public Records Act (Government Code §§ 7920.000, *et seq*.) and applicable CEA policies.

- Ralph M. Brown Act: Employees approved for remote work must conduct CEA business in a manner that supports compliance with California's open meeting laws, including the Ralph M. Brown Act (Government Code §§ 54950, *et seq*.), by ensuring that remote work does not interfere with the scheduling, noticing, conduct, or public accessibility of CEA Board and committee meetings or related deliberations carried out in accordance with those requirements.

Employees must use CEA-approved systems, platforms, and practices to ensure transparency, auditability, appropriate retention, and lawful retrieval of agency records and communications.

11.0 EQUIPMENT & EXPENSES

- CEA Provides Equipment: CEA will provide standard equipment for approved remote work arrangements, including technology or other materials deemed necessary by CEA for the performance of assigned duties. All equipment, supplies, records, and other materials provided by CEA remain CEA property and must be used in accordance with applicable CEA policies and procedures.

- Prohibition of Unauthorized Software: Employees may not install unauthorized software, hardware, or third-party applications on CEA-issued equipment.

- Equipment Return Upon Employee Separation: Upon separation of employment, conclusion of the remote work arrangement, or upon CEA's request, employees must promptly return all CEA-issued equipment, records, documents, files, supplies, and other property.

- Employee Responsible for Home Office: Employees are responsible for home office setup and internet unless otherwise specified.

- Technology Allowance: A monthly technology allowance may be provided as established in CEA's employee benefits policy.

- Reimbursement of Expenses: Reimbursement for other approved business-related expenses incurred in connection with remote work shall be governed by CEA's applicable reimbursement, travel, and expense policies.

12.0 PERFORMANCE EXPECTATIONS

Employees approved for remote work remain subject to the same duties, obligations, responsibilities, performance standards, and workplace expectations that apply to employees working on site, unless otherwise expressly provided in writing by CEA. Employees must:

- Maintain Productivity: Employees must continue to meet all productivity, quality, customer service, attendance, conduct, and deadline expectations applicable to their position, and remote work does not alter CEA's expectations regarding satisfactory job performance.

- Maintain Consistent Communication: Employees must remain available and accessible during established work hours, perform assigned work in a timely and professional manner, and maintain regular communication with supervisors, coworkers, and other CEA contacts as required by their position.

- Maintain In-Person Availability As Required: Employees approved for remote work must attend all required in-person and virtual meetings, including video conferences, telephone conferences, team meetings, and other scheduled or as-needed meetings, and must remain available and prepared to participate during established work hours consistent with CEA's attendance, conduct, and performance expectations.

13.0 LIMITATIONS

- Remote Work Not an Entitlement: Remote work is a discretionary, management-authorized work arrangement and is not an entitlement, vested right, guaranteed benefit, or condition of employment.

- No change to employment status: Nothing in this Policy alters the at-will nature of employment at CEA or changes any other terms and conditions of employment, except as expressly provided in writing by CEA.

- CEA discretion to modify or revoke: CEA reserves the right to grant, deny, modify, suspend, or revoke any remote work arrangement at any time, with or without advance notice, based on operational needs, business considerations, legal or regulatory requirements, performance concerns, or other factors determined by CEA.

- No guarantee of continued remote work: Approval of a remote work arrangement for any period of time does not create an expectation or guarantee of continued approval.

- CEA authority over work assignments and location: CEA retains the right to assign duties, change schedules, require in-person attendance, modify reporting relationships, reassign positions, or require an employee to work from a CEA worksite or another designated location as business needs require.

- Additional requirements may apply: CEA may impose additional department-level requirements, written agreement terms, or case-specific conditions on a remote work arrangement, provided they are consistent with this Policy.

- Noncompliance may result in corrective action: Failure to comply with this Policy, an approved remote work arrangement, or other applicable CEA policies and procedures may result in modification or revocation of remote work approval and may subject the employee to disciplinary action, where appropriate.

14.0 POLICY REVIEW

This Policy will be reviewed periodically and may be revised, interpreted, or discontinued at CEA's discretion to remain aligned with applicable law, regulatory requirements, and organizational needs, and approved remote work arrangements remain subject to ongoing review and modification as circumstances change.

CLEAN ENERGY ALLIANCE

Staff Report

DATE: July 30, 2026

TO: Clean Energy Alliance Board of Directors

FROM: Gregory Wade, Chief Executive Officer

ITEM 4: Consider Adoption of Resolution No. 2026-036 Awarding Professional Services Agreements to Chapman and Cutler LLP for Prepay and Disclosure Counsel Services and Authorizing Execution of the Agreement

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RECOMMENDATION:

That the Clean Energy Alliance (CEA) Board of Directors (Board) adopt Resolution No. 2026-036 awarding a Professional Services Agreements (Agreement) to Chapman and Cutler LLP to provide prepay and disclosure counsel services and authorizing the Chief Executive Officer (CEO) to execute the Agreement.

BACKGROUND AND DISCUSSION:

Municipal electric, gas utilities, and tax-exempt entities such as community choice aggregators (CCAs) in the United States have the ability to prepay for a long-term supply of electricity or natural gas for their retail end-users and fund that prepayment with tax-exempt municipal bonds ("Prepayments"). Prepayments have saved utility ratepayers (natural gas, electricity from gas fired power plants and energy from renewable power projects) billions of dollars in reduced rates and energy charges and are anticipated to continue to do so over the 30-year life of these transactions.

At the April 30, 2026 Boad of Directors meeting, the Board adopted Resolution No. 2026-023 approving the Professional Services Agreement with PFM Financial Advisors LLC (PFM) to provide Municipal Financial Advisor services to support the establishment, structuring, and execution of the Prepayment transaction. The next step is to hire the legal counsel that will support CEA through the execution of the Prepayment. Prepayment legal counsel is needed to provide advice, counsel, and subject matter expertise to CEA for the negotiation and drafting of all agreements, documentation associated with the transaction, and to serve in the capacity of Disclosure Counsel, Bond Counsel, and Tax Counsel to CEA.

CEA issued a Request for Proposals (RFP) for bond, tax and/or disclosure counsel in May 2026 with a June 17, 2026 deadline to respond. CEA received five responses to this RFP from Orrick, Barnes & Thornburg, Chapman, Nixon Peabody, and Norton Rose Fullbright. Each response was reviewed for the proposed services, staffing, qualifications, and fees. The responses varied in proposals to provide bond and tax counsel services, prepay and disclosure counsel services, or both. Following CEA's review of the responses, staff recommends selecting Chapman and Cutler LLC (Chapman) to provide prepay and disclosure counsel services to CEA at this time. In September, staff anticipates recommending that Orrick, Herrington & Sutcliffe LLP (Orrick) be selected to provide bond and tax counsel services to the issuer (who is anticipated to be the California Community Choice Financing Authority (CCCFA) once the Board approves CEA becoming an official member). Both have law firms with extensive experience in the prepayment energy market and have worked with a variety of prepayment suppliers, underwriters, bond issuers, municipal purchasers, and represented CCAs as prepayment counsel.

The proposed fixed fee amount for Chapman is $225,000 for representation of CEA and serving as Disclosure Counsel, contingent upon successful bond closing and payable from bond proceeds at closing. If required by the underwriter, Chapman will prepare the "forepart" of the Preliminary Official Statement and the final Official Statement and will coordinate the printing and distribution to investors for an additional fixed fee of $75,000 for a total fixed fee not-to-exceed $300,000, contingent upon successful bond closing and payable from bond proceeds at closing. These fees are fair and reasonable.

Staff recommends that the Board adopt Resolution No. 2026-036 awarding and authorizing the CEO to execute the Agreement, which will enable CEA to proceed with the next steps in the prepay transaction.

FISCAL IMPACT:

There will be no direct fiscal impact from execution of the Agreement, as the fees for prepayment counsel services are contingent and would be compensated from bond proceeds. This Agreement is intended to enable a future municipal prepayment transaction, which CEA anticipates can drive material power supply portfolio cost savings for CEA customers.

Submitted for Board consideration:

____
Gregory Wade
Chief Executive Officer

ATTACHMENTS:

A. Resolution No. 2026-036, approving the Professional Service Agreement with Chapman and Cutler LLP and
B. Professional Services Agreement with Chapman and Culter LLP

CLEAN ENERGY ALLIANCE
RESOLUTION NO. 2026-036

A RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN ENERGY ALLIANCE AWARDING A PROFESSIONAL SERVICES AGREEMENT TO CHAPMAN AND CUTLER LLP AND AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE THE AGREEMENT

WHEREAS, the Clean Energy Alliance (CEA) is a joint powers authority established on November 4, 2019, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 *et seq*.); and

WHEREAS, many Community Choice Aggregators (CCAs) have issued tax-exempt municipal bonds to prepay supply for their retail end customers to achieve cost savings, and CEA intends to explore a similar transaction; and

WHEREAS, the proposed Professional Services Agreement with Chapman and Cutler LLP will provide prepay and disclosure counsel services to CEA required for the structuring and execution of a prepay transaction with no financial risk or fiscal impact to CEA because all fees would be paid only upon closing of a successful transaction.

NOW, THEREFORE, BE IT RESOLVED, the Board of Directors of Clean Energy Alliance hereby finds, determines, and resolves as follows:

Section 1. The foregoing recitals are true and correct and incorporated fully herein.

Section 2. A Professional Services Agreement for prepay and disclosure counsel services is hereby awarded to Chapman and Cutler LLP for a contingent fixed fee.

Section 3. The Chief Executive Officer is hereby authorized and directed to execute a Professional Services Agreement with Chapman and Cutler LLP in a form substantially similar to that presented to the Board on July 30, 2026. The Chief Executive Officer is hereby further authorized and directed to execute such other documents and take such other and further actions as may be necessary and proper to accomplish the purposes of this resolution.

The foregoing Resolution was passed and adopted this 30th day of July, 2026, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

____
Katie Melendez, Board Chair

ATTEST:

____
Ana Marie Alarcon, Clerk to the Board

AGREEMENT BETWEEN THE CLEAN ENERGY ALLIANCE AND CHAPMAN AND CUTLER LLP FOR PREPAY AND DISCLOSURE COUNSEL SERVICES

THIS AGREEMENT, is entered into this 1st of August, 2026, by and between CLEAN ENERGY ALLIANCE, an independent joint powers authority ("Authority"), and Chapman and Cutler LLP, an Illinois limited liability partnership ("Consultant").

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 Sections 6500 *et seq.*) ("Act") with the power to conduct its business and enter into agreements.

B. Consultant possesses the skill, experience, ability, background, and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein and is duly authorized and registered to do business in the State of California.

C. Authority and Consultant desire to enter into this Agreement for Prepay and Disclosure Counsel services.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this Agreement shall commence on August 1, 2026, and shall terminate upon completion of the prepayment transaction and acceptance of all required deliverables, unless terminated earlier pursuant to Section 19 hereof.

2. **SERVICES TO BE PERFORMED**

Consultant shall perform each and every service set forth in Exhibit "A" pursuant to the schedule of performance set forth in Exhibit "B," both of which are attached hereto and incorporated herein fully by this reference.

3. **COMPENSATION TO CONSULTANT**

Consultant shall be compensated on a contingent fixed fee basis for services performed pursuant to this Agreement in an amount based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

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 accordance with the highest standards of care, skill and diligence in Consultant's industry, trade, or profession and agrees that all services shall be performed by qualified and experienced personnel in conformity with the applicable requirements of federal, state and local laws in effect at the time that the services are being performed.

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 as an independent contractor and in pursuit of Consultant's independent calling, except to the extent that they are limited by statute, rule or regulation or the express terms of this Agreement. The Consultant has and shall retain the right to exercise full control and supervision of all persons assisting the Consultant in the performance of the services required by this Agreement, Authority only being concerned with the finished results of the work being performed. 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, employer-paid payroll taxes, Social Security, retirement benefits, health benefits, unemployment insurance, workers' compensation plans, vacation and sick leave, nor any other benefits are available from Authority to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA 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. It is the intent of the Parties that neither Consultant nor its officers, employees or agents are to be considered employees of Authority, whether "common law" or otherwise, and Consultant shall indemnify, defend and hold Authority harmless from any such obligations related to its officers, employees and agents.

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 Sections 6500 *et seq*.) pursuant to a Joint Powers Agreement dated November 4, 2019, as amended from time to time, 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 contractor, or Consultant's employee or subcontractor on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital or veteran status, medical condition, pregnancy, sex, age, sexual orientation, genetic information, gender expression, or any other protected class. Consultant shall take reasonable steps to provide equal employment opportunities and treat applicants and employees during employment without regard to their sex, race, color, age, religion, ancestry, national origin, disability, military or veteran status, medical condition, genetic information, gender expression, marital status, or sexual orientation and shall make reasonable accommodation to qualified individuals with disabilities or medical conditions. Such steps may include but are limited to employment, upgrading, demotion, transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation, and selection for training, including apprenticeship. Consultant agrees that a material violation of this provision may constitute a material breach of this Agreement.

9. **HOLD HARMLESS AND INDEMNIFICATION**

A. General Indemnification. Consultant shall, to the fullest extent allowed by law indemnify, defend, and hold harmless the Authority, its members, and their respective officers, officials, agents, employees and volunteers (collectively "Indemnitees") from and against any and all liabilities, claims, actions, causes of action, proceedings, suits, demands, damages, judgments, liens, levies, costs, expenses 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, arising out of or related to a breach of this Agreement or the active negligence or willful misconduct of Consultant or Consultant's employees, officers, officials, agents or independent contractors in the performance of or failure to perform this Agreement, except where caused by the sole or active negligence or willful misconduct of any of the Indemnitees. Such costs and expenses shall include reasonable attorneys' fees. Notwithstanding anything to the contrary contained herein, this paragraph 9 shall not be construed to apply to any claims arising out of the professional negligence or malpractice of Consultant as counsel providing the services described herein.

B. Employee Benefits Eligibility Indemnification. In the event that Consultant's employee, subcontractor, independent contractor or other person providing services under this Agreement on Consultant's behalf (collectively, "Consultant's Personnel") claims or is determined by a court of competent jurisdiction or administrative agency to be eligible for enrollment in or entitled to any benefits of the Authority or its constituent members, Consultant shall indemnify, defend, and hold harmless Authority or its constituent members for the payment of any employer and employee contributions for such benefits on behalf of the employee as well as for payment of any penalties and interest on such contributions that would otherwise be the responsibility of the Authority or its constituent members. Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Consultant's Personnel providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation and benefit including, but not limited to, eligibility to enroll in any benefit program as an employee of Authority or its constituent members and entitlement to any contributions to be paid by Authority or its constituent members for employer contributions and/or employee contributions for any employee benefits.

C. Indemnification for Employee Payments. Consultant agrees to defend and indemnify the Authority and its constituent members for any obligation, claim, suit or demand for tax, retirement contribution including any contribution to any retirement system, social security, salary or wages, overtime payment, or workers' compensation payment which the Authority or its constituent members may be required to make for work done under this Agreement.

D. The acceptance of the services provided by this Agreement by Authority shall not operate as a waiver of the right of indemnification. The provisions of this Section 9 shall not be limited by any provision of insurance coverage that the Consultant may have in effect or be required to obtain and maintain during the term of this Agreement. The provisions of this Section 9 are continuing obligations and survive the completion of the services or termination of this Agreement.

10. **<u>INSURANCE</u>**:

A. <u>General Requirements</u>. 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 "D," 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 Consultant or the insurer affording coverage shall provide thirty (30) days' advance written notice to the Authority by certified mail, Attention: General Counsel. Ten (10) days advance written notice for cancellation due to non-payment of premium shall be provided by the insurer to the Authority in the same manner." 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. All endorsements shall be on forms approved by Authority. Consultant shall provide certified copies of required insurance policies, which shall include the declaration pages, a schedule of forms listing all policy endorsements, and all policy forms, upon Authority's request.

B. <u>Subrogation Waiver</u>. Consultant agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to 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 that any such insurer of Consultant may acquire against Authority by virtue of the payment of any loss under such insurance.

C. <u>Primary and Non-contributory</u>. The commercial general liability, including any excess or umbrella policies being used to meet the required limits of insurance, and automobile liability policies shall contain, or be endorsed to contain, a provision that such policies are primary and non-contributory to any insurance that may be carried by the Authority or its members, as reflected in an endorsement at least as broad as CG 20 01 04 13, which shall be submitted to the Authority. Any insurance or self-insurance maintained by the Authority, its members or their respective officers, officials, employees, or representatives shall be excess of the Consultant's insurance and shall not contribute with it.

D. <u>Failure to secure or maintain insurance</u>. 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.

E. <u>Additional Insured</u>. Authority, its members, and their respective, officers, employees and volunteers shall be named as additional insureds under all insurance coverages, except any workers compensation and professional/cyber 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.

F. Self-Insured Retentions. Any self-insured retentions are the responsibility of the Consultant and must be declared to and approved by Authority. At the option of Authority, either (1) the insurer shall reduce or eliminate such self-insured retentions as respects the Authority, its members and their respective officers, officials, employees and volunteers, or (2) the Consultant shall provide a financial guarantee satisfactory to Authority guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

G. 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.

H. 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.

I. Special Risks or Circumstances. Authority reserves the right to modify these requirements, including limits, based on the nature of risk, prior experience, insurer, coverage, or other special circumstances.

11. **CONFLICT OF INTEREST**

Consultant represents and 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 will be required to fill out a conflict of interest form under Authority's Conflict of Interest Code.

12. **PROHIBITION AGAINST TRANSFERS**

Consultant shall not assign, 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, 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 managing member or joint venturer or syndicate member or cotenant, if Consultant is a partnership or limited liability company 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 or partnership or limited liability company or other entity.

13. SUBCONTRACTOR APPROVAL

A. 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.

B. 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.

C. If Consultant subcontracts for any of the work to be performed under this Agreement, Consultant shall be as fully responsible to the Authority for the acts and omissions of Consultant's subcontractors and for the persons either directly or indirectly employed by the subcontractors, as Consultant is for the acts and omissions of persons directly employed by Consultant. Nothing contained in the Agreement shall create any contractual relationship between any subcontractors of Consultant and the Authority or its members. In any dispute between the Consultant and its subcontractor, neither the Authority nor any of its members shall be made a party to any judicial or administrative proceeding to resolve the dispute. The Consultant agrees to defend, hold harmless and indemnify the Indemnitees as described in Section 9 of this Agreement, should any of the Indemnitees be made a party to any judicial or administrative proceeding to resolve any such dispute.

D. 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, drawing, specification, 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 and is hereby assigned to the Authority. Consultant shall not copyright any Report prepared as part of the services required by this Agreement, except as may be requested on Authority's behalf. Consultant expressly waives and disclaims, any copyright in, and the right to reproduce all Reports, except upon the Authority's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The Consultant shall, upon request of the Authority, execute any further document(s) necessary to further effectuate this waiver and disclaimer. 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. Consultant shall, at such time and in such form as Authority may require, furnish reports concerning the status of services required under this Agreement.

C. All Reports also shall be provided in electronic format.

D. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement that has not been publicly released shall be made available to any individual or organization by Consultant without prior approval by Authority.

15. <u>RECORDS</u>

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 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 and copies 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.

16. <u>SUPPLIER DIVERSITY</u>

General Order 156 (GO 156) is a California Public Utilities Commission ruling that requires utility entities to procure at least 21.5% of their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises' ("WMDVLGBTBEs") in all categories. Qualified businesses become GO 156 certified through the CPUC and are then added to the GO 156 Clearinghouse database.

The CPUC Clearinghouse can be found here: www.thesupplierclearinghouse.com. While CEA is not legally required to comply with GO 156, CEA's policies and commitment to diversity are consistent with the principles of GO 156, and CEA has an Inclusive and Sustainable Workforce Policy, which can be found at https://thecleanenergyalliance.org/key-documents.

CEA will provide a link to a survey annually to each of its contract vendors, which may ask for disclosure of (a) their GO 156 certification status, (b) their efforts to work with diverse business enterprises, including those owned or operated by women ("WBE"), minorities ("MBE"), disabled veterans ("DVBE"), and lesbian, gay, bisexual, or transgender people ("LGBTBE"); and (c) other information regarding inclusivity in their workforce or related to CEA's goals as stated in CEA's Inclusive and Sustainable Workforce Policy. CEA will use the information obtained solely to help evaluate how well it is conforming to its own policies and goals. Pursuant to California Proposition 209, CEA does not discriminate against nor grant preferential treatment based on race, sex, color, ethnicity, or national origin.

17. <u>CONFIDENTIALITY AND SECURITY</u>

A. <u>Confidential Information</u>. Consultant shall comply with all applicable law and maintain in confidence and not disclose to any third party nor 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 or Authority's customers, including confidential information regarding Authority's customers and employees, except as may be required by law.

B. Security.

1. Implementation. Consultant shall implement commercially reasonable administrative, technical and physical safeguards designed to: (a) ensure the security and confidentiality of data and information provided by Authority or its customers or used in connection with providing services under this Agreement, including data or information about third parties ("Authority's Data"); (b) protect against any anticipated threats or hazards to the security or integrity of Authority's Data; (c) protect against unauthorized access to or use of Authority's Data; and (d) prevent the access or use of Authority's Data for any marketing or commercial purpose not expressly authorized pursuant to a written agreement between Consultant and Authority. Consultant shall review and test such safeguards on no less than an annual basis.

2. Network. If Consultant makes Authority's Data accessible through the Internet or other networked environment, Consultant shall be solely responsible for all aspects of Internet use, and shall maintain, in connection with the operation or use of Authority's Data, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorization, authentication and non-repudiation and virus detection and eradication.

3. Personal Data. If Consultant processes or otherwise has access to any personal or customer data or information on Authority's behalf when performing Consultant's services and obligations under this Agreement, then: (a) Authority shall be the data controller (where "data controller" means an entity which alone or jointly with others determines purposes for which and the manner in which any personal data are, or are to be, processed) and Consultant shall be a data processor (where "data processor" means an entity which processes the data only on behalf of the data controller and not for any purposes of its own); (b) Authority shall ensure that it has obtained all necessary consents and it is entitled to transfer the relevant personal or customer data or information to Consultant so that Consultant may lawfully use, process and transfer the personal or customer data and information in accordance with this Agreement on Authority's behalf in order for Consultant to provide the services and perform its other obligations under this Agreement; (c) Consultant shall process all personal and customer data and information only in accordance with any lawful and reasonable instructions given by Authority from time to time and in accordance with the terms of this Agreement; and (d) each Party shall take appropriate technical and organizational measures against unauthorized or unlawful processing of personal and customer data and information or its accidental loss, destruction or damage so that, having regard to the state of technological development and the cost of implementing any measures, the measures taken ensure a level of security appropriate to the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction or damage in relation to all personal and customer data and information and the nature of the data and information being protected. If necessary, the Parties will cooperate to document these measures taken.

4. Information Security. Consultant represents and warrants that its collection, access, use, storage, disposal and disclosure of Confidential Information accessed and/or collected from Authority or its customers does and will comply with all applicable federal and state privacy, utility customer and data protection laws, including, but not limited to,

CPUC General Order 66-D, Decision (D.) 17-09-024, Public Utilities Code Section 8380 and associated CPUC decisions D.11-07-056 and D.12-08-045, the Critical Infrastructure Information Act of 2002, and 18 CFR § 388.113. In the event of any security breach, Consultant shall: (a) Provide Authority with the name and contact information for an employee who shall serve as Authority's primary security contact and shall be available to assist Authority twenty-four (24) hours per day, seven (7) days per week as a contact in resolving obligations associated with a security breach; and (b) Notify Authority of a security breach as soon as possible but in no case longer than 48 hours after Consultant becomes aware of it so that notice can be timely provided to Authority customers as required by law, and so that Authority can investigate and provide timely notice to its insurance carrier, if appropriate. Immediately following Consultant's notification to Authority of a security breach, the Parties shall coordinate with each other to investigate the security breach. Consultant agrees to fully cooperate with Authority in Authority's handling of the matter. Consultant shall use best efforts to immediately remedy any security breach and prevent any further security breach at Consultant's own expense in accordance with applicable privacy rights, laws, regulations and standards. Consultant agrees to provide, at its expense, up to one year of credit monitoring services to third parties impacted by any data breach involving the loss of personally identifiable information and be responsible for any fines assessed by any regulatory agency as a result of Consultant's acts or omissions.

C. Notice and Remedy of Breaches. Each Party shall promptly give notice to the other of any actual or suspected breach by it of any of the provisions of Section 16 of this Agreement, whether or not intentional, and the breaching Party shall, at its expense, take all steps reasonably requested by the other Party to prevent or remedy the breach.

D. Enforcement. Each Party acknowledges that any breach of any of the provisions of Section 16 of this Agreement may result in irreparable injury to the other for which money damages would not adequately compensate. If there is a breach, then the injured Party shall be entitled, in addition to all other rights and remedies which it may have, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all persons involved from continuing the breach.

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:
Clean Energy Alliance
Chief Executive Officer
5857 Owens Ave, 3rd Floor
Carlsbad, CA 92008

TO CONSULTANT:
Doug Bird, Partner
Chapman and Cutler LLP
1270 Avenue of the Americas
New York, NY 10020

19. **TERMINATION**

A. In the event Consultant fails or refuses to perform any of the provisions hereof at the time or 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 (which shall be not less than 10 days) 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, Authority may terminate the Agreement by giving Consultant written notice thereof, which shall be effective immediately. Authority also shall 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 and within five (5) working days: (1) assemble all documents owned by Authority and in Consultant's possession, and deliver said documents to Authority; and (2) place all work in progress in a safe and protected condition.

B. This Agreement may be terminated by either Party, without cause, upon the giving of thirty (30) days' written notice to the other Party.

C. Authority shall pay Consultant for services satisfactorily performed up to the effective date of termination. 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 is the property of Authority pursuant to Section 14 hereof.

20. **COMPLIANCE**

Consultant shall comply with all applicable local, state and federal laws, now existing or hereafter amended or enacted.

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 related to this Agreement shall be filed with the Superior Court of the County of San Diego, State of California. Consultant hereby waives any and all objections to personal jurisdiction and venue in said forum.

22. **ADVERTISEMENT**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, 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. **DRAFTING AMBIGUITIES**

The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

26. **INSERTED PROVISIONS**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be incorporated 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.

28. **CONSEQUENTIAL DAMAGES**

Neither Party shall be liable to the other for consequential damages, including, without limitation, loss of use or loss of profits, incurred by one another or their subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of either of them.

29. **SEVERABILITY**

In the event that any part of this Agreement is found to be illegal or unenforceable under the law as it is now or hereafter in effect, either Party will be excused from performance of such portion or portions of this Agreement that is found to be illegal or unenforceable without affecting the remaining provisions of this Agreement.

30. **COUNTERPARTS/ELECTRONIC SIGNATURES**

This Agreement may be executed electronically and in any number of counterpart, which together shall constitute one and the same agreement. A true and correct electronic copy of this Agreement may be used for all purposes as an original.

31. RESERVED.

32. **SIGNATORY AUTHORITY**

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

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

CHAPMAN AND CUTLER LLP	CLEAN ENERGY ALLIANCE
By: ___________________________	By: _____________________________
Name: Doug Bird	Name: Gregory Wade
Title: Partner	Title: Chief Executive Officer

APPROVED AS TO FORM:

____
Counsel for Authority

ATTEST:

____
Authority Clerk

<u>Exhibit A</u>
<u>Scope of Services</u>

Consultant shall perform the following services for the Authority:

Task 1:

Consultant will perform legal services on behalf of CEA relating to a renewable energy prepayment transaction (the "Transaction"), including, as applicable, reviewing and commenting on documents and filings relating to the Transaction, reviewing and commenting on board presentations and approvals, drafting, reviewing and negotiating applicable agreements, certificates and legal opinions, and disclosure counsel services to CEA in connection with the marketing of the bonds to be issued to finance the Transaction.

Task 2:
Additionally, if required by the underwriter, Consultant will prepare the "forepart" of the Preliminary Official Statement and the final Official Statement and will coordinate the printing and distribution to investors for an additional fixed fee as set forth in Exhibit C,

Team Members:
Doug Bird, Partner
Jim Burr, Partner
Jacquelyn Cerasuolo, Partner
Helen Pennock, Senior Counsel
Brendan Radke, Senior Counsel
Other personnel to be assigned as necessary

Exhibit B
Schedule of Performance

Consultant shall diligently perform the services in accordance with any timelines set by the Authority.

Exhibit C
Compensation

In full compensation for the services provided under Exhibit A, Task 1, Consultant will provide the Authority with Prepay and Disclosure Counsel services and Authority will pay to Consultant a fixed contingent fee for the energy prepayment transaction work in the amount of $225,000. This is a flat contingent transaction fee to serve as Prepay and Disclosure Counsel on any energy prepayment transaction and shall not be earned until the successful closing of such a transaction.

In full compensation for the services provided under Exhibit A, Task 2, if required by the underwriter, Consultant will prepare the "forepart" of the Preliminary Official Statement and the final Official Statement and will coordinate the printing and distribution to investors for an additional fixed fee of $75,000. This is a flat contingent transaction fee to perform the services under Task 2 on any energy prepayment transaction and shall not be earned until the successful closing of such a transaction.

There are no reimbursable expenses under this Agreement. The total compensation under this Agreement shall not-to-exceed $300,000 and is entirely contingent upon and to be paid from the proceeds of a successful prepay bond transaction,

Exhibit D
Insurance Requirements and Proof of Insurance

Proof of insurance coverage described below is attached to this Exhibit, with Authority and its members and their respective officials, officers, employees, agents and volunteers 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 and providing, at minimum, $1,000,000.00 employers' liability coverage.

(2) **Liability**:
Commercial general liability ("CGL") coverage with minimum limits of $2,000,000 per occurrence and $4,000,000 aggregate for bodily injury and property damage, including ongoing and completed operations. ISO occurrence Form CG 0001 or equivalent is required. If limits apply separately to this Agreement (CG 25 03 or 25 04), the general aggregate limit shall not apply. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy. If Consultant or subcontractor maintains higher limits than the limits shown above, Authority shall be entitled to coverage for the higher limits maintained by the Consultant and their subcontractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Authority. Any excess or umbrella policies being used to meet the required limits of insurance will be evaluated separately and must meet the same qualifications as the Consultant's primary policy.

(3) **Automotive**:
Commercial Automobile Liability Insurance for all of the Consultant's automobiles including owned, hired and non-owned automobiles, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit no less than $1,000,000.00 per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).

(4) **Professional Liability**
Professional liability insurance that includes coverage for the professional acts, errors and omissions of Consultant in the amount of at least $1,000,000 per claim and $2,000,000 annual aggregate. Consultant shall ensure both that (1) the policy retroactive date is on or before the date of commencement of the services; and (2) the policy will be maintained in force for a period of three years after substantial

completion of the services or termination of this Agreement, whichever occurs last. Consultant agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase Authority's exposure to loss. All defense costs shall be outside the limits of the policy. If Consultant maintains higher limits than the limits shown above, Authority shall be entitled to coverage for the higher limits maintained by Consultant. Any available proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Authority. Consultant represents that it presently carries professional liability insurance in a minimum amount of $50 million per claim and an aggregate amount greater than $100 million, issued under an annual claims-made policy from Attorneys Liability Assurance Society, Inc. ("ALAS"). In the event the Consultant is no longer insured by ALAS during the term of this Agreement, Consultant will secure professional liability insurance from a company or companies with a rating not less than that maintained by ALAS. The ALAS policy provides for an extended reporting period of 12 months upon a cancellation by ALAS.

(5) **Cyber Liability**

Consultant maintain Cyber Liability with a limit of $2,000,000 per occurrence or claim and $2,000,000 annual aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Consultant in this Agreement and shall include claims involving infringement of intellectual property, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to such obligations. All defense costs shall be outside the limits of the policy.

CLEAN ENERGY ALLIANCE

Staff Report

DATE: July 30, 2026

TO: Clean Energy Alliance Board of Directors

FROM: Greg Wade, Chief Executive Officer

ITEM 5: Clean Energy Alliance Chief Executive Officer Operational and Administrative Report

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RECOMMENDATION:

Receive and File the Chief Executive Officer (CEO) Operational and Administrative Report.

BACKGROUND AND DISCUSSION:

This report provides an update to the Clean Energy Alliance (CEA) Board of Directors (Board) regarding operational and administrative activity.

OPERATIONAL UPDATE

Rate Relief Credit Update

On January 29, 2026, the CEA Board approved a temporary Rate Relief Credit designed to achieve rate parity between CEA's Clean Impact power product and SDG&E's bundled customers, mitigating the impacts of the Power Charge Indifference Adjustment (PCIA) rates that went into effect on January 1, 2026.

The following table reflects customer opt-downs to our Clean Impact product since February 1, 2026, when the Rate Relief Credit went into effect. As of July 10, 2026, CEA has a total of 216 customer accounts that have opted down.

Member City	Commercial	Residential	Total
Carlsbad		54	54
Del Mar		3	3
Escondido	1	34	35
Oceanside	1	67	68
San Marcos	1	23	24
Solana Beach		2	2
Vista	1	29	30
TOTAL	**4**	**212**	**216**

Since its adoption by the CEA Board, the Rate Relief Credit has been adjusted for specific rate classes in response to rate and PCIA changes made by SDG&E since February 1, 2026. These adjustments have been made so that the intended impact of this CEA credit – to provide CEA's Clean Impact customers the ability to realize monthly average bills that are the same or better than SDG&E's bundled customers – can be achieved and maintained.

CEA in the Community

To provide opportunities for the customers and communities we serve to meet with CEA staff and have their questions answered, staff continues to attend many in-person community events, organize and hold community workshops and give presentations. CEA has been busy with many of these scheduled outreach efforts. Recent events and presentations that CEA participated in:

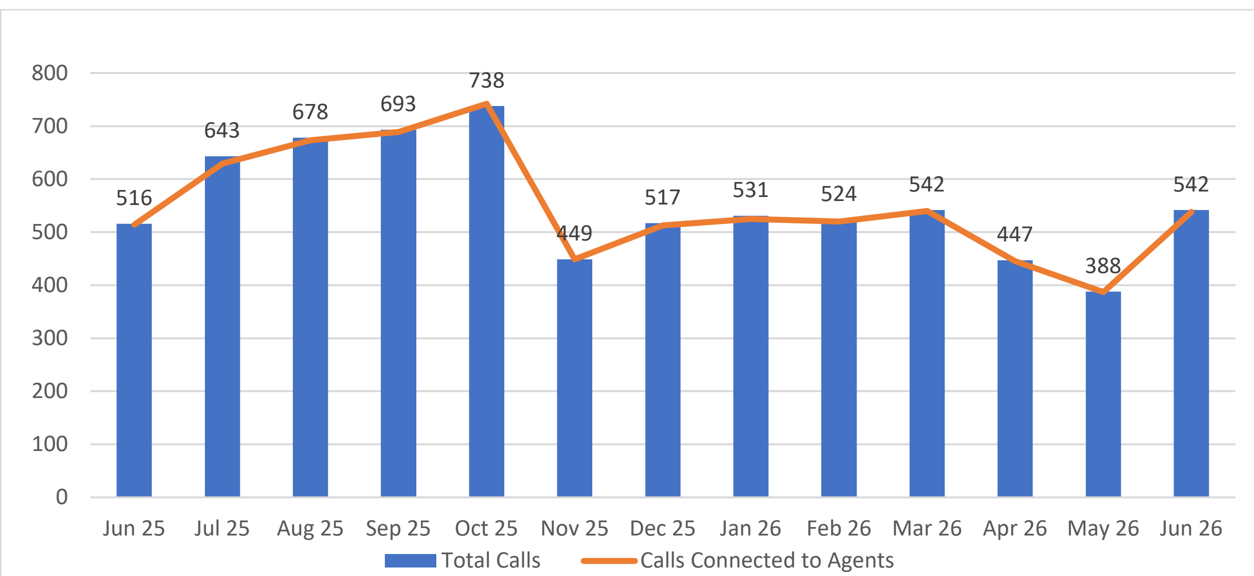
DATE	DESCRIPTION	CITY
June 18, 2026	San Onofre Nuclear Power Plant Tour	Pendleton
June 20, 2026	NSDC NAACP Juneteenth Festival	Oceanside
June 20, 2026	AD 76 Family Palooza	Escondido
June 23, 2026	City of San Marcos Proclamation	San Marcos
July 25, 2026	Carlsbad Food and Wine Festival	Carlsbad

Upcoming events in which CEA will be participating include:

DATE	DESCRIPTION	CITY
August 4, 2026	National Night Out	Oceanside
August 5, 2026	City of Escondido City Council Presentation	Escondido
August 8, 2026	Flapjacks for Backpacks	San Marcos
August 11, 2026	City of Vista City Council Presentation with Luminia	Vista

Call Center Activity and Participation Statistics

The following chart reflects customer activity through July 1, 2026.



Call volumes to CEA's Call Center increased 39% from May 2026 to June 2026. The most common call topics for all customers (commercial and residential) were related to billing inquiries, Net Energy

Metering, and general information. It is not unusual to see an increase in customer calls when we move from winter to summer rates from May to June as energy usage and the cost for that energy increases.

The total number of calls received, response times, and call duration through July 1, 2026, were as follows:

Call Center Monthly Summary – June 2026					
Stats by Month	**June**	**May**	**Apr**	**Mar**	**Total**
Total Calls	542	388	447	542	36,821
Total Calls Connected to Agents	538	387	445	540	36,162
Average Seconds to Answer	0:00:06	0:00:04	0:00:08	0:00:04	
Average Call Duration	0:10:04	0:09:40	0:09:35	0:09:18	

The following table reflects enrollments in CEA's power supply products by city. As of July 1, 2026, CEA has a total of 257,291 enrolled customer accounts as follows:

Member City	Eligible Accounts	Clean Impact – 50% Renewable	Clean Impact Plus - 75% Carbon Free	Green Impact – 100% Renewable	Participation Rate
Carlsbad	55367	219	49486	660	91%
Del Mar	3032	10	2762	72	94%
Escondido	57347	187	53530	68	94%
Oceanside	74875	267	69438	105	93%
San Marcos	38212	140	35479	71	93%
Solana Beach	8012	19	7164	165	92%
Vista	39582	113	36992	344	95%
TOTAL	**276427**	**955**	**254851**	**1485**	**93%**

Solar Plus and Battery Bonus Updates are no longer in the CEO Report, they are now under the Programs Report.

SONGS & UCSD Microgrid Tours

On June 18, 2025, a group of CEA staff, Board Members, Community Advisory Committee Members, and member agency staff toured the San Onofre Nuclear Generating Station (SONGS). The tour provided an overview of nuclear power generation, general reactor operations, and the ongoing dismantling process, scheduled for completion in 2032. Constructed in the 1980s, the station once supplied electricity to approximately 1 million homes before its closure in 2013. The tour also provided insight into the ratepayer-funded decommissioning process, environmental considerations, and the future of nuclear energy, while offering a valuable opportunity to learn about California's evolving energy infrastructure.

On June 26, 2026, Programs Specialist Natalie Aguilar attended the Association of Women in Water, Energy, and the Environment (AWEE) UC San Diego Energy Campus & Microgrid Tour, where she learned about the UC San Diego's energy systems, decarbonization efforts, and innovative microgrid technologies. The tour highlighted UC San Diego's Central Utility Plant, and UCSD's 90% reduction goal in Scope 1 Emissions by 2045. The event concluded with a networking lunch that provided valuable opportunities to connect with energy professionals and deepen her understanding of the San Diego region's evolving energy landscape.

California Climate and Energy Collaborative (CCEC) Conference

On June 24-25, 2026, Programs Analysts Jacqueline Berg and Karen Villaseñor attended the 17th Annual California Climate and Energy Collaborative Forum (CCEC). The Forum brought together local government staff, elected officials and community-based organizations to share best practices and learn from each other's efforts to advance equitable climate change and energy initiatives. The event featured a variety of sessions relevant to CEA's work, including *Implementing Equitable Capacity Management Strategies for All-Electric Multifamily Housing*, *Making Electrification Work in Manufactured Housing* and *Designing Direct-to-Renter Energy Programs*. Several member agency representatives attended the forum, providing valuable opportunities for staff to connect with member agency staff.

CPUC Strengthens Extreme Heat Utility Disconnection Protections

On July 16, the California Public Utilities Commission (CPUC) unanimously adopted Resolution E-5468, strengthening customer protections against utility disconnections during extreme heat events. The Commission rejected the utilities' proposal to suspend disconnections only at CalHeatScore (CHS) Level 3 and instead required protections to begin at Level 2, when elevated heat-related health risks emerge. The resolution also lowers the backup temperature threshold for suspending residential disconnections from 100°F to 90°F until the CHS system is fully operational. The new requirements apply to PG&E, SCE, SDG&E, and SoCalGas and are intended to provide broader protections for customers during dangerous heat conditions.

Contracts $50,000 - $100,000 entered into by Chief Executive Officer

VENDOR	DESCRIPTION	AMOUNT
None.		

<u>FISCAL IMPACT</u>:

There is no fiscal impact with this action.

Submitted for Board consideration:

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Gregory Wade
Chief Executive Officer

<u>ATTACHMENTS</u>: None.

CLEAN ENERGY ALLIANCE

Staff Report

DATE: July 30, 2026

TO: Clean Energy Alliance Board of Directors

FROM: Kaitlin McGee, Senior Key Accounts/Program Manager

ITEM 6: Clean Energy Alliance Programs Report

RECOMMENDATION:

Receive and File the Programs Report.

BACKGROUND AND DISCUSSION:

This report provides an update to the Clean Energy Alliance (CEA) Board of Directors (Board) regarding the following CEA Energy Programs Plan pillars: Clean Energy Supply and Grid Resilience, Building Electrification and Energy Efficiency, Transportation Electrification, and Local Workforce and Community Education.

This report provides overall program status and updates.

Program Pillar 1: Clean Energy Supply & Grid Resilience

Solar Plus and Battery Bonus Metrics

In the following chart, "Active" means a customer's application is in progress, and "Complete" means a customer's system has been installed and has received Permission to Operate (PTO). The Month-over-Month Change notes whether there has been an increase or decrease since the last report to the Board.

Member City	Solar Plus		Solar Plus Connect		Battery Bonus		Battery Bonus Connect	
Status	Active	Complete	Active	Complete	Active	Complete	Active	Complete
Carlsbad	2	3	3	0	0	3	3	7
Del Mar	0	0	1	0	0	0	1	0
Escondido	5	5	13	0	0	0	3	9
Oceanside	3	5	6	0	0	0	3	11
San Marcos	4	4	3	0	0	1	2	6
Solana Beach	0	1	1	0	0	0	1	1
Vista	4	2	7	0	2	1	3	10
TOTAL	**18**	**20**	**34**	**0**	**2**	**5**	**16**	**44**
MoM CHANGE	**-12**	**+8**	**0**	**0**	**0**	**+1**	**-2**	**+2**

Solar Plus

Status: As of July 1, 2026, Solar Plus has 18 active applicants and 20 participants with fully installed systems that have received Permission to Operate (PTO) from San Diego Gas & Electric. Since the June 2026 Board meeting, eight customer systems have received PTO under the program.

Next Steps: CEA will continue ongoing coordination with Participate.Energy to support overall program implementation.

Solar Plus Business

Status: Luminia and CEA's preliminary conversations about Solar Plus Business are underway with prospective applicants interested in the program. Notably, Luminia and CEA will present the program to the City of Vista at its August 11, 2026 City Council Meeting.

Next Steps: CEA will continue ongoing coordination with Luminia to support overall implementation.

Battery Bonus

Status: As of July 1, 2026, Battery Bonus has two active applicants and five participants with fully installed systems that have received PTO. Since the June 2026 Board meeting, one customer's system has received PTO under the program.

Next Steps: CEA will continue ongoing coordination with Participate.Energy to support overall program implementation.

Solar Plus Connect

Status: The Solar Plus Connect program currently has 34 active applicants with systems pending installation. With Self-Generation Incentive Program (SGIP) funding nearly exhausted, staff does not anticipate the application numbers to change from the current number.

Next Steps: Participate.Energy is working to address recently updated California Public Utilities Commission (CPUC) SGIP requirements before proceeding with system installations.

Battery Bonus Connect

Status: The Battery Bonus Connect program has 44 participants with installed systems that have received PTO and 16 systems pending installation. With SGIP funding nearly exhausted, staff does not anticipate the application numbers to change from the current number.

Next Steps: Haven anticipates completing the 16 pending installations in the next several weeks.

SGIP Funding

SGIP funding for Solar Plus Connect and Battery Bonus Connect totals $970,490 and $1,131,996 respectively, in either approved or submitted funding. SGIP funding applied to Connect program customers may fluctuate as applications are reviewed, adjusted and approved. A breakdown of SGIP funding by Member City is provided in the following table.

Member City	Solar Plus Connect	Battery Bonus Connect
Carlsbad	$85,120	$178,200
Del Mar	$26,032	$0
Escondido	$398,748	$237,600
Oceanside	$180,315	$246,599
San Marcos	$89,877	$158,400
Solana Beach	$25,426	$39,600
Vista	$164,972	$271,596
TOTAL	**$970,490**	**$1,131,996**

Peak Smart Savers

Updates: As of July 10, 2026, the PeakSmart Savers program has 58 active participants. Since the program's launch, CEA has enrolled an average of approximately four customers per month. The highest number of enrollments occurred in November and December of 2025, primarily due to the end of the bill protection eligibility period, which was set to end at the end of 2025 and was later extended to the end of 2026. To date, no PeakSmart Days have been called in 2026. PeakSmart enrollment by member city is as follows:

Member City	PeakSmart Savers Participants
Carlsbad	13
Del Mar	1
Escondido	9
Oceanside	17
San Marcos	3
Solana Beach	0
Vista	15
TOTAL	**58**
MoM Change	**+3**

Next Steps: Staff are preparing for anticipated PeakSmart event days during high energy demand days during the 2026 summer season.

Program Pillar 2: Building Electrification and Energy Efficiency

Equitable Building Decarbonization (EBD)

Status: The California Energy Commission's Equitable Building Decarbonization (EBD) Direct Install Program is open for single family homes and multi-family homes. Income-qualified owners and renters may apply to receive no-cost upgrades, which may include home weatherization and air sealing, heat pump water heaters, heat pump heating and cooling systems, electric laundry appliances, induction cooktops, low voltage lighting, low-flow showerheads and other electrification improvements.

Within CEA's service area, four member agencies are designated as Initial Community Focus Areas (ICFAs): Escondido, Oceanside, San Marcos and Vista. Through a grant from the County of Los Angeles, which serves as the Southern California EBD program administrator, CEA is participating as an EBD Community Partner. In this role, CEA is responsible for outreach and assisting eligible residents with enrollment.

Staff have been meeting with community organizations, member agency staff, and neighborhood groups to share information, flyers, and provide support in the EBD program.

Next Steps: Staff will continue to meet with community organizations to share information regarding the EBD Program and continue outreach at in-person events during the month of August 2026.

Distributed Energy Resources Management System (DERMS)

Status: Staff are currently researching the process of procuring and implementing a DERMS platform. Staff will be investigating other CCAs that have stood up DERMS platforms to identify best practices and lessons learned. After the information gathering is complete, Staff intends to draft a Request for Proposals (RFP) to solicit a DERMS platform provider.

On July 9, 2026, Staff presented to the Community Advisory Committee a presentation on New DER Technologies and their Integration. The DERMS platform could centralize the deployment of smart devices installed as part of the EBD and SDREN offerings, and systems installed under the Solar Plus and Battery Bonus programs.

Next Steps: As part of the Load Flexibility + Virtual Power Plant Program Initiative, the timing for this project is Mid-Term under the Energy Programs Plan. As a Mid-Term Initiative, program implementation is expected for 2028.

Program Pillar 3: Transportation Electrification

Status: Staff is currently researching other CCA programs to use as models for Program Initiatives under Pillar 3: Transportation Electrification including; EV Charger Rebate, Multi-Unit Dwelling (MUD) Charging, EV Managed Charging and Virtual Power Plant, and Municipal & Fleet Electrification Partnerships.

Next Steps: Staff will continue to research other CCA programs. Under the Energy Programs Plan, the EV Charger Rebate, and the EV Managed Charging and Virtual Power Plant Program Initiatives are both Mid-Term programs, with expected implementation in 2028.

Program Pillar 4: Local Workforce and Community Education

Energy Literacy and Education

Status:

On May 21, 2026, CEA hosted the Understanding Your Bill Webinars via Zoom in both English and Spanish. The webinars provided an overview of electric rates, a review of how customers can find and read their electric bill, bill assistance and discount options, and CEA program offerings. The English webinar had 33 attendees while the Spanish version had 4. The overall registration had a similar ratio with 93 English webinar registrations and 7 Spanish webinar registrations.

The webinar recordings are now available on YouTube:

English: https://youtu.be/FUrFiCapH20?si=P7zMw7k01pMQ0LmU

Spanish: https://youtu.be/M4A_xFOY4aI?si=55NvJnyowyBr3UA3

Next Steps: Staff continue to share the webinar recordings as a resource for CEA customers. Staff will continue the implementation of the Energy Literacy and Education program initiative on an ongoing basis.

San Diego Regional Energy Network (SDREN) Programs

Status:

The San Diego Regional Energy Network (SDREN) is a regional energy-efficiency network administered by San Diego Community Power in partnership with the County of San Diego. SDREN was approved by the California Public Utilities Commission (CPUC) on August 1, 2024. SDREN is funded by ratepayers through the existing Public Purchase Program Surcharge on utility customer bills and has an approved budget of $124 million to administer 10 energy efficiency programs for 2024 through 2027. The program targets undeserved and hard-to-reach residents, businesses, public agencies, and tribal governments across San Diego County.

As of July 10, 2026, SDREN has launched or is preparing to launch programs in the following categories: Residential, Workforce Development, Commercial, Public Agencies, Codes & Standards, and Tribal Governments. Programs currently open for enrollment include: Energy Code Coach, Spark Your Education, Spark Your Career, and Public Sector Energy Upgrade with more to be launched in 2026. More information can be found on the SDREN website at sdren.org.

CEA staff meet on a monthly basis with SDREN staff to stay-up-to date on SDREN programs and share updates on CEA programs.

Next Steps:

CEA staff continue to meet with SDREN staff to stay up-to date on SDREN, and program updates.

FISCAL IMPACT:

There is no fiscal impact with this action.

Submitted for Board consideration:

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Gregory Wade
Chief Executive Officer

ATTACHMENTS: None.

CLEAN ENERGY ALLIANCE

Staff Report

DATE: July 30, 2026

TO: Clean Energy Alliance Board of Directors

FROM: Greg Wade, Chief Executive Officer

ITEM 7: Risk Oversight Committee Report

RECOMMENDATION:

Receive and file the Risk Oversight Committee Report.

BACKGROUND AND DISCUSSION:

CEA's Energy Risk Management Policy (ERMP) established a Risk Oversight Committee (ROC) which meets quarterly and ensures CEA is adequately implementing and complying with that ERMP. Chair Melendez and Vice Chair Garcia are currently appointed as Board Members who participate in the ROC. The ROC is made up of the following staff, Board representatives, and General Counsel who provide collective oversight along with the support of energy, financial, and legal expertise:

- Katie Melendez, Board Chair
- Christian Garcia, Board Vice Chair
- Greg Wade, CEO
- Andy Stern, CFO
- Johanna Canlas, General Counsel and/or Elizabeth Mitchell, Assistant General Counsel
- Dan Peckham, Senior Power Procurement Manager
- *CEA Financial and Power Supply Team staff attend ROC Meetings as well to provide supporting materials and background context, as appropriate*

This Staff Report, and complementing presentation provided to the Board, provide an update on recent ROC meetings and deliberations, as required by the ERMP. CEA's ROC meets quarterly, with meetings on March 5th and June 16th. The next meeting is scheduled for September 3rd.

Standing topics for these meetings include:

1. A market update on energy price trends (wholesale power, Resource Adequacy (RA), and renewable and carbon free energy);
2. A summary of CEA's current contracts and open positions for the coming years against compliance obligations and internal metrics and targets; and
3. A summary of recent procurement activity and performance of existing contracts. For the March meeting, the ROC also discussed the status of opt-downs under CEA's Rate Relief Credit offering and staff provided a progress update on the ongoing prepay bond workstream.

As its core agenda topics, the ROC's discussions on energy market trends and open positions over the past two meetings have involved discussions of ongoing decreases in market pricing after high marks in 2023-

2024 and confirming that CEA has continued to meet its monthly and forward-looking hedge targets while limiting open position exposure across a variety of energy products (wholesale power, renewable and carbon free energy, and Resource Adequacy).

FISCAL IMPACT:

There is no fiscal impact associated with this action.

Submitted for Board consideration:

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Gregory Wade
Chief Executive Officer

ATTACHMENTS: None.

CLEAN ENERGY ALLIANCE

Staff Report

DATE: July 30, 2026

TO: Clean Energy Alliance Board of Directors

FROM: Gregory Wade, Chief Executive Officer

ITEM 8: Consider Adoption of Resolution No. 2026-037 Amending the Clean Energy Alliance Rate Schedule to Update the Wholesale Market Access Tariff Rate Effective August 1, 2026

RECOMMENDATION:

That the Clean Energy Alliance (CEA) Board of Directors (Board):

1) Conduct the Public Hearing: Open the Public Hearing, Receive Public Testimony, and close the Public Hearing.
2) Consider adoption of Resolution No. 2026-037 Amending CEA Rate Schedule to update the Wholesale Market Access Tariff Rate to $0.10000 per kWh effective August 1, 2026.

BACKGROUND AND DISCUSSION:

At its October 26, 2023 regular Board meeting, the CEA Board approved the Wholesale Market Access Tariff (WMAT) Program and Terms and Conditions. The WMAT Terms and Conditions established the methodology for calculating the WMAT rate and specified the rate would be adopted at a scheduled public hearing.

At its November 20, 2025 regular Board Meeting, the Board adopted Resolution No. 2025-045 that amended the WMAT rate to $0.117590 per kWh effective January 1, 2026. The action before the Board for consideration is to amend the rate effective August 1, 2026. A rate reduction is recommended to appropriately account for the net results of the WMAT portfolio from calendar year 2025, consistent with the WMAT Terms and Conditions. Based on current assumptions for the WMAT portfolio, staff is recommending decreasing the WMAT rate from $0.11759 to $0.10000 per kWh effective August 1, 2026.

Notice of this public hearing was published in the San Diego Union Tribune on Friday July 17 and July 24, 2026.

FISCAL IMPACT

The WMAT Rate as proposed provides sufficient revenue to cover, but not exceed, costs as currently estimated and to fund the proportionate share of CEA administration costs and reserves associated with the WMAT.

Submitted for Board consideration:

____

Gregory Wade
Chief Executive Officer

ATTACHMENTS:

A. Resolution No. 2026-037 Amending CEA Rate Schedule to Update the WMAT Tariff
B. Public Hearing Notice

CLEAN ENERGY ALLIANCE
RESOLUTION NO. 2026-037

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CLEAN ENERGY ALLIANCE AMENDING RATE SCHEDULE UPDATING THE WHOLESALE MARKET ACCESS TARIFF RATE EFFECTIVE AUGUST 1, 2026

WHEREAS, the Clean Energy Alliance (CEA) is a joint powers agency formed on November 4, 2019, under the Joint Exercise of Power Act, California Government Code section 6500 *et seq*.,

WHEREAS, Section 4.6 of the Joint Powers Authority (JPA) Agreement establishes the specific responsibility of the CEA Board of Directors to adopt retail rates for power; and

WHEREAS, at its November 20, 2025 Regular Board Meeting, the CEA Board adopted Resolution No. 2025-045 amending the WMAT Rate effective January 1, 2026; and

WHEREAS, the WMAT rate is to be reviewed periodically through the year and if appropriate, updated, to ensure sufficient funds are collected to cover the costs of the portfolio without a material overcollection; and

WHEREAS, the WMAT Terms and Conditions establishes the methodology for calculating the WMAT rate; and

WHEREAS, the updated WMAT Rate was calculated using the approved methodology to generate sufficient revenue to cover the costs of serving WMAT customers;

WHEREAS, a Public Hearing Notice for the proposed rate update was published in the San Diego Union Tribune on July 17 and July 24, 2026 and posted on July 17, 2026; and

WHEREAS, the public hearing was held at the regular meeting of the Board of Directors of the Clean Energy Alliance and all information and public comment if any were duly heard and considered.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Clean Energy Alliance, as follows:

Section 1. The Board of Directors of the Clean Energy Alliance hereby adopts and approves the updated WMAT Rate at $.10000 per kWh.

Section 2. Such rate is to be effective August 1, 2026.

The foregoing Resolution was passed and adopted this 30th day of July 2026, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

____
Katie Melendez, Board Chair

ATTEST:

____
Ana Marie Alarcon, Clerk to the Board

PUBLIC HEARING NOTICE
CLEAN ENERGY ALLIANCE

The Board of Directors of Clean Energy Alliance (CEA) will conduct a public hearing to consider adopting a resolution amending the Wholesale Market Access Tariff (WMAT) rate effective August 1, 2026.

As proposed, the WMAT rates will be reduced from $0.11759 to $0.10000 per kWh to realign with future projected load sales.

DATE OF HEARING:	Thursday, July 30, 2026
TIME OF HEARING:	2:00 p.m. or as soon thereafter as the matter may be heard
PLACE OF HEARING:	Leucadia Wastewater District, Boardroom 1960 La Costa Avenue Carlsbad, CA 92009

All interested persons are invited to attend the meeting and comment on adopting a Resolution Amending Rates for Channelside. Members of the public unable to attend the public hearing may submit their comments and recommendations in writing to CEA, via email to clerk@thecleanenergyalliance.org, which must be received no later than 12:00pm on Thursday, July 30, 2026 to ensure consideration by the Board.

Ana Marie Alarcon — DATED: July 17, 2026

Ana Marie Alarcon, CMC
Clerk to the Board

Published:	Friday July 17, 2026 Friday July 24, 2026	Published: San Diego Union Tribune
Posted:	Friday July 17, 2026	Leucadia Wastewater District, Boardroom

CLEAN ENERGY ALLIANCE

Staff Report

DATE: July 30, 2026

TO: Clean Energy Alliance Board of Directors

FROM: Greg Wade, Chief Executive Officer

ITEM 9: Receive Regulatory Update from Keyes & Fox

RECOMMENDATION:

Receive the Regulatory Update from Keyes & Fox.

BACKGROUND AND DISCUSSION:

Clean Energy Alliance (CEA) contracts with Keyes & Fox for regulatory advocacy activities. Each month, Keyes & Fox provides an update to the CEA Board on key items of interest. This month's update will provide an overview of SDG&E's application for withdrawal from Energy Efficiency (EE) programming, Energy Resource Recovery Account (ERRA) compliance—including SDG&E's compliance with Bundled Procurement Plan (BPP) requirements within the approved scope—and Resource Adequacy (RA) activities.

FISCAL IMPACT:

There is no fiscal impact from this action.

Submitted for Board consideration:

____

Gregory Wade
Chief Executive Officer

ATTACHMENTS:

A. Keyes & Fox July Regulatory Memo

KEYES&FOX LLP

Attachment A

EQ Research

Clean Energy Alliance

Regulatory Monitoring Report

To:	Clean Energy Alliance (CEA) Board of Directors
From:	Tim Lindl, Partner, Keyes & Fox LLP Jacob Schlesinger, Partner, Keyes & Fox LLP Jason Hoyle, Director of Research, EQ Research LLC
Subject:	Monthly Regulatory Memo
Date:	July 22, 2026

Keyes & Fox LLP and EQ Research LLC are pleased to provide CEA's Board of Directors with this informational memo describing recent developments in key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC). Additional information is available in CEA's Digest of Regulatory Updates.

SDG&E Phase 1 GRC (A.26-06-015)

- A July 7 Ruling consolidated SDG&E's Application into the SoCalGas proceeding (A.26-06-014). On July 8, a Ruling scheduled the prehearing conference for July 24. The SD CCAs (i.e., SDCP and CEA) filed a Protest on July 20 recommending the proceeding scope be expanded to include several additional issues. On July 21, SDG&E filed the Joint Prehearing Conference Statement identifying party positions on issues to be addressed in the proceeding.

SDG&E 2025 ERRA Compliance (A.26-06-001)

- On June 1, SDG&E filed its 2025 ERRA Compliance Application for January 1 through December 31, 2025. On June 29, protests were submitted by CalAdvocates and the Joint CCAs (i.e., San Diego Community Power and Clean Energy Alliance). The Joint CCAs' protest emphasized the importance of including in scope the review of SDG&E's compliance with its Bundled Procurement Plan (BPP) and an evaluation of whether SDG&E's resource adequacy (RA) sales activities complied with its BPP. Parties filed a July 13 Meet and Confer Report prior to the July 17 prehearing conference in which the Joint CCAs participated.

Resource Adequacy (R.25-10-003)

- On July 10, the CPUC issued D.26-07-008 adopting local capacity obligations for 2027-2029, flexible capacity obligations for 2027, and program refinements. The Final Decision also adopts an Unforced Capacity framework for implementation in the 2028 resource adequacy (RA) year. Modifications to the storage qualifying capacity methodology and the updated charging sufficiency value calculation for co-located energy-only resources will be effective beginning in the 2027 RA compliance year. As modified, Quarterly Compliance Reports must include additional information about Reliability Capacity and Imbalance Reserve products, among other information, beginning in the third quarter report in 2026. Finally, requirements for updated information to be shared in LSEs' year-ahead forecasts will be adopted on an interim basis beginning in the 2028 RA year. The Decision did not adopt any requirements for existing contracts. Finally, at or before the year-ahead forecast meet and confer process, the IOUs must provide CCAs and the CEC with information on customers expected to interconnect in a CCA's service area the following year.

Climate Credit (R.25-07-013)

- On June 29, the CPUC issued a Scoping Memo and Ruling providing direction on Phase 1B, which will address additional changes to the Climate Credit beyond the interim changes implemented earlier this year. Phase 1B will consider whether the Commission should change or establish guiding principles, goals, and/or objectives for the residential Climate Credit; whether the Commission should make changes to the residential gas and electric Climate Credit, including changes to credit eligibility, timing of distribution, number of annual distributions, and/or calculation methodology for Climate Credit amounts; whether there should be changes to

Climate Credit outreach; and followed by consideration of issues such as implementation time and costs of any changes to the credit, as well as environmental and social justice.

- The Ruling presented two volumetric tier-based Climate Credit concepts. The first, Baseline Usage Tier Approach, maintains a flat $/kWh credit amount but adjusts the number of credits a customer receives by assigning different multipliers for usage below baseline usage (1x), above baseline usage (2x), or above CARE baseline (3x) usage. The second approach, Climate Zone Tier Approach, also provides a flat-rate credit, but adjusts the number of credits a customer receives based on their climate zone, with all customers in the same climate zone receiving the same number of credits.

- As updated in a separate July 9 Ruling, opening comments on the Ruling are due July 24 and reply comments are due July 17. Party proposals for changes to the Climate Credit are due September 14. A proposed decision is expected as early as Q1 2027.

IRP/RCPPP (R.20-05-003)

- On June 23, the ALJ issued a Ruling requesting comments on an additional proposal for a Reliable and Clean Power Procurement Program (RCPPP). This new proposal does not replace the previous proposals, but it attempts to resolve some concerns expressed by parties with respect to the previous proposals. This Ruling's proposal would add a 5-year timeframe to the Preferred System Plan (PSP) used in IRP preparation and introduce reliance on the five-year timeframe for Load Serving Entity (LSE) procurement purposes as a binding requirement. Additionally, these requirements would be expressed in net qualifying capacity, similar to what is used for the current mid-term reliability procurement requirements. Under this proposal, when a PSP portfolio and/or Transmission Planning Process base case portfolio is adopted, each LSE would become responsible for procuring its proportional share of the new resources identified in the five-year timeframe, but each LSE would be permitted some flexibility in choosing its specific resources as long as the total Net Qualifying Capacity requirement was met and attribute or resource-type obligations were fulfilled. A July 13 Ruling extended the deadline for opening comments to August 14 and reply comments are due September 2.

Rule 17/18 Over-/Under-Billing Application (A.26-06-019)

- On June 22, the Joint IOUs submitted an Application requesting approval of a consensus proposal on how to address under- and over-collections resulting from the Rule 17/18 back-billing limitations to the on-bill charges of CCAs and ESPs, in compliance with Ordering Paragraph 37 of D.25-09-030. SDG&E's Rule 18 governs corrections of billing errors and related issues. SDG&E estimates $200,000 in incremental costs and about six months to modify its billing system to implement this proposal. According to SDG&E's Testimony, annual electric billing corrections where billing was reversed, corrected, and rebilled have remained less than 1% of total electric bills issued. Under the IOUs' proposal, each IOU will track and report under-collections of charges for the CCAs and ESPs in its territory, and each CCA/ESP will be responsible for rolling those amounts into their generation rates, and billing error data will be reported by the IOUs in their Phase 1 GRCs. Protests and responses to the Application are due July 29.

Low-Income Programs (A.26-01-003 consolidated)

- Opening briefs on definitional questions were filed on May 15 and reply briefs were filed on June 5. At issue in this portion of the proceeding is the interpretation and implementation of language in the Public Utilities Code relating to eligibility for CARE and FERA programs. Specifically, what should be included as income, how to determine household size, and participation in which other income-qualified programs should automatically make a customer eligible for CARE or FERA programs through a lower-burden process called categorical eligibility. There is disagreement between the IOUs and other parties about the extent to which flexibility is permitted for income and household size thresholds in determining which other programs confer categorical eligibility for participation in CARE and FERA. Parties, to varying degrees, support use of the more detailed definitions for income and household size provided in the existing Energy Savings Assistance program. A proposed decision on this portion of the proceeding is expected in Q2 2027.

CLEAN ENERGY ALLIANCE

Staff Report

DATE: July 30, 2026

TO: Clean Energy Alliance Board of Directors

FROM: Gregory Wade, Chief Executive Officer

ITEM 10: Consider Adoption of Resolution No. 2026-038 Awarding and Approving of 25-Year Energy Storage Service Agreement with GEM A-CAES LLC and Authorizing Execution of the ESSA

RECOMMENDATION:

That the Clean Energy Alliance (CEA) Board of Directors (Board) Adopt Resolution No. 2026-038 awarding and approving a 25-Year Energy Storage Service Agreement (ESSA) with GEM A-CAES LLC for CEA's 60MW portion of an advanced compressed air energy storage facility and authorizing the Chief Executive Officer (CEO) to execute the ESSA.

BACKGROUND AND DISCUSSION:

California Public Utilities Commission (CPUC) Decisions 21-06-035 and 23-02-040 (Decisions) required all load serving entities (LSEs), including community choice aggregators, to procure additional resources to ensure sufficient capacity is available for reliability as older non-renewable resources (Diablo Canyon, among others) are retired. These decisions are commonly and collectively referred to as a LSE's Midterm Reliability (MTR) requirement. Through the execution of its various long-term energy contracts, CEA has procured sufficient capacity to meet those previous MTR requirements. In February 2026, the CPUC approved Decision 26-02-057, which establishes additional procurement requirements LSEs must meet by 2032. This newest order requires:

- Statewide procurement of 6,000 MW of new clean energy and storage net qualifying capacity (NQC) between 2030 and 2032.
- At least 25% of the total capacity procured must be from Clean Firm Resources (non-weather-dependent, zero-emissions, 80%+ capacity factors) or Long Duration Energy Storage (LDES) – providing 8+ hours of discharge – by June 1, 2032; and
- Resource contracts must extend for a minimum term of ten (10) years.

CEA anticipates that its previously executed solar plus storage contracts have sufficient capacity above and beyond the earlier MTR order obligations to fulfill CEA's portion of the generic 4,500MW procurement requirement, leaving CEA's outstanding need for the latest procurement order as its share of the 1,500MW Clean Firm / LDES sub-category. Partially in response to the newest CPUC procurement order, CEA issued a solicitation in March 2026. The solicitation garnered responses from 25 developers, which included zero (0) offers for clean firm resources and fifteen (15) offers for LDES projects. Consistent with CEA's Bid Evaluation Criteria Policy, offers were further refined based on technology type and innovation value, price ($ Value), development risk, location, environmental / social / economic benefits, and procurement order eligibility to arrive at a shortlist.

Hydrostor, a LDES developer, proposed to CEA a 60MW slice of the 500MW Willow Rock project which is owned by their subsidiary ("GEM A-CAES LLC") and will provide 8 hours of energy storage capacity using advanced compressed air energy storage ("A-CAES") technology. To store potential energy, air is stored and compressed in large underground caverns that sit beneath a water reservoir. In response to dispatch signals, water is allowed to flood the cavern, causing the compressed air to spin turbines and generate electricity. The Willow Rock project addresses CEA's procurement obligations under the CPUC's latest procurement order, will contribute toward meeting CEA's Resource Adequacy (RA) obligations for the duration of the contract term, and will store excess solar energy during daytime hours to be utilized during higher demand / lower supply hours across the rest of the day. The term of the proposed agreement is for a period of twenty-five (25) years, starting when the project reaches commercial operations in June 2031.

The proposed ESSA is structured as a Resource Adequacy + Top-Bottom 4 Agreement ("RA+TB4"). Under a RA+TB4 agreement, the Seller remains the scheduling coordinator for the resource and passes on the associated charging/discharging energy value and RA attributes to the Buyer. CEA would receive 60MW of LDES RA capacity, plus an energy settlement associated with the top four (4) most economic discharging hours and the corresponding charging hours. Although Willow Rock is designed as an *8-hour* energy storage resource, Hydrostor has proposed structuring the ESSA as an RA+TB4 (rather than TB8) agreement to CEA and other contracted off-takers as a workable balance of contract price and energy value risk taken by Buyer and Seller. For LDES technology, an RA+TB4 structure helps balance cost and value by securing the project's core reliability and compliance benefits while preserving flexible dispatch rights that can be used to manage peak-load exposure, renewable integration, and grid-reliability needs.

Compared to the other proposals, the Willow Rock project was competitively priced and was one of the more derisked projects (i.e., it has progressed further through the development process and therefore more likely to achieve commercial operations) proposed in response to CEA's recent solicitation, while also providing differentiated innovation value for its unique technology. The project's high rankings in these categories in particular resulted in its shortlisting and the recommendation before the Board for contract award and approval. Willow Rock has a Conditional Loan Guarantee from the Department of Energy, which should support the project's financing and is representative of the development progress the project has already achieved. Additionally, the project expects to close financing by the end of 2026, and this near-term deadline provides CEA with more certainty around project viability.

Staff recommends the Board adopt the Resolution awarding an ESSA to GEM A-CAES LLC for CEA's 60MW portion of an advanced compressed air energy storage facility and authorizing the CEO to execute the ESSA.

FISCAL IMPACT:

There will be no cost to CEA associated with this Agreement until construction is completed, with the project having a guaranteed Commercial Operation Date (COD) of June 2031. Contract costs will be included in the financial pro-forma and starting with CEA's FY30/31 budget. The competitive energy pricing of the ESSA is confidential, but the long-term purchase of this capacity will provide CEA with energy settlement, RA, and compliance value over the term of the agreement at a competitive price.

Submitted for Board consideration:

____

Gregory Wade
Chief Executive Officer

ATTACHMENTS:

A. Resolution No. 2026-038, approving of 25-Year Energy Storage Service Agreement with GEM A-CAES LLC and Authorizing Execution of the ESSA
B. Redacted Energy Storage Service Agreement with GEM A-CAES LLC

CLEAN ENERGY ALLIANCE
RESOLUTION NO. 2026-038

A RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN ENERGY ALLIANCE AWARDING AND APPROVING A TWENTY-FIVE-YEAR ENERGY STORAGE SERVICES AGREEMENT ADEQUACY AGREEMENT WITH GEM A-CAES LLC AND AUTHORIZING EXECUTION OF THE AGREEMENT

WHEREAS, Clean Energy Alliance (CEA) is a joint powers authority established on November 4, 2019, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 *et seq*.); and

WHEREAS, The California Public Utilities Commission (CPUC)'s latest procurement order, approved in Decision 26-02-057, requires CEA to procure new Clean Firm and/or Long Duration Energy Storage (LDES) Resources; and

WHEREAS, CEA issued a solicitation in March 2026 and received responses which address its procurement requirements from the CPUC for Clean Firm / LDES; and

WHEREAS, consistent with CEA's Bid Evaluation Criteria Policy, offers were further refined based on technology type and innovation value, price ($ Value), development risk, location, environmental / social / economic benefits, and procurement order eligibility to arrive at a shortlist;

WHEREAS, a shortlisted project proposal from GEM A-CAES is for a 60 MW slice of an 8-hour advanced air compressed energy storage facility, capacity was received that would address CEA's procurement obligations under the CPUC's latest procurement order at a competitive price, contribute toward meeting CEA's Resource Adequacy (RA) obligations for the duration of the contract term, and store excess solar energy during daytime hours to be utilized during higher demand / lower supply hours across the rest of the day; and

WHEREAS, CEA has negotiated an Energy Storage Services Agreement (ESSA) with GEM A-CAES LLC for the aforementioned project, which was considered by the Board of Directors of Clean Energy Alliance at its July 30, 2026 regular meeting.

NOW, THEREFORE, BE IT RESOLVED the Board of Directors of Clean Energy Alliance hereby finds, determines and resolves as follows:

Section 1. The foregoing recitals are true and correct and incorporated fully herein.

Section 2. A twenty-five-year Energy Storage Services Agreement (ESSA) is hereby awarded to GEM A-CAES LLC for a project totaling 60 MW of 8-hour energy storage to begin delivering capacity by June, 2031.

Section 3. The Chief Executive Officer is hereby authorized and directed to execute such ESSA with GEM A-CAES LLC in a form substantially similar to that presented to the Board on July 30, 2026. The Chief Executive Officer is hereby further authorized and directed to execute such other documents and further actions as may be necessary and proper to accomplish the purposes of this resolution.

The foregoing Resolution was passed and adopted this 30th day of July, 2026, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

APPROVED:

____
Katie Melendez, Board Chair

ATTEST:

____
Ana Marie Alarcon, Clerk to the Board

Execution Version

ENERGY STORAGE SERVICE AGREEMENT

COVER SHEET

Seller: GEM A-CAES LLC, a Delaware limited liability company ("**Seller**")

Buyer: Clean Energy Alliance, a California joint powers authority ("**Buyer**")

Description of Facility: A 500 MW / 4,000 MWh advanced compressed air energy storage facility, located in Kern County, in the State of California, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	2/29/2024 - Complete
Material Permits Obtained	[redacted]
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	Phase I: 1/25/2021 - Complete Phase II: 11/22/2021 - Complete
Executed Interconnection Agreement	12/29/2023 - Complete
Financial Close	[redacted]
Major Equipment procured	[redacted]
Guaranteed Construction Start Date	[redacted]
Full Capacity Deliverability Status obtained	3/18/2022 - Complete
Initial Synchronization	[redacted]
Delivery Network Upgrades completed	[redacted]
Expected Commercial Operation Date	[redacted]
Guaranteed Commercial Operation Date	6/1/2031

Delivery Term: Twenty-five (25) Contract Years

Guaranteed Capacity: 60 MW-AC at eight (8) hours of continuous discharge (the "**Resource Duration**")

Dedicated Interconnection Capacity: 500 MW

Buyer's Share of the Dedicated Interconnection Capacity: 60 MW

Guaranteed Efficiency Rate: [redacted]

Minimum Efficiency Rate: [redacted]

Contract Price:

Contract Year	Contract Price
1 – 25	[redacted] (flat) with no escalation

Product:

☒ Monthly Energy Settlement Amount
☒ Capacity Attributes including Resource Adequacy Benefits

Scheduling Coordinator: Seller/Seller Third Party

Security Amount:

Development Security: [redacted] multiplied by the Guaranteed Capacity (in kW)
Performance Security: [redacted] multiplied by the Guaranteed Capacity (in kW)

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Exhibits:

ENERGY STORAGE SERVICE AGREEMENT

This Energy Storage Service Agreement ("**Agreement**") is entered into as of [ ], 2026 (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1
DEFINITIONS

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

"**AC**" means alternating current.

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.7(e).

"**Adjusted Guaranteed Capacity**" has the meaning set forth in Section 5 of Exhibit B.

"**Administrative NQC Reduction**" means a reduction in the maximum achievable Net Qualifying Capacity of the Facility able to be shown on Buyer's monthly Supply Plan that is equal to the reductions that have been generally applied to all resources materially similar to the Facility in terms of technology type, market and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including fleet averages or other average outage rates. If an Administrative NQC Reduction occurs, Seller shall assign the reduction in NQC on a pro rata basis to the Facility based on the proportion of the Guaranteed Capacity under this Agreement to the Installed Capacity. Notwithstanding anything herein to the contrary, Seller shall not be required to modify the Facility in order to mitigate the effects of an event that otherwise qualifies as an Administrative NQC Reduction.

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

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

"**Ancillary Services**" means all ancillary services, products and other attributes, if any, associated with the Installed Capacity of the Facility, including spinning reserve, non-spinning reserve, regulation up, regulation down, and voltage support as each is defined in the CAISO Tariff.

"**Availability Standards**" has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

"**Bankrupt**" or "**Bankruptcy**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets and such appointment is not removed within ninety (90) days.

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. Pacific Prevailing Time (PPT).

"**Buyer**" means Clean Energy Alliance, a California joint powers authority.

"**Buyer Default**" means a failure by Buyer or its agents to perform Buyer's obligations hereunder and includes an Event of Default of Buyer.

"**Buyer's Indemnified Parties**" has the meaning set forth in Section 16.1(a).

"**Buyer's Share**" means the Guaranteed Capacity as adjusted in accordance with Section 5 of Exhibit B divided by the Installed Capacity.

"**CAISO**" means the California Independent System Operator Corporation, or any successor entity performing similar functions.

"**CAISO Certification**" means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all applicable Ancillary Services, PMAX, and PMIN.

"**CAISO Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

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

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the ability of Buyer's Share of the Installed Capacity to provide reliability or to charge, discharge and deliver to the Delivery Point at a particular moment and that can be purchased, sold or conveyed under CAISO or CPUC market rules or used for any current or future compliance or reporting purpose including the Compliance Obligations. Capacity Attributes include Resource Adequacy Benefits, Imbalance Reserves, Reliability Capacity Up, and Reliability Capacity Down.

"Capacity Commitments" means written contracts that obligate Seller to deliver Capacity Attributes from the Facility to Persons other than Seller's Affiliates over a period of time that includes the Delivery Term.

"**Capacity Damages**" has the meaning set forth in Section 5 of Exhibit B.

"Capacity Procurement Mechanism" has the meaning set forth in the CAISO Tariff.

"**Capacity Test**" or "**CT**" means any test or retest of the Facility to establish the Installed Capacity, Effective Capacity, or Efficiency Rate or any other test conducted pursuant to Exhibit O.

"**CEQA**" means the California Environmental Quality Act, as amended or supplemented from time to time.

"**Change of Control**" means, except in connection with public market transactions of equity interests or capital stock of Seller's Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

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

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

"Charging Energy" means the Energy delivered to the Facility from the CAISO Grid as measured at the Facility Meter Point by the Facility Meter, as such meter readings are adjusted by the CAISO for any applicable electrical losses and station use.

"**CIRA Tool**" means the CAISO Customer Interface for Resource Adequacy.

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

"**Collateral**" has the meaning set forth in the Intercreditor and Collateral Agent Agreement.

"**Collateral Agent**" has the meaning set forth in the Intercreditor and Collateral Agent Agreement.

"**Collateral Assignment Agreement**" has the meaning set forth in Section 14.2.

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

"**Commercial Operation Capacity Test**" means the Capacity Test conducted in connection with Commercial Operation of the Facility, including any additional Capacity Test for additional capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

"**Commercial Operation Date**" or "**COD**" has the meaning set forth in Exhibit B.

"**Commercial Operation Delay Damages**" means an amount equal to [redacted]

"**Compliance Actions**" has the meaning set forth in Section 3.7(c).

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.7(b).

"**Compliance Obligation**" means the RAR, Local RAR, Flexible RAR, Mid Term Reliability Obligations and any other resource adequacy or capacity procurement requirements imposed on load serving entities by the CPUC, CAISO, WECC, or any other Governmental Authority having jurisdiction.

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

"**Construction Delay Damages**" means an amount equal to [redacted]

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

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

"**Contract Capacity**" means the Effective Capacity multiplied by Buyer's Share.

"**Contract Price**" has the meaning set forth on the Cover Sheet.

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

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

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

"**Cover Sheet**" means the cover sheet to this Agreement, which is incorporated into this Agreement.

"**CPM Soft Offer Cap**" has the meaning set forth in the CAISO Tariff.

"**CPUC**" means the California Public Utilities Commission, or any successor entity performing similar functions.

"**CPUC Master Resource Database**" means the CPUC database of generation, energy storage and other resources qualified to provide Resource Adequacy Benefits capacity to load serving entities.

"**CPUC System RA Penalty**" means the system RAR penalties assessed against load-serving entities by the CPUC for Resource Adequacy Requirement deficiencies that are not replaced or cured, as established in the Resource Adequacy Rulings and subsequently incorporated into the annual "Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings" that is issued by the CPUC Energy Division, which is expected to be updated annually, or any replacement or successor documentation established by the CPUC Energy Division to reflect Resource Adequacy Requirement penalties that are established by the CPUC and assessed against load-serving entities for Resource Adequacy Requirement deficiencies.

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

"**Daily Energy Settlement**" has the meaning set forth in Exhibit C.

"**Damage Payment**" means an amount calculated in accordance with Section 11.3(a).

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

"**Dedicated Interconnection Capacity**" means an instantaneous amount of Charging Energy and/or Discharging Energy, as applicable, that is permitted to be delivered from and/or to the Delivery Point under Seller's Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

"**Defaulting Party**" has the meaning set forth in Section 11.1(a).

"**Delivered RA**" means an amount, expressed in MW, calculated for the applicable Showing Month as the lesser of (i) the amount of the Net Qualifying Capacity of the Facility and any Replacement RA for such Showing Month made available by Seller to be shown for each hour of the Resource Duration on Buyer's monthly Resource Adequacy Plans to the CAISO, and (ii) the Slice-of-Day Capacity that Seller makes available to be shown from the Facility and any Replacement RA for each hour of the Resource Duration in such Showing Month to the CPUC and is able to be counted as Resource Adequacy Benefits by both the CAISO and CPUC.

"**Delivery Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Delivery Point**" has the meaning set forth in Exhibit A.

"**Delivery Term**" shall mean the period of Contract Years set forth on the Cover Sheet beginning on the first day of the first RA Compliance Showing month following the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"**Development Cure Period**" has the meaning set forth in Exhibit B.

"**Development Security**" means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

Discharging Energy" means all Energy delivered from the Facility to the Delivery Point, as measured at the Facility Meter Point by the Facility Meter, as such meter readings are adjusted by the CAISO for station use and electrical losses to the Delivery Point.

"**Disclosing Party**" has the meaning set forth in Section 18.2.

"**Early Commercial Operation Date**" has the meaning set forth in Section 3.2.

"**Early Termination Date**" has the meaning set forth in Section 11.2(a).

"**Effective Capacity**" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for the number of hours of continuous discharge corresponding to the Resource Duration, as measured in MW AC at the Delivery Point (i.e., measured at the Facility Meter and adjusted for electrical losses to the Delivery Point to the extent such electrical losses are not already reflected in the Facility Meter measurements) as determined pursuant to the most recent Capacity Test (including the Commercial Operation Capacity Test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto).

"**Effective Date**" has the meaning set forth on the Preamble.

"**Efficiency Rate**" means the measured round-trip efficiency rate of the Facility, expressed as a percentage, calculated pursuant to a Capacity Test, and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

"Emergency" means an event or condition in which continued operation of the Facility is reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property.

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

"**Energy**" means alternating current electrical energy measured in MWh.

"**Energy Management System**" or "**EMS**" means the Facility's energy management system.

"**Energy Settlement Revenues**" means the sum of all Monthly Energy Settlement Amounts, calculated in accordance with Exhibit C.

"**Environmental Costs**" means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility's compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, (ii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iii) costs of permit maintenance fees and emission fees as applicable, (iv) the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate the Facility, (v) the costs associated with the use, disposal, and clean-up of Hazardous Substances introduced to the Site, and (vi) the costs associated with decontamination or remediation, on or off the Site, necessitated by the maintenance, use, or release of such Hazardous Substances on the Site.

"**Event of Default**" has the meaning set forth in Section 11.1.

"**Expected Facility Capacity**" means 500 MW.

"**Expected Commercial Operation Date**" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

"**Facility**" means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including the Energy Management System and mechanical equipment and associated facilities and equipment required to deliver Product (but excluding any Shared Facilities), as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

"**Facility Meter**" means a CAISO-approved meter, along with a CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Facility Meter Point and the amount of Discharging Energy discharged from the Facility at the Facility Meter Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"**Facility Meter Point**" means the location or locations of the Facility Meter.

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

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

"**Flexible Attributes**" means with respect to a Resource Adequacy Resource, any and all flexible resource adequacy attributes that can be counted toward Buyer's Flexible RAR, as they are identified from time to time by the Resource Adequacy Rulings, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.

"**Flexible RAR**" means the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

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

"**Full Capacity Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"**Gains**" means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by, (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement, and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement and the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement. Factors used in determining the economic benefit to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Capacity Attributes.

"**GHG Regulations**" means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

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

"**Greenhouse Gas**" or "**GHG**" has the meaning set forth in the GHG Regulations or in any other applicable Laws.

"**Guaranteed Capacity**" has the meaning set forth on the Cover Sheet as it may be adjusted pursuant to Section 5 of Exhibit B.

"**Guaranteed Commercial Operation Date**" means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

"**Guaranteed Construction Start Date**" means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

"**Guaranteed Efficiency Rate**" has the meaning set forth on the Cover Sheet.

"**Guaranteed RA Amount**" means, for any Showing Month, an amount of Qualifying Capacity that may be shown for each hour of the Resource Duration, expressed in MW, equal to the Guaranteed Capacity *minus* the Administrative NQC Reduction, if any, in the applicable Showing Month.

"**Hazardous Substance**" means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a "hazardous" or "toxic" substance or waste, or as a "contaminant" or "pollutant" or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

"**Hold-Back Capacity**" has the meaning set forth in Section 4.1(h).

"**Imbalance Energy**" means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Discharging Energy, as applicable, deviates from the amount of Scheduled Energy.

"**Imbalance Reserves**" means Imbalance Reserves Up and Imbalance Reserves Down as defined in the CAISO Tariff.

"**Indemnified Party**" shall mean (i) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

"**Indemnifying Party**" shall mean (i) Seller, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(a), and (ii) Buyer, with respect to all third-party claims, demands, losses, liabilities, penalties, and expenses arising out of, resulting from, or caused by the circumstances described in Section 16.1(b).

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

"**Installed Capacity**" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Facility to discharge Energy for the number of hours of continuous discharge corresponding to the Resource Duration, as measured in MW AC at the Facility Meter Point by the Delivery Point (i.e., measured at the Facility Meter and adjusted for electrical losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B, but in either case (a) or (b) up to but not in excess of the Expected Facility Capacity.

"**Intercreditor and Collateral Agency Agreement**" means that certain Intercreditor and Collateral Agency Agreement, dated as of March 16, 2021, by and among River City Bank, as Collateral Agent, the Secured Creditors from time to time party thereto, and Buyer.

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller or Seller's Affiliate pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility at the Interconnection Point that is no less than the Dedicated Interconnection Capacity, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

"**Interconnection Point**" means the point at which Seller's Interconnection Facilities interconnect with the Transmission System pursuant to the Interconnection Agreement, which point is identified in Exhibit A.

"**Interest Rate**" has the meaning set forth in Section 8.2.

"**Investment Grade Credit Rating**" means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody's.

"**ITC**" means the investment tax credit established pursuant to Section 48 or Section 48E of the United States Internal Revenue Code of 1986.

"Joinder" has the meaning set forth in the Intercreditor and Collateral Agency Agreement.

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

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

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

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. Branch with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, in a form substantially similar to the letter of credit set forth in Exhibit K.

"**Licensed Professional Engineer**" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

"**Limited Assignee**" has the meaning set forth in Section 14.5.

"**Local Attributes**" means, with respect to a Resource Adequacy Resource, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the Resource Adequacy Rulings, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Facility within the CAISO Control Area, that can be counted toward Buyer's Local RAR, but exclusive of any Flexible Attributes or Resource Adequacy Attributes which are not associated with where in the CAISO Control Area the Facility is physically located or electrically interconnected.

"**Local RAR**" means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. "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.

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

"**Lockbox Account**" has the meaning set forth in the Security Agreement.

"**Lockbox Arrangement**" has the meaning set forth in Section 8.10.

"**Losses**" means, with respect to Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement, and the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term.

"**LRA**" has the meaning set forth in the Tariff

"**Major Equipment**" means the items of equipment and machinery with a delivery lead time exceeding twelve (12) months as set forth in Exhibit P.

"**Marketable Emission Trading Credits**" means emissions trading credits or units issued pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

"**Material Permits**" means all permits required for Seller to commence construction, as set forth on Exhibit S.

"**Maximum Charging Capacity**" means the highest level at which the Facility may be charged, expressed in MW and as set forth in Exhibit Q.

"**Maximum Discharging Capacity**" means the highest level at which the Facility may be discharged, expressed in MW and as set forth in Exhibit Q.

"**Maximum State of Charge**" means the maximum State of Charge to which the Facility may be charged, as set forth in Exhibit Q.

"**Maximum Stored Energy Level**" means the maximum Stored Energy Level the Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.

"**Meter Service Agreement**" means "Meter Service Agreement for CAISO Metered Entities" or "Meter Service Agreement for Scheduling Coordinators", as applicable, as each are defined in the CAISO Tariff.

"**Milestones**" means the development activities for significant permitting, interconnection, and construction milestones set forth on the Cover Sheet.

"**Minimum Efficiency Rate**" means the percentage specified on the Cover Sheet.

"**Minimum State of Charge**" means the minimum State of Charge to which the Facility may be discharged, as set forth in Exhibit Q.

"**Minimum Stored Energy Level**" means the minimum Stored Energy Level the Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.

"**Monthly Capacity Payment**" means the payment required to be made by Buyer to Seller each month commencing on the Commercial Operation Date and throughout the Delivery Term as compensation for the Product, as calculated in accordance with Exhibit C.

"**Monthly Energy Settlement Amount**" has the meaning set forth in Exhibit C.

"**Moody's**" means Moody's Investors Service, Inc.

"**MW**" means megawatts in alternating current, unless expressly stated in terms of direct current.

"**MWh**" means megawatt-hours measured in alternating current, unless expressly stated in terms of direct current.

"**Negative Credit Watch**" means (a) a designation by S&P of "CreditWatch Negative" (or any successor designation); or (b) a designation by Moody's of "under review for downgrade" (or any successor designation); in either case where the stated purpose or reasonably anticipated result of such review is a downgrade of Buyer's Credit Rating to below the Investment Grade Credit Rating.

"**NERC**" means the North American Electric Reliability Corporation, or any successor entity performing similar functions.

"**Net Qualifying Capacity**" or "**NQC**" has the meaning set forth in the CAISO Tariff.

"**Network Upgrade**" means collectively Delivery Network Upgrades and Reliability Network Upgrades.

"**Non-Defaulting Party**" has the meaning set forth in Section 11.2.

"**Notice**" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail) in accordance with Exhibit N.

"**Notification Deadline**" means twenty (20) Business Days before the relevant deadlines for the corresponding RA Compliance Showings applicable to the relevant Showing Month.

"**Operating Restrictions**" means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

"**Outage**" means a Planned Outage or Unplanned Outage.

"**Outage Event**" has the meaning set forth in Exhibit C, Section (f).

"**Outage Schedule**" has the meaning set forth in Section 4.10(a)(i).

"**Participating Generator Agreement**" has the meaning set forth in the CAISO Tariff.

"**Party**" or "**Parties**" has the meaning set forth in the Preamble.

"**Performance Security**" means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

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

(a) A Tangible Net Worth of not less than [redacted] or a Tangible Net Worth of not less than [redacted] and a Credit Rating of at least BBB- from S&P or Baa3 from Moody's; and

(b) At least five (5) years of experience in the ownership and operations of facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

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

"**Planned Outage**" means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.10(a).

“**PMAX**” means the applicable CAISO-certified maximum operating level of the Facility.

“**PMIN**” means the applicable CAISO-certified minimum operating level of the Facility.

“**PNode**” has the meaning set forth in the CAISO Tariff.

“**Portfolio**” means the portfolio of electrical energy generating, electrical energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

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

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

“PPA Provider” has the meaning set forth in the Security Agreement.

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

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

“**Project Labor Agreement**” has the meaning set forth in Section 13.4(b).

“**Prudent Operating Practice**” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States, and (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale energy storage facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“**PTC**” means the production tax credit established pursuant to Section 45 or Section 45Y of the United States Internal Revenue Code of 1986.

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

“**RA Attributes**” means, with respect to a Resource Adequacy Resource, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, Resource

Adequacy Rulings, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any Local Attributes and Flexible Attributes.

"**RA Compliance Showing**" means the (a) RAR compliance or advisory showings (or similar or successor showings), (b) Local RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

"**RA Deficiency Amount**" means the liquidated damages that Seller shall pay to Buyer for an applicable RA Shortfall Month, as calculated in accordance with Section 3.5(b).

"**RA Guarantee Date**" means the Commercial Operation Date.

"**RA Shortfall**" means, for a given Showing Month, [redacted]

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.5(b), any Showing Month during the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, during which there is a RA Shortfall.

"**RA Substitute Capacity**" has the meaning set forth in the CAISO Tariff.

"**Ramp Rate**" means the ability of the Facility to change between power output levels, expressed in MW_{AC}/min.

"**Receiving Party**" has the meaning set forth in Section 18.2.

"**Reliability Capacity**" has the meaning set forth in the CAISO Tariff.

"**Reliability Capacity Down**" has the meaning set forth in the CAISO Tariff.

"**Reliability Capacity Up**" has the meaning set forth in the CAISO Tariff.

"**Reliability Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Remedial Action Plan**" has the meaning set forth in Section 2.4.

"**Replacement RA**" means Resource Adequacy Benefits from a Resource Adequacy Resource that are equivalent in all material respects to those that would have been provided by the Facility with respect to the applicable Showing Month in which an RA Deficiency Amount is due to Buyer, including, as applicable, Flexible Attributes, Local Attributes, and the same Slice-of-Day generation profile and related characteristics, any successor criteria applicable to the Facility, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits.

"**Replacement Unit**" means a unit that: (i) meets the requirements specified in Section 3.1(c), (ii) is located within the CAISO Control Area and (iii) is capable of providing Replacement RA.

"**Requested Confidential Information**" has the meaning set forth in Section 18.2.

"**Required Secured Creditor**" has the meaning set forth in the Intercreditor and Collateral Agency Agreement.

"**Residual Unit Commitment**" or "**RUC**" has the meaning set forth in the CAISO Tariff.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's Resource Adequacy Requirements, as those obligations are set forth in any ruling issue by a Governmental Authority, including the Resource Adequacy Rulings, or the CAISO Tariff, and shall include RA Attributes, Flexible Attributes, and Local Attributes, and any successor criteria applicable to the Facility, including any Resource Duration attributes.

"**Resource Adequacy Plan**" has the meaning set forth in the CAISO Tariff.

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

"**Resource Adequacy Resource**" has the meaning set forth in the CAISO Tariff.

"**Resource Adequacy Rulings**" means any applicable CPUC ruling or decision relating to resource adequacy, or any other resource adequacy Law, rules or regulations enacted, adopted or promulgated by the CPUC or the CAISO, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

"**Resource Duration**" means the number of continuous hours of discharge as set forth on the Cover Sheet.

"**S&P**" means the Standard & Poor's Financial Services LLC (a subsidiary of S&P Global Inc.) or its successor.

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

"**Secured Creditor**" means each PPA Provider or other party that is a Secured Creditor under the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

"**Security Agreement**" means the Security Agreement, dated as of March 16, 2021, between Buyer and Collateral Agent, as collateral agent for the benefit of the Secured Creditors, or any successor agreement generally available to Buyer's creditors.

"**Security Interest**" has the meaning set forth in Section 8.9.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Seller's Indemnified Parties**" has the meaning set forth in Section 16.1(b).

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount shall not include consequential, incidental, punitive, exemplary or indirect or business interruption damages, unless such damages are part of a Party's Gains, Losses or Costs as those terms are explicitly defined herein.

"**Settlement Interval**" has the meaning set forth in the CAISO Tariff.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff.

"**Settlement Point**" means [redacted]

"**Shared Facilities**" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Charging Energy and Discharging Energy to and from the Delivery Point to the Facility (which is excluded from Shared Facilities), including the Interconnection Agreement itself, that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

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

"**Shown Unit**" means the Facility or any Replacement Unit specified by Seller in a Supply Plan.

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

"**Site Control**" means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

"**Slice-of-Day**" or "**SOD**" has the meaning set forth in the Resource Adequacy Rulings.

"Slice-of-Day Capacity" means the maximum amount of Resource Adequacy capacity that can be shown on the Slice-of-Day Resource Adequacy Plan (as defined in the Resource Adequacy Rulings) filing to the CPUC, assuming that the Resource Duration is constant, but subject to the Efficiency Rate. The Slice-of-Day Capacity shall be calculated as follows:

[redacted]

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

"**State of Charge**" or "**SOC**" means the ratio of (a) the Stored Energy Level of the Facility to (b) the Effective Capacity multiplied by the Resource Duration, expressed as a percentage.

"**Stored Energy Level**" means, at a particular time, the amount of electric Energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

"**Subsequent Purchaser**" means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

"**Substitution Rules**" has the meaning set forth in the CAISO Tariff.

"**Supplementary Capacity Test Protocol**" has the meaning set forth in Exhibit O.

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

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

"**Tangible Net Worth**" means the tangible assets (for example, not including intangibles such as goodwill and rights to patents or royalties) that remain after deducting liabilities as determined in accordance with generally accepted accounting principles.

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

"**Tax Credits**" means (a) the PTC, ITC, and any other state, local or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to investments in energy storage facilities and (b) any refundable credit, grant, or other cash payment in lieu of an incentive described in clause (a).

"**Terminated Transaction**" has the meaning set forth in Section 11.2(a).

"**Termination Payment**" has the meaning set forth in Section 11.3(b).

"**Throughput**" means, at any point in time during any day or Contract Year, as applicable, the total cumulative amount of Discharging Energy from the Facility at such point in time during such day or Contract Year, as applicable (expressed in MWh).

"**Transmission Provider**" means any entity or entities transmitting or transporting the Charging Energy and Discharging Energy, as applicable, on behalf of Seller or Buyer to or from the Delivery Point, but excluding Seller or any Seller's Affiliate responsible for operating any gen-tie line to any point of interconnection to a Transmission Provider's transmission system or distribution system. For purposes of this Agreement, the Transmission Provider is set forth in Exhibit A.

"**Transmission System**" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

"**Ultimate Parent**" means Hydrostor Inc., an Ontario business corporation registered in Ontario, Canada.

"**Unplanned Outage**" means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof or pursuant to Section 4.11, which period is not a Planned Outage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein, including Section 2.1(b) ("**Contract Term**"); *provided*, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

2.2 **Commercial Operation; Conditions Precedent**. Seller shall provide Notice to Buyer of the expected Commercial Operation Date, which shall occur on the first day of the applicable calendar month for RA Compliance Showing purposes, at least sixty (60) days in advance of such date. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation. Following Buyer's receipt of such Notice, Buyer shall have five (5) Business Days to approve or reject Seller's request for confirmation of Commercial Operation, which, if confirmed, shall be deemed to have occurred as of the date of such Notice. If Buyer fails to respond to Seller's Notice within such five (5) Business Day period, Buyer will be deemed to have approved Seller's request for confirmation of Commercial Operation. Upon Buyer's approval (or deemed approval) of Seller's achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date.

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity and Efficiency Rate on the Commercial Operation Date and demonstrating that the Installed Capacity is sufficient to provide no less Contract Capacity than [redacted] of the Guaranteed Capacity (without giving effect to any adjustment pursuant to Section 5 of Exhibit B) to Buyer;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO have been executed and delivered and are in full force and effect, and a copy of each such agreement has been delivered to Buyer;

(c) Seller has executed an Interconnection Agreement with the Transmission Provider, which shall be in full force and effect, and a copy of the Interconnection Agreement has been delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained and shall be in full force and effect, and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(e) Seller has Site Control;

(f) Seller has obtained CAISO Certification for the Facility, and a copy of the CAISO Certification has been delivered to Buyer;

(g) Seller has obtained Full Capacity Deliverability Status and all Delivery Network Upgrades are complete such that Seller can deliver the Guaranteed Capacity;

(h) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

(i) Seller has taken all actions and executed all documents and instruments required to authorize Seller (or its designated agent) to act as Scheduling Coordinator under this Agreement, and Seller (or its designated agent) is authorized to act as Scheduling Coordinator and has full capability to Schedule and dispatch the Facility.

(j) The Facility is shown on the CAISO and CPUC NQC lists and is able to be shown on Buyer's RA Compliance Showings.

(k) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;

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

(m) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Construction Delay Damages and Commercial Operation Delay Damages; and

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

2.4 **Remedial Action Plan**. If Seller misses a Milestone by more than [redacted] except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such [redacted] period following the missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in reasonable detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed

Milestones and to achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended pursuant to Exhibit B, *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B and except as provided in Section 11.1(b)(ii), so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3
PURCHASE AND SALE

3.1 **Purchase and Sale of Product**. Subject to the terms and conditions of this Agreement, during each day of the Delivery Term, Buyer shall be solely entitled to, and Seller shall deliver and sell, and Buyer shall purchase and receive all Product associated with the Capacity Attributes produced by or attributed to the Contract Capacity. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any energy storage capacity or Capacity Attributes from any other resource or the market for delivery hereunder except as provided in Section 3.1(c), nor shall Seller sell, assign or otherwise transfer any Capacity Attributes associated with the Contract Capacity, or any portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement or as otherwise required by Law.

(a) No Energy or Ancillary Services. Notwithstanding anything to the contrary herein, no Energy or Ancillary Services associated with the Facility is required to be made available to Buyer as part of this Agreement and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Agreement. Neither the purchase of the Product nor receipt of the Energy Settlement Revenue confers to Buyer any right to the electrical output or Energy from the Facility. Rather, the Product includes Buyer's Share of the Capacity Attributes and Resource Adequacy Benefits from the Installed Capacity and the Monthly Energy Settlement Amount which confers the right for Buyer to receive payments regardless of whether the Facility is charged or discharged. Seller retains the right to sell any Capacity Attributes from the Facility other than those Capacity Attributes related to the Contract Capacity.

(b) Reductions in Guaranteed RA Amount. Seller's obligation to deliver the Guaranteed RA Amount for each Showing Month may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Facility during the applicable Showing Month; provided, (A) Seller notifies Buyer by the Notification Deadline applicable to that Showing Month of the amount of Product from the Facility that Buyer may include in Buyer's Compliance Showings for each day of that month as a result of such Planned Outage, and (B) such reduction is able to be reflected on the Supply Plans in accordance with the Tariff. In the event Seller is unable to provide the RA Guaranteed Amount for any portion of a Showing Month because of a Planned Outage of the Facility, Seller has the option, but not the obligation, to provide Replacement RA for such portion(s) of the RA Guaranteed Amount not provided by the Facility during such Showing Month pursuant to Section 3.1(c).

(c) Replacement RA. If Seller is unable to provide the full Guaranteed RA

Amount for a Showing Month for any reason, including, without limitation, as provided in Section 3.1(b), then Seller may, at no additional cost to Buyer, provide Buyer with Replacement RA from one or more Replacement Units in an amount such that the total amount of Product provided to Buyer from the Facility and any Replacement Unit(s) for each Showing Month is not more than the Guaranteed RA Amount, provided that in each case:

(i) Seller shall notify Buyer in writing of its intent to provide Replacement RA and shall identify the Replacement Unit(s) from which such Replacement RA shall be provided no later than the Notification Deadline for such Showing Month;

(ii) The proposed Replacement Unit(s) must (1) be accepted by the CAISO, and (2) otherwise satisfy the requirements of this Agreement; and

(iii) Seller shall, or shall cause the Replacement Unit's SC to, submit a Supply Plan for each Showing Month no later than the Notification Deadline for such Showing Month.

3.2 **Sales Prior to Expected Commercial Operation Date**. If Seller is able to achieve Commercial Operation and commence producing Product prior to the Expected Commercial Operation Date, Seller shall provide Notice to Buyer at least ninety (90) days prior to the date that Seller anticipates commencement of production of Product ("**Early Commercial Operation Date**") and shall offer to sell Product to Buyer under the terms and conditions of this Agreement as of the Early Commercial Operation Date. If Buyer rejects or fails to respond to such offer within ten (10) Business Days of Seller's Notice under this Section 3.2, Seller may sell all Product and otherwise participate in any available markets without liability to Buyer until the Expected Commercial Operation Date. If Buyer accepts such offer, the Delivery Term shall commence as of the Early Commercial Operation Date.

3.3 **Capacity Attributes**. Seller has received Full Capacity Deliverability Status for the Facility for the Expected Facility Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Reliability Network Upgrades and/or Delivery Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility associated with the Contract Capacity.

(b) Throughout the Delivery Term, Seller shall maintain Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer in the amount of the Guaranteed Capacity. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits relating to the Contract Capacity from the Facility to Buyer unless otherwise directed by Buyer.

(c) For the duration of the Delivery Term, Seller shall take all actions required by the CAISO Tariff and all applicable Laws, including registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity

Attributes committed by Seller to Buyer pursuant to this Agreement to allow (i) Buyer's rights to the Guaranteed RA Amount of Product for the sole benefit of the Buyer and (ii) that Buyer may use the Product to meet its Compliance Obligations. Such actions shall include, without limitation, (1) cooperating with and providing, and causing each Shown Unit's SC, owner, or operator to cooperate with and provide, requested and supporting documentation to the CAISO or the CPUC, including such documentation to demonstrate that the Guaranteed RA Amount can be delivered to the CAISO controlled grid for the Resource Duration, pursuant to the "deliverability" standards established by the CAISO or the CPUC, and (2) upon reasonable request of Buyer, providing additional information and documentation to Buyer to assist Buyer to meet compliance with regulatory agency requests and requirements to document that the Facility and the Capacity Attributes meet the requirements of all existing or future compliance programs administered by any regulatory agency to which Buyer is accountable. If necessary, the Parties further agree to negotiate in good faith to amend this Agreement to conform to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Authority to maintain the benefits of the Agreement.

3.4 **[Reserved]**.

3.5 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages, in each case, as the sole remedy for the Resource Adequacy Benefits Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "RA Deficiency Amount") equal to the [redacted]

(c) Replacement RA. If Seller anticipates it will have an RA Deficiency Amount in any month of the Delivery Term due to an Outage of the Facility, Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA up to the anticipated Storage RA Shortfall; provided, any Replacement RA shall be delivered in compliance with Section 3.1(c).

3.6 **Buyer's Re-Sale of Product**. Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.6, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

3.7 **Compliance Expenditure Cap**.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide Resource Adequacy Benefits associated with Buyer's Share of the Installed Capacity to Buyer that comply with the Resource Adequacy Rulings. The Parties acknowledge that Governmental Authorities, including the CPUC and CAISO, may undertake actions to implement changes in Law. Seller agrees, subject to the provisions of this Section 3.7, to use commercially reasonable efforts to take all Compliance Actions and to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law to maximize benefits to Buyer, including: (i) the modification of the description of Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; or (ii) submission of any reports, data, or other information required by Governmental Authorities; *provided*, Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs to obtain, maintain, convey or effectuate Buyer's use of any Resource Adequacy Benefits, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped at [redacted] per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**").

(c) Any actions required for Seller to comply with its obligations set forth in Section 3.7(b), the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

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

(e) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (i) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (ii) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.7 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.

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

3.8 **Change in Efficiency Requirements.** [redacted]

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer, and Buyer shall take delivery of the Product in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the delivery of Product, any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations, transmission line losses, and Imbalance Energy charges. Seller shall provide the Buyer with the Guaranteed Storage RA Amount of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline corresponding to each Showing Month of the Delivery Term, Seller shall deliver the Guaranteed RA Amount by submitting, or causing each Shown Unit's Scheduling Coordinator to submit, Supply Plans to identify the characteristics of the Shown Unit and confirm the Resource Adequacy Benefits provided to Buyer for each Showing Month so that the total amount of Resource Adequacy Benefits identified and confirmed for such Showing Month equals the Guaranteed RA Amount, unless specifically requested not to do so by Buyer in accordance with this Agreement.

(b) Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the CAISO Tariff. Seller shall submit, or cause each Shown Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply

Plans in accordance with the CAISO Tariff and CPUC requirements to identify and confirm the Capacity Attributes delivered to Buyer for each Showing Month of the Delivery Period.

(c) Seller shall identify the Shown Unit(s) and Guaranteed RA Amount for a Showing Month by providing Buyer with the specific Shown Unit information set forth in Exhibit M no later than the Notification Deadline for such Showing Month.

(d) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Guaranteed RA Amount for the Shown Unit(s) in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

(e) The Resource Adequacy Benefits are delivered and received when the CIRA Tool shows that the Supply Plan submitted in compliance with Buyer's instructions, including Buyer's instructions to withhold all or part of the Guaranteed RA Amount from Seller's Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Resource Adequacy Benefits from the Shown Unit(s) by CAISO. Seller has failed to deliver the Resource Adequacy Benefits if (i) Buyer has elected to submit the Resource Adequacy Benefits from the Shown Unit(s) in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 4.1(d) or (ii) Seller fails to submit the volume of Guaranteed RA Amount for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. The Buyer will have received the Guaranteed RA Amount if Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month.

(f) Buyer is to receive and retain all revenues associated with the Guaranteed RA Amount of Capacity Attributes during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, Imbalance Reserves other than the opportunity cost component of Imbalance Reserves as set forth in CAISO Tariff Section 11.2.6.3, Reliability Capacity Up, and Reliability Capacity Down, or their successors and any other current or future revenues by the CAISO or CPUC associated with the Guaranteed RA Amount of Capacity Attributes. Seller shall promptly report receipt of any such revenues to Buyer. Seller shall pay to Buyer within thirty (30) days of receipt any such amounts received by Seller, or a Shown Unit's SC, owner, or operator. Without prejudice to its other rights, Buyer may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the Agreement.

(g) During the Delivery Period, Seller shall comply with the CAISO Tariff and shall perform all, or cause the Shown Unit's SC, owner, or operator to perform all, obligations under applicable Law and the CAISO Tariff that are associated with the sale of the Product hereunder, including zero dollar ($0) bid requirements for RUC or its successor and/or bids for Reliability Capacity, if applicable. Buyer is not liable for, and Seller shall be solely responsible for any CAISO penalties, fines or costs related to this Agreement including those penalties, fines or costs imposed on Seller or the Shown Unit's SC, owner, or operator for noncompliance with the CAISO Tariff.

(h) No later than five (5) Business Days before the Notification Deadline for a Showing Month, Buyer may request in writing that Seller not list, or cause the Shown Unit's Scheduling Coordinator not to list, in the Shown Unit's Supply Plan a portion or all of the Guaranteed RA Amount for any portion of such Showing Month ("**Hold-Back Capacity**"). Following Buyer's request for Hold-Back Capacity, Buyer may request, in writing, that Seller make the previously requested Hold-Back Capacity available for Buyer's use as RA Substitute Capacity within the respective Showing Month, provided that Seller has not placed the Facility in Outage. Such request shall be provided to Seller no later than five (5) Business Days prior to the first day for which Buyer seeks to use such Substitute Capacity. The portion of the Guaranteed RA Amount that is the subject of Buyer's request for Hold-Back Capacity shall be deemed delivered consistent with this Section 4.1 for purposes of calculating the Monthly Capacity Payment for such month. Seller shall, or shall cause the Shown Unit's Scheduling Coordinator to, use commercially reasonable efforts to comply with Buyer's request under this Section 4.1(h) including taking all commercially reasonable actions to allow Buyer or a subsequent purchaser under Section 3.6 to utilize the applicable portion of the Guaranteed RA Amount that Buyer timely requested be withheld from the Supply Plans during each Showing Month under the Substitution Rules, including, but not limited to, providing Buyer or subsequent purchaser under Section 3.6 with all information needed to utilize the RA Substitute Capacity. Seller shall not be liable for any amounts under Section 3.5 resulting from Buyer's inability to use the Hold-Back Capacity as RA Substitute Capacity unless due to Seller's unexcused failure to make the Hold-Back Capacity available for use as RA Substitute Capacity.

4.2 **Interconnection**. Seller shall be responsible for all costs and charges associated with Interconnection Facilities and Network Upgrades necessitated by the interconnection of the Facility. Throughout the Delivery Term, Seller shall provide under the Interconnection Agreement interconnection capacity and rights to the Facility of not less than the Dedicated Interconnection Capacity.

4.3 **Efficiency Rate.** During the Delivery Term, Seller shall use reasonable commercial efforts consistent with Prudent Operating Practices to cause the Facility to maintain an Efficiency Rate, calculated pursuant to a Capacity Test, of no less than the Guaranteed Efficiency Rate. [redacted]

4.4 **Capacity Test.** Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Capacity Tests in accordance with Exhibit O.

(a) Buyer shall have the right to send one or more representative(s) to witness all Capacity Tests. Alternatively, to the extent that any Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Seller shall notify Buyer no later than five (5) Business Days prior to any Capacity Test (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(b) Following each Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate of the Facility determined pursuant to a Capacity Test varies from the then-current Effective Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to such Capacity Test (not to exceed the Installed Capacity) shall become the new Effective Capacity and/or Efficiency Rate, as applicable, at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C, until a revised Effective Capacity and/or Efficiency Rate, as applicable, is determined pursuant to a subsequent Capacity Test.

4.5 **[Reserved]**.

4.6 **[Reserved]**.

4.7 **[Reserved]**.

4.8 **[Reserved]**.

4.9 [**Reserved**].

4.10 **Outages**

(a) Planned Outages.

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's schedule of proposed Planned Outages ("**Outage Schedule**") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, use reasonable commercial efforts to accommodate Buyer's requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than ninety (90) days advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.10(a)(i); *provided*, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff. Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

(b) No Planned Outages During Summer Months. Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term that reduces the capacity of the Facility by more than ten percent (10%), unless the Planned Outage (i) is required to avoid damages to the Facility, (ii) is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through October, (iii) is required by Prudent Operating Practices, (iv) is approved by CAISO, if applicable, or (v) the Parties agree in writing. In the event Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(c) Planned Outage Timing. To the extent commercially reasonable, Seller shall schedule maintenance Outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.

(d) RA Substitute Capacity. Seller shall provide RA Substitute Capacity as required by CAISO in connection with Facility outages. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Seller's request for CAISO to approve such Facility outage. If Seller fails to provide RA Substitute Capacity, then Buyer may elect to not include the Facility (or, if applicable, the portion of the Facility) in its Supply Plan and such failure shall be deemed an "RA Shortfall" for the purpose of Section 3.5.

(e) Pro Rata Reductions. If an Outage of the Facility is only for a portion of the Effective Capacity of the Facility, Seller shall assign the reduction in deliveries of Product no less than on a pro rata basis to Buyer based on Buyer's Share of the Effective Capacity.

4.11 **Reduction in Delivery Obligation**.

(a) Unplanned Outage. When Unplanned Outages of the Facility occur, Seller shall orally notify Buyer of the existence, nature, cause and expected duration of the Unplanned Outage as soon as practical by contacting Buyer by telephone and shall use reasonable commercial efforts to provide such notice within twenty-four (24) hours after the Unplanned Outage commences. Seller shall provide to Buyer a Notice setting forth the information required in this Section 4.11 within five (5) Business Days of the cessation of the Unplanned Outage. Seller shall, in accordance with Prudent Operating Practice, inform Buyer of material changes in the expected duration of the Unplanned Outage. Seller shall be permitted to reduce deliveries of Product during any Unplanned Outage. Seller shall provide Buyer with Notice and expected duration of (if known) and plans to remediate any Unplanned Outage within five (5) Business Days of the occurrence of the Unplanned Outage.

(b) Force Majeure Event. Seller shall be permitted to reduce deliveries of RA Product during any Force Majeure Event.

(c) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety in the event of an Emergency or System Emergency ordered by the CAISO or Transmission Provider that requires the Facility to ramp down or shut off, with evidence thereof provided to Buyer, provided, however, that Seller's failure to deliver Product shall not be excused due to any Outage of the Facility due to an Emergency caused by Seller's negligence or willful misconduct.

ARTICLE 5
TAXES AND ENVIRONMENTAL COSTS

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes.

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

5.3 **Environmental Costs**. Seller shall be solely responsible for:

(a) All Environmental Costs;

(b) All taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Delivery Term;

(c) Seller's obligations listed under "Compliance Obligation" in the GHG Regulations; and

(d) All other costs associated with the implementation and regulation of Greenhouse Gas emissions (whether in accordance with the California Global Warming Solutions Act of 2006, Assembly Bill 32 (2006) and the regulations promulgated thereunder, including the GHG Regulations, or any other current or future federal, state or local legislation, regulations, decisions or other action to address, offset or reduce any Greenhouse Gas emissions implemented and regulated by a Governmental Authority) with respect to the Facility and/or Seller.

ARTICLE 6
MAINTENANCE AND REPAIR OF THE FACILITY

6.1 **Maintenance of the Facility**.

(a) Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, the delivery and sale of Product, and the disposal and recycling of any equipment associated with the Facility.

(b) Seller shall maintain accurate records with respect to all Capacity Tests.

(c) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

(d) Seller shall use reasonable commercial efforts consistent with Prudent Operating Practices (i) to promptly make all necessary repairs to the Facility, and any portion thereof, and (ii) to take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement (and, at a minimum, the Guaranteed Capacity and the Guaranteed Efficiency Rate).

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

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties. Seller agrees that any agreements regarding Shared Facilities shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, including providing interconnection capacity for the Facility's sole use in an amount not less than the Dedicated Interconnection Capacity. Seller shall not, and shall not permit any Affiliate to, allocate to other Persons a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Buyer's Share of the Dedicated Interconnection Capacity.

ARTICLE 7
METERING

7.1 **Metering.** The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is to be tested, adjusted, modified or relocated.

7.2 **Meter Data**. Seller hereby agrees to provide all Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of Day-Ahead Market LMP data, Capacity Attributes transaction data, and Replacement RA delivered to Buyer (if any) sufficient to document and verify the amount of Product delivered by the Facility for the preceding month; and (b) be in a format reasonably specified by Buyer, covering the Product delivered in the preceding month determined in accordance with the applicable provisions of this Agreement. Seller shall, and shall cause its Scheduling Coordinator to, provide Buyer with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO and other information, all as may be necessary from time to time for Buyer to verify the accuracy of all invoices. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

8.2 **Payment**. Buyer shall make payments to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days of Buyer's receipt of Seller's invoices; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) not to exceed the maximum rate permitted by Law (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

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

8.4 **Invoice Adjustments**. Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5 or (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest at the Interest Rate, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

8.6 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including (a) any related damages calculated pursuant to Section 3.5, and Exhibits B and C, (b) interest, and (c) payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment; provided, however, that the aggregate amounts of such replenishments shall not exceed the full amount of the Development Security. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following events have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

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

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

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

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

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.10 **Buyer Credit Arrangements**.

(a) To secure Buyer's obligations under this Agreement, Seller shall have the right to execute a Joinder, which shall allow Seller to become a PPA Provider and Secured Creditor under the Intercreditor and Collateral Agency Agreement for so long as Buyer is subject to the Security Agreement and Lockbox Account (or any successor arrangement generally available to Buyer's creditors) (the current arrangement and any successor arrangement generally available to Buyer's creditors is the "**Lockbox Arrangement**").

(b) Under the Lockbox Arrangement:

(i) Buyer shall provide notice to Seller of the termination of all security interests under the Security Agreement.

(ii) Buyer further agrees it will not create any additional security interests (i) under the Security Agreement on terms more favorable than those currently offered to Seller, or (ii) under any arrangement similar to the Security Agreement that is generally available to Buyer's creditors unless Seller is offered the right to participate in such arrangement on terms no less favorable than those offered to the other participants.

(c) In addition, so long as Buyer is not in default under this Agreement, the Intercreditor and Collateral Agency Agreement and the Security Agreement, Buyer may request the dissolution of the current Lockbox Arrangement in order to enter into a substantially similar successor Lockbox Arrangement and, provided that Seller is allowed to become a PPA Provider and Secured Creditor under the successor Lockbox Arrangement, upon Seller's entering into such successor Lockbox Arrangement (which shall not be unreasonably withheld, conditioned or delay by Seller), Seller hereby agrees that (x) its security interest under the Security Agreement shall terminate, without further action, effective upon the termination of the security interests of all other PPA Providers under the Security Agreement, and (y) if requested by Buyer, Seller would promptly execute a written termination statement confirming such termination in accordance with Section 7.12 of the Security Agreement.

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ARTICLE 9
NOTICES

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

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows:

(a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail;

(b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier;

(c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 p.m. PPT, on the next Business Day provided that in each case the sender does not receive a delivery failure notification; or

(d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of Outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

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

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

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Reliability Network Upgrades, except to the extent expressly permitted as a Development Cure Period under this Agreement. Notwithstanding any provision to the contrary, the occurrence and continuation of a Force Majeure Event shall not (x) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions expressly permitted under a Development Cure Period or (y) limit Buyer's right to declare an Event of Default for Seller's failure to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date under this Agreement, terminate this Agreement, and receive a Damage Payment.

10.2 **No Liability If a Force Majeure Event Occurs**. Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. If a Force Majeure Event causes a partial Outage to the Facility, Seller shall assign the reduction in deliveries of Product on a pro rata basis to Buyer based on Buyer's Share of the Effective Capacity. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Section 4 of Exhibit B, or (b) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) after all applicable extensions of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

10.3 **Notice of Force Majeure Event.** Within two (2) Business Days of the commencement of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely Notice shall not constitute a waiver of the Force Majeure Event, but the relief granted to the claiming Party under this Article 10 shall be based on the date Notice is provided rather than the date of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon Notice to the other Party; provided however, if the market prices for the Product have increased during the period of time that Force Majeure Event occurs, Seller may not terminate the Agreement under this Section 10.4 solely due to changes in market prices for the Product.. Upon any such termination, neither Party shall have any further liability to the other Party, save and except for those obligations specified in Section 2.1(b) and 11.6, and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "**Event of Default**" shall mean,

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1, and except for failure to provide Resource Adequacy Benefits, the exclusive remedies for which are set forth in Section 3.5, and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising best efforts);

(iv) such Party becomes Bankrupt;

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

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

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

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

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

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

(d) to suspend performance; and

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

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

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

(i) [redacted] The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's Event of Default would be difficult or impossible to determine, that the damages set forth in this Section 11.3(a)(i) are liquidated damages and not a penalty, and are a reasonable approximation of Buyer's harm or loss.

(ii) [redacted] The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are liquidated damages and not a penalty and are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **<u>Notice of Payment of Termination Payment or Damage Payment</u>**. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

11.6 **<u>Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination</u>**. [redacted]

11.7 **<u>Rights And Remedies Are Cumulative</u>**. Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

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

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

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

12.2 **Waiver and Exclusion of Other Damages**. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

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

RECAPTURE OF TAX CREDITS, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.5, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B. THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; COVENANTS

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

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

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

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

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

(e) The Facility will be located in the State of California.

(f) Seller shall maintain Site Control throughout the Contract Term.

(g) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents, if applicable.

(h) The Product includes the exclusive right of Buyer to claim the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-03, as such Decision may be revised, updated or amended from time to time.

(i) Seller will provide additional information and documentation to Buyer if necessary to enable Buyer to demonstrate that the Product meets the procurement mandates set forth in CPUC Decision 21-06-035.

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

(a) Buyer is a joint powers authority validly existing and in good standing under the laws of the State of California, and is qualified to conduct business pursuant to its duly authorized Joint Powers Agreement. All Persons making up the governing body of Buyer are appointed in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

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

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; *provided*, *however*, that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (California Government Code Section 810 *et seq*.).

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

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

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

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

13.4 **Seller's Covenants**. Seller covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations and orders and decrees of any courts or administrative bodies or tribunals, including, without limitation, employment discrimination and prevailing wage laws.

(b) Seller shall enter into a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreements providing for terms and conditions of employment with applicable labor organizations ("**Project Labor Agreement**").

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer unless such Change in Control is to a Permitted Transferee, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. Seller shall pay Buyer's documented out-of-pocket expenses, including reasonable attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing, refinancing, tax equity investment or tax credit transfer in connection with the Facility. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement.

14.2 **Collateral Assignment**. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). Each Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and the applicable Lender, such agreement not to be unreasonably withheld. Buyer will not be subject to obligations under more than one Collateral Assignment Agreement at any time. The Collateral Assignment Agreement must include, among others, the following provisions unless otherwise agreed to by Buyer, Seller and the applicable Lender:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and the cure period of Lender shall not commence until Lender has received notice of such Event of Default;

(b) Lender will have the right to cure an Event of Default on behalf of Seller if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure such Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or, in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default, an additional reasonable period of time to complete such proceedings and effect such cure not to exceed one hundred eighty (180) days without the written consent of Buyer, which consent shall not be unreasonably withheld), provided that if Lender is prohibited by any court order or bankruptcy or insolvency proceedings from curing the Event of Default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition.

(c) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender (if Lender has provided the notice set forth in subsection (b) above) to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default capable of being cured existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(g) If Lender elects to transfer this Agreement or sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law;

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith, Lender shall have the right to elect within thirty (30) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld; and

(i) The Parties shall negotiate any Collateral Assignment Agreement in good faith, including variations to the provisions set forth in this Section 14.2, and to the extent the Collateral Assignment Agreement executed by Buyer and Lender varies from such provisions, the terms of such Collateral Assignment Agreement shall be controlling. In addition, Buyer shall cooperate with Seller or any Lender to execute or arrange for delivery of estoppels reasonably requested by Seller or Lender.

14.3 **Permitted Assignment by Seller**. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); provided that (i) such transfer or assignment is not in violation of applicable Law, including the Political Reform Act (Cal. Gov. Code section 81000 et seq.,) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy (if any), or any other conflict of interest Law; (ii) no Event of Default of Seller has occurred and is continuing at the time of such transfer; (iii) the assignee is a Permitted Transferee or, if such assignment is made pursuant to clause (a), no Change of Control has occurred; (iv) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and (v) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee. Any purported assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until the required Notice has been provided and the agreement required under clause (v) has been received by Buyer.

14.4 **Buyer Limited Assignment**. Buyer shall have the right to make a limited assignment in connection with a municipal prepayment transaction to an entity ("**Limited Assignee**") that has, or provides a parent guaranty in form and substance reasonably acceptable to Seller from an entity with, an Investment Grade Credit Rating, of Buyer's right to receive Product and Buyer's obligation to make payments to the Seller. The limited assignment shall be expressly subject to the Limited Assignee's timely payment of amounts as due hereunder. Buyer shall pay Seller for any payments not timely made by the Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under the Agreement notwithstanding the limited assignment. Any failure by the Limited Assignee to make payments to Seller when due hereunder shall be a Buyer Event of Default if not cured within the applicable cure period specified herein. Subject to the foregoing, Buyer may make such assignment upon not less than sixty (60) days' advance written notice by delivering to Seller a written request for Seller's consent to such assignment, which request must include a proposed assignment agreement reasonably acceptable to Seller. In connection with such proposed assignment agreement complying with the previous sentence, Seller agrees to comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies. Buyer shall pay Seller's documented out-of-pocket expenses, including reasonable attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Buyer's assignment pursuant to this Section. Seller will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Seller's rights, benefits, risks or obligations under this Agreement.

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Governing Law; Venue**. This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement. The Parties agree that any suit, action or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal or state courts located in the County of San Diego.

15.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the authorized members of the Parties' senior management shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law or in equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnification**.

(a) Seller agrees to indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "**Buyer's Indemnified Parties**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Seller's breach of this Agreement (including inaccuracy of any Seller representation of warranty made hereunder), (ii) a violation of applicable Laws by Seller or its Affiliates, including but not limited to violations of any Laws in constructing or operating the Facility and failure to comply with the CAISO Tariff, or (iii) negligent or willful misconduct by Seller or its Affiliates, directors, officers, employees, or agents.

(b) Buyer agrees to indemnify, defend and hold harmless Seller and its Affiliates, directors, officers, attorneys, employees, representatives and agents (collectively, the "**Seller's Indemnified Parties**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees and expert witness fees), howsoever described, to the extent arising out of, resulting from, or caused by (i) Buyer's breach of this Agreement (including inaccuracy of any representation of warranty made hereunder), (ii) a violation of applicable Laws by Buyer or its Affiliates, or (iii) negligent or willful misconduct of Buyer or its Affiliates, its directors, officers, employees, or agents.

(c) Notwithstanding any other provision of this Agreement, Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Parties, from any claim, liability, loss, injury (including personal injury) or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the use, storage, release, disposal and transportation of Hazardous Substances, or the contamination of land, water, or air, including but not limited to the Site, with any Hazardous Substances resulting from or related to Seller's performance of this Agreement.

(d) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting solely from its own negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

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

ARTICLE 17
INSURANCE

17.1 **Insurance**.

(a) [redacted]

(b) Employer's Liability Insurance. Seller, if it has employees, shall maintain Employers' Liability insurance with limits of not less than [redacted] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [redacted] policy limit will apply to each employee.

(c) Workers' Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain, or cause to be maintained, at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [redacted] per occurrence. Such insurance shall cover liability arising out of Seller's or Seller's contractors and subcontractors, as applicable, use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name Buyer as an additional insured and contain standard cross-liability and severability of interest provisions.

(e) Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of [redacted] per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(f) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than [redacted]; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of [redacted] per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). All subcontractors shall provide a primary endorsement for the required coverage pursuant to clause (g)(iii) and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.

(i) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage with insurers with ratings comparable to A-VII or higher, and that are authorized to do business in the State of California, in form evidencing all coverages set forth above. Such certificates shall specify that Buyer shall be given at least thirty (30) days' prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and workers' compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

ARTICLE 18
CONFIDENTIAL INFORMATION

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

18.2 **Duty to Maintain Confidentiality**.

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

(b) The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (California Government Code Section 7920 *et seq*.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as "Confidential" that clearly contain information that is not Confidential Information.

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

18.4 **Irreparable Injury; Remedies**. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing

Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.5 **Further Permitted Disclosure**. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party. Seller shall provide written notice to Buyer of any disclosure of Confidential Information (other than Seller's employees, actual or potential lenders or investors, consultants, contractors, suppliers, counsel, accountants, directors or advisors, or any such representatives of Seller's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) pursuant to this Section 18.5, including the identity of the party receiving such Confidential Information.

18.6 **Press Releases**. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release. A Party's consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 19
MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

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

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

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

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

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

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

19.8 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words "execution," "signed," "signature," and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

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

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

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

19.12 **Dodd-Frank Act.** The Parties intend this Agreement to be a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Responseto a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013). Notwithstanding the prior sentence, if and to the extent that this Agreement and the performance of the Parties' obligations requires any reporting to the Commodity Futures Exchange Commission (together with any successor body, the "**CFTC**") pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Seller shall be responsible for all such reporting (and Seller shall bear all costs and expenses associated therewith) and shall be the reporting counterparty for purposes of any applicable parts of the regulations of the CFTC promulgated under the Commodity Exchange Act. Buyer shall promptly provide information reasonably required by Seller for any such reporting and Seller shall be entitled to report and disclose information concerning all swaps transacted under this Agreement (including information regarding the economic terms and valuations of this Agreement) to any applicable Governmental Authority (or a third party swap data repository as required by a Governmental Authority), from time to time, to the extent required by any applicable Laws. Additionally, to the extent either Party needs additional information or details from the other Party in order to comply with any such applicable Laws (including information concerning such other Party's organization, corporate status, status under the CFTC's regulations and/or unique entity identifier), such other Party shall promptly provide such additional information or details to the first Party upon request. Buyer shall promptly reimburse Seller for any costs, fines or penalties Seller incurs as a result of Buyer's failure to comply with this Section 19.12. Seller shall promptly reimburse Buyer for any costs Buyer incurs as a result of Seller's failure to comply with this Section 19.12 and the Commodity Exchange Act, except to the extent such costs are a result of any action or omission of Buyer. Notwithstanding any provision of this Agreement to the contrary, no Event of Default, termination event, or other similar event shall be deemed to occur under this Agreement solely on the basis of a breach of any covenant or agreement in this Section 19.12 other than the obligation to make reimbursement payments.

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

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

[Signatures on following page]

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

GEM A-CAES LLC, a Delaware limited liability company

By: ____________________________
Name: ____________________________
Title: ____________________________

CLEAN ENERGY ALLIANCE, a California joint powers authority

By: ____________________________
Name: Gregory Wade______________
Title: Chief Executive Officer_______

Approved as to form:

By: ____________________________
Name: ____________________________
Title: ____________________________

EXHIBIT A

FACILITY DESCRIPTION

Project Name: Willow Rock Energy Storage Center

Site includes all or some of the following APNs: [redacted]

County: Kern

CEQA Lead Agency: California Energy Commission

Zip Code: 93501

Latitude and Longitude: [redacted]

Facility Description: Advanced Compressed Air Energy Storage ("A-CAES")

Delivery Point: [redacted]

PNode: [redacted]

Interconnection Point: Whirlwind 230 kV substation

Transmission Provider: Southern California Edison Company

Local Capacity Area and Sub-Local Capacity Area: n/a

Additional Information: Site plan provided below, current as of the Effective Date, but subject to adjustment.

Site Plan

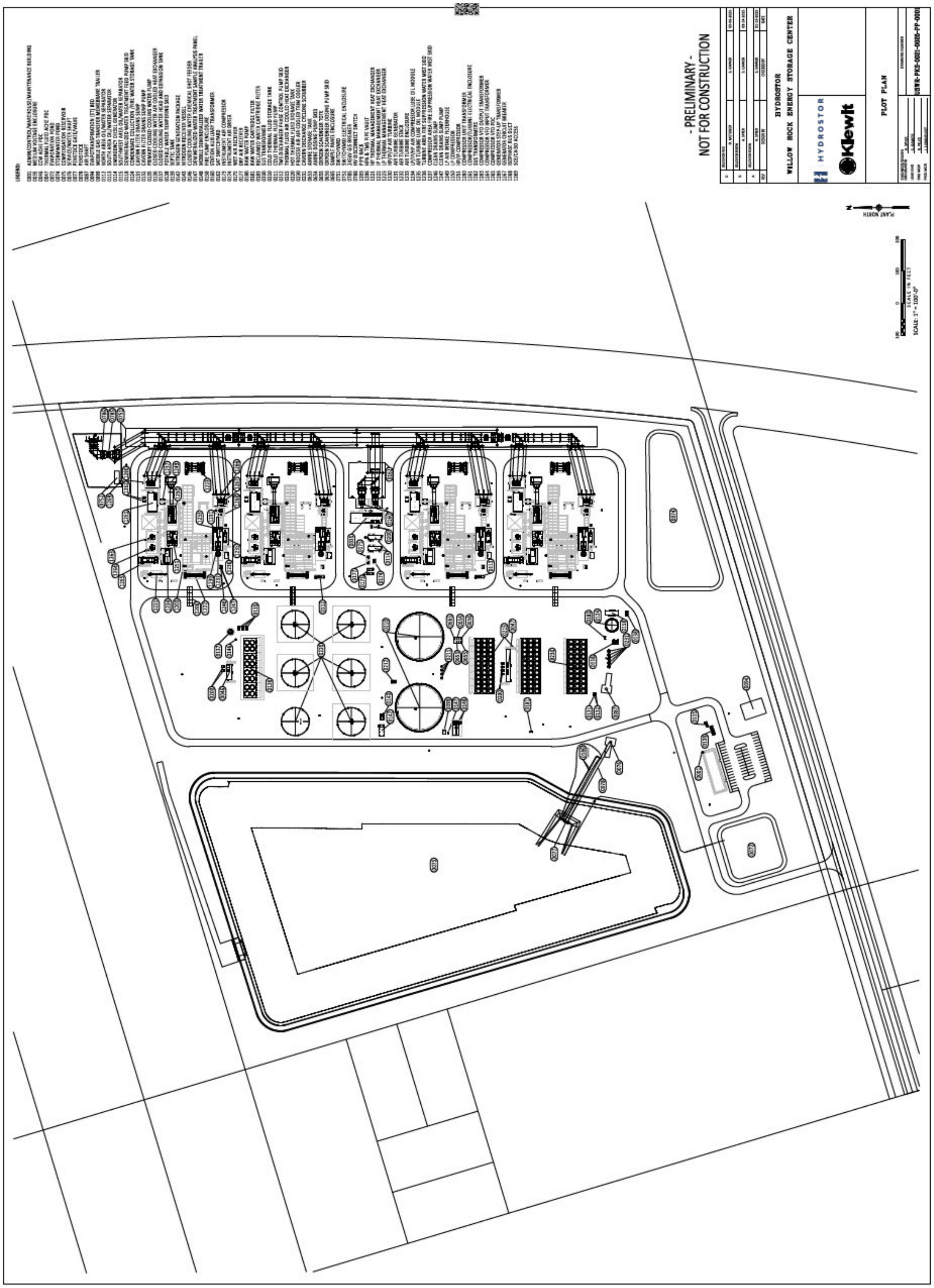
- PRELIMINARY -
NOT FOR CONSTRUCTION
HYDROSTOR
WILLOW ROCK ENERGY STORAGE CENTER
HYDROSTOR
Kiewit
PLOT PLAN

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

   a. "**Construction Start**" will occur upon Seller's acquisition of the conditional use permit and other applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "**Construction Start Date**." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date, as may be extended by Seller's payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B.

   b. In addition to extensions pursuant to a Development Cure Period, Seller shall extend the Guaranteed Construction Start Date by paying Construction Delay Damages in advance to Buyer for each day Seller extends the Guaranteed Construction Start Date, not to exceed a total of [redacted] days of extensions by such payment of Construction Delay Damages. If Seller extends the Guaranteed Construction Start Date, on or before the date that is [redacted] days prior to the then-current Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Construction Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Construction Delay Damages, Buyer shall refund to Seller the Construction Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Construction Delay Damages, not to exceed the total amount of Construction Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of Exhibit B.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "**COD Certificate**") (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The "**Commercial Operation Date**" shall be the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.

a. Seller shall cause Commercial Operation to occur no later than the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, as may be extended by a Development Cure Period but not by the payment of Commercial Operation Delay Damages, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

c. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller extends the Guaranteed Commercial Operation Date, not to exceed a total of [redacted] days of extensions by such payment of Commercial Operation Delay Damages. If Seller extends the Guaranteed Commercial Operation Date, on or before the date that is [redacted] days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(c) of Exhibit B.

3. **Termination for Failure to Timely Achieve Construction Start and/or Commercial Operation**. If the Facility has not achieved Construction Start on or before the Guaranteed Construction Start Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2. If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:

a. a Force Majeure Event occurs; or

b. Seller has not acquired the Material Permits by the Guaranteed Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or

c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date despite the exercise of diligent and commercially reasonable efforts by Seller; or

d. Buyer has not made all necessary arrangements to receive the Product at the Delivery Point by the Guaranteed Commercial Operation Date.

An extension of the Guaranteed Construction Start Date for a Development Cure Period shall automatically extend the Guaranteed Commercial Operation Date on a day-for-day basis. Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4.d above) shall not exceed [redacted], for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4.d above) shall not exceed [redacted]. Notwithstanding anything to the contrary, no Development Cure Period extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, or (ii) Seller failed to provide requested documentation as provided below. Except as set forth in Section 10.3 regarding Force Majeure Event notice requirements, Seller shall provide prompt written notice to Buyer of a Development Cure Period delay, but in no case more than ten (10) Business Days after Seller became aware of such delay, except that in the case of a delay occurring within [redacted] days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity**. If, at Commercial Operation, the Installed Capacity of the Facility is such that Seller is unable to satisfy the total aggregate quantity of Capacity Commitments for the Facility, Seller shall have [redacted] after the Commercial Operation Date to install additional capacity such that the Installed Capacity is sufficient to satisfy the Facility's Capacity Commitments, including satisfying the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to increase the Installed Capacity by such date, Seller may elect to reduce the Guaranteed Capacity by issuing written notice to that effect and identifying, in writing, the new adjusted Guaranteed Capacity (the "**Adjusted Guaranteed Capacity**"). If Seller makes this election, then Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [redacted] for each MW that the Guaranteed Capacity as of the Effective Date exceeds the Adjusted Guaranteed Capacity. Thereafter,

the Guaranteed Capacity shall equal the Adjusted Guaranteed Capacity, and applicable portions of the Agreement, including Exhibit Q, shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

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

(a) Monthly Capacity Payment. Each month of the Delivery Term, Buyer shall pay Seller a Monthly Capacity Payment minus the Monthly Energy Settlement Amount for such month. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Product.

Monthly Capacity Payment = Contract Price x Guaranteed Capacity x 1000

(b) Monthly Energy Settlement Amount. The "**Monthly Energy Settlement Amount**" is calculated as follows to account, on a daily basis, for the Day-Ahead Market LMPs associated with the top four (4) hours of prices associated with discharging and the bottom number of hours equal to four (4) divided by the Guaranteed Efficiency Rate; provided, that if there would be no or negative value associated with energy arbitrage tied to an incremental hour of discharging and the commensurate incremental hours of charging, that such hours be omitted from the energy arbitrage calculation for such day:

Monthly Energy Settlement Amount = ES = $\sum_{i=1}^{D} S_i$

where,

D = the number of days in month

S_i = Daily Energy Settlement of i^{th} day in a month ($)

Daily Energy Settlement $= S_i = B \times \left\{\sum_{n=1}^{N} max\left[\left(P_n^H - \int_j^J P_j^L dj\right), 0\right]\right\}$

where,

B = Guaranteed Capacity (MW)

n = n^{th} hour of N

N = financial settlement discharging duration (4 hours)

$j = (n - 1) / RTE$

$J = n / RTE$

dj = the fraction of the hour j for which price P_j^L applies

P_n^H = The n^{th} highest Day-Ahead Market LMPs ($/MWh) within day i

P_j^L = The j^{th} lowest Day-Ahead Market LMP ($/MWh) within day i required to charge the Facility for discharge during P_n^H

RTE = Guaranteed Efficiency Rate

Day-Ahead Market LMP = the LMP reported by the CAISO at the PNode associated with the Project for each Settlement Period in a day during the Day-Ahead Market.

Exhibit T contains illustrative examples of calculating the Daily Energy Settlement.

(c) Tax Credits. [redacted]

(d) Effect of Force Majeure. [redacted]

(e) Effect of Health and Safety Outage. [redacted]

EXHIBIT D

[RESERVED]

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any material planned changes to the Facility or the Site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter.

8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.

9. List of issues that are reasonably likely to affect Seller’s Milestones.

10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.

11. A detailed description of all actions taken by Seller to comply with Prevailing Wage Requirement and Project Labor Agreement requirements of this Agreement.

12. Progress and schedule of all material agreements, contracts, permits (including Material Permits), approvals, technical studies, financing agreements and Major Equipment purchase orders showing the start dates, completion dates, and completion percentages.

13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

14. Workforce Development reporting (if applicable). Format to be provided by Buyer.

15. Any other documentation reasonably requested by Buyer.

EXHIBIT F

[RESERVED]

EXHIBIT G

[RESERVED]

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [*LICENSED PROFESSIONAL ENGINEER*] ("**Engineer**") to Clean Energy Alliance, a California joint powers authority **(**"**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [*DATE*] ("**Agreement**") by and between [*SELLER*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [*DATE*], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, interconnected, and synchronized with the Transmission System in accordance with the Interconnection Agreement.

2. Seller has installed equipment for the Facility with an Installed Capacity sufficient to permit Seller to provide no less than [redacted] of the Guaranteed Capacity.

3. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.

4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on [*DATE*].

5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation on [*DATE*].

6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [*DATE*].

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**
this ________ day of _____________, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**
By:_________________________________
Its:_________________________________
Date:__________________________

EXHIBIT I

FORM OF INSTALLED CAPACITY AND EFFICIENCY RATE TEST CERTIFICATE

This certification ("**Certification**") of Installed Capacity and Efficiency Rate is delivered by [*LICENSED PROFESSIONAL ENGINEER*] ("**Engineer**") to Clean Energy Alliance, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [*DATE*] ("**Agreement**") by and between GEM A-CAES LLC and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Capacity Test conducted on [*DATE*] demonstrated a maximum dependable operating capability that can be sustained for [*Insert Resource Duration (#)*] consecutive hours to discharge electric energy of __ MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Exhibit O (the "**Installed Storage Capacity**"); and

(b) The Capacity Test conducted on [*DATE*] demonstrated an Efficiency Rate of __%, all in accordance with the testing procedures, requirements and protocols set forth in Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this ________ day of _____________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: ________________________________

Printed Name: ________________________

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by GEM A-CAES LLC ("**Seller**") to Clean Energy Alliance, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Service Agreement dated [*DATE*] ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

(2) the Construction Start Date occurred on _____________ (the "**Construction Start Date**"); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: ____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as this ________ day of _____________, 20__.

GEM A-CAES LLC

By: _________________________________

Printed Name: ________________________

Title: ______________________________

EXHIBIT K

FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: ____________________
Bank Ref.: ________________
Amount: US$______________
Expiration Date: ___________

Beneficiary:
Clean Energy Alliance
Attn: Gregory Wade, CEO
5857 Owens Ave, Suite 2023
Carlsbad, CA 92008

Ladies and Gentlemen:

By the order of [*Entity name, state of formation, type of entity*] ("Applicant"), we, [*Bank name and address*] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [*XXXXXX*] (the "Letter of Credit") in favor of Clean Energy Alliance, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. $[*XXXXXX*] (United States Dollars [*XXXXXX*] and 00/100), pursuant to that certain Energy Storage Service Agreement dated as of [*Date*] and as amended (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [*Date*] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by Beneficiary's duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [*XXXXXX*] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, [(b) as a PDF attachment to an email to [*Bank email address*] or (c) facsimile to [*Bank fax number*] confirmed by [email to [*Bank email address*] Transmittal by facsimile or email shall be deemed delivered when received. The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on such Expiration Date, or such later date as may be specified in such notice. No presentation made under this Letter of Credit after such Expiration Date (or such later date, if applicable) will be honored.

This Letter of Credit is issued subject to the rules of the 'International Standby Practices 1998', International Chamber of Commerce Publication No. 590 ("ISP98") and, as to matters not addressed by ISP98, shall be governed and construed in accordance with the laws of state of California.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements (other than as set forth in the immediately prior paragraph), this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*Bank name and address*], referring specifically to Issuer's Letter of Credit No. [*XXXXXX*]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [*Bank phone number*] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Energy Alliance, Attn: Gregory Wade, CEO, 5857 Owens Ave, Suite 2023, Carlsbad, CA 92008. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[*Bank Name*]

____

[*Officer name*]
[*Officer title*]

Exhibit A:
Drawing Certificate

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

[*Bank name and address*]

Ladies and Gentlemen:
The undersigned, a duly authorized representative of Clean Energy Alliance, a California joint powers authority, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [*XXXXXX*] (the "Letter of Credit") issued by [*Bank name*] (the "Bank") by order of [*Entity name, state of formation, type of entity*] (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Energy Storage Service Agreement dated as of [*Date*] (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $[*XXXXXX*] because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $[*XXXXXX*], which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the Expiration Date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such Expiration Date.

3. The undersigned is a duly authorized representative of Clean Energy Alliance and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Clean Energy Alliance by wire transfer in immediately available funds to the following account: [*Specify account information*].

Clean Energy Alliance

_
[*Name and Title of Authorized Representative*]
Date____________________________

EXHIBIT L

[RESERVED]

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by GEM A-CAES LLC ("**Seller**") to Clean Energy Alliance, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage Services Agreement dated ____________ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.1(c) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information[1]

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

[1] To be repeated for each unit if more than one.

GEM A-CAES LLC

By:___________________________________
Its:___________________________________

Date:_________________________________

EXHIBIT N

NOTICES

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	
	[redacted]
	[redacted]

[redacted]	[redacted]
[redacted] [redacted]	[redacted]
[redacted]	[redacted]

EXHIBIT O

CAPACITY TESTS

A. Commercial Operation Capacity Test(s). Upon no less than ten (10) Business Days' prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Capacity Test (and any subsequent Commercial Operation Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the initial Installed Capacity and initial Efficiency Rate hereunder based on the actual capacity and efficiency rate of the Facility determined by such Commercial Operation Capacity Test(s).

B. Subsequent Capacity Tests. Following the Commercial Operation Date, Buyer may request an additional Capacity Test once in each Contract Year. Upon no less than ten (10) Business Days after receipt of Notice from Buyer, Seller shall schedule and complete a Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon no less than five (5) Business Days' prior Notice to Seller. Seller shall have the right to run a retest of any Capacity Test upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice). The Parties shall use reasonable commercial efforts to perform no more Capacity Tests than are reasonably necessary and to coordinate Capacity Tests with Capacity Tests being performed in connection with other contracts to which the Facility is subject.

C. Test Results and Re-Setting of Effective Capacity and Efficiency Rate. No later than ten (10) Business Days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.4 of the Agreement, the actual Efficiency Rate and Effective Capacity determined pursuant to a Capacity Test (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Capacity Test shall become the new Effective Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Monthly Capacity Payment and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

B. Conditions Prior to Testing.

EMS Functionality. The EMS shall be successfully configured to receive data from the Storage Management System (SMS), exchange DNP3 data with the

Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between CAISO's RTU and the Facility SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between CAISO's RTU and Seller's EMS interface and the ability to record SCADA System data.

Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the Expected Facility Capacity; provided, for all purposes of this Agreement, the amount of Buyer's Share of the Installed Capacity shall never be deemed to exceed the Guaranteed Capacity, and all SOC measurements associated with a Capacity Test shall be based on the Buyer's Share of the Installed Capacity without taking into account any capacity that exceeds the Guaranteed Capacity.

A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the CT will still be deemed "complete," and any adjustments necessary to the Effective Capacity or to the Efficiency Rate resulting from such CT, if applicable, will be made in accordance with this Exhibit O.

(1) The measurement of Charging Energy, as measured by the Facility Meter, that is required to charge the Facility from the Minimum Stored Energy Level up to the Maximum Stored Energy Level.

(2) The measurement of Discharging Energy, as measured by the Facility Meter, that is required to discharge the Facility from the Maximum Stored Energy Level down to the Minimum Stored Energy Level.

(3) Amount of time between the Facility's electrical output going from 0 to Maximum Discharging Capacity.

(4) Amount of time between the Facility's electrical input going from 0 to Maximum Charging Capacity.

B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:

(1) Time;

(2) The amount of Discharging Energy measured by the Facility Meters (MWh) (i.e., to each measurement device making up the Facility Meter);

(3) The amount of Charging Energy measured by the Facility Meters (MWh) (i.e., from each measurement device making up the Facility Meter); and

(4) Stored Energy Level (MWh).

C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) near the horizontal centerline of the Facility; and

(3) Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

(1) That the CT successfully started;

(2) The Maximum Discharging Capacity sustained for the number of consecutive hours corresponding to the Resource Duration;

(3) The Maximum Charging Capacity sustained for the number of consecutive hours equal to the Resource Duration divided by the Minimum Efficiency Rate (or such lesser time as is required to reach 100% SOC);

(4) Amount of time between the Facility's electrical output going from 0 to the Maximum Discharging Capacity registered during the CT;

(5) Amount of time between the Facility's electrical input going from 0 to the Maximum Charging Capacity registered during the CT;

(6) Amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC; and

(7) Amount of Discharging Energy, registered at the Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

(1) General. At all times during a CT, the Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Facility.

(2) Abnormal Conditions. If abnormal operating conditions prevent the testing or recordation of any required parameter during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.

(3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within ten (10) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

(1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;

(2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and

(3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefore.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefore. If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to Construction Start, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then current design of the Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Capacity and Efficiency Rate. The Effective Capacity and Efficiency Rate shall be updated as follows:

(1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) at the Maximum Discharging Capacity during the first Resource Duration number of hours of discharge (up to, but not in excess of, the product of (i) the Expected Facility Capacity as of the Effective Date, multiplied by (ii) the Resource Duration) shall be divided by the Resource Duration number of hours to determine the Effective Capacity, which shall be expressed in MW AC, and shall be the new Effective Capacity in accordance with Section 4.4 of the Agreement.

(2) The total amount of Discharging Energy (as reported under Section II.D(7) above) divided by the total amount of Charging Energy (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate.

J. Partial Capacity Tests. To the extent that a Capacity Test is being performed solely for Buyer that is not part of a Capacity Test applicable to the full Facility, the Parties will cooperate, acting reasonably and in good faith, to adjust the requirements and calculations to reflect testing of at least Buyer's share of the Installed Capacity.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Capacity and Efficiency Rate Test**

- Procedure:

(1) System Starting State: The Facility will be in the on-line state at 0% SOC.

(2) Record the initial value of the SOC.

(3) Command a real power charge that results in an AC power of Facility's Maximum Charging Capacity and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) the number of hours equal to the Resource Duration divided by the Minimum Efficiency elapsed since the Facility commenced charging.

(4) Record and store the SOC after the earlier of (a) the Facility has reached 100% SOC or (b) number of hours equal to the Resource Duration divided by the Minimum Efficiency of continuous charging.

(5) Record and store the amount of Charging Energy, registered at the Facility Meter, to go from 0% SOC to 100% SOC.

(6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Facility's Maximum Discharging Capacity and maintain the discharging state until the earlier of (a) the Facility has discharged at the Maximum Discharging Capacity for the number of consecutive hours corresponding to the Resource Duration, or (b) the Facility has reached 0% SOC.

(7) Record and store the SOC and Discharging Energy after the number of hours corresponding to the Resource Duration of continuous discharging.

(8) If the Facility has not reached 0% SOC pursuant to Section III.A(6), continue discharging the Facility at Maximum Discharging Capacity until it reaches a 0% SOC.

(9) Record and store the Discharging Energy as measured at the Facility Meter from the commencement of discharging pursuant to Section III.A(6) until the Facility has reached a 0% SOC pursuant to either Section III.A(7) or Section III.A(8), as applicable.

- Test Results:

(1) The resulting Effective Capacity measurement is the sum of the total Discharging Energy as reported under Section III.A(7) above at the Facility Meter divided by the Resource Duration, not to exceed the Expected Facility Capacity.

(2) The total amount of Discharging Energy (as reported under Section III.A(9) above) divided by the total amount of Charging Energy (as reported under Section III.A(5) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate.

EXHIBIT P

MAJOR EQUIPMENT

Owner-Furnished Equipment

- o Turbomachinery
- o Shell and Tube Heat Exchangers

Electrical and I&C

- o Electrical Enclosures
- o GSU Transformers
- o Main Auxiliary Transformers
- o Generator Circuit Breaker
- o Compressor Transformers
- o Emergency Diesel Generator
- o Iso Phase Bus Duct
- o Battery/UPS System
- o Distributed Control System

Mechanical

- o Air Cooled Heat Exchangers
- o Compressed Air System
- o Oil Water Separators
- o HP Air Trim Cooler
- o Fire Pumps
- o General Service Pumps
- o Fire Protection
- o Cold Thermal Fluid Pumps
- o Shop Fabricated Tanks

- o Field Erected Tanks (Cylindrical and Spherical)
- o Nitrogen Generation
- o Piping
- o Expansion Joints
- o Silencers
- o Generation Conduit Gate Valve
- o Butterfly Valves
- o Sanitary Waste Tank

Structural

- o Building
- o Structural Steel

Substation

- o HV Breakers
- o Structures/Equipment
- o Relay Panels

Bulks

Transmission

- o Steel Structures
- o Conductors

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, and (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q.

File Update Date:	[TBD]
Technology:	Advanced Compressed Air Energy Storage ("A-CAES") Technology
Storage Unit Name:	Willow Rock Energy Storage Center
A. Contract Capacity	
Expected Facility Capacity (MW):	500
Guaranteed Capacity (MW):	60
Contract Capacity (MW)	[TBD]
B. Total Unit Dispatchable Range Information	
Interconnect Voltage (kV):	220 kV
Maximum State of Charge (SOC) during Charging:	100%
Minimum State of Charge (SOC) during Discharging:	0%
Maximum Stored Energy Level (MWh):	4,000 MWh
Minimum Stored Energy Level (MWh):	0 MWh
Maximum Charging Capacity (MW):	500 MW
Maximum Discharging Capacity (MW):	500 MW
C. Maximum Throughput	
Maximum Daily Throughput:	4,000 MWh
Maximum Annual Throughput:	1,460,000 MWh
D. Ancillary Services	
Spinning reserve is included:	No
Non-spinning reserve is included:	No
Regulation up is included:	No
Regulation down is included:	No
Black start is included:	No
F. Other Services	
Voltage support is included:	No

EXHIBIT R

[RESERVED]

EXHIBIT S

MATERIAL PERMITS REQUIRED FOR CONSTRUCTION START

No.	*Permits*
1	Application for Certification for the Facility by the California Energy Commission.
2	U.S. Department of Energy National Environmental Policy Act Environmental Assessment / Finding of No Significant Impact

EXHIBIT T

DAILY ENERGY SETTLEMENT EXAMPLE CALCULATION

This Exhibit T illustrates how the Daily Energy Settlement described in Exhibit C would be calculated for one day. As the Monthly Energy Settlement Amount is computed on a monthly basis, this calculation would be repeated for every day of the month using each day's Day-Ahead Market LMPs. The examples in this Exhibit T are for illustrative purposes only. The following assumptions are used for this Daily Energy Settlement example:

- Guaranteed Capacity: 60 MW
- Guaranteed Efficiency Rate: [redacted]
- Financial settlement discharging duration: 4 hours

Table 1: Day-Ahead LMP Prices for July 1

Hour Ending	Day-Ahead Market LMP ($/MWh)	Hour Ending	Day-Ahead Market LMP ($/MWh)
1	47.90591	13	31.61684
2	45.96599	14	31.62506
3	44.82173	15	32.09684
4	44.90083	16	34.41447
5	43.47428	17	35.20000
6	50.37740	18	42.00045
7	47.14653	19	50.25203
8	35.27595	20	60.29049
9	31.82775	21	55.98469
10	31.63916	22	53.54025
11	31.10063	23	50.08900
12	31.12481	24	49.55949

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

<u>Daily Energy Settlement Equation:</u>

$$\text{Daily Energy Settlement} = S_i = B \times \left\{\sum_{n=1}^{N} max\left[\left(P_n^H - \int_j^J P_j^L\, dj\right), 0\right]\right\}$$

where:

B = Guaranteed Capacity (MW)

n = nth hour of N

N = financial settlement discharging duration (4 hours)

$j = (n - 1) / RTE$

$J = n / RTE$

dj = the fraction of the hour j for which price P_j^L applies

P_n^H= The nth highest Day-Ahead Market LMPs ($/MWh) within day i

P_j^L= The j^{th} lowest Day-Ahead Market LMP ($/MWh) within day i required to charge the Facility for discharge during P_n^H

RTE = Guaranteed Efficiency Rate

Day-Ahead Market LMP = the LMP reported by the CAISO at the PNode associated with the Project for each Settlement Period in a day during the Day-Ahead Market.

Sample Calculation for July 1:

Step 1: Calculate for 1st discharge hour (n=1)

Item #	Description	Units	Variable	Value	Additional Calculation Notes
1A	Discharge hour	hour #	n	[redacted]	
1B	Discharge price	$/MWh	P_n^H	[redacted]	[redacted]
1C	Charge start hour	hour #	j	[redacted]	[redacted]
1D	Charge end hour	hour #	J	[redacted]	[redacted]
1E	Charge price for 1st stub period	$/MWh	P_j^L	[redacted]	
1F	Charge stub period applicable	hour #	dj	[redacted]	[redacted]
1G	**Cost of charging in 1st stub period**	**$/MW**	$\boldsymbol{P_j^L dj}$	[redacted]	
1H	Start of next charging period	hour #	j	[redacted]	[redacted]
1I	Charge price for 2nd period	$/MWh	P_j^L	[redacted]	[redacted]
1J	Charge period applicable	hour #	dj	[redacted]	[redacted]
1K	**Cost of charging in 2nd period**	**$/MW**	$\boldsymbol{P_j^L dj}$	[redacted]	[redacted]
1L	End of charging period / 3rd period	hour #	j = J	[redacted]	[redacted]
1M	Charge price for 3rd period	$/MWh	P_j^L	[redacted]	[redacted]
1N	Charge period applicable	hour #	dj	[redacted]	[redacted]
1O	**Cost of charging in 3rd period**	**$/MW**	$\boldsymbol{P_j^L dj}$	[redacted]	[redacted]
1P	**Total cost of charging**	**$/MW**	$\boldsymbol{\int_j^J P_j^L dj}$	[redacted]	[redacted]
1Q	**Discharge price - charge cost**	**$/MW**	$\boldsymbol{P_n^H - \int_j^J P_j^L dj}$	[redacted]	[redacted]
1R	**Margin, if positive**	**$/MW**	$\boldsymbol{max\left[\left(P_n^H - \int_j^J P_j^L dj\right), 0\right]}$	[redacted]	[redacted]

Step 2: Calculate for 2nd discharge hour (n=2)

Item #	Description	Units	Variable	Value	Additional Calculation Notes
2A	Discharge hour	hour #	n	[redacted]	
2B	Discharge price	$/MWh	P_n^H	[redacted]	[redacted]
2C	Charge start hour	hour #	j	[redacted]	[redacted]
2D	Charge end hour	hour #	J	[redacted]	[redacted]
2E	Charge price for 1st stub period	$/MWh	P_j^L	[redacted]	[redacted]
2F	Charge stub period applicable	hour #	dj	[redacted]	[redacted]
2G	**Cost of charging in 1st stub period**	**$/MW**	$\boldsymbol{P_j^L dj}$	[redacted]	[redacted]
2H	Start of next charging period	hour #	j	[redacted]	[redacted]
2I	Charge price for 2nd period	$/MWh	P_j^L	[redacted]	[redacted]
2J	Charge period applicable	hour #	dj	[redacted]	[redacted]
2K	**Cost of charging in 2nd period**	**$/MW**	$\boldsymbol{P_j^L dj}$	[redacted]	[redacted]
2L	End of charging period / 3rd period	hour #	j = J	[redacted]	[redacted]
2M	Charge price for 3rd period	$/MWh	P_j^L	[redacted]	[redacted]
2N	Charge period applicable	hour #	dj	[redacted]	[redacted]
2O	**Cost of charging in 3rd period**	**$/MW**	$\boldsymbol{P_j^L dj}$	[redacted]	[redacted]
2P	**Total cost of charging**	**$/MW**	$\boldsymbol{\int_j^J P_j^L dj}$	[redacted]	[redacted]
2Q	**Discharge price - charge cost**	**$/MW**	$\boldsymbol{P_n^H - \int_j^J P_j^L dj}$	[redacted]	[redacted]
2R	**Margin, if positive**	**$/MW**	$\boldsymbol{max\left[\left(P_n^H - \int_j^J P_j^L dj\right), 0\right]}$	[redacted]	[redacted]

Step 3: Calculate for 3rd discharge hour (n=3)

Item #	Description	Units	Variable	Value	Additional Calculation Notes
3A	Discharge hour	hour #	n	[redacted]	
3B	Discharge price	$/MWh	P_n^H	[redacted]	[redacted]
3C	Charge start hour	hour #	j	[redacted]	[redacted]
3D	Charge end hour	hour #	J	[redacted]	[redacted]
3E	Charge price for 1st stub period	$/MWh	P_j^L	[redacted]	[redacted]
3F	Charge stub period applicable	hour #	dj	[redacted]	[redacted]
3G	**Cost of charging in 1st stub period**	**$/MW**	$\boldsymbol{P_j^L dj}$	[redacted]	[redacted]
3H	Start of next charging period	hour #	j	[redacted]	[redacted]
3I	Charge price for 2nd period	$/MWh	P_j^L	[redacted]	[redacted]
3J	Charge period applicable	hour #	dj	[redacted]	[redacted]
3K	**Cost of charging in 2nd period**	**$/MW**	$\boldsymbol{P_j^L dj}$	[redacted]	[redacted]
3L	End of charging period / 3rd period	hour #	j = J	[redacted]	[redacted]
3M	Charge price for 3rd period	$/MWh	P_j^L	[redacted]	[redacted]
3N	Charge period applicable	hour #	dj	[redacted]	[redacted]
3O	**Cost of charging in 3rd period**	**$/MW**	$\boldsymbol{P_j^L dj}$	[redacted]	[redacted]
3P	**Total cost of charging**	**$/MW**	$\boldsymbol{\int_j^J P_j^L dj}$	[redacted]	[redacted]
3Q	**Discharge price - charge cost**	**$/MW**	$\boldsymbol{P_n^H - \int_j^J P_j^L dj}$	[redacted]	[redacted]
3R	**Margin, if positive**	**$/MW**	$\boldsymbol{max\left[\left(P_n^H - \int_j^J P_j^L dj\right), 0\right]}$	[redacted]	[redacted]

Step 4: Calculate for 4th discharge hour (n=4)

Item #	Description	Units	Variable	Value	Additional Calculation Notes
4A	Discharge hour	hour #	n	[redacted]	
4B	Discharge price	$/MWh	P_n^H	[redacted]	[redacted]
4C	Charge start hour	hour #	j	[redacted]	[redacted]
4D	Charge end hour	hour #	J	[redacted]	[redacted]
4E	Charge price for 1st stub period	$/MWh	P_j^L	[redacted]	[redacted]
4F	Charge stub period applicable	hour #	dj	[redacted]	[redacted]
4G	**Cost of charging in 1st stub period**	**$/MW**	$\boldsymbol{P_j^L dj}$	[redacted]	[redacted]
4H	Start of next charging period	hour #	j	[redacted]	[redacted]
4I	Charge price for 2nd period	$/MWh	P_j^L	[redacted]	[redacted]
4J	Charge period applicable	hour #	dj	[redacted]	[redacted]
4K	**Cost of charging in 2nd period**	**$/MW**	$\boldsymbol{P_j^L dj}$	[redacted]	[redacted]
4L	End of charging period / 3rd period	hour #	j = J	[redacted]	[redacted]
4M	Charge price for 3rd period	$/MWh	P_j^L	[redacted]	[redacted]
4N	Charge period applicable	hour #	dj	[redacted]	[redacted]
4O	**Cost of charging in 3rd period**	**$/MW**	$\boldsymbol{P_j^L dj}$	[redacted]	[redacted]
4P	**Total cost of charging**	**$/MW**	$\boldsymbol{\int_j^J P_j^L dj}$	[redacted]	[redacted]
4Q	**Discharge price - charge cost**	**$/MW**	$\boldsymbol{P_n^H - \int_j^J P_j^L dj}$	[redacted]	[redacted]
4R	**Margin, if positive**	**$/MW**	$\boldsymbol{max\left[\left(P_n^H - \int_j^J P_j^L dj\right), 0\right]}$	[redacted]	[redacted]

Step 5: Sum the amounts calculated in Steps 1 to 4.

$$\left\{\sum_{n=1}^{N} max\left[\left(P_n^H - \int_j^J P_j^L dj\right), 0\right]\right\}$$

= Item # 1R + Item # 2R + Item # 3R + Item # 4R

= [redacted]

= [redacted]

Step 6: Multiply the Guaranteed Capacity (MW) by the amount calculated in Step 5.

$$\text{Daily Energy Settlement} = S_i = B \times \left\{\sum_{n=1}^{N} max\left[\left(P_n^H - \int_j^J P_j^L dj\right), 0\right]\right\}$$

= [redacted]

= [redacted]

In this example, the Daily Energy Settlement for July 1 is [redacted]

Note that the numbers used in the example in this Exhibit is rounded for illustrative purposes only.

CLEAN ENERGY ALLIANCE

Staff Report

DATE: July 30, 2026

TO: Clean Energy Alliance Board of Directors

FROM: Gregory Wade, Chief Executive Officer

ITEM 11: Receive Legislative Update from Staff

RECOMMENDATION:

Receive a Legislative Update from Staff.

BACKGROUND AND DISCUSSION:

Clean Energy Alliance (CEA) contracts with Summit Advocacy for Legislative advocacy activities. Staff will provide the Board with an update on key legislative and regulatory issues of interest to CEA. The update will include a summary of significant developments during the 2026 legislative session to date, including matters being monitored for their potential impact on the energy and climate sectors, as well as CEA's operations and strategic priorities.

FISCAL IMPACT:

There is no direct fiscal impact from this action.

Submitted for Board consideration:

____

Gregory Wade
Chief Executive Officer

ATTACHMENTS:

A. Summit Advocacy Legislative Report

SUMMIT
Advocacy

Overview

In the first half of 2026, the California state Legislature has been busy. Most recently, legislative leadership and the Governor worked to pass the state budget ahead of the new fiscal year and collaborated to shape the upcoming November ballot.

While the Legislature has been engaging in legislative hearings since January, things picked up significantly in the month of June with budget negotiations ahead of the June 15th and June 30th budget deadlines. These negotiations involved budget subcommittee hearings broken down by subject, along with full committee meetings to finalize the deal.

Additionally, the deadline for the Legislature to pass policies intended to go on the November ballot was June 25th. The Legislature and Governor worked on and agreed to add several new measures for voter approval and were able to negotiate several off of the ballot.

Throughout the month, Legislators also worked long hours to hear and pass bills out of their relevant policy committees. The deadline for bills to be heard in policy committee was July 2nd. Those that are fiscal now move to Appropriations Committees, where their fate will be decided on August 14th. Bills without a fiscal tag go straight to the Floor. All bills must pass out of the Legislature by the end-of-Session on August 31st.

Budget

As has been the trend for the past several years, the California state budget has a structural deficit that continues to grow. This year, increased tax payments to the state, largely due to Artificial Intelligence company growth and high-income earners paying more taxes than expected, allowed the state to postpone significant cuts. The Legislature also passed several new taxes that will impact individuals, governments, and businesses, including adding software to the products subject to sales tax.

The budget also moved leftover funds from the Distributed Energy Backup Assets (DEBA) program to continue funding the Demand Side Grid Support (DSGS) program, at least through this year.

Of note, the Budget Act of 2026 also included $10 million in funding for geothermal exploration and development activities.

Past Bills, Status and Implementation

Rarely is the passage of a bill by the Legislature the end of the story. Implementation of legislation by regulatory agencies is often just as critical. For example, SB 1221 (Min, Chaptered 2024), which requires the CPUC to establish a decarbonization pilot program, has been in the process of being implemented at the CPUC. The pilot programs have not formally started yet, but several CEA cities are represented on the initial list where the CPUC may approve pilot projects, including Carlsbad, Oceanside, Vista, and San Marcos. A recent CPUC decision ordered that these zones will be updated by the end of the year and set the timeline and process for gas corporations to voluntarily file applications for proposed pilot projects.

Another past bill we have been monitoring is SB 254 (Becker, Chaptered 2025). This bill required, among other things, the California Earthquake Authority to study California's current landscape for utility wildfire liability and make recommendations for ways to improve the system to equitably spread the costs and also mitigate wildfire risks. The study was released in April, and informational hearings were held in the Assembly and Senate. While no legislation has been introduced in response, the Investor Owned Utilities (IOUs) and some allies continue to work behind the scenes to try to pass a bill before session ends August 31.

Priority Bills CEA is Supporting

CEA has been closely involved in lobbying and monitoring numerous bills in 2026. We have worked closely with CalCCA and our fellow CCAs to coordinate lobbying efforts and demonstrate a united front.

CCAs prioritized affordability in 2026 with two CalCCA-sponsored bills. CEA also took support positions on both bills and lobbied members to pass them. The first of these bills is AB 1761 (Rogers) regarding data transparency in the Power Charge Indifference Adjustment (PICA) process. It would ensure that all data serving as a basis for any decision or ruling is made available to load serving entities and ratepayer advocates on behalf of their customers. The CCA coalition has been able to pass the bill through the process thus far with only a handful of no-votes. However, the CPUC has placed a decent fiscal tag on the bill and the IOUs remain opposed, so the biggest hurdles for the bill remain. It needs to pass from the Senate Appropriations Committee, where many bills that would cost the state money get held every year.

The other priority bill is SB 1138 (Padilla), which would require the CPUC to allow for the hourly trading of resource adequacy (RA) attributes for compliance purposes, since they now require hourly matching. CEA has been part of the CCA community supporting the bill, which has passed through the legislature without a no vote. The bill still faces its final

Appropriations Committee hearing as well on August 13 before it would go to the Floor. The CPUC has also placed a large fiscal tag on this bill, having previously rejected the idea regulatorily.

Other Bills

CEA has been closely monitoring and engaging on numerous other bills in the Legislature this year, covering topics ranging from data centers and affordability to wildfire prevention and procurement.

SB 1329 (McNerney) would prohibit counties from including the value of renewable energy credits and federal tax credits in the assessment of the facility. The bill is important for the solar industry since the exclusion from property taxes for solar systems expires at the end of the year.

AB 1787 (Schultz) would require the IOUs to offer dynamic rate options, if the CPUC approves their pending applications to update their existing smart meter infrastructure. The CCA community has been involved with the bill to seek clarify around customer interaction between a future dynamic rate and NEM/NBT enrollment, but CCAs have not supported the bill.

AB 2383 (Zbur) is one of nearly a dozen data center related bills introduced in 2026. This bill and the one below have become the most likely of these bills to reach the Governor's desk. AB 2383 would require IOUs (and any CCAs that have a customer application) to develop a new rate class for data center customers to ensure there is not cost shifting from other customers. CEA and other CCAs engaged with the author to ensure that the bill would not impact existing large load customers, like desalination or water treatment plants. The bill was amended to target just new data centers, making it much less likely to impact CEA.

The other major data center inspired bill this year is SB 886 (Padilla). This bill would require the big three IOUs to establish new tariffs for data center customers to ensure they pay a fair share of costs, including those that may not otherwise be borne by transmission level customers like wildfire costs. CEA has not engaged on this bill since thus far the application has stayed on the large IOUs.

SB 2266 (Schultz) would require the CPUC to adopt a uniform capacity valuation methodology for energy resources to better predict the value of the resources within the RA, IRP, and RPS programs. CalCCA has supported the bill following amendments to clarify the language, including how the bill will consolidate reporting of procurement plans for IRP and RPS (but not including RA) by January 1, 2030, and require the CPUC to consolidate compliance reporting for RA if/when feasible.

AB 2369 (Rogers) would have the CPUC and CEC provide information to the CAISO to identify opportunities to increase the reliability contribution or mitigate congestion of planned or existing energy-only resources through transmission capacity expansions. The bill is being pushed in part by Sonoma Clean Power who see it as a way to unlock more geothermal power in their region. CalCCA has also supported the bill.

AB 2111 (Papan) would reform transmission planning in the state by requiring the consideration of more alternative scenarios by CAISO, among other things, with the goal of encouraging the development of more transmission infrastructure in more resource-constrained areas. The bill is being co-sponsored by Sonoma Clean Power and Peninsula Clean Energy.

AB 710 (Irwin) would require IOUs to collaborate with local governments, tribal governments, and CCAs within its service area to identify critical circuits and microgrid projects for reliability purposes. The bill is a "gut and amend," having this new language just placed into the bill in June, and is being pushed by local government advocacy groups. CCAs have worked with the author and sponsors to ensure that the bill does not disrupt CCAs' ability to get data under current processes and would allow us to access the right forms of data.

AB 2313 (Berman) would go a step beyond the CPUC implementation of SB 1221 (Min) and require each gas corporation to offer a Gas Distribution Service Line Replacement Alternatives Program to provide residential gas customers a monetary incentive to deploy electric appliance alternatives and cease gas service to avoid a pending gas distribution service line replacement. The bill goes beyond the pilot program currently under development. It is supported by several CCAs, but strongly opposed by gas utilities and their worker unions.

SB 868 (Wiener) would bring California in line with Germany and Utah in allowing plug-in solar systems (aka balcony solar) to be installed without the need for interconnection agreements like tradition NEM systems. The systems are intended to be small and able to plug into an existing outlet in a home. While utilities and electrical workers have expressed concerns about back feeding onto the grid that may harm workers or the grid, the bill has lots of momentum, being supported by solar and environmental advocates.

SB 1295 (Stern) would require IOUs, as part of the distribution planning process, to evaluate whether distributed energy storage systems can meet any identified reliability or capacity need, versus other traditional resources. While the bill doesn't apply to CCA's, CEA is watching the bill due to its potential impact on IOU procurement generally.

AB 706 (Aguiar-Curry) would establish the Forest Organic Residue Energy and Safety Transformation (FOREST) program to expand biomass power and feedstock utilization in strategically located regions of the state with the overall goal of reducing catastrophic wildfire risk and reducing emissions associated with fires and forest management. It is supported by Pioneer Community Energy. The bill does not yet identify a funding source for the incentives, while will need to be identified either this year or in the future before the bill could be implemented.

AB 2234 (Papan) is another bill being sponsored by Sonoma Clean Power. It would expand the scope of equipment that is covered by the definition of "geothermal exploratory well" to cover more modern technologies. The bill does not create a CEQA exemption as a bill from last year attempted to do.

Lastly, SB 931 (Laird) and AB 2647 (Calderon) relate to nuclear energy in California. SB 931 requires PG&E to pay for future lost local tax revenues to schools and other entities from the future closure of Diablo Canyon. AB 2647 requires an assessment of the potential for new advanced nuclear energy facilities in California. Both reflect the existing paradigm of nuclear energy policy in the state; there is a widespread appreciation for the importance of Diablo Canyon, but no desire to build a similar new large nuclear facility. However, there is growing interest in smaller modular nuclear energy facilities.

Hearing Engagement

In addition to the dozens of policy bill hearings by the Assembly Utilities & Energy and Senate Energy, Utilities & Communications Committees, the legislative committees also hold informational hearings on various topics, like energy reliability or program updates. CEA and its representatives in Sacramento have attended or monitored numerous hearings this legislative year.

In the Assembly Utilities & Energy Committee, we have monitored the following: (1) Oversight Hearing on Transmission Accelerator Implementation, (2) Joint Oversight Hearing on AI's Energy Impacts, (3) Assessing Progress in Developing Clean Energy, (4) Energy Entities' Progress Report and Outcomes Review of AB 2316 (Ward, Chapter 350, Statutes of 2022), (5) Improving the Utility-Caused Wildfire Recovery System for Survivors, Ratepayers, and Other Stakeholders, and (6) The State of Electricity Reliability: Rising Demand, Shifting Reserves, and Retiring Resources.

When the Legislature returns in August, the Assembly U&E Committee will also hold an informational hearing titled: "Savings You Don't See: California's Energy Efficiency Programs." CEA will be monitoring the hearing and have coordinated with the CCA community to do some advocacy engagement prior to the hearing to promote the beneficial energy efficiency programs CCAs offer.

In the Senate Energy, Utilities & Communications Committee, we have monitored: (1) The California Public Utilities Commission and the Public Advocates Office Annual Update to the Legislature: Addressing Affordability by Revisiting the Economic Regulations of Investor-Owned Electric Utilities, and (2) Enhancing California's Resiliency to Natural Catastrophes: Senate Bill 254 (2025) Study Report Focusing on Electric Utility-Related Policy Recommendations.

Looking Ahead

With Legislators on their annual Summer Recess, the end of session is fast approaching. When Legislators return to Sacramento on August 3, they will have just four weeks to finalize session before it officially ends per the state Constitution at midnight on August 31. During that time, Appropriations Committees in both houses will have to review hundreds of bills for fiscal impacts, which is when many bills fail to advance. After that process, bills must pass from both Chambers before the deadline, which generally results in many late nights in the Capitol building.