

**Power & Water Resources Pooling
Authority**

Regular Meeting of the Board of Directors

**9:00 A.M.
Wednesday, December 6, 2023**

Power and Water Resources Pooling Authority

NOTICE OF REGULAR MEETING AND AGENDA

Notice is hereby given that a Regular Meeting of the Board of Directors of the Power and Water Resources Pooling Authority (PWRPA) will be held on **December 6, 2023, at 9:00 a.m., at the Banta Carbona Irrigation District, 3514 W. Lehman Road, Tracy, CA 95304**, by simultaneous teleconference at the following locations:

Glenn Colusa Irrigation District
344 E. Laurel St., Willows, CA 95988

James Irrigation District
8749 Ninth Street, San Joaquin, CA 93660

Lower Tule River Irrigation District
357 E. Olive Ave./Ave. 152, Tipton, CA 93272

Princeton-Cordora-Glenn ID/ Provident ID
252 Commercial Street, Princeton, CA 95970

Zone 7 Water Agency
100 N. Canyons Pkwy, Livermore, CA 94551

Cawelo Water District
17207 Industrial Farm Rd., Bakersfield, CA

Reclamation District 108
975 Wilson Bend Road, Grimes, CA 95950

Santa Clara Valley Water District
5750 Almaden Expressway, San Jose, CA 95118

Sonoma County Water Agency
404 Aviation Blvd., Santa Rosa, CA 95403

Westlands Water District
3130 North Fresno St., Fresno, CA 93703

Accessible Public Meetings - PWRPA shall resolve requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act. Requests should be sent as soon as practicable via email to the attention of: ADA Request pep@cameron-daniel.com

Regular Agenda (all items below may include possible action, times are approximations)

1	Chair	Roll Call of all Directors participating
2	Chair	Matters Subsequent to Posting the Agenda
3	Chair	Public Comment – During Agenda Item 3, any member of the public may address the Board concerning any matter on the agenda.
4	Chair 2 Min	Consent Agenda A. Minutes of the Regular Board Meeting held on October 4, 2023. B. Minutes of the Special Board Meeting held on November 1, 2023.
5	TR GM OM 60 Min	A. Treasurer's Report - Approval of Ordering Payments of Accounts and Claims; acceptance of the Treasurer's Report and other items related to Treasurer's duties. B. Resolution 23-12-16 <i>2023 Annual Budget and Pro Forma Rate Schedule</i> . C. Resolution 23-12-17 <i>RBI Professional Services Agreement</i> . D. Resolution 23-12-18 <i>ACES Professional Services Agreement</i> .
6	GM OM 30 Min	A. GM Report – New customer evaluation; PWRPA education and task team schedule; Regulatory updates; 2024+ strategic session. B. OM Report – Ops highlights; REC projections. C. Resolution 23-12-19 <i>Appointment of Officers for 2024</i> .

7	GM 15 min	Special Projects A. Resolution 23-12-20 <i>Cawelo WD REC Agreement</i> . B. Resolution 23-12-21 <i>West Stanislaus ID PPA and Rate Agreement</i> . C. Utility scale project update.
8	SC GC 10:30 AM 15 Min	Closed Session A. Conference with legal counsel – Existing litigation: PG&E WDT3 Rate Case, FERC ER22-619, ER20-2878 consolidated. Pursuant to Gov’t Code section 54956.9(d)(1). B. Conference with legal counsel – Pending litigation: Pursuant to Gov’t Code section 54956.9(d)(4).
9	Chair	Board Matters – Other announcements.
	Chair	Adjournment - Next Regular Meeting is Wednesday , February 7, 2024, at 9:00 A.M.

Power & Water Resources Pooling Authority

Consent Agenda • Item 4

1. Minutes of the October 4, 2023, Regular Board Meeting.
2. Minutes of the November 1, 2023, Special Board Meeting.

Power and Water Resources Pooling Authority

REGULAR MEETING MINUTES OCTOBER 4, 2023

1	Chair	<p>Directors and Alternates Present: <i>Dave Nixon (AEWSD), Ed Pattison (BBID), Dave Ansolabehere (CWD), Louis Jarvis (GCID), Manny Amorelli (JID), Lance Boyd (PPID), Gary Enos (PPID), Jordan Navarott (RD 108), John Brosnan (SCVWD), Dale Roberts (SCWA), Bobby Pierce (WSID), Kiti Campbell (WWD), Sal Segura (Z7).</i></p> <p><i>Also participating: Bruce McLaughlin (GM), Cori Bradley (OM), Jennifer Montoya (WWD).</i></p> <p>David Ansolabehere, serving in his capacity as Vice Chairman, opened the meeting at 9:00 A.M.</p>
2	Chair	Matters Subsequent to Posting the Agenda - None
3	Chair	Public Comment – None.
4	Chair	<p>Consent Agenda</p> <p>A. Minutes of the Regular Board Meeting held on August 2, 2023.</p> <p>B. P3 Request: SCVWD energy efficiency upgrade.</p> <p>C. Cap & Trade Request: SCVWD renewable resource procurement.</p> <p>Dave Nixon moved, John Brosnan seconded, and participating Directors unanimously approved the Consent Agenda.</p> <p><i>Voting Shares: 89.4% Yes / 0% No /10.6 % Absent (BCID, LTRID)</i></p>
5	TR GM OM	<p>A. Treasurer's Report - Approval of Ordering Payments of Accounts and Claims; acceptance of the Treasurer's Report and other items related to Treasurer's duties.</p> <p>Manny Amorelli moved, Sal Segura seconded, and participating Directors unanimously approved the Treasurers Report including the Ordering of Accounts and Claims.</p> <p><i>Voting Shares: 89.4% Yes / 0% No / 10.6% Absent (BCID, LTRID)</i></p> <p>B. 2024 Budget first look – Ms. Bradley presented a first look at the draft 2024 budget. Overall, the draft budget shows lower retail sales, higher Base resource allocations, higher CAISO TAC rates and significantly lower PG&E WDT rates. The administrative overhead is relatively unchanged from historical averages.</p> <p>Ms. Bradley presented the pricing information for the Zero Carbon Water Portfolio resources. Also discussed was the fact that continuing to charge the current rates would result in significant over-collections.</p> <p>Dave Nixon moved, Jordan Navarott seconded, and participating Directors unanimously approved Resolution 23-10-13 <i>Rate Review and Adjustment Rate Change</i>.</p> <p><i>Voting Shares: 89.4% Yes / 0% No / 10.6% Absent (BCID, LTRID)</i></p>
6	GM OM	<p>A. GM Report – Mr. McLaughlin introduced his plans to implement training and collaboration sessions in 2024. In particular, the training sessions are designed to educate new Board Members on PWRPA's formation documents, policies, compliance obligations, rules of procedure and operational processes. The</p>

		<p>collaboration sessions will concentrate on financial matters and, particularly, rate stabilization mechanisms.</p> <p>B. OM Report – Ms. Bradley presented the Ops highlights for September. She also updated the Board on the CEC Demand Side Grid Support Program which authorizes payments for districts that voluntarily reduce demand.</p> <p>C. Consider and possibly approve Resolution 23-10-14 <i>2022 Power Content Label</i>. Dave Nixon moved, Sal Segura seconded, and participating Directors unanimously approved the 2022 Power Content Label which, as in previous years, included a Zero Carbon Water Portfolio and Standard Water Portfolio. <i>Voting Shares: 89.4% Yes / 0% No / 10.6% Absent (BCID, LTRID)</i></p> <p>D. Consider and possibly approve Resolution 23-10-15 <i>Meeting Dates for 2024</i>. Dave Nixon moved, Manny Amorelli seconded, and participating Directors unanimously approved the Resolution setting the 2024 Meeting Dates. <i>Voting Shares: 89.4% Yes / 0% No / 10.6% Absent (BCID, LTRID)</i></p>
7	GM OM	<p>Special Projects</p> <p>A. Ms. Bradley and Mr. McLaughlin described a project opportunity being developed by NextEra called Rock Valley Solar-Storage. NextEra requires a minimum take of 25 MW solar and 25 MW storage, with a COD in late 2028. PWRPA is currently discussing the project with the public agencies that it partners with on the Whitney Point Solar project to evaluate whether a 25 MW allocation is doable.</p> <p>B. Ms. Bradley gave an update on the Lower Tule River Success Hydro project which is late due to administrative delays by Southern California Edison. Mr. McLaughlin provided updates on the Luna Valley Solar (Westlands Water District) and the BCID LLC Solar (onsite at BCID).</p>
8	SC GC	<p>Closed Session</p> <p>A. Conference with legal counsel – Existing litigation: PG&E WDT3 Rate Case, FERC ER22-619, ER20-2878 consolidated. Pursuant to Gov't Code section 54956.9(d)(1).</p> <p>After returning to open session, Mr. McLaughlin reported that no action was taken during closed session.</p>
9	Chair	Board Matters – There were no other announcements.
	Chair	Adjournment – The meeting was adjourned at 11:01 A.M. The next Regular Meeting is Wednesday, December 6, 2023, at 9:00 A.M.

Power and Water Resources Pooling Authority

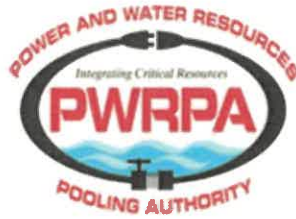
SPECIAL MEETING MINUTES NOVEMBER 1, 2023

1	Chair	<p>Directors and Alternates Present: <i>Dave Nixon (AEWSD), David Weisenberger (BCID), Dave Ansolabehere (CWD), Louis Jarvis (GCID), Manny Amorelli (JID), John Michael Domondon (LTRID), Lance Boyd (PPID), Gary Enos (PPID), Jordan Navarott (RD 108), John Brosnan (SCVWD), Dale Roberts (SCWA), Bobby Pierce (WSID), Kiti Campbell (WWD), Sal Segura (Z7).</i></p> <p><i>Also participating: Bruce McLaughlin (GM), Cori Bradley (OM).</i></p> <p>David Weisenberger, serving in his capacity as Chairman, opened the meeting at 10:01 A.M.</p>
2	Chair	Matters Subsequent to Posting the Agenda - None
3	Chair	Public Comment – There was no public comment.
4	SC GC	<p>Closed Session</p> <p>A. Conference with legal counsel – Existing litigation: PG&E WDT3 Rate Case, FERC ER22-619, ER20-2878 consolidated. Pursuant to Gov’t Code section 54956.9(d)(1).</p> <p>B. Conference with legal counsel – Pending litigation: Pursuant to Gov’t Code section 54956.9(d)(4).</p> <p>After returning to open session, Mr. McLaughlin reported that by unanimous vote of all Directors present, the Board approved the terms of a settlement agreement with PG&E in docket FERC ER22-619.</p> <p>No action was taken on the matter involving pending litigation.</p>
5	Chair	Board Matters – There were no other announcements.
	Chair	Adjournment – The meeting was adjourned at 11:25 A.M. The next Regular Meeting is Wednesday, December 6, 2023, at 9:00 A.M.

Power & Water Resources Pooling Authority

Regular Agenda • Item 5.A

1. Treasurer's Report.



POWER AND WATER RESOURCES POOLING AUTHORITY

DISBURSEMENT LIST

November 2023

Check #	Vendor-name	Payment-description	Check-amount
3414	Special District Risk Mgmt Authority	Property & Liability Insurance	\$ 21,803.37
3500	Advanced Data Storage	Document Storage - November 2023	44.50
3501	Arvin-Edison Water Storage District	Treasurer's Duties	5,527.11
3502	Braun Blaising & Wynne, P.C.	Legal Services - October 2023	572.63
3503	Michael McCarty Law Office PLLC	Consultant	5,555.00
3504	Robertson Bryan Inc.	Consultant	62,795.10
Sub-Total			\$ 96,297.71
Wire Transfers:			
Wire	Cameron-Daniel, P.C.	General Manager/General Council	\$ 37,410.00
Wire	Holland & Knight	FERC Wholesale Distribution Filing Legal Fees	2,399.67
Total			\$ 136,107.38

POWER AND WATER RESOURCES POOLING AUTHORITY
CASH ACTIVITY AND TREASURER'S REPORT
MONTH ENDING OCTOBER 31, 2023

CASH ACTIVITY:

BALANCE SEPTEMBER 30, 2023 \$ 24,529,234.78

Increases:

Power Billing Invoices	\$ 3,589,437.19	
LAIF - Interest	199,864.21	
NCPA - LEC & Displacement Program	80,366.26	
APX - Astoria Solar	51,430.52	
TCB - Monthly Interest	4,318.37	
		3,925,416.55

Decreases:

WAPA - Power September 2023	\$ 1,495,497.47	
CAISO	1,342,287.50	
Canadian Solar - Slate Solar partial August & September 2023	489,803.28	
Canadian Solar - Astoria Solar - September 2023	156,085.95	
PG&E - GCID, RD 108, SCVWD, Zone 7	103,691.01	
NextEra Whitney Point Solar - September 2023	102,379.14	
Robertson-Bryan, Inc	77,275.24	
WAPA - Restoration September 2023	48,464.34	
Trimark - Cell, Meter Reading and T&M September 2023	48,281.15	
Cameron-Daniel, P.C.	38,442.70	
Aces - October 2023	25,000.00	
Arvin-Edison Water Storage District-Treasurer	6,128.12	
Holland and Knight	4,283.68	
Michael McCarty Law Office, PLLC	3,000.00	
White Pines Solar Santa Clara WD - September 2023	2,656.10	
Bank Fees	500.00	
Braun Blaising & Wynne, P.C.	302.14	
Advanced Data Storage	44.50	
		3,944,122.32

BALANCE OCTOBER 31, 2023 \$ 24,510,529.01

TREASURERS REPORT:

Operating Account:

Tri Counties Bank - General Operating Account #1031821, yield 3.682% \$ 2,348,394.08

Local Agency Investment Fund (LAIF) - Account # 90-39007, yield 3.670%

Reserve Funds	\$ 11,244,454.30	
Cap & Trade Allowance Revenue	7,609,272.65	
Funds on Deposit	3,308,407.98	
Total LAIF		22,162,134.93

TOTAL PWRPA OPERATING FUNDS - OCTOBER 31, 2023 \$ 24,510,529.01

Public Purpose Program (P-3) Tri Counties Bank Account #1031856 3,181,006.67

TOTAL FUNDS ON DEPOSIT WITH PWRPA - OCTOBER 31, 2023 \$ 27,691,535.68

CAISO Collateral Deposit Account 2,898,152.00

Western Area Power Administration - PWRPA Trust Account 1,000.00

TOTAL FUNDS - PWRPA & OTHER AGENCIES - OCTOBER 31, 2023 \$ 30,590,687.68

Treasurer's Notes:

All investments are placed in accordance with PWRPA's Statement of Investment Policy and Guidelines. The Treasurer's Report is presented on cash basis, effective yields are based on most recent published information. PWRPA has sufficient cash flow to meet its obligations next month. Included in the Operating Funds above is the Board approved \$10,000,000 Reserve and Funds on Deposit from the following Participants:

Participant	Amount	Participant	Amount
Banta Carbona	\$ 22,476.04	Santa Clara	565,798.94
Cawelo	851,845.46	Sonoma	704,570.48
James	43,291.60	West Stan	282,746.34
Glen-Colusa ID	118,183.47	Westlands	573,595.81
RD108	60,000.00	West Side ID	57,887.44
		Zone 7	28,012.40
		Total	\$ 3,308,407.98

Power and Water Resources Pooling Authority
P-3 Remaining Funds By Year
as of October 31, 2023

Member Agency	2019	2020	2021	2022	2023	Total Available P-3 Funds	Expenditures	
	(a)	(b)	(c)	(d)	(e)	(f)	Total to Date	September-23
							(g)	(h)
Arvin-Edison WSD	\$0.00	\$0.00	\$0.00	\$0.00	\$316,658.14	\$316,658.14	\$5,570,834.85	\$0.00
Banta Carbona ID	0.00	28,418.11	49,489.90	69,174.18	44,608.88	191,691.07	404,708.20	0.00
Byron-Bethany ID	0.00	0.00	0.00	0.00	5,747.45	5,747.45	171,290.66	0.00
Cawelo WD	0.00	0.00	0.00	4,271.92	72,189.07	76,460.99	962,841.11	0.00
Glenn-Colusa ID	0.00	23,300.11	32,132.77	16,890.62	33,854.72	106,178.22	348,863.79	0.00
James ID	0.00	10,457.51	15,685.23	21,738.73	5,981.64	53,863.11	130,969.96	0.00
Lower Tule ID	0.00	0.00	0.00	34,283.20	36,573.89	70,857.09	331,806.44	0.00
Princeton ID	0.00	0.00	0.00	0.00	11,410.44	11,410.44	177,976.09	0.00
RD 108	0.00	13,564.87	16,362.76	12,132.54	11,954.10	54,014.27	213,468.71	0.00
Santa Clara Valley WD	0.00	0.00	16,885.21	98,852.17	80,595.65	196,333.03	737,636.35	0.00
Sonoma County WA	0.00	99,654.97	109,040.76	150,507.89	105,935.09	465,138.71	1,490,752.21	0.00
West Stanislaus ID	0.00	0.00	0.00	58,050.32	37,454.61	95,504.93	496,284.30	0.00
Westlands WD	0.00	0.00	102,451.51	1,100,668.62	231,289.35	1,434,409.48	5,531,125.34	0.00
Zone 7	0.00	9,318.79	25,493.12	42,082.23	25,738.54	102,632.68	71,833.02	0.00
Undesignated/Forfeited/Misc	107.06	0.00	0.00	0.00	0.00	107.06	35,133.04	0.00
Total	\$107.06	\$184,714.36	\$367,541.26	\$1,608,652.42	\$1,019,991.57	\$3,181,006.67	\$16,675,524.07	\$0.00
Exclusive access Date	08/04/23	08/03/24	08/02/25	08/01/26				

- (a) Three year exclusive access to these funds by agency begins on 8/05/20 and ends 08/04/23
(b) Three year exclusive access to these funds by agency begins on 8/04/21 and ends 08/03/24
(c) Three year exclusive access to these funds by agency begins on 8/03/22 and ends 08/02/25
(d) Three year exclusive access to these funds by agency begins on 8/02/23 and ends 08/01/26
(e) 2023 P-3 collected through October 2023
(f) Total available P-3 Funds
(g) Total P-3 expenditures since inception of program
(h) P-3 expenditures October 2023

Power and Water Resources Pooling Authority
Cap and Trade Allowance Revenue
Pursuant to Resolution 13-04-05 and Resolution 21-11-14
As of October 31, 2023

District	Resolution 13-04-05		Resolution 21-11-14			Total Revenue	Expenditures	Balance
	Allocation	Revenue	2021	2022	2023			
Arvin-Edison	37.478%	\$3,421,905.95	\$208,146.78	\$831,876.00	\$599,388.51	\$5,061,317.24	\$3,921,905.95	\$1,139,411.29
Banta-Carbona	3.115%	284,413.18	33,717.30	132,634.85	101,981.65	552,746.98	0.00	552,746.98
Byron-Bethany	0.708%	64,643.51	5,278.35	20,240.47	14,431.26	104,593.59	104,593.59	0.00
Cawelo	8.447%	771,248.19	32,760.55	115,918.41	65,973.02	985,900.17	205,787.50	780,112.67
Glenn-Colusa	2.849%	260,126.21	23,174.67	86,307.16	52,326.97	421,935.01	421,935.01	0.00
James	0.798%	72,860.90	5,746.23	23,359.47	20,274.38	122,240.98	0.00	122,240.98
Lower Tule	1.005%	91,760.91	20,089.23	76,569.91	47,395.31	235,815.36	0.00	235,815.36
Princeton	1.334%	121,800.06	7,684.74	25,968.74	14,048.29	169,501.83	97,711.01	71,790.82
RD 108	1.368%	124,904.41	10,013.47	35,342.29	20,417.73	190,677.90	190,677.90	0.00
Santa Clara	4.853%	443,100.21	45,211.76	169,068.24	116,939.24	774,319.45	443,100.21	331,219.24
Sonoma	7.787%	710,987.29	71,470.54	275,734.34	194,326.77	1,252,518.94	196,000.00	1,056,518.94
West Stan	3.228%	294,730.57	31,345.36	119,698.69	94,144.48	539,919.10	150,789.15	389,129.95
Westlands	27.030%	2,467,957.68	202,357.42	796,569.54	759,906.12	4,226,790.76	1,390,020.55	2,836,770.21
Zone 7	0.000%	0.00	9,503.60	46,016.34	37,996.27	93,516.21	0.00	93,516.21
Total	100.000%	\$9,130,439.07	\$706,500.00	\$2,755,304.45	\$2,139,550.00	\$14,731,793.52	\$ 7,122,520.87	\$ 7,609,272.65

(a) Transferred as a Payment to power cost to help meet RPS

(b) GCID \$65,084.88 in approved projects remaining revenue transferred as a payment to power cost to help meet RPS

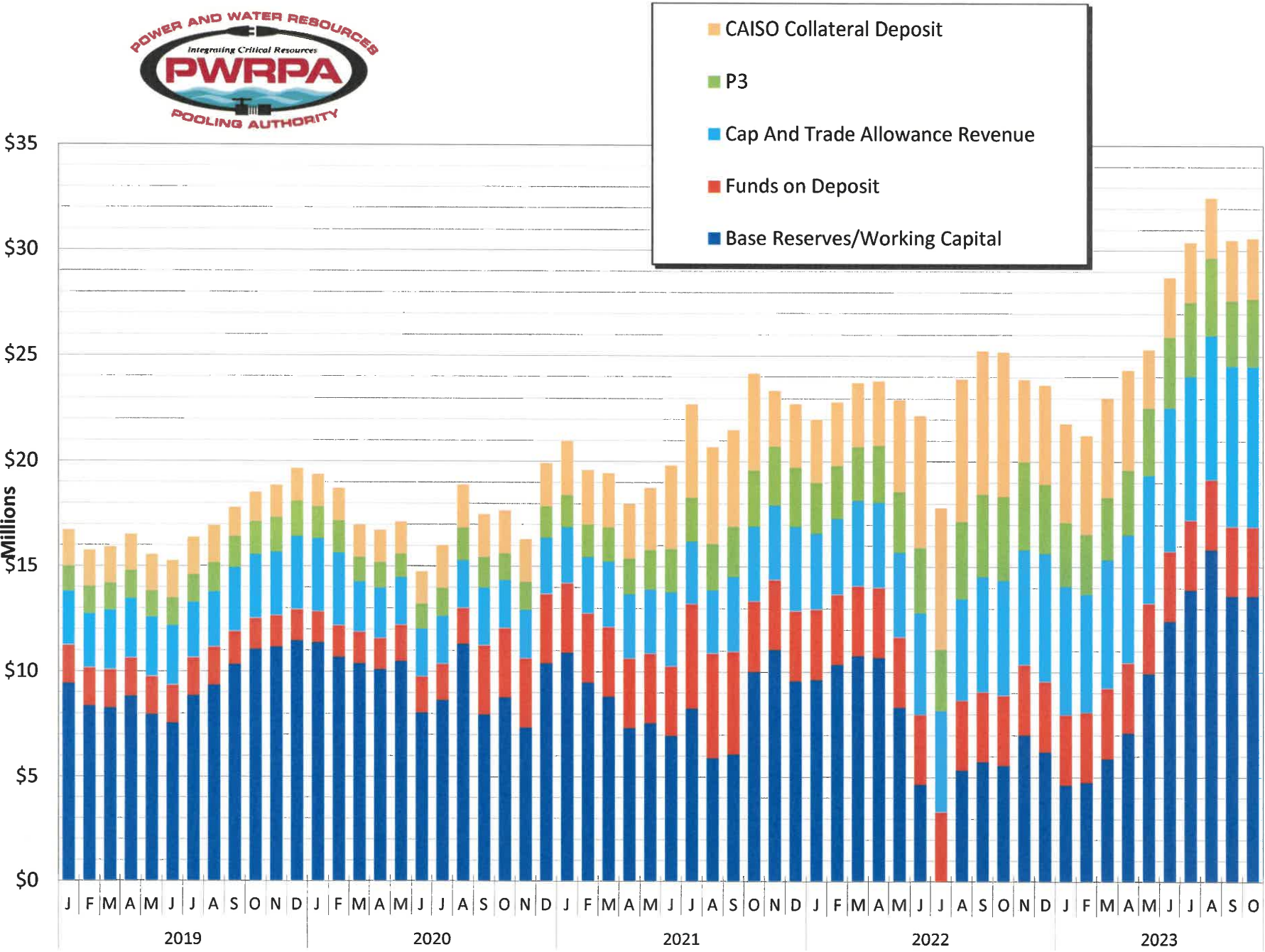
District	Exhibit B Allocation		
	2021	2022	2023
Arvin	29.4617%	30.1918%	28.0147%
Banta Carbona	4.7724%	4.8138%	4.7665%
Byron Bethany	0.7471%	0.7346%	0.6745%
Cawelo	4.6370%	4.2071%	3.0835%
Glenn-Colusa	3.2802%	3.1324%	2.4457%
James	0.8133%	0.8478%	0.9476%
Lower Tule	2.8435%	2.7790%	2.2152%
Princeton	1.0877%	0.9425%	0.6566%
RD 108	1.4173%	1.2827%	0.9543%
Santa Clara	6.3994%	6.1361%	5.4656%
Sonoma	10.1161%	10.0074%	9.0826%
West Stan	4.4367%	4.3443%	4.4002%
Westlands	28.6422%	28.9104%	35.5171%
Zone 7	1.3452%	1.6701%	1.7759%
Total	100.0000%	100.0000%	100.0000%

Sale of Freely Allocated Allowances

Year	March	June	September	December	Total
2012				\$ 216,935.00	\$ 216,935.00
2013	136,200.00			370,080.76	506,280.76
2014		379,500.00	184,000.00	192,511.00	756,011.00
2015	195,360.00	196,640.00	200,320.00	212,934.71	805,254.71
2016	212,158.18	89,530.09	249,317.05	296,303.48	847,308.80
2017	115,168.59	371,399.40	265,500.00	260,748.84	1,012,816.83
2018	262,980.00	263,700.00	258,408.50	264,250.60	1,049,339.10
2019	283,140.00		446,160.00	461,227.00	1,190,527.00
2020	321,660.00		500,400.00	415,783.87	1,237,843.87
2021	445,000.00	480,622.00	582,500.00	706,500.00	2,214,622.00
2022	583,000.00	827,304.45	675,000.00	670,000.00	2,755,304.45
2023	501,300.00	758,250.00	880,000.00		2,139,550.00
Total					\$ 14,731,793.52

Resolution 13-04-05 \$9,130,439.07
Resolution 21-11-14 5,601,354.45
\$14,731,793.52

SUMMARY TREASURER REPORT



POWER & WATER RESOURCES POOLING AUTHORITY

WIRE TRANSFERS

October 1 - 31, 2023

Transaction Number	Beneficiary Name	Credit Amount	Value Date
197439	CAISO Market Clearing	\$125,708.11	10/2/2023
197853	Cameron-Daniel, P.C.	\$38,442.70	10/4/2023
197854	Holland & Knight	\$4,283.68	10/4/2023
198334	CAISO Market Clearing	\$85,762.63	10/10/2023
198346	ACES Power Marketing	\$25,000.00	10/10/2023
198347	Pacific Gas and Electric	\$101,885.50	10/10/2023
198348	Pacific Gas and Electric	\$1,805.51	10/10/2023
199223	Western Area Power Administration	\$48,464.34	10/16/2023
199224	CAISO Market Clearing	\$69,404.87	10/16/2023
199225	Garlock Energy, LLC	\$2,656.10	10/16/2023
199934	Slate 1 (Canadian Solar)	\$489,803.28	10/20/2023
200151	CAISO Market Clearing	\$976,637.90	10/23/2023
200487	Western Area Power Administration	\$1,495,497.47	10/25/2023
201172	CAISO Market Clearing	\$84,773.99	10/30/2023
201173	Astoria 2 Operating	\$156,085.95	10/30/2023
201174	Whitney Point Solar LLC	\$102,379.14	10/30/2023
201175	Trimark Associates, Inc.	\$48,281.15	10/30/2023
Total		3,856,872.32	

Power & Water Resources Pooling Authority

Regular Agenda • Item 5.B

1. Resolution 23-12-16 2023 *Annual Budget and Pro Forma Rate Schedule*.

Power & Water Resources Pooling Authority
Resolution 23-12-16

**APPROVING AND ADOPTING AN ANNUAL BUDGET
AND ASSOCIATED PRO-FORMA RATE SCHEDULE FOR 2024**

WHEREAS, the Power and Water Resources Pooling Authority ("Pooling Authority") provides retail electric services under the Aggregation Services Agreement ("ASA") to electric accounts designated by Project Participants ("Customers"); and

WHEREAS, Section 4.4 of the Joint Powers Agreement requires the General Manager to develop a budget for the Pooling Authority and submit a draft budget to each of the Customers prior to the commencement of the fiscal year; and

WHEREAS, Section 3.6.4 of the Joint Powers Agreement authorizes the Pooling Authority Board of Directors ("Board") to review, modify if necessary, and approve the draft budget prepared and submitted by the General Manager; and

WHEREAS, Section 5.1 of the ASA provides that the Board shall be the local regulatory authority with respect to matters related to the ASA including ratesetting; and

WHEREAS, Section 8.1 of the ASA requires the Pooling Authority to recover costs through rates and charges applicable to its retail electricity Customers; and

WHEREAS, Section 8.2 of the ASA directs the Board, based on principles in Exhibit E to the ASA and in connection with the Board's review of the Pooling Authority's resource plan and Budget, to establish annual pro forma retail electricity rates for services provided under the ASA.

NOW, THEREFORE, BE IT RESOLVED that the Pooling Authority Board hereby:

1. Approves the 2024 Budget for the Pooling Authority attached hereto as Exhibit A, subject to approval by General Counsel as to form.
2. Approves the annual pro forma rate schedule reflecting "Average Conditions," effective as of January 1, 2024, in the form attached hereto as Exhibit B, subject to approval by General Counsel as to form.

PASSED AND ADOPTED by the PWRPA Board of Directors this 6th day of December 2023, by the following vote on roll call:

AYES	Arvin-Edison WSD, Banta Carbona ID, Byron Bethany ID, Cawelo Water District, Glenn-Colusa ID, James ID, Lower Tule River ID, Princeton/Provident ID, RD 108, Santa Clara Valley WD, Sonoma County Water Agency, West Stanislaus ID, Westlands Water District, Zone 7 Water Agency (100.0% Voting Shares)
NOES	None
ABSENT	

David Weisenberger
Chairman

Attest by: Bruce McLaughlin
Secretary

Exhibit A to Resolution 23-12-16

2024 Budget

Exhibit B to Resolution 23-12-16

Power & Water Resources Pooling Authority

Regular Agenda • Item 5.C

1. Resolution 23-12-17 *RBI Professional Services Agreement*.

Power & Water Resources Pooling Authority
Resolution 23-12-17

**EXTENSION OF PROFESSIONAL SERVICES AGREEMENT
WITH ROBERTSON-BRYAN, INC**

The Power and Water Resources Pooling Authority ("PWRPA") provides electric service to its customers, known as "Project Participants," under terms and conditions specified in the Aggregation Services Agreement ("ASA"); and

WHEREAS, Robertson-Bryan, Inc. (RBI), is currently providing operations management services to PWRPA under a one-year fixed-fee professional services agreement expiring on January 15, 2024; and

WHEREAS, RBI has worked together with PWRPA's General Manager to evaluate the 2024 scope of work for operations management functions; and

WHEREAS, RBI has proposed a three-year extension of the existing professional services agreement.

NOW, THEREFORE, BE IT RESOLVED that the Pooling Authority Board of Directors hereby:

1. Authorizes the Chair, or his designee, to execute and implement the contract with RBI for operations management services according to the rates, terms, and conditions substantially similar to those set forth in Exhibit A, subject to the prior approval of General Counsel as to the form of the final, executable version.

PASSED AND ADOPTED by the PWRPA Board of Directors this 6th day of December 2023, by the following vote on roll call:

AYES	Arvin-Edison WSD, Banta Carbona ID, Byron Bethany ID, Cawelo WD, Glenn-Colusa ID, James ID, Lower Tule River ID, Princeton/Provident ID, RD 108, Santa Clara Valley WD, Sonoma County WA, West Stanislaus ID, Westlands WD, Zone 7 WA
NOES	
ABSENT	

David Weisenberger
Chairman

Attest by: Bruce McLaughlin
Secretary

**ATTACHMENT A
to
RESOLUTION 23-12-17**

PROFESSIONAL SERVICES AGREEMENT

Robertson-Bryan, Inc. (Firm), and the **Power and Water Resources Pooling Authority**, a California joint powers authority (Authority), enter into this **Professional Services Agreement** (Agreement), effective January 16, 2024. The Firm and the Authority are collectively referred to herein as the Parties. The Parties agree as follows:

1. Term and Termination

It is the desire of both the Firm and the Authority to enter into a three-year Agreement. Therefore, this Agreement shall become effective **January 16, 2024** and shall continue in effect until **January 15, 2027**, unless terminated prior to that date by either Party. This Agreement may be terminated under the following conditions:

1. By written mutual agreement of both Parties. Termination under this provision may be immediate.
2. Termination for convenience: Upon six (6) months written notice by either Party to the other of intent to terminate. In the event that the Joint Powers Agreement (JPA) is terminated pursuant to JPA section 6.1.1, the six-month notice period shall automatically begin no later than the date that all parties to the JPA mutually agree to terminate the JPA.
3. Termination for cause: If the Firm fails to perform in accordance with the Scope of Services listed below, or if the Firm fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within thirty (30) days written notice thereof, the Authority may terminate this Agreement for cause. Termination shall be affected by serving a notice of termination on the Firm setting forth the manner in which the Firm is in default. The Firm will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.
4. If this Agreement is terminated by either Party, the Authority agrees to pay to the Firm all fees and expenses associated with services provided to the effective date of termination.

2. General Scope of Services, Staff Roles, and Availability

- a. General Scope of Services (see **Exhibit A**)
 - i. Any work deemed by the Operations Manager, General Manager, and/or Authority Board of Directors (Board) to be out of scope with regards to Exhibit A will be presented by the Firm to the General Manager and/or Board for approval on a time and material basis according to the Firm Fee Schedule presented in **Exhibit B**.
 - ii. Any services requested of Firm staff that would result in exceeding the annual availability of staff for the fixed fee for services defined in Exhibit A shall be billed to the Authority on a time and material basis, according to the Firm Fee Schedule provided in Exhibit B.
 - iii. Additional services requested by individual Districts (for projects/topics primarily addressed through PWRPA) that are not covered by the fixed fee will be billed on a time

and material basis, according to the Firm Fee Schedule in Exhibit B, at the discretion of the Firm and Districts.

b. Staff & Accessibility

i. Professional services by Cori Bradley:

Role: Operations Manager duties

ii. Firm Staff:

Role: Staff shall support both the Operations Manager and the General Manager in an efficient and effective manner. Staff roles can change over time, but key staff positions available are staff analyst, database analyst, and power portfolio analyst.

Accessibility: Staff are available up to a collective total of 4,100 hours for their respective roles under the fixed fee. Staff are available during standard business hours and on-call as needed.

3. Independent Contractor Relationship

The Parties intend that an independent contractor relationship will be created by this Agreement. The Firm shall remain, at all times as to the Authority, a wholly independent contractor with only such obligations as are required under this Agreement. The implementation of services will lie solely with the discretion of the Firm. No employee of the Firm shall be deemed to be an employee of the Authority. The Firm will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

4. Fixed Fee for services, reimbursable expenses

Fixed Fee: The annual contract rate for 2024 services provided under this Agreement shall be **Six hundred thirty-six thousand six hundred thirty six (\$636,636.00)** dollars, which shall be paid in monthly installments of fifty three thousand fifty three dollars (**\$53,053.00**). This fixed fee shall be compensation for the scope of services outlined in Exhibit A and staff availability defined above. This fixed fee shall have an annual escalation factor of three percent (3%) for the term of this Agreement to address year-over-year cost-of-living adjustments. In addition, the Firm's hourly billing rates (Exhibit B) used for out-of-scope work performed on a time and materials basis shall be increased by three percent (3%) annually.

In the event that this Agreement requires modification due to a changed scope-of-work or other factors at any time in the future, the scope of services and associated fixed fee shall be reviewed and revised by the Firm and submitted to the Authority Board for review and approval. As such, an equitable Agreement for both parties can be maintained over time in the face of changing factors and services requested from the Firm to meet the Authority's needs.

The Firm shall receive reimbursement beyond that of the fixed fee for all direct expenses incurred while providing professional services to the Authority, including but not limited to, plane fare, mileage at the current IRS approved business rate per mile, lodging for overnight stays as authorized in advance by the

Authority, document delivery charges, copying charges, filing fees and any other costs required to complete the scope of services. The Authority will consider and possibly reimburse certain educational activities that directly benefit the Authority.

MCG Energy Solutions Software as Service: The Firm is contracted with a software provider under the guidance and agreement by the Authority that replaced the prior SAMBA system. The Firm will pass through the MCG invoiced costs and will manage the subscription level as requested by the Authority.

5. General Right of Inspection and Supervision

Even though the Firm is an independent contractor with the Authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the Authority and shall be subject to the Authority's inspection.

6. Notices

All notices, invoices, reports or other communication required herein shall be properly given if delivered in person, or sent by first-class mail, facsimile, email, or overnight delivery to the following addresses.

Authority: Power and Water Resources Pooling Authority
Attention: Chairman
Banta-Carbona Irrigation District
3514 West Lehman Road
Tracy, CA 95304
bcid@inreach.com

Firm: Robertson-Bryan, Inc.
Attention: Michael Bryan
3100 Zinfandel Drive, Suite 300
Rancho Cordova, CA 95670
bryan@robertson-bryan.com
Telephone: (916) 261-4043

7. Key Terms and Conditions

1. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, exclusive of conflict of laws provisions.
2. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof.
3. This Agreement may not be modified or amended without the express written agreement of the Parties.
4. This Agreement may be executed in any number of counterparts, including through facsimile signatures, and upon execution by the Parties, each executed counterpart shall have the same force and effect as an original document and as if the Firm and the Client had signed the same document. Any signature page of this Agreement may be detached from any counterpart of this Agreement

without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form but having attached to it one or more signature pages.

5. This Agreement may be scanned and stored in electronic format. Neither Party shall object to the admissibility of an electronic version of this Agreement on the basis that such was not originated or maintained in documentary form.
6. All intellectual property rights in the services, including but not limited to, any deliverable furnished to the Authority as part of the services or any modifications, customizations and interfaces developed with respect to a deliverable, in whole or in part, provided to the Authority by the Firm under this Agreement shall be solely the property of the Authority. The Firm hereby assigns all right, title and interest in and to and exclusive ownership of such services and deliverables to the Authority and the Firm shall take all actions necessary to transfer exclusive ownership of the same to the Authority. The Authority and the Firm agree that any product created, conceived, and/or prepared by the Firm in the performance of the services contained in this Agreement shall in all respects be considered a "work made for hire" within the meaning of the federal copyright and patent laws and that no other right in this Work shall inhere in the Firm, or in the Firm's representatives, heirs, or assigns. The Work shall be owned by the Authority and the Authority may, at its option and expense, seek copyright or patent registration for the Work. As owner of the copyright or patent, the Authority shall have all rights attendant to that ownership, including, but not limited to, rights of reproduction, preparation of derivative works, distribution, and display. Notwithstanding the foregoing, the Firm and the Authority may establish different terms for a specified deliverable pursuant to a separate written agreement.
7. Indemnity: If any claim or action is brought against the Firm, or any personnel of the Firm, and such claim arises from the Authority's negligence, errors or omissions, or willful misconduct, the Authority agrees to indemnify and hold harmless the Firm, its owners, officers, and employees from injuries, damages, claims, demands, costs, expenses, losses or liabilities, in law or in equity for all such claims and damages. The Firm agrees to indemnify and hold harmless the Authority, its Directors, officers, employees, and authorized volunteers from injuries, damages, claims, demands, costs, expenses, losses or liabilities, in law or in equity arising from the negligent acts, errors or omissions of the Firm or its employees, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement. The Authority will control its own defense and at the time of claim resolution, in the event of any claim within the purview of these indemnification provisions, Firm will provide reimbursement for those defense costs caused by any negligence or willful misconduct by or attributable to the Firm.
8. Arbitration: Any dispute arising out of or related to the engagement of Firm or its personnel by the Authority for any purpose, including, but not limited to, (i) any dispute relating to Firm's fees, expenses or costs, or (ii) any dispute relating to any allegedly wrongful or negligent act or omission by Firm or the Authority or any of their personnel, or (iii) any dispute relating to any duty allegedly owed by Firm or its personnel to the Authority or by the Authority or its personnel to Firm, shall be

subject to binding arbitration at San Francisco, California, pursuant to the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of the arbitration. The Authority understands that by agreeing to arbitrate the disputes specified in this arbitration agreement it is waiving its right to have a trial by a jury or court regarding such disputes. This arbitration agreement shall only apply to disputes concerning fees, costs, or both if (i) the Authority does not elect to pursue the arbitration procedures provided by the California Business and Professions Code (Bus. & Prof. Code, § 6200 et seq.) regarding such disputes, or (ii) if either Firm or the Authority rejects the award in any such arbitration. All employees and officers of Firm and the Authority are intended beneficiaries of this arbitration agreement and shall be bound by and have the benefit of it. The arbitration shall not deprive any party of prejudgment remedies. All arbitration proceedings, or any action to enforce such proceedings, shall be conducted in as confidential a manner as permitted by law. The arbitrator or arbitrators shall be authorized to award equitable remedies including specific performance. In any such arbitration, a written statement of decision prepared in compliance with the California Code of Civil Procedure shall be rendered, and any arbitration decision must be based on correct application of law and findings of fact based upon a preponderance of evidence admissible under the Evidence Code of the State of California. Failure of the arbitrator to comply with the requirements of this agreement shall be grounds to modify or vacate an award. The arbitration proceeding shall be reported by a certified court reporter, and all evidence shall be marked and retained as part of the record of the proceedings by the court reporter, or the arbitrator, until a final judgment on the arbitrator's award is paid or confirmed or the award is modified or vacated. By agreeing to arbitration both parties waive their right to trial by Jury.

9. The Firm shall obtain at its own expense, all insurance required by the attached insurance requirements (**Exhibit C**). Such insurance shall be maintained in full force and in effect at all times during the performance of work under this Agreement.

8. Signatures

In witness whereof, the Parties have caused this Agreement to be executed by their duly authorized representatives.

Authority

David Weisenberger

Title: Chairman

Date: _____

Firm

Michael Bryan

Title: President

Date: _____

Exhibit A: General Scope of Work

The general scope of services for the fixed fee agreement is defined below.

1. Support the General Management Services:
 - a. Advise Board in coordination with the General Manager on all matters relevant to the electric service provided by the Authority. Develop and implement strategic policies as authorized by the General Manager and the Board.
 - b. Identify and pursue Authority customer-focused programs and initiatives.
 - c. Design, build and maintains a cross-functional, team-based system to implement Board directives and attract/retain the highest caliber staff.
 - d. Plan, organize, coordinate, and direct the work of Firms and others to achieve efficient operations and meet project goals.
 - e. Plan, organize, coordinate, and participate in Board and committee meetings.
 - f. Meet with member Agencies, as necessary, to represent the Authority's activities.
 - g. Conducts a variety of special studies and surveys to determine the effectiveness of Authority projects.
 - h. Represent the Board's policies and projects with other government agencies.
 - i. Evaluate and make recommendations on improvements to existing Authority operations, projects, and services.
2. Operations Services
 - a. Develop and implement Authority's annual and Long-term Resource Plan (ASA Article 6).
 - b. Prepare and disseminate monthly reports covering operations and activities of the Authority.
 - c. Develop plans and operations for Authority facilities and resources.
 - d. Prepare the annual budget and Pro Forma rates, making recommendations to the Board on revenue and expenditure levels. (JPA 4.4)
 - e. Manage MDMA and all metering issues, including new Points of Delivery requests.
 - f. Manage Scheduling Coordinator functions, including load and resource portfolio strategy protocols.
 - g. Manage staff, algorithms, and all data in software systems.
 - h. Coordinate with Treasurer on all aspects of vendor invoicing, audits, and District allocation, monthly and annual reconciliation processes. This includes settlement validation of all load and resource transactions.
 - i. Coordinate and manage regulatory reporting needs of the Authority.
 - j. Manage staff and Districts on load scheduling and resource position analysis.

EXHIBIT B: FIRM HOURLY FEE SCHEDULE

2024 FEE SCHEDULE FOR ALL FIRM SERVICES NOT COVERED BY THE FIXED FEE

PROFESSIONAL SERVICES	RATE/HOUR
♦ Managing Partner	\$296.00
♦ Principal Engineer/Scientist	\$271.00
♦ Chief Engineer/Scientist	\$262.00
♦ Resource Director	\$245.00
♦ Senior Analyst	\$228.00
♦ Project Engineer I	\$214.00
♦ Senior Portfolio Manager	\$197.00
♦ ISO Specialist	\$180.00
♦ Project Analyst II	\$164.00
♦ Project Database Analyst II	\$161.00
♦ Project Analyst I	\$151.00
♦ Project Database Analyst I	\$150.00
♦ Staff Analyst II	\$139.00
♦ Staff Analyst I	\$133.00
♦ Administrative Assistant	\$104.00

Rates shall have an annual escalation factor of three percent (3%) for the term of this Agreement to address year-over-year cost-of-living adjustments.

Ten percent (10%) of subcontractor fees will be added to cover administrative costs. Hourly rates increased by twenty-five percent (25%) for depositions, trials, and hearings.

RBI issues invoices on a monthly basis for all work performed. Payment is due upon receipt of the invoice.

EXHIBIT C: INSURANCE REQUIREMENTS

Professional Services Additional Insured Endorsement

Liability Insurance – The Firm shall provide and maintain at all times during the performance of this Agreement, the following commercial general liability, professional liability, and automobile liability insurance:

Coverage - Coverage shall be at least as broad as the following:

1. Coverage for Professional Liability appropriate to the Firm's profession covering Firm's wrongful acts, negligent acts, and errors and omissions. The retroactive date, if any, is to be no later than the effective date of this Agreement.
2. Commercial General Liability Coverage
3. Automobile Liability Coverage

Limits – The Firm shall maintain no less than the following:

1. Professional Liability – One million dollars (\$1,000,000) per claim and occurrence.
2. General Liability – One million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000.00) aggregate, for bodily injury and property damage.
3. Automobile Liability (hired and non-owned) – One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

Required Provisions – The general liability policy is to contain the following provisions:

1. The Authority, its directors, officers, employees, and authorized volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities by or on behalf of the Firm; and premises owned, occupied or used by the Firm.
2. For any claims related to this project, the Firm's insurance shall be primary insurance as respects the Authority, its directors, officers, employees, or authorized volunteers. Any insurance, self-insurance, or other coverage maintained by the Authority, its directors, officers, employees, or authorized volunteers shall not contribute to it.
3. In the event any change is made in the scope of coverage or retroactive date of professional liability coverage required under this Agreement, Firm shall notify the Authority prior to any changes.

Workers Compensation and Employers Liability Insurance – The Firm and all sub-contractors shall cover or insure under the applicable laws relating to workers’ compensation insurance, all of their employees employed directly by them or through sub-contractors in carrying out the work contemplated under this Agreement, all in accordance with the “Workers Compensation and Insurance Act,” Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The Firm shall provide employer’s liability insurance in the amount of at least \$1,000,000 per accident for bodily injury and disease.

Deductibles and Self-Insured Retentions – Any deductible or self-insured retention must be declared to and approved by the Authority; whereas, said approval shall not be unreasonably withheld.

Acceptability of Insurers – Insurance is to be placed with insurers having a current A.M. Best rating of no less than A-:VII or equivalent or as otherwise approved by the Authority.

Evidence of Insurance – Prior to execution of the Agreement, the Firm shall file with the Authority a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer’s representative. Such evidence shall include an original copy of the additional insured endorsement signed by the insurer’s representative. Such evidence shall also include confirmation that the coverage includes or has been modified to include Required Provisions 1 through 3. The Firm shall upon demand of the Authority, deliver to the Authority such policy or policies of insurance and the receipts for payment of premiums thereon.

Sub-contractors – In the event that the Firm employs other independent contractors (sub-contractors), as part of the services covered under this Agreement, it shall be the Firm’s responsibility to require and confirm that each sub-contractor meets the minimum insurance requirements specified above.

Power & Water Resources Pooling Authority

Regular Agenda • Item 5.D

1. Resolution 23-12-18 *ACES Professional Services Agreement*.

Power & Water Resources Pooling Authority
Resolution 23-12-18

**AMENDMENT 1 TO THE
PROFESSIONAL SERVICES AGREEMENT WITH ACES, LLC**

The Power and Water Resources Pooling Authority ("PWRPA") provides electric service to its customers, known as "Project Participants," under terms and conditions specified in the Aggregation Services Agreement; and

WHEREAS, the Alliance for Cooperative Energy Services Power Marketing LLC ("ACES"), is currently providing services to PWRPA under a three-year fixed-fee professional services agreement ("PSA") expiring on December 31, 2024; and

WHEREAS, PSA Section 1.2 provides that the PSA term shall continue for additional one (1) year terms unless either Party provides written notice of termination to the other Party at least ninety (90) days prior to the end of the then current term; and

WHEREAS, no later than June 2023, the General Manager began negotiations with ACES regarding a revised scope of needed services for 2024; and

WHEREAS, ACES presented an amendment having a revised scope of work to include: (a) expanded portfolio management for existing and new generation resources; and (b) an increased annual rate reflecting additional labor hours and inflation adjustments since 2021.

NOW, THEREFORE, BE IT RESOLVED that the Pooling Authority Board of Directors hereby:

1. Authorizes the Chair, or his designee, to execute and implement Amendment 1 to the professional services agreement with ACES according to the rates, terms, and conditions substantially similar to those set forth in Exhibit A.

PASSED AND ADOPTED by the PWRPA Board of Directors this 6th day of December 2023, by the following vote on roll call:

AYES	Arvin-Edison WSD, Banta Carbona ID, Cawelo Water District, Glenn-Colusa ID, James ID, Lower Tule River ID, Princeton/Provident ID, RD 108, Santa Clara Valley WD, Sonoma County Water Agency, The West Side ID, West Stanislaus ID, Westlands Water District, Zone 7 WA (100.0% Voting Shares)
NOES	
ABSENT	

David Weisenberger
Chairman

Attest by: Bruce McLaughlin
Secretary

**ATTACHMENT A
to
RESOLUTION 23-12-18**

Amendment to the Exhibit A
“Amendment No. 1”

This Amendment No. 1 (“Amendment”) entered into this 6th day of December 2023 (the “Effective Date”) is by and between Alliance for Cooperative Energy Services Power Marketing LLC (“ACES”) and the Power and Water Resources Pooling Authority (“PWRPA” or “Customer”), each individually a “Party” or collectively the “Parties.” This Amendment amends that certain Exhibit A of the Service Agreement dated January 1, 2021 (“Agreement”) as amended, between the Parties and further amends that agreement as follows:

I. Services: Exhibit A of the Agreement dated January 1, 2021 is hereby amended as follows:

A. Section II. Portfolio Strategy and Management, B. Short-term Portfolio Management, 1) Portfolio Management (Intraday to 4 months), Management of Portfolio Assets, including: This section is hereby deleted and replaced after the heading in its entirety with the following:

- WAPA (Western) Base Resource and Displacement
- Lodi Energy Center
- Sonoma County Warm Springs Hydro
- Shell Call/Put Option
- Slate Battery Storage Project
- Lower Tule River Hydro Project
- Load Scheduling in CAISO
- Future Assets based upon changes to Customer’s portfolio (such changes may require revisiting the scope of services and will be determined on a case-by-case basis)

B. Section V. Customer Annual Service Fees is amended to add to the end of the Annual Customer Service Fees paragraph the following:

Beginning January 1, 2024 through and including December 31, 2024, Customer shall pay ACES annual fees in the amount of Three Hundred Ninety Five Thousand Dollars (\$395,000), which shall be due and payable in equal monthly installments of Thirty Two Thousand Nine Hundred Sixteen Dollars and Sixty Seven Cents (\$32,916.67) (“Annual Customer Service Fees”). Each monthly installment shall be due and payable in advance on the first business day of the month. Thereafter, Annual Customer Service Fees shall increase by four percent (4%) annually, beginning January 1, 2025.

II. Term: The Term of this Amendment shall commence upon execution and shall run concurrent with the Term of the Agreement.

III. All other terms and conditions of the Agreement and Exhibit A, as amended, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed and delivered by their respective duly authorized officers as of the date first written above.

**ALLIANCE FOR COOPERATIVE
ENERGY SERVICES POWER
MARKETING LLC**

By: _____

Name: Michael Thomas Steffes

Title: President & CEO

**POWER AND WATER RESOURCES
POOLING AUTHORITY**

By: _____

Name: _____

Title: _____

Power & Water Resources Pooling Authority

Regular Agenda • Item 6.A

1. General Manager's Report.

This table reflects the proposed 2024 schedule for Regular Board Meetings and locations, typical agenda items, optional training sessions and strategy task team meetings. **The Board is requested to provide input on preferred dates, times, locations and particularly the proposal for an onsite Strategy Session in 3Q 2024.**

January 2024	February 2024	March 2024	April 2024
3 – Informational Packet 8 – <u>PWRPA Optional Training</u> 22 – <u>PWRPA Optional Training</u>	7 – Board Meeting (at BCID) <ul style="list-style-type: none"> • 2024 operational forecasts • RPS planning • <u>PWRPA Optional Training after meeting</u> TBD – <u>PWRPA Strategy Task Team</u>	6 – Informational Packet 6 – <u>PWRPA Optional Training</u> 25 – <u>PWRPA Optional Training</u> TBD – <u>PWRPA Strategy Task Team</u>	3 - Board Meeting (at BCID) <ul style="list-style-type: none"> • 2024 JPA Exhibit B & C • 2024 Rate review • Consider 2025 Base Resource Contract • <u>PWRPA Optional Training after meeting</u> TBD – <u>PWRPA Strategy Task Team</u>
May 2024	June 2024	July 2024	August 2024
1 – Informational Packet 1 – <u>PWRPA Optional Training</u> 27 – <u>PWRPA Optional Training</u> TBD – <u>PWRPA Strategy Task Team</u>	5 - Board Meeting (at Cawelo?) <ul style="list-style-type: none"> • 2023 Annual Audit • 2024 Rate review • 2023 CEC Power Source Disclosure • Biennial Conflict of Interest update 24 - <u>PWRPA Optional Training</u> TBD – <u>PWRPA Strategy Task Team</u>	TBD – Strategy Development Session (at SCWA?) <ul style="list-style-type: none"> • Long-term power portfolio management (resources and procurement) • Organizational models • Succession models (directors, vendors & staff) 29 – <u>PWRPA Optional Training</u>	7 - Board Meeting (at BCID) <ul style="list-style-type: none"> • 2023 Reconciliation • 2024 Rate review • 2024 Wildfire Plan update • Review draft 2025 PG&E WDT rates TBD – <u>PWRPA Strategy Task Team</u>
September 2024	October 2024	November 2024	December 2024
4 – Informational Packet 4 – <u>PWRPA Optional Training</u> 23 – <u>PWRPA Optional Training</u> TBD – <u>PWRPA Strategy Task Team</u>	2 - Board Meeting (at BCID) <ul style="list-style-type: none"> • 2023 CEC Power Content Label • Scheduling Coordinator Agreement • Review draft 2026 PG&E WDT rates TBD – <u>PWRPA Strategy Task Team</u>	6 – Informational Packet 6 – <u>PWRPA Optional Training</u> 25 – <u>PWRPA Optional Training</u> TBD – <u>PWRPA Strategy Task Team</u>	9 - Board Meeting (Monday at BCID) <ul style="list-style-type: none"> • 2025 Budget • 2025 Meeting Dates • 2025 Officer appointment



December 1, 2023

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Informational Filing

**Pacific Gas and Electric Company Wholesale Distribution Tariff,
FERC Electric Tariff Volume No. 4, Annual Update for Rate Year 2024
under the Formula Rate in Docket No. ER20-2878-000, *et al.***

Dear Ms. Bose:

Pacific Gas and Electric Company (“PG&E”) submits to the Federal Energy Regulatory Commission (“FERC” or “Commission”) for informational purposes, its Annual Update for Rate Year 2024 (“RY2024”) revising its Wholesale Distribution Revenue Requirement (“DRR”), Distribution Rates, Cost of Ownership rates, and Customer Service Charges, as those terms are defined in PG&E’s Wholesale Distribution Tariff (“WDT”), FERC Electric Tariff Volume No. 4, effective January 1, 2024. PG&E submits this filing pursuant to Section 4.6 of the Wholesale Distribution Formula Rate (“Formula Rate”) Protocols using the Formula Rate Model¹ as revised pursuant to the Second Offer of Partial Settlement and Stipulation (“Second Partial Settlement”) filed in Docket No. ER20-2878-013² for PG&E’s third WDT rate case (“WDT3”), Docket No. ER20-2878-000, *et al.*³

¹ The Protocols are included in Appendix I, Wholesale Distribution Formula Rate, Attachment 1 of PG&E’s WDT (“Protocols”). The Model, a spreadsheet containing individual worksheets (“Schedules”), is included in Appendix I, Wholesale Distribution Formula Rate, Attachment 2 of PG&E’s WDT (“Model”). Together, the Protocols and the Model comprise the Formula Rate.

² The Second Partial Settlement, which included revisions to the Protocols and Model, was filed March 31, 2022 and approved by the Commission on June 2, 2022. *See Pac. Gas & Elec. Co.*, 179 FERC ¶ 61,167 (2022).

³ Docket No. ER20-2878-000 contains the WDT3 filing. PG&E submitted a total of eight (8) filings to amend and align the terms of WDT3 with the service agreements (“SA”) of its six (6) wholesale load distribution customers – City and County of San Francisco (“CCSF”), Port of Oakland (“Port”), Power and Water Resources Pooling Authority (“PWRPA”), Shelter Cove Resort Improvement District No. 1 (“Shelter Cove”), Western Area Power Administration (“WAPA”), and the Westside Power Authority (“Westside”) – in sub-Docket Nos. ER20-2878-001 through -008.

This Annual Update filing revises the Wholesale DRR, from which each of PG&E's wholesale load distribution customer's ("Customer") allocated revenue requirement is calculated, from the currently effective amount of \$6,838 million to \$6,894 million. The total DRR allocated to Customers is being revised from \$59.7 million to \$50.7 million including the allocated wholesale primary credit.⁴ This is a decrease of the allocated Wholesale DRR of \$9 million.

Consistent with the WDT Protocols, this filing shall not modify the Formula Rate or subject the Formula Rate to modification and shall not constitute a rate change filing under Section 205 of the Federal Power Act.⁵ This filing is an informational filing. PG&E requests that the Commission issue a notice of this filing and establish a comment date.

I. BACKGROUND

On September 15, 2020, PG&E filed proposed revisions to certain non-rate terms and conditions and revisions to rate terms including moving to a Formula Rate in WDT3 and those revisions became effective on April 15, 2021.

On April 6, 2021, in Docket No. ER20-2878-010, PG&E submitted an Offer of Partial Settlement ("First Partial Settlement") resolving certain Model and Protocol issues that was approved by the Commission on July 15, 2021.⁶ On December 1, 2021, PG&E filed its first Annual Update for Rate Year 2022 using the Formula Rate as revised pursuant to the First Partial Settlement. On March 31, 2022, in Docket No. ER20-2878-013, PG&E submitted to FERC another Offer of Partial Settlement ("Second Partial Settlement") resolving all rate related issues in the WDT3 proceeding, as well as some non-rate related issues. The Second Partial Settlement was approved by the Commission on June 2, 2022.⁷

Pursuant to the terms of the Second Partial Settlement, the RY2024 Annual Update uses the Formula Rate as revised by the Second Partial Settlement.

On October 3, 2022, PG&E submitted a Petition for Declaratory Order ("Petition") requesting approval to establish a revenue sharing mechanism for secondary products and services in its WDT in Docket No. EL23-2-000. The Commission granted the Petition on December 15, 2022.⁸ On January 26, 2023, in Docket No. ER23-942-000, P&GE added Schedule 26-NP&S to the Model and revised Schedules 20, 1, and 2 in the Model to reflect the addition of the NP&S

⁴ Sum of Lines 103, 103a and 110 on Schedule 4-WholesaleRates of WDT3 Model.

⁵ Protocols § 4.6.2.

⁶ *Pac. Gas & Elec. Co.*, 176 FERC ¶ 61,012 (2021).

⁷ *Pac. Gas & Elec. Co.*, 179 FERC ¶ 61,167 (2022).

⁸ *Pac. Gas & Elec. Co.*, 181 FERC ¶ 61,203 (2022).

revenue sharing mechanism. These revisions were accepted and made effective March 28, 2023⁹ and are included in the Model for the RY2024 Annual Update.

II. WDT FORMULA RATE

A. Overview

PG&E's Model provides a DRR for RY2024, which represents the distribution costs that PG&E incurred in the previous calendar year ("Prior Year" or "PY"), in this instance calendar year 2022 ("PY2022"). The DRR is then used as the basis for allocation among Customers ("Allocated DRR") to recover their respective shares of the DRR through distribution service rates. The calculation of the Allocated DRR for primary load service is found on Line 103 of Schedule 4-WholesaleRates of the Model and the calculation of the Allocated DRR for secondary load service is found on Line 110 of Schedule 4-WholesaleRates. These calculations are made pursuant to Section 12 of the Protocols.

Pursuant to Section 5 of the Protocols, the Model also provides for an Annual True-up Adjustment ("ATA") that compares PG&E's costs in the Prior Year that were allocated to each Customer with wholesale distribution revenues collected from each Customer in the Prior Year. A summary of the Customer-specific ATAs in the RY2024 Annual Update can be found in Schedule 3-ATA, Lines 400 - 405.

The Cost of Ownership ("CoO") rates are calculated in Schedule 21-CoO using the RY2024 Total Distribution Revenue Requirement found in Schedule 1-DRR, pursuant to Section 15 of the Protocols.

The Customer Service Charges are calculated in Schedule 23-CustServCharge using a revised average annual hourly billing rate and as applicable, revised monthly hours for each Customer, pursuant to Section 13 of the Protocols.

B. Annual Update Process

Consistent with Section 4.1 of the WDT Protocols, on July 1, 2023, PG&E provided to the WDT3 parties and Commission Trial Staff ("Interested Parties") a draft Annual Update for Rate Year 2024. PG&E also hosted a technical conference on August 1, 2023 and responded to Information Requests and follow-up questions afterwards.

On November 1, 2023, PG&E provided to the parties an updated version of the draft Annual Update Model which incorporated changes to address errors identified by the parties and PG&E. PG&E also provided subsequent updated versions after November 1.

⁹ See Delegated Letter Order dated March 21, 2023, eLibrary Accession No. 20230321-3065.

C. DRR

PG&E's total wholesale DRR used to calculate Distribution Service Rates for RY2024 is \$6,894 million, an increase of \$56 million or 8.2% over the current DRR of \$6,838 million. This total DRR is the sum of the primary DRR, \$4,163 million, and secondary DRR, \$2,731 million. For RY2024, the allocated DRR for primary service to be recovered from wholesale customers through Distribution Rates is \$43.8 million and the allocated DRR for secondary service to be recovered from wholesale customers through Distribution Rates is \$7.9 million for a total allocation of \$51.7 million.

D. Annual True-up Adjustments

The total Annual True-up Adjustments for primary and secondary can be found on Schedule 3-ATA, Lines 401 and 404, respectively, and are credits of \$6.1 million for primary and \$6.7 million for secondary.

E. Distribution Service Rates

The RY2024 wholesale distribution rates for PG&E's Customers for can be found in Schedule 4-WholesaleRates of the Model and are compared to RY2023 rates below:

Customer & Service Agreement Number	RY2023 Primary Rates (\$/kW)	RY2024 Primary Rates (\$/kW)
CCSF SA 275	\$13.500	\$8.303
PWRPA SA 56	\$25.505	\$12.803
Shelter Cove SA 382	\$23.267	\$15.353
WAPA SA 17	\$16.051	\$11.032
Westside SA 15	\$25.905	\$21.987

Customer & Service Agreement Number	RY2023 Secondary Rates (\$/kW)	RY2024 Secondary Rates (\$/kW)
CCSF SA 275	\$26.134	\$9.919
WAPA SA 17	\$30.003	\$12.202

F. Cost of Ownership Rates

The Cost of Ownership rates for RY2024 can be found on Schedule 21-CoO and are compared to RY2023 rates below:

Monthly CoO Rate	RY2023	RY2024
Customer Financed	0.89%	0.80%

Power & Water Resources Pooling Authority

Regular Agenda • Item 6.B

1. Operations Manager's Report.

Power and Water Resources Pooling Authority

December 2023 Update

Operations Manager Report

Possible Action

n/a

Operations Staff Overview

1. December planned activity
 - a) Slate: invoicing for DDE
 - b) LTRID Hydro: final step: remote meter test
 - c) 2024 Budget and rates implementation
 - d) Metering documentation
2. November recap
 - a) Slate: DDE resolution
 - b) LTRID Hydro onboarding
 - c) 2024 Budget
 - d) Various coordination w/ Solar developers on Districts request

Operations Report:

1. Pre-Reconciliation
 - a) Actual data for January – partial Nov, Nov - December estimates.
 - b) BR estimates as of Nov 1 makes the rate \$26/MWH (\$54 in the Dry budget).
 - c) Updates include: REC costs, change in reserve, and rate change effective Sept 1.

Table 1: 2023 Pre-Reconciliation

Revenue and Expense: January - December 2023									
Participant	Revenue			Expenses			Balance Over/(Under) Funded	Summary	
	Power Invoice	Power & Ops Costs	P3	Direct Consulting	Change in Reserve Estimate	Prior Period		Total Costs	Composite Rate (¢/ kWh)
Arvin-Edison	\$ 15,603,029	\$ 14,012,268	\$ 399,350	\$ -	\$ 213,028	\$ (22,731)	\$ 1,001,114	\$ 14,601,915	\$ 12.38
Banta-Carbona	\$ 1,691,303	\$ 1,482,405	\$ 42,249	\$ -	\$ (31,997)	\$ (1,396)	\$ 200,042	\$ 1,491,260	\$ 10.60
Byron-Bethany	\$ 462,688	\$ 383,142	\$ 10,920	\$ -	\$ (884)	\$ (268)	\$ 69,779	\$ 392,910	\$ 13.97
Cawelo	\$ 2,771,368	\$ 2,486,721	\$ 70,872	\$ -	\$ 31,416	\$ 3,589	\$ 178,770	\$ 2,592,598	\$ 13.90
Glenn-Colusa	\$ 1,344,530	\$ 1,240,364	\$ 35,350	\$ -	\$ (1,178)	\$ (560)	\$ 70,555	\$ 1,273,976	\$ 11.46
James	\$ 251,645	\$ 252,810	\$ 7,205	\$ -	\$ (8,515)	\$ (1,081)	\$ 1,226	\$ 250,419	\$ 30.22
Lower Tule	\$ 1,530,734	\$ 1,353,927	\$ 38,587	\$ -	\$ 11,199	\$ (2,019)	\$ 129,041	\$ 1,401,693	\$ 14.20
Princeton	\$ 601,914	\$ 524,451	\$ 14,947	\$ -	\$ 1,560	\$ 60	\$ 60,897	\$ 541,018	\$ 12.27
RD108	\$ 490,358	\$ 425,364	\$ 12,123	\$ 21	\$ (9,163)	\$ (32)	\$ 62,046	\$ 428,313	\$ 18.77
Santa Clara	\$ 3,685,561	\$ 3,313,876	\$ 94,445	\$ 3,469	\$ 13,809	\$ (3,885)	\$ 263,846	\$ 3,421,715	\$ 16.20
Sonoma	\$ 4,618,861	\$ 4,177,138	\$ 119,048	\$ 75	\$ (1,884)	\$ (8,755)	\$ 333,239	\$ 4,285,623	\$ 12.68
West Stan	\$ 1,511,201	\$ 1,251,511	\$ 35,668	\$ -	\$ (10,654)	\$ (2,360)	\$ 237,036	\$ 1,274,165	\$ 11.30
Westlands	\$ 9,412,384	\$ 8,528,673	\$ 243,067	\$ 1,007	\$ (225,157)	\$ (50,992)	\$ 915,787	\$ 8,496,598	\$ 25.05
Zone 7	\$ 1,301,123	\$ 1,200,025	\$ 34,201	\$ -	\$ 18,421	\$ (1,794)	\$ 50,271	\$ 1,250,853	\$ 23.50
PWRPA	\$ 45,276,701	\$ 40,632,677	\$ 1,158,031	\$ 4,571	\$ 0	\$ (92,224)	\$ 3,573,646	\$ 41,703,055	\$ 14.51

2. October operations
 - a) Energy is 37% under budget for the month, 39% for the year
 - b) Load averaged 31 MW, 22MW lower than last month
 - c) Average schedule deviation of 3 MW for an estimated cost of 10,300.

Power and Water Resources Pooling Authority

December 2023 Update

Operations Manager Report

3. Pricing

a) Average monthly prices:

Table 2: Average monthly cost and ISO revenue rates

	Cost	Revenue
BR	\$ 26.41	\$ (64.08)
Displacement	\$ 26.41	\$ (69.21)
WWD BOR	\$ -	\$ (68.64)
Whitney Point	\$ 58.75	\$ (23.02)
Astoria	\$ 63.00	\$ (13.97)
Slate	\$ 26.81	\$ (44.03)
*Lodi	\$ 68.80	\$ (77.25)
Market		

Generator Reports

1. Astoria Solar

a) Generation

- 1,705 MWh, 23% capacity. Low output due to negative pricing.
- Net credit \$31,100 or \$18 /MWh

2. Whitney Point Solar

a) Generation

- 2,285 MWh, 28% capacity factor
- Net credit \$66,200, or \$28 /MWh

3. Slate Solar + Battery

a) Generation

- 3,322 MWh, 25% capacity factor
- Net value \$477,300, or \$100 /MWh

b) Staff work

- ACES & MCG to setup data flows: working through data translations
- Deemed Energy issues finally resolved.
 - Original 2022 invoice was \$150,000. Staff due diligence got that down to \$30,000.

4. Lodi Energy Center

○ Operations:

- 3,322 MWh, or 56% capacity factor due to economics
- Ran 826 of 31 days due to economics
- Net value of \$48,500 or \$15/MWh

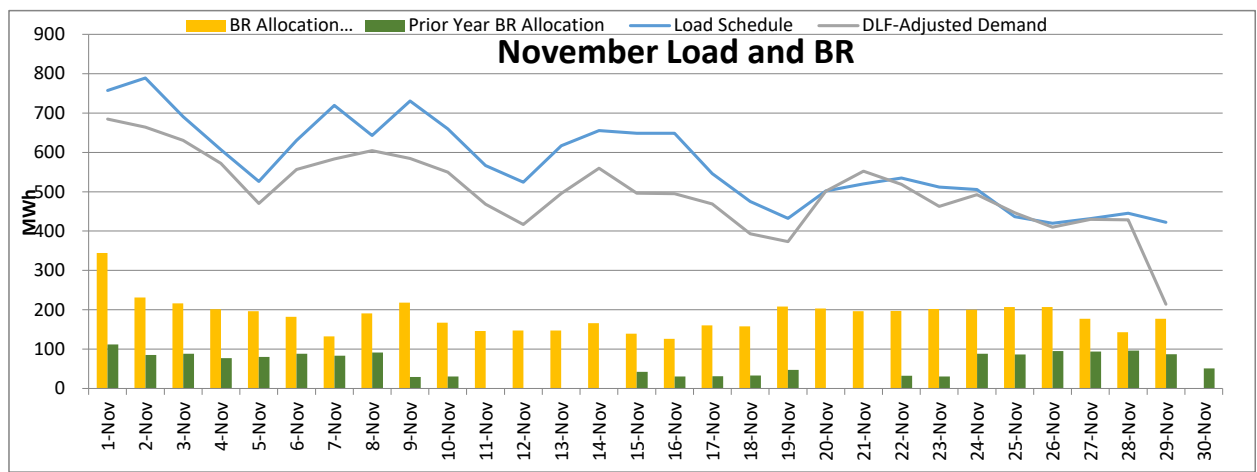
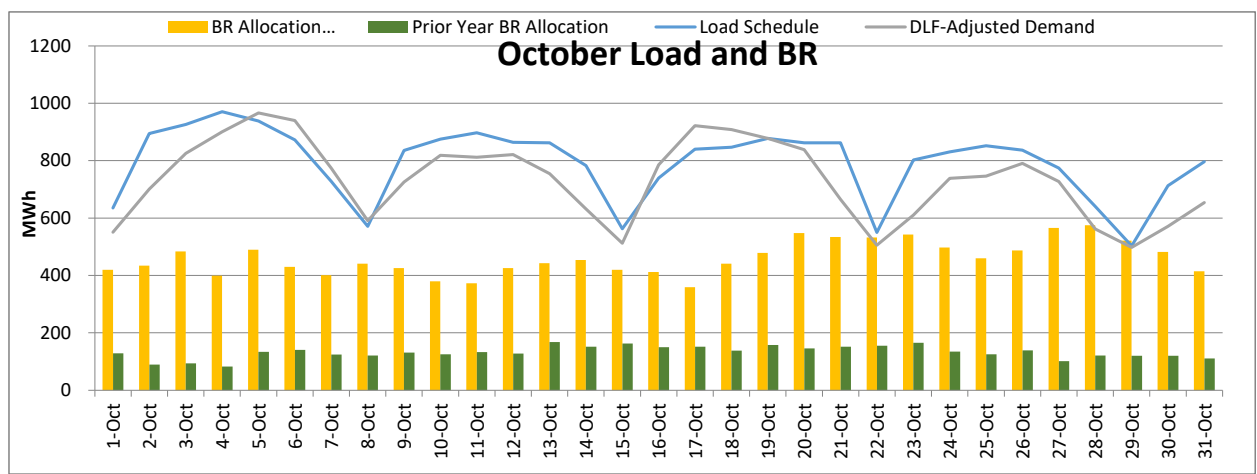
Power and Water Resources Pooling Authority

December 2023 Update

Operations Manager Report

Power Planning & Regulatory

1. Power Net Short
 - a) WAPA's current forecast is Nov 1, 2023.
2. BR output:
 - a. Covered 66% of load for Oct and 38% of November



3. Resource Adequacy
 - a. 2023: we had one CAISO procurement and PWRPA share was \$35,000
 - b. 2024: same contingency plan, procurement at this time is out of the market. We will look to cure shortages in the month ahead process.

Power and Water Resources Pooling Authority

December 2023 Update

Operations Manager Report

- c. Regulations: staff tracking changes CEC is making to enforce penalties and cost allocations for entities that lean on CAISO for backstop procurement.
- 4. Renewable Energy Credits
 - a. CP3 (2021-2024)
 - i. PWRPA's long Districts have agreed to transfer some of their excess to short Districts at a price of \$36.50/REC. The market has since risen to \$70/REC.
 - ii. Unless conditions really change (loads go up, BR output decreases by 40%, etc), PWRPA has enough PCC1 RECs within the portfolio.
 - iii. 20,000 PCC3 RECs have been procured and staff will finalize another procurement in Q1 2024 or balance.
 - b. PWRPA staff continues to work with Districts on their on-site project developments; WSID, BCID, BBID, RD108, SCWA.

Power & Water Resources Pooling Authority

Regular Agenda • Item 6.C

1. Resolution 23-12-19 *Appointment of Officers for 2024.*

Power & Water Resources Pooling Authority
Resolution 23-12-19

OFFICERS FOR THE 2024 FISCAL YEAR

WHEREAS, the Power and Water Resources Pooling Authority ("Pooling Authority") was created by a Joint Powers Agreement ("JPA") to, among other things, acquire, construct, maintain, operate, and finance water and energy related projects; and

WHEREAS, JPA Section 3.11.1 requires the Board of Directors ("Board") to select, from among themselves, a Chair and a Vice-Chair; and

WHEREAS, JPA Section 3.11.2 requires the Board to appoint a Secretary; and

WHEREAS, JPA Section 3.11.3 requires the Board to appoint a qualified person to serve as Treasurer and Auditor; and

WHEREAS, JPA Section 3.11.6 provides that the aforementioned officers shall serve a one-year term beginning on the first day of each fiscal year.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby:

1. Selects, appoints and designates the following persons as officers for 2024.
 - a. Chair –
 - b. Vice Chair –
 - c. Secretary –
 - d. Treasurer and Auditor -

PASSED AND ADOPTED by the Pooling Authority Board of Directors this 6th day of December 2023, by the following vote on roll call:

AYES	Arvin-Edison WSD, Banta Carbona ID, Byron Bethany ID, Cawelo Water District, Glenn-Colusa ID, James ID, Lower Tule River ID, Princeton/Provident ID, Santa Clara Valley WD, Sonoma County Water Agency, West Stanislaus ID, Westlands Water District, Zone 7 WA
NOES	
ABSENT	

David Weisenberger
Chairman

Attest by: Bruce McLaughlin
Secretary

Power & Water Resources Pooling Authority

Regular Agenda • Item 7.A

1. Resolution 23-12-20 *Cawelo WD REC Agreement.*

Power & Water Resources Pooling Authority
Resolution 23-12-20

RENEWABLE ENERGY CERTIFICATE PURCHASE AGREEMENT

The Power and Water Resources Pooling Authority ("PWRPA") provides electric service to its customers, known as "Project Participants," under terms and conditions specified in the Aggregation Services Agreement ("ASA"); and

WHEREAS, Cawelo Water District ("CWD") is a Project Participant and owns Renewable Energy Credits ("RECs") from a solar generation facility that is, or will be, a CEC-certified eligible renewable energy resource; and

WHEREAS, in Resolution 20-12-26, PWRPA approved a model agreement for the purchase of "RECs" from CEC-certified eligible renewable energy resources; and

WHEREAS, PWRPA desires to enter into a REC purchase agreement with CWD.

NOW, THEREFORE, BE IT RESOLVED that the Pooling Authority Board of Directors hereby:

1. Approves the model Renewable Energy Credits Agreement, attached hereto as Attachment A.
2. Authorizes the Chair, or his designee, to execute and implement a Renewable Energy Certificate Purchase Agreement with Cawelo Water District according to the rates, terms, and conditions substantially similar to those set forth in Attachment A, subject to the prior approval of General Counsel as to the form of the final, executable version.

PASSED AND ADOPTED by the PWRPA Board of Directors this 6th day of December 2023, by the following vote on roll call:

AYES	Arvin-Edison WSD, Banta Carbona ID, Byron Bethany ID, Cawelo Water District, Glenn-Colusa ID, James ID, Lower Tule River ID, Princeton / Provident ID, RD 108, Santa Clara Valley WD, Sonoma County Water Agency, West Stanislaus ID, Westlands Water District, Zone 7 WA (100.0% Voting Shares)
NOES	None
ABSENT	

David Weisenberger
Chairman

Attest by: Bruce McLaughlin
Secretary

**ATTACHMENT A
to
RESOLUTION 23-12-20**

**RENEWABLE ENERGY CREDIT PURCHASE AND SALE AGREEMENT
BY AND BETWEEN CAWELO WATER DISTRICT AND THE POWER & WATER
RESOURCES POOLING AUTHORITY**

This Renewable Energy Credit ("REC") Purchase and Sale Agreement ("Agreement") is entered into by and between the Cawelo Water District, a California public agency ("Seller"), and the Power & Water Resources Pooling Authority, a California joint powers agency ("Purchaser" or "PWRPA"). Each of Seller and Purchaser shall be referred to herein as a "Party" and together, as the "Parties."

This Agreement sets forth the terms and conditions of the purchase and sale of RECs from the Designated Facility (as defined hereunder).

RECITALS

WHEREAS, PWRPA is a local publicly owned electric utility, as defined in California Public Utilities Code Section 224.3, and provides retail electric service to Project Participants pursuant to the Aggregation Services Agreement ("ASA") and policies, rates, terms and conditions adopted by PWRPA's Board of Directors ("Board"), which administers the ASA and serves as the local regulatory authority for PWRPA.

WHEREAS, Project Participants are users of electric power and water resources for purposes such as providing irrigation and municipal and industrial water, and in order to serve their Participants utilize such electrical and water resources through, among other things, pumping water, water transfers, storing water, and distributing and exchanging electrical power. The Participants utilize electric power to convey water and recognize that water delivery and electric power consumption are directly related and that exchange of water and electric power resources is a viable means of managing both electric power consumption and water supplies.

WHEREAS, Cawelo Water District ("CWD") is a PWRPA Project Participant.

WHEREAS, PWRPA must procure specified percentages of its retail sales from eligible renewable electricity resources according to the California Renewable Portfolio Standard ("RPS").

WHEREAS, PWRPA adopted Resolution 13-11-13 *Renewable Energy Resources Procurement Plan* in conformance with the *Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities* adopted by the California Energy Commission ("CEC").

WHEREAS, PWRPA adopted Resolution 14-04-04 *Renewable Portfolio Standard Cost of Compliance Rule* in conformance with Appendix 2 of Exhibit E to the ASA which authorizes allocating PWRPA's RPS compliance obligation costs to all Project Participants.

WHEREAS, CWD has an assigned responsibility for its share of PWRPA's RPS compliance obligation costs using the rules adopted in Resolution 14-04-04.

WHEREAS, PWRPA and Seller desire to enter into this Agreement in order to specify such terms and conditions under which: (a) **Seller has a power purchase agreement for the full output of electricity and Environmental Attributes from the Designated Facility;** (b) all Environmental Attributes associated with the Designated Facility shall be distributed per this Agreement; and (c) the RPS compliance value from such RECs credited to PWRPA shall be attributed exclusively to CWD's assigned responsibility under the rules adopted by Resolution 14-04-04 for its direct benefit or for others as CWD may determine in its sole discretion.

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and intending to be legally bound hereby, the Parties hereby covenant and agree as follows:

1. Definitions; Rules of Interpretation.

The following terms shall have the following meanings:

- a. "Business Day" means any day other than Saturday, Sunday, or a day on which the Federal Reserve Bank is authorized or required to be closed.
- b. "CEC" means California's State Energy Resources Conservation and Development Commission, also known as the California Energy Commission.
- c. "CEC Certification" means that the CEC has certified that the Designated Facility is an eligible renewable energy resource in accordance with Public Utilities Code Section 399.12(e) and the guidelines adopted by the CEC, as amended from time to time, and any successor statute.
- d. "Designated Facility" means the Scooby Solar project which is a ground-mounted 3,477 kW DC solar generation facility located on 12 acres in Kern County, CA, Latitude 35.5880°, Longitude -119.1936°, APN: 073-050-19-7.
- e. "Environmental Attributes" means RECs, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated that are (a) at any time recognized or deemed of value (or both) by any Purchaser, applicable law, or any voluntary or mandatory program of any Governmental Authority or other Person, and (b) attributable to (i) generation by the Designated Facility of Energy during the Delivery Term, and (ii) the emissions or other environmental characteristics of such generation or its displacement of conventional or other types of Energy generation.

Environmental Attributes include any of the aforementioned arising out of legislation or regulation pertaining to oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the "UNFCCC"), the Kyoto Protocol to the UNFCCC, California's greenhouse gas legislation (including California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to that act, including without limitation any compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations of the California Air Resources Board or any successor regulations thereto), or any similar international, federal, state or local program or crediting "early action" with a view thereto, or laws or regulations involving or administered by the CAMD, and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as renewable Energy certificates of any kind. Environmental Attributes for purposes of this definition are separate from the System Energy. Environmental Attributes do not include Tax Credits. Seller and, to the extent required, Purchaser, shall file all federal and state of California tax returns in a manner consistent with Section 4.

- f. “Environmental Attribute Reporting Rights” means all rights to report ownership of the Environmental Attributes to any Person, including under Section 1605(b) of the Energy Policy Act of 1992 (Title 42, United States Code § 13385) or any other current or future international, federal, state or local law, regulation or bill, or otherwise.
- g. “Governmental Authority” means any national, state, or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission, or the California Public Utilities Commission), or any arbitrator with authority to bind a Party at law.
- h. “Product” means the California RPS Program-eligible RECs and Environmental Attributes associated with generation from the Designated Facility during the Delivery Term, as evidenced by WREGIS Certificates. *(note: currently researching CA Book and Claim)*
- i. “REC” or “Renewable Energy Credit” means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, which certificate is issued through the accounting system established by the CEC pursuant to the RPS Law, evidencing that one (1) MWh of Energy was generated and delivered from such eligible renewable energy resource. Such certificate is a tradable environmental commodity (also known as a “green tag”) for which the owner of the REC can prove that it has purchased renewable energy.
- j. “RPS Program” means the California Renewable Energy Resources Act, including the California Renewables Portfolio Standard Program, Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code, California Public Resources Code § 25740 through 25751, any related regulations or guidebooks promulgated by the CEC or, as applicable, the California Public Utilities Commission, as these may be amended from time to time.
- k. “RPS Compliant” means, when used with respect to the Designated Facility, that all electricity products generated by such facility at all times shall, together with all of the associated Environmental Attributes, qualify as a “portfolio content category 3” eligible renewable resources under the RPS Program and meet the requirements of Public Utilities Code Section 399.16(b)(1).
- l. “Tax Benefits” means all federal, state and local tax deductions, tax credits, tax grants, and other tax benefits available to taxpayers, including grants under Section 1603 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, as well as any replacements or modifications to such tax deductions, credits, grants or benefits.
- m. “Tax Credits” means any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of Energy from the System.
- n. “WREGIS” means the Western Renewable Energy Generation Information System.

2. **Purchase and Sale of Product; Scheduling; Interconnection; Obligation to Deliver.**

- a. **Purchase and Sale of Product.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser the Product generated by or associated with the Designated Facility during the Delivery Term.
- b. **Sale Only to Purchaser.** In no event shall Seller sell, or be deemed to have sold, Product from the System other than to Purchaser during the Delivery Term.

3. **Term and Termination.**

- a. **Effective Date.** The Effective Date shall be the date on which both Parties have executed the Agreement.
- b. **Delivery Term.** The Parties intend this Agreement to be a long-term contract consistent with Public Utilities Code Section 399.13(b). The initial term ("Initial Term") of this Agreement shall commence on the Effective Date and continue for ten (10) years, unless terminated earlier as provided for in this Agreement. Either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein, or such other terms and conditions as may be requested, for the number and length of additional periods as determined by the Parties (each an "Additional Term"). The Delivery Term comprises the Initial Term and any Additional Term.
- c. **Termination.** Either Party may terminate this Agreement: (1) after Default by the other Party pursuant to this Agreement; or (2) at any time by giving the other Party twenty (20) Business Days written notice.

4. **Billing and Payment.**

- a. **Contract Amount and Purchase Price.** Seller shall sell and Purchaser shall purchase the Product at the Purchase Price of \$0.05 per one (1) REC.
- b. **Title.** Title to the Product shall pass from Seller to Purchaser upon generation of the associated energy from the Designated Facility, and the Product shall be held in trust by Seller for Purchaser until the transfer of the RECs to Purchaser's WREGIS Account.
- c. **Delivery.** No less often than annually, Seller shall cause delivery of the Product in accordance with the applicable rules and procedures relating to WREGIS and the California RPS Program.
- d. **Billing Statement.** As soon as practicable after the Product has been delivered to Purchaser, as evidenced by a WREGIS Certificate delivered to Purchaser's WREGIS Account, Seller shall deliver to Purchaser an invoice for that portion delivered.
- e. **Payment Terms.** Subject to its contest rights set forth in Section 4(f), Purchaser shall pay the full amount of each invoice on or before the 45th day following receipt

thereof (the "Due Date"). All payments made by Purchaser under this Agreement shall be by electronic funds transfer or by check payable to Cawelo Water District or its designee (unless otherwise directed in writing by Seller) at the address for notices set forth in Section 15. If the Due Date is not a Business Day, payment will be due the next following Business Day. Late payments shall accrue interest at a per annum rate equal to the lower of 6%, or the maximum rate allowed by law.

- f. **Disputes and Adjustments of Invoices.** Purchaser 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 sixty (60) Business Days of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to Seller. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid.
- g. **Taxes.** Each Party shall pay any taxes lawfully levied upon it by a Governmental Authority.
- h. **Administrative Costs.** Purchaser is responsible for all costs associated with this Agreement required for establishing and administering any WREGIS account.

5. **Environmental Attributes and Tax Credits/Benefits.**

Purchaser is the owner of all Environmental Attributes and Seller is entitled to the benefit of all Tax Credits and Tax Benefits. Purchaser's purchase of the Product under this Agreement does not include the right to Tax Credits, Tax Benefits, or any other attributes of ownership and operation of the Designated Facility, all of which shall be retained by Seller, except for all Environmental Attributes as may otherwise be expressly provided in this Agreement. Seller shall cooperate with Purchaser in obtaining, securing and transferring all Environmental Attributes, including Purchaser's registration of the Designated Facility and its generation with WREGIS. Seller shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Purchaser.

6. **Conditions to Obligations.**

- a. **Conditions Precedent.** Purchaser shall have no obligation whatsoever to purchase the Product from the Designated Facility under this Agreement until Seller completes to Purchaser's reasonable satisfaction each of the following conditions:
 - i. Seller has received the requisite CEC Certification and verification for the Designated Facility; and

- ii. Seller shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and other appropriate documentation required to effect Designated Facility registration with WREGIS and to enable REC transfers related to the Facility within the WREGIS system or have completed any other similar requirements applicable to Seller to enable Purchaser to fulfill its RPS requirements.
- b. Purchaser shall provide, at its sole expense, the reasonable and necessary assistance for Seller to satisfy the above conditions in this Section 6.a.
- c. **Failure to Satisfy Conditions Precedent.** If Seller fails to complete the conditions precedent set forth in Section 6.a within six (6) months of the Effective Date, then either Party shall have the right to terminate this Agreement, and neither Party shall have any further liability hereunder.

7. Change in Law.

- a. **“Change in Law”** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the Designated Facility, or other performance of the Seller’s obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.
- b. If any Change in Law occurs that has a material adverse effect on either Party’s ability to perform its obligations described in this Agreement, then the Parties shall, within thirty (30) days following receipt by either Party of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, or such other period of time the Parties deem necessary and appropriate, then either Party has the right to terminate this Agreement

8. Continuing Representations and Warranties. In addition to the foregoing, Seller, and, if applicable, its successor(s), represents and warrants that:

- a. The Designated Facility is RPS Compliant;
- b. Seller has the sole and exclusive legal right to sell and deliver the Product, and upon the delivery of the Product to Purchaser, all right, title and interest in and to the Product shall be conveyed to Purchaser free and clear of any liens or other encumbrances or title defects; and

- c. the RECs associated with the Product will, upon delivery of the Product to Purchaser, vest in Purchaser, and Purchaser will (i) have the exclusive rights to make all claims as to such RECs and (ii) have the right to report with WREGIS Purchaser's exclusive ownership of such RECs all for benefit of CWD.

9. **Other Representations and Warranties.** Each Party represents and warrants as of the Effective Date:

- a. it is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation; it has the legal capacity, authority and power to execute this Agreement and to perform its obligations under this Agreement; it has taken all necessary action to authorize such execution and performance; the execution and performance of this Agreement are within its powers and do not violate or conflict with its governing documents, any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it, or any contract to which it is a party;
- b. its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law);
- c. no Event of Default (as defined in Article 12) with respect to it, or event which with notice and/or lapse of time would constitute such an Event of Default, has occurred and is continuing and no such event or circumstance would occur because of its entering into or performing its obligations under this Agreement;
- d. there are no proceedings by or before any court or other agency of government now pending or, to the knowledge of such Party, threatened, that if adversely determined could have a material adverse effect on such Party's ability to perform the Party's obligations under this Agreement;
- e. it is not relying upon any representations of the other Party other than those expressly set forth in this Agreement, and it has entered into this Agreement with a full understanding of, and the ability to assume, the material terms and risks of this Agreement, and has made its decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the other Party.

10. **Records.** Seller shall maintain or cause to be maintained adequate records of the Product, including but not necessarily limited to records to assist Purchaser in meeting any reporting or registration requirements associated with the Product, including metering records. Seller shall provide such records upon reasonable notice from Purchaser. Seller hereby consents to Purchaser's use of any such information for the purpose of documenting Purchaser's interest in the Product. Without limiting the generality of the foregoing, each Party agrees to provide copies of its records to the extent reasonably necessary for WREGIS to perform its functions and to verify the

accuracy of any fact, statement, charge or computation made in documents submitted to WREGIS.

11. **Additional Assurances.** Each Party, upon the reasonable request of the other Party, will perform any further acts and execute and deliver documents that may be necessary to carry out the intent and purpose hereof.

12. **Events of Default.**

A Party is in default ("Default") hereunder if that Party (the "Defaulting Party") does any of the following (each an "Event of Default"):

- a. fails to make, when due, any payment required under this Agreement, if such failure is not remedied within three (3) Business Days after written notice of such failure is given to the Defaulting Party;
- b. fails to cure any representation or warranty made by the Defaulting Party in this Agreement that has been shown to have been false or misleading in any material respect when made, if such failure is not cured within five (5) Business Days of written notice of such failure from the other Party;
- c. fails to perform any material covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered as a separate Event of Default), to the extent not excused by Force Majeure, if such failure is not cured within five (5) Business Days after written notice of such failure is given to the Defaulting Party, the Defaulting Party:
 - i. makes an assignment or any general arrangement for the benefit of creditors;
 - ii. files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors;
 - iii. has a petition in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors filed against it involuntarily and such proceeding remains undismissed for thirty (30) days; or
 - iv. otherwise becomes bankrupt or insolvent (however evidenced).

13. **Remedies.**

- a. **General.** If either Party is in Default as set forth in Article 12 at any time during the Term ("Affected Party"), the other Party ("Notifying Party") may (a) upon two (2) Business Days' prior written notice to the Affected Party terminate this Agreement, (b) withhold any payments due in respect of this Agreement to the extent of its damages, and (c) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement, including an action

for damages (except as limited below); provided, however, upon the occurrence of any Default listed in Section 12(c) (bankruptcy) as it may apply to any Party, this Agreement shall automatically terminate, without notice, immediately prior to such default.

- b. **Breach of California RPS Program Warranty.** Notwithstanding anything to the contrary herein, if the representation and warranty set forth in Section 8 is false such that the Product, in whole or in part, does not conform to the California RPS Program requirements and as a result Purchaser is unable to use the Product, in whole or in part, for compliance with the California RPS Program, then, Seller shall be in Default. Seller hereby acknowledges that, under Public Utilities Code Section 399.21(a)(6), Purchaser may retire the RECs in WREGIS within thirty-six (36) months of the initial date of generation of the associated energy, and therefore the representations and warranties with respect to conformance to the California RPS Program and the associated remedies for an Event of Default shall continue in effect during such period of time.

14. **Limitation of Liability.**

THE PARTIES AGREE THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSE HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS MEASURE OF DAMAGE IS PROVIDED SUCH REMEDY OR MEASURE SHALL BE THE SOLE AND EXCLUSIVE REMEDY THEREFOR. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AS THE SOLE AND EXCLUSIVE REMEDY. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, WHETHER BY STATUTE, IN TORT, OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS, AND ARE NOT A PENALTY.

15. **Miscellaneous.**

- a. **Indemnification.** Each Party ("Indemnifying Party") shall indemnify and hold harmless the other Party, its shareholders, officers, directors, employees and agents, from and against any and all third party claims, costs, suits, liabilities, damages, losses, demands and expenses of every kind including, without limitation, reasonable attorney fees and disbursements, known or unknown, contingent or otherwise, resulting from or arising out of any event, circumstance, act or incident first occurring or existing during the period when control and title to the Product is vested in such Party, as further described in Section 4(b). The Indemnified Party shall notify the other Party promptly of any claim under this Section 15(a). The other Party shall afford the Indemnified Party the opportunity to defend or participate in the defense of the claim. The other Party shall make

no settlement of an indemnified claim specifically naming or directly affecting the Indemnified Party without the Indemnified Party's prior written approval.

- b. **Force Majeure.** Neither Party shall be considered to be in default in the performance of any obligations under this Agreement when a failure of performance shall be due to any Force Majeure. The term "Force Majeure" shall mean an event that prevents a Party from performing its obligations under this Agreement, which is not within the Party's reasonable control and which by exercise of due diligence, such Party is unable to avoid, cause to be avoided or overcome. Such causes may include, without limitation, the following and other causes of similar nature: flood, earthquake, tornado, storm, fire, explosion, public emergency, civil disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority (whether valid or invalid), and action or non-action by, or failure to obtain the necessary authorizations or approvals from any government agency or authority. Force Majeure may include the failure or disruption in deliveries of RECs and Green Attributes by WREGIS that is not the fault of the Party asserting the Force Majeure. No Party shall, however, be relieved of liability for failure of performance if such nonperformance is due to its own negligence or to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Force Majeure may not be based on (a) an inability to pay, (b) Seller's ability to sell the RECs to another entity at a greater price than the Purchase Price or (c) Purchaser's inability to economically use or resell the RECs (provided such inability does not arise from Seller's breach of the warranties and representations set forth in Article 4 of this Agreement). Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of Force Majeure shall give prompt written notice of such fact to the other Party, and shall continue to exercise due diligence to remove or remedy such inability with all reasonable dispatch.
- c. **Time is of the Essence.** Time is of the essence of each and every obligation set forth in this Agreement.
- d. **Headings.** The Parties have inserted the headings used in this Agreement for convenience only and each heading shall not be construed to limit, add to or otherwise affect the interpretation of the provision in which it appears.
- e. **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with, the laws of the State of California, without regard to principles of conflicts of law.
- f. **Assignment.** Neither Party shall assign or transfer this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent may be not be unreasonably withheld.
- g. **Waiver.** No delay or omission in the exercise of any power or remedy and no renewal or extension of any performance due under this Agreement shall impair any such power or remedy or waive any Default.

- h. **Unenforceability.** Should any portion of this Agreement be ruled unenforceable or invalid, such ruling shall not affect the enforceability or validity of the remaining portions of this Agreement.
- i. **Joint Drafting.** This Agreement has been drafted and negotiated by both Parties and shall not be strictly construed against either Party.
- j. **Dispute Resolution.** Any dispute arising from or relating to this Agreement shall be resolved by a procedure agreed to by the Parties.
- k. **Notices.** Any written notice, direction, instruction, request or other communication required or permitted under this Agreement shall be deemed to have been duly given on the date of receipt, and shall be delivered to the Party to whom notice is to be given (i) personally, (ii) by electronic mail (receipt acknowledgment), (iii) by a recognized overnight delivery service or (iv) by first class registered or certified mail, return receipt requested, postage prepaid (with additional notice by regular mail), and addressed to the Party to whom notice is to be given at the address stated below its name below, or at the most recent address specified by written notice given to the other Party in the manner provided in this Section 15.

TO SELLER:

Cawelo Water District
17207 Industrial farm Road
Bakersfield, CA 93308
Attn: David Ansolabehere
Email: dansolabehere@cawelowd.org
Tel: (661) 393-6072

TO PURCHASER:

Power & Water Resources Pooling Authority
3504 W. Lehman Road
Tracy, CA 95304
Attn: General Counsel
Email: bcm@cameron-daniel.com
Tel: (916) 531-5566

With a copy to:

Arvin-Edison Water Storage District
P.O. Box 175
Attn: David Nixon
Email: dan@aewsd.org
Tel: (661) 854-5573

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

Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

- m. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- n. **Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Purchaser shall not knowingly take any action that would subject Seller, or Seller's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Purchaser shall not assert in any proceeding before a court or regulatory body that Seller is a public utility by virtue of Seller's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement.
- o. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) Business Days after receipt of a written request by the other Party hereto, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party.
- p. **Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701 (e)(3) of the Internal Revenue Code of 1986,

Special rules for contracts or arrangements involving solid waste disposal, energy, and clean water facilities. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of the Product from the Designated Facility.

- q. **No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- r. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- s. **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

SIGNATURES

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

“Purchaser”

Power and Water Resources Pooling
Authority, a California joint powers authority

By: _____

Name: _____

Title: _____

Date: _____

“Seller”

Cawelo Water District, a California public
agency

By: _____

Name: _____

Title: _____

Date: _____

Power & Water Resources Pooling Authority

Regular Agenda • Item 7.B

1. Resolution 23-12-21 *West Stanislaus ID PPA and Rate Agreement.*

Power & Water Resources Pooling Authority
Resolution 23-12-21

WSID SOLAR POWER PROJECT

WHEREAS, the Power and Water Resources Pooling Authority ("PWRPA") was created by a Joint Powers Agreement ("JPA") to, among other things, study, promote, develop, conduct, finance, acquire, construct, and/or operate water and energy-related projects and programs; and

WHEREAS, PWRPA is authorized to make and enter into contracts with entities in order to study, promote, develop, conduct, design, finance, acquire, construct, and operate water and energy-related projects and programs; and

WHEREAS, PWRPA and its Project Participants have signed the Aggregation Services Agreement ("ASA") under which the Pooling Authority provides aggregated electric services to electric accounts designated by the Project Participants; and

WHEREAS, Section 7.3 of the JPA and Section 4.6 of the ASA provide that PWRPA or some or all of the Project Participants may develop, install, own and operate certain electric generating facilities for the benefit of certain or all Project Participants; and

WHEREAS, Section 7.1 of the JPA and Section 4.6 of the ASA provide, among other things, that funding for, participation and withdrawal of participation in any Project undertaken by PWRPA, and the purchase and integration of electricity from these electric generating facilities, including any credit to be given to the host Project Participant or participating Project Participants, shall be governed by a separate Project Agreement; and

WHEREAS, Article 5 of the ASA provides that the Board of Directors ("Board") shall, among other things, review and approve contracts related to the provision of electric service under the ASA, review and approve a budget relating to the provision of electric services under the ASA, and allocate approved costs through rates and charges applicable to Project Participants; and

WHEREAS, pursuant to Resolution 13-11-13, PWRPA adopted a Renewable Energy Resources Procurement Plan in compliance with the California Energy Commission's Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities; and

WHEREAS, pursuant to Public Utilities Code Section § 399.16(b)-(c), electricity products are classified as Portfolio Content Category 1 if they are: (a) associated with contracts or ownership agreements that are executed after June 1, 2010; (b) procured as bundled; and (c) are associated with an eligible renewable energy resource that has its first point of interconnection to a distribution system used to serve end users within a California Balancing Authority; and

WHEREAS, the proposed solar PV system at West Stanislaus Irrigation District ("WSID") shall be interconnected directly to the PG&E distribution system using Rule 21 grid and designed to export energy to the grid controlled by the California Independent System Operator ("CAISO"); and

WHEREAS, the WSID Solar Project will be constructed, owned and operated by White Pine Renewables and PWRPA will execute a power purchase agreement ("PPA") for the WSID Solar Project; and

WHEREAS, as required by the Aggregation Services Agreement ("ASA"), a Project Rate Agreement was prepared between PWRPA and WSID as the sole Participating Customer, which among other things, specifies the rates, terms and conditions for costs and energy associated with the Projects; and

WHEREAS, WSID shall provide documentation reasonably satisfactory to PWRPA showing that installation, operation, and maintenance of the WSID Project has been determined to be exempt from environmental review pursuant to the California Environmental Quality Act ("CEQA") in reliance on, but not limited to, California Public Resources Code section 21080.35 (statutory exemption for solar system installation) and section 15301 (categorical exemption for future maintenance and operation of an existing facility); and

WHEREAS, the Rate Agreement shall be effective on the first day when all of the following shall have occurred: (a) the Rate Agreement has been executed and delivered by WSID to PWRPA; (b) White Pine Renewables has executed the PPA; (c) PWRPA has executed (i) the PPA, and delivered it to White Pine Renewables and (ii) the Rate Agreement, and delivered it to WSID; and

WHEREAS, WSID desires that the WSID Solar Project be designated as a PWRPA Project with WSID as the host Project Participant.

NOW, THEREFORE, BE IT RESOLVED that the Pooling Authority Board hereby:

1. Finds that it is reasonable and consistent with the purpose and objective of the JPA and ASA to designate the WSID Solar Project as a Pooling Authority "Project" as that term is defined in JPA Section 1.12. (Attachment A)
2. Finds that it is reasonable and consistent with the purpose and objective of the JPA and ASA to designate WSID as the sole "Project Participant" as that term is defined in JPA Section 1.14 ("RPS Project Participant").
3. Approves the form of the Rate Agreement, subject to non-substantive changes made to it by General Counsel. (Attachment B).

4. Approves the form of the PPA, subject to non-substantive changes made to it by the General Counsel. (Attachment C).
5. Authorizes and directs the General Counsel to make any final, non-substantive changes that he believes are necessary to the Rate Agreement and PPA, and to distribute them to WSID and White Pine Renewables, respectively.
6. Authorizes and directs the Chairman, or designee, to execute the Rate Agreement Rate Agreement and the PPA.
7. Authorizes and directs authorized representatives of PWRPA to do and perform any and all acts required under the Rate Agreement and PPA in order to fulfill PWRPA's obligations described therein.
8. Authorizes this Resolution to take effect immediately upon its adoption.

PASSED AND ADOPTED by the Pooling Authority Board of Directors this 6th day of December, 2023, by the following vote on roll call:

AYES	Arvin-Edison WSD, Banta Carbona ID, Byron Bethany ID, Cawelo WD, Glenn-Colusa ID, James ID, Lower Tule River ID, Princeton/Provident ID, RD 108, Santa Clara Valley WD, Sonoma County Water Agency, West Stanislaus ID, Westlands Water District, (100.0% Voting Shares)
NOES	
ABSENT	

David Weisenberger
Chairman

Attest by: Bruce McLaughlin
Secretary

**Power & Water Resources Pooling Authority
Resolution 23-12-21**

Attachment A for Resolution 23-12-21
Project Description

White Pine Renewables will permit, construct, commission, own, and operate a solar power resource on land in the West Stanislaus Irrigation District located in San Joaquin County, with general attributes as follows:

1. Size – 3,800 kW AC.
2. Commercial Operation Date (“COD”) – during late Q1 2025.
3. Interconnection – the project will interconnect directly to the PG&E electric system using Rule 21.
4. Output – Preliminary estimates indicate an average annual output of 9,226,000 kWh over the 35-year term.
5. PWRPA will enter into a Power Purchase Agreement (“PPA”) to buy all the electrical energy, capacity and renewable energy credits/environmental attributes from the Project for a 35-year period.

**Power & Water Resources Pooling Authority
Resolution 23-12-21**

Attachment B for Resolution 23-12-21

Form of Rate Agreement

**SEPARATELY METERED DISTRIBUTED GENERATION RATE
AGREEMENT
– WSID SOLAR PROJECT –**

This **Separately Metered Distributed Generation Rate Agreement – WSID Solar Project** (“SMDG Rate Agreement”), effective as of date described in Section 2.1, is made and entered into by and between the **Power and Water Resources Pooling Authority** (“PWRPA”) and the West Stanislaus Irrigation District (“WSID”). WSID is a Project Participant and by executing this SMDG Rate Agreement becomes a Participating Customer,” thereby affirmatively electing to pay rates reflecting costs, energy, and environmental attributes associated with PWRPA’s generation entitlement share in the SMDG Solar Project.

RECITALS

1. PWRPA operates as a publicly owned electric utility and provides retail electric service to WSID and other Project Participants pursuant to the Aggregation Services Agreement (“ASA”) and rates, terms and conditions adopted by PWRPA’s Board of Directors, which administers the ASA and serves as the Local Regulatory Authority (“LRA”) for PWRPA.
2. As generally described in Section 4.6 and Article 7 of the PWRPA Joint Powers Agreement (“JPA”), and Section 4.6 of the ASA, Project Participants may elect to pay rates reflecting energy and costs associated with specific electric resource projects developed by PWRPA.
3. Separately Metered Distributed Generation (“SMDG”) projects are eligible renewable electricity resources that are co-located with the retail load of a Participating Customer to be served in a manner that, as compared to centralized electricity generation resources, reduces environmental impacts related to siting, reduces greenhouse gas emissions, reduces distribution losses, reduces certain distribution and/or transmission charges, and adds to local electric reliability.
4. In accordance with PWRPA Renewable Energy Resources Procurement Plan (“PWRPA RPS Plan”) section 6.B, SMDG is classified as a Portfolio Content Category 1 resource since the electricity products are procured as bundled from an eligible renewable energy resource that has its first point of interconnection to a distribution system used to serve end users within a California balancing authority.
5. PWRPA is participating in the development of one SMDG Solar Project on a parcel of land located in San Joaquin County (“WSID SMDG”), nominally rated at **3,600 kilowatts** –alternating current (“kWAC”). The land and pumping facilities are owned by WSID. The SMDG facilities will be owned and operated by WSID Solar, LLC (“Seller”).
6. PWRPA will execute a power purchase agreement (“SMDG PPA”) with the Seller relating to the sale and purchase of the full electrical output and associated environmental attributes from the WSID SMDG facilities (“SMDG Project”).

7. Appendix 1 to Exhibit E of the ASA (“PWRPA Allocation Policy”) describes, among other things, how costs and energy from specific resources will be allocated to those Project Participants that have elected to pay rates reflecting such costs and energy (“Participating Customers”). WSID is the sole Participating Customer for the SMDG Projects.
8. PWRPA and WSID desire to enter into this SMDG Rate Agreement in order to specify the rates, terms and conditions associated with energy generated by the SMDG Projects. PWRPA and the Seller have agreed to the form of the SMDG PPA, subject to non- substantial changes as approved by their respective counsel. PWRPA intends to execute the SMDG PPA following the Seller’s approval and execution of the SMDG PPA.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, PWRPA and the Participating Customer agree as follows:

ARTICLE 1 CONTRACT DOCUMENTS

- 1.1 **Definitions:** Capitalized terms used in this SMDG Rate Agreement without other definition herein shall have the respective meanings given to such terms in the ASA or the SMDG PPA, as so designated herein.
- 1.2 **ASA Incorporated:** This SMDG Rate Agreement consists of this document, as it may be amended from time to time pursuant to Section 1.4, and the ASA, as it may be amended from time to time pursuant to Section 2.5 of the ASA. The ASA is hereby incorporated into and made a part of this SMDG Rate Agreement.
- 1.3 **SMDG PPA:** As described further in Section 3.3, the SMDG PPA shall not be incorporated into and made a part of this SMDG Rate Agreement. However, in light of the importance of the SMDG PPA in regard to the administration of this SMDG Rate Agreement, the SMDG PPA is attached hereto as Attachment 1 for reference purposes. PWRPA has provided WSID a copy of the final, effective SMDG PPA.
- 1.4 **Amendments:** This SMDG Rate Agreement may be amended only by written instrument executed by PWRPA and WSID. PWRPA shall provide notice to WSID of the amendment of this SMDG Rate Agreement.
- 1.5 **Conflicting Provisions:** As described further in Section 3.1, this SMDG Rate Agreement is intended to implement various provisions in the ASA, including specifically Section 4.5 of the ASA and the PWRPA Allocation Policy, relating to so-called “Specific Projects.” As such, notwithstanding Section 2.4 of the ASA, in the event of any conflict between this document and the ASA, this document shall control.

ARTICLE 2 EFFECTIVE DATE AND PARTICIPATION

- 2.1 Effective Date:** This SMDG Rate Agreement shall be effective on the first day when all of the following shall have occurred: (a) this SMDG Rate Agreement shall have been executed and delivered by the Participating Customer to PWRPA, (b) Seller shall have executed the SMDG PPA, (c) PWRPA shall have executed (i) the SMDG PPA, and delivered it to Seller and (ii) this SMDG Rate Agreement, and delivered it to WSID (“Effective Date”) and (d) WSID shall have executed the Solar Power License Agreement By and Between WSID Solar, LLC and the Banta Carbona Irrigation District (“Site License”). PWRPA shall provide written notice to WSID of the establishment of the Effective Date; provided, however, the failure to provide such notice shall not affect the establishment of the Effective Date.
- 2.2 SMDG Rate Percentages:**
- 2.2.1 General:** WSID is the sole Participating Customer in the SMDG Projects. As such, WSID shall receive all energy, Environmental Attributes Value and costs under this SMDG Rate Agreement.
- 2.2.2 Specified SMDG Rate Percentage:** WSID is the sole Participating Customer for the SMDG Projects, and hereby affirms that its participation level in the SMDG Projects is 100% (“SMDG Rate Percentage”)
- 2.2.3 PWRPA’s Generation Entitlement Share:** PWRPA’s Generation Entitlement Share is 100% of the SMDG Projects.

ARTICLE 3 SCOPE AND RELATIONSHIP

- 3.1 General:** PWRPA operates as a publicly owned electric utility and provides full requirements retail electric service to the Project Participants. The ASA and the various rates, policies and programs adopted by the Board define the process by which PWRPA obtains power resources and allocates costs through rates to the Project Participants. Under the JPA and ASA, PWRPA has the authority to offer and implement a flexible power procurement program in which, among other things, PWRPA acquires or generates energy from specific power resources upon confirmation from specified Project Participants of their agreement to pay electric rates based, in part, on the costs associated with such resources. This SMDG Rate Agreement is intended to implement provisions in the ASA relating to PWRPA’s flexible power procurement program, including specifically Section 4.5 of the ASA and the PWRPA Allocation Policy, relating to the costs and benefits of so-called “Specific Projects.”
- 3.2 Local Regulatory Authority:** As described in Section 5.1 of the ASA, the Board is the LRA for PWRPA and, among other things, establishes rates and adopts policies for retail electric service provided by PWRPA to the Project Participants consistent with the ASA and subject to the following:

- 3.2.1 Rates:** The Board shall establish rates to ensure recovery of the SMDG Costs (as defined in Article 4, below) from WSID pursuant to or not otherwise in conflict with the terms of this SMDG Rate Agreement.
- 3.2.2 Policy Changes:** The Board may adopt policies relating to or affecting PWRPA's Generation Entitlement Share of the SMDG as may be reasonably necessary in the exercise of the Board's role as LRA for PWRPA; provided, however, such policies shall not conflict with the terms of this SMDG Rate Agreement unless WSID consents to such change in writing.
- 3.3 SMDG Agreements:** Consistent with its administration of other power resources, only PWRPA, and not WSID, shall have privity of contract with respect to the SMDG PPA and other agreements relating to PWRPA's Generation Entitlement Share. PWRPA shall ensure the SMDG PPA specifies that WSID has a third party beneficiary interest in the SMDG PPA.
- 3.4 CEQA:** WSID shall be the lead agency for compliance with the California Environmental Quality Act. PWRPA shall be a responsible agency.

ARTICLE 4 RATE PROVISIONS

- 4.1 Participating Customer Liability for SMDG Costs:** By executing this SMDG Rate Agreement, WSID agrees to pay rates established by the Board that reflect, among other things, all costs reasonably associated with PWRPA's Generation Entitlement Share, as further described below.
- 4.1.1 General:** WSID shall pay through rates its share (as determined by its respective SMDG Rate Percentage) of PWRPA's costs associated with PWRPA's Generation Entitlement Share, which shall include (a) all costs paid by PWRPA under the SMDG PPA and (b) such other costs determined by the Board from time to time to be reasonably related to PWRPA's administration and operation of the SMDG PPA and this SMDG Rate Agreement ("SMDG Costs").
- 4.1.2 Obligation for the Term of the SMDG PPA:** WSID acknowledges and agrees as follows:
- (a.) the term of the SMDG PPA is expected to continue for 35 years from the Commercial Operation Date for the respective SMDG facility;
 - (b.) the Contract Price applicable to PWRPA is shown in Schedule 2-1 to the SMDG PPA; and
 - (c.) WSID's rate obligation under this SMDG Rate Agreement shall continue for the term of the SMDG PPA and such additional time, if any, as determined by the Board to be necessary for the recovery of all SMDG Costs.

4.1.3 Cost Allocation: Section VI of Exhibit E to the ASA describes various formulas used to implement cost allocation principles in the ASA. In light of WSID's SMDG Rate Percentage (100%), the SMDG Costs shall be allocated entirely to WSID.

4.1.4 Recovery of All Fees and Costs: Without limiting the generality of the various cost recovery provisions in the ASA and under California law, and notwithstanding Section 11.1 of the ASA (as implemented pursuant to Section 8.1 of the Joint Powers Agreement), PWRPA shall be entitled to recover from WSID, in addition to the cost responsibility charge described in Section 4.3, attorneys' fees, expenses and costs reasonably necessary to obtain such determination and to recover amounts due as a result of WSID's default.

4.1.5 Financial Remedial Actions: Should WSID be determined to be in Continuing Default, PWRPA shall have the right at any time or from time to time without after at least 30 calendar days notice to WSID, any such notice being hereby expressly waived, to pay the unpaid amount in the following manner and order of sequence ("Financial Remedial Actions"):

- (a.) Withdraw any and all funds available in WSID's P3-RCA account that was established by the PWRPA RPS Cost of Compliance Rule.
- (b.) Withdraw any and all funds available in WSID's Public Purpose Program Account, regardless of their categorization.
- (c.) Withdraw any and all funds available in the WSID's Allowance Value account established by the PWRPA Cap-and-Trade Cost of Compliance Rule.
- (d.) Withdraw any and all funds available in WSID's Environmental Attribute Value account.
- (e.) Increase the rate for all electricity sales to WSID using an RPS Compliance Adder of \$35/MWh.

4.2 Implementation of the PWRPA Allocation Policy: The PWRPA Allocation Policy shall be implemented with respect to this SMDG Rate Agreement as follows:

- (a) PWRPA's Generation Entitlement Share shall be allocated using the rules for the "Energy Efficiency" Tier.
- (b) In accordance with the RPS Cost of Compliance Rule adopted by Resolution 14-04-04, the Renewable Energy Certificates associated with the SMDG electricity generation project shall be allocated to WSID's assigned share of PWRPA's RPS compliance obligation.

4.3 Withdrawal or Termination

4.3.1 SMDG Cost Responsibility Charge: As generally described in Sections 10.2 and 10.3 of the ASA, a Project Participant that withdraws from the ASA or has its participation under the ASA terminated shall, among other things, continue to be responsible for its relative share of the net

unavoidable costs of PWRPA's generation resources. In addition to other terms and conditions in the ASA, WSID agrees that if it withdraws from the ASA or has its participation under the ASA terminated ("Departing SMDG Participant"), it shall continue to be responsible for the net unavoidable costs associated with its allocation of costs from PWRPA's Generation Entitlement Share ("SMDG Cost Responsibility Charge"). The Board, in its role as LRA, shall determine the amount of the SMDG Cost Responsibility Charge.

- 4.3.2 Cooperation; Withdrawal:** As described in Recital 3, above, PWRPA acknowledges that the SMDG Projects are co-located with WSID's retail load in order to effectuate several environmental and electrical benefits. If WSID elects to withdraw from the ASA, PWRPA shall cooperate in good faith with WSID, as requested by WSID, in order to ensure that the SMDG Projects remain co-located with WSID's retail load. Such cooperation may include, but shall not be limited to, assigning the SMDG PPA to WSID and rearranging the electric distribution system; provided, however, in all instances WSID shall reimburse PWRPA for its costs incurred in such cooperative efforts.

ARTICLE 5

TERM, TERMINATION AND ASSIGNMENT

- 5.1 Term:** The term of this SMDG Rate Agreement shall begin on the Effective Date and, unless earlier terminated, shall continue concurrent with the term of the SMDG PPA as it relates to PWRPA, and such additional time as determined by the Board to be necessary for the recovery of all SMDG Costs.

5.2 Termination

- 5.2.1 Board Action and Consent by the Participating Customers:** This SMDG Rate Agreement may be terminated by PWRPA at any time upon reasonable advance notice to WSID upon adoption of a resolution by the Board directing PWRPA to terminate this SMDG Rate Agreement; provided, however, (a) such resolution shall not be effective unless WSID consents to the termination in writing and (b) prior to such termination, and if requested by WSID, PWRPA shall cooperate with WSID as may be reasonably necessary to modify or assign the SMDG PPA or otherwise provide a means by which WSID may receive economic benefits from the operation of the SMDG comparable to the economic benefits WSID receives under this SMDG Rate Agreement. Without limiting the generality of the foregoing in clause (b), above, PWRPA acknowledges that the SMDG Projects are co-located with WSID's retail load in order to effectuate several environmental and electrical benefits, and therefore PWRPA agrees to cooperate in good faith with WSID, as requested by WSID and as generally described in Section 4.3.2, in order to ensure that the SMDG Projects remain co-located with WSID's retail load.

- 5.2.2 Default:** In addition to all other remedies provided in this SMDG Rate

Agreement and under law, PWRPA may terminate this SMDG Rate Agreement if WSID is in material default of this SMDG Rate Agreement and fails to timely cure such material default following 30-calendar days notice and reasonable opportunity to cure.

- 5.2.3 Withdrawal and Payment of SMDG Cost Responsibility Charge:** This SMDG Rate Agreement shall be terminated with respect to WSID if WSID withdraws from the ASA and fully pays the SMDG Cost Responsibility Charge and any costs associated with PWRPA's cooperative efforts, as described in Section 4.3.2.

ARTICLE 6 MISCELLANEOUS

- 6.1 Severability:** If one or more clauses, sentences, paragraphs or provisions of this SMDG Rate Agreement shall be held to be unlawful, invalid or unenforceable, the remainder of this SMDG Rate Agreement shall not be affected thereby and shall be treated as lawful and valid, and shall be enforced to the maximum extent possible.
- 6.2 Further Assurances:** WSID agrees to execute and deliver all further instruments and documents and take all further actions that may be reasonably necessary to effectuate the purposes and intent of this SMDG Rate Agreement.
- 6.3 Counterparts:** This SMDG Rate Agreement may be executed in any number of counterparts, including through facsimile signatures, and upon execution by PWRPA and WSID each executed counterpart shall have the same force and effect as an original document and as if PWRPA and the Participating Customer had signed the same document. Any signature page of this SMDG Rate Agreement may be detached from any counterpart of this SMDG Rate Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this SMDG Rate Agreement identical in form but having attached to it one or more signature pages.

**ARTICLE 7
SIGNATURE**

IN WITNESS WHEREOF, PWRPA and the Participating Customer have executed this SMDG Rate Agreement as of date written below.

POWER AND WATER RESOURCES POOLING AUTHORITY

By: _____

Title: _____

Date: _____

WEST STANISLAUS IRRIGATION DISTRICT

By: _____

Name: _____

Title: _____

Customer: _____

Date: _____

DRAFT

**Power & Water Resources Pooling Authority
Resolution 23-12-21**

Attachment C to Resolution 23-12-21

Form of Power Purchase Agreement

SOLAR POWER & SERVICES AGREEMENT

This Solar Power & Services Agreement (this “Agreement”) is made and entered into as of [], 2023 (the “Effective Date”), between Solar Moving Water, LLC, a Delaware limited liability company (“Seller”), and Power and Water Resources Pooling Authority, a California public agency, (“Purchaser”; and, together with Seller, each, a “Party” and together, the “Parties”).

WITNESSETH:

WHEREAS, [] (“Land-Owner”) / Seller] intends to purchase the Premises (as hereafter defined);¹ and

WHEREAS, Purchaser desires that Seller install and operate a solar photovoltaic system at the Premises for the purpose of providing Solar Services (as hereafter defined), and Seller is willing to do the same.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

The exhibits listed below are incorporated by reference and made part of this Agreement.

Exhibit 1: Special Terms and Conditions

Exhibit 2: General Terms and Conditions

Exhibit 3: Performance Guaranty

IN WITNESS WHEREOF and in confirmation of their consent to this Agreement and intending to be legally bound hereby, Seller and Purchaser have executed this Agreement as of the Effective Date.

PURCHASER

Power and Water Resources Pooling Authority

SELLER

Solar Moving Water, LLC

By: _____
Name: []
Title: []

By: _____
Name: Evan Riley
Title: Authorized Person

¹ **Note to Draft:** Pending confirmation that Solar Moving Water, LLC will be purchaser. If other WP entity purchases the land, insert last whereas clause: ,and WHEREAS: Land-Owner will lease the Premises to Seller for the purposes of providing the Solar Services.

EXHIBIT 1
Special Terms and Conditions

The following Schedules are incorporated by reference and made part of this Agreement:

Schedule 1-1	Description of the Premises, System and Scope of Work
Schedule 1-2	Electricity Rates
Schedule 1-3	Early Termination Fee
Schedule 1-4	Estimated Annual Production
Schedule 1-5	Notice Information

[Remainder of page intentionally left blank]

Schedule 1-1: Description of the Premises, System and Scope of Work

A. Premises	
APN:	A parcel of real property located at [], in Stanislaus County, California, with the following APN: [].
B. Solar System Description	
Interconnection Type:	[PG&E Rule 21]
Solar System Size (kW dc):	4,890 kW dc
Solar System Size (kW ac):	3,800 kW ac
C. Scope of Work	
Overview:	Design and supply grid-interconnected, ground-mounted solar electric (PV) system

The Parties acknowledge and agree that, upon written notice to the Purchaser, Seller may update Part B of the table set forth on this Schedule 1-1 after the Effective Date to reflect the then-current System design.

Schedule 1-2 – Electricity Rates

1. The “Term” is 34 years and 364 days, beginning on the Effective Date.
2. The “Pumping Rate” with respect to the System under this Agreement shall be in accordance with this Schedule 1-2, subject to any adjustments described herein:

Contract Year	Pumping Rate* (\$/kWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
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23	
24	
25	
26	
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28	
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31	
32	
33	
34	
35	
<u>Note:</u> *The Pumping Rate for each Contract Year after Contract Year 1 is calculated based on the Contract Year 1 Pumping Rate multiplied by a 1.5% escalation factor for each subsequent year.	

3. The “Export Rate” with respect to the System under this Agreement shall be in accordance with this Schedule 1-2, subject to any adjustments described herein:

Contract Year	Export Rate* (\$/kWh)
---------------	-----------------------

1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
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<u>Note:</u> *The Export Rate for each Contract Year after Contract Year 1 is calculated based on the Contract Year 1 Export Rate multiplied by a 1.5% escalation factor for each subsequent year.		

4. Pumping Rate and Export Rate Adjustments:

(a) *Interconnection Adjustment:*

- (i) Upon Seller's receipt of the final system impact study results from CAISO, Seller will notify Purchaser of the Final I/C Cost, and
- (ii) Upon determination of the final purchase price of the Premises by [Seller / Land-Owner] (the "Premises Cost", and together with the Final I/C Cost, the "Adjustment Costs") the Pumping Rate and Export Rate will be adjusted as set forth below (the "Rate Adjustment"):

1. If the Adjustment Costs are \$650,000, the Pumping Rate and Export Rate shall be as set forth in the above tables.
2. If the Adjustment Costs are greater than \$650,000, the Pumping Rate and Export Rate shall be adjusted upwards by \$0.0035/kWh for every \$100,000 that the Adjustment Costs are in excess of \$650,000 by prorating the Pumping Rate and Export Rate listed in the tables above.
3. If the Adjustment Costs are less than \$650,000, the Pumping Rate and Export Rate shall be adjusted downwards by \$0.0035/kWh for every \$100,000 that the Adjustment Costs are less than \$650,000 by prorating the Pumping Rate and Export Rate listed in the tables above.
4. If the Adjustment Costs are greater than \$1,250,000 (the “Adjustment Maximum”), the Seller shall have the right to (x) continue development of the System with the adjustment of the Pumping Rate and Export Rate limited to \$0.021/kWh or (y) terminate this Agreement as set forth in Section 2.2(b) of Exhibit 2 (in which case Purchaser will have no further liability or obligation to Seller arising out of or pursuant to this PPA except as expressly stated herein).

For purposes of clarity, the Pumping Rate and Export Rate will be adjusted starting with the first dollar in excess of or less than \$650,000, as applicable, for any Rate Adjustment listed above.

Schedule 1-3 – Early Termination Fee

1. The Early Termination Fee with respect to the System under this Agreement shall be calculated in accordance with the following:

Early Termination Occurs in Contract Year:	Early Termination Fee (\$/Wdc)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
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2. Following the Expiration Date, the Early Termination Fee shall be deemed to be \$0.
3. The Early Termination Fee for Contract Year 1 applies to any Early Termination Date that occurs before the Commercial Operation Date.

Schedule 1-4 – Estimated Annual Production

1. The Estimated Annual Production with respect the System under this Agreement is as follows:

Contract Year	Estimated Annual Production (kWh)
1	10,034,280
2	9,984,109
3	9,934,188
4	9,884,517
5	9,835,094
6	9,785,919
7	9,736,989
8	9,688,304
9	9,639,863
10	9,591,664
11	9,543,705
12	9,495,987
13	9,448,507
14	9,401,264
15	9,354,258
16	9,307,487
17	9,260,949
18	9,214,645
19	9,168,571
20	9,122,728
21	9,077,115
22	9,031,729
23	8,986,571
24	8,941,638
25	8,896,930
26	8,852,445
27	8,808,183
28	8,764,142
29	8,720,321
30	8,676,719
31	8,633,336
32	8,590,169
33	8,547,218
34	8,504,482
35	8,461,960

2. The Estimated Annual Production values set forth in the table above are estimates (and not guarantees) of approximately how many kWhs are expected to be generated annually by the System based on the size of the System indicated in Schedule 1-1. Seller shall deliver to Purchaser updated Estimated Annual Production values for this Schedule 1-4 immediately following the Commercial Operation Date that reflect the actual System size.

Schedule 1-5 – Notice Information

Purchaser:

Power and Water Resources Pooling Authority

Attn: ☐

[Address]

[Address]

Seller:

Solar Moving Water, LLC

Attn: Evan Riley

1808 Wedemeyer Street, Suite 221

San Francisco, CA 94129

Financing Party:

[To be provided by Seller when
known]

EXHIBIT 2

General Terms and Conditions

1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Adjustment Costs” has the meaning set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions).

“Adjustment Maximum” has the meaning set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions).

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

“Agreement” has the meaning set forth in the Preamble.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Assignment” has the meaning set forth in Section 13.1.

“Bankruptcy Event” means with respect to a Party, that either:

- (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or
- (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of 60 days.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in New York, NY are required or authorized by Applicable Law to be closed for business.

“CAISO” means the California Independent System Operator.

“Claims” has the meaning set forth in Section 16.2.

“Commercial Operation Date” has the meaning set forth in Section 3.3(b).

“Contract Year” means a 12-month period commencing on the Commercial Operation Date and each succeeding 12-month period; if the Commercial Operation Date does not occur on the first day of a month, the first Contract Year shall be deemed

to include that portion of the month in which the Commercial Operation Date occurred plus the succeeding 12-month period such that every subsequent Contract Year shall commence on the first day of a month and end on the last day of the month immediately preceding such anniversary.

“Disruption Period” has the meaning set forth in Section 4.3(b).

“Early Termination Date” means any date on which this Agreement terminates other than by reason of expiration of the then applicable Term.

“Early Termination Fee” means the fee payable by Purchaser to Seller under the circumstances described in Section 2.2(a), or Section 11.2, and in the amount described on Schedule 1-3 of Exhibit 1 (Special Terms and Conditions).

“Effective Date” has the meaning set forth in the preamble to this Agreement.

“Electrical Energy” means the total quantity of electricity generated by the System that is recorded by Seller’s metering equipment pursuant to Section 4.2 and delivered as Pumping Energy or Export Energy. For the purpose of clarity, all Electrical Energy shall be classified as either Pumping Energy or Export Energy.

“Environmental Attributes” means the characteristics of electric power generation at the System that have intrinsic values, separate and apart from the Electrical Energy, including, without limitation, carbon trading credits, renewable energy credits or certificates, capacity attributes, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, and Green-e® products.

“Environmental Law” means any and all federal, state, local, provincial and foreign, civil and criminal laws, statutes, ordinances, orders, common law, codes, rules, regulations, judgments, decrees, injunctions relating to the protection of health and the environment, worker health and safety, and/or governing the handling, use, generation, treatment, storage, transportation, disposal, manufacture, distribution, formulation, packaging, labeling, or release to the environment of or exposure to Hazardous Materials, including any such requirements implemented through Governmental Approvals.

“Estimated Annual Production” has the meaning set forth in Section 5.2.

“Estimated Remaining Payments” means as of any date, the estimated remaining Solar Services Payments to be made through the end of the then-applicable Term, as reasonably determined by Seller and set forth in Exhibit 1 (Special Terms and Conditions).

“Expiration Date” means the date on which this Agreement terminates by reason of expiration of the Term.

“Export Energy” means the quantity of Electrical Energy delivered to and measured by CAISO’s revenue-grade meter.

“Export Rate” means the price per kWh as set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions), subject to any Rate Adjustment defined therein.

“Final I/C Cost” means the final interconnection costs for the System set forth in the final system impact study provided by CAISO to Seller.

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Seller (or an Affiliate of Seller) leases the System, (ii) any Person (or its agent) who has made or will make a loan to or otherwise provides financing to Seller (or an Affiliate of Seller) with respect to the System, or (iii) any Person acquiring a direct or indirect interest in Seller or in Seller’s interest in this Agreement or the System as a tax credit investor.

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

“General Conditions” means this Exhibit 2 (General Terms and Conditions) of this Agreement, including all Schedules hereto.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority, including any such approval, consent, order or binding agreements with or involving a governmental authority under Environmental Laws.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Hazardous Materials” means any hazardous or toxic material, substance or waste, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, mold, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are regulated under or for which liability can be imposed under any Environmental Law.

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

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

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Premises.

“Invoice Date” has the meaning set forth in Section 6.2.

“Liabilities” has the meaning set forth in Section 16.1.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Party” or “Parties” has the meaning set forth in the preamble to this Agreement.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Pre-existing Environmental Conditions” means the presence or release of, or exposure to, any Hazardous Materials at, to, on, in, under or from the Premises that first existed, arose or occurred on or prior to Seller’s commencement of construction at the Premises.

“Premises” has the meaning set forth in Schedule 1-1 of Exhibit 1.

“Premises Cost” means the final purchase price of the Premises by [**Land-Owner / Seller**].

“Pumping Energy” means the quantity of Electrical Energy that is delivered to the Purchaser for resale for the water-related loads of customers.

“Pumping Rate” means the price per kWh as set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions), subject to any Rate Adjustment defined therein. Pumping Energy for any given time period shall be measured by subtracting the amount of Export Energy from the amount of Electrical Energy.

“Purchaser” has the meaning set forth in the preamble to this Agreement.

“Purchaser Default” has the meaning set forth in Section 11.2(a).

“Rate Adjustment” has the meaning set forth in Schedule 1-2 of Exhibit 1.

“Seller” has the meaning set forth in Exhibit 1 (Special Terms and Conditions).

“Seller Default” has the meaning set forth in Section 11.1(a).

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

“Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies, and any other solar or renewable energy subsidies and incentives.

“Solar Insolation” means the amount of solar energy falling on a particular location, as specified by Seller, as measured in kWh per square meter.

“Solar Services” has the meaning set forth in Section 5.3.

“Solar Services Payment” has the meaning set forth in Section 6.1.

“Special Conditions” means Exhibit 1 of this Agreement, including all Schedules thereto.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent or (b) the maximum rate allowed by Applicable Law.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring.

“System Operations” means Seller’s operation, maintenance and repair of the System performed in accordance with the requirements herein.

“Term” has the meaning set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions).

“Termination Date” means the date on which this Agreement ceases to be effective, including on an Early Termination Date or the Expiration Date.

“Utility” means Pacific Gas & Electric Company.

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting this Agreement. Words in this Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include”, “includes”, and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof”, “herein”, and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

2. TERM AND TERMINATION.

2.1 Term. The Term of this Agreement shall commence on the Effective Date. The electricity supply period under this Agreement commences on the Commercial Operation Date and continues for the duration of the Term, unless terminated earlier pursuant to the provisions of this Agreement.

2.2 Early Termination.

(a) Purchaser may terminate this Agreement during the Term for any reason upon 60 days’ prior written notice. In such event, Purchaser shall pay, as liquidated damages, the Early Termination Fee set forth on Schedule 1-3 of Exhibit 1 (Special Terms and Conditions), and Seller shall cause the System to be disconnected and removed from the Premises. Upon Purchaser’s payment to Seller of the Early Termination Fee, this Agreement shall terminate automatically, and all rights, interests, duties, and obligations shall cease except as otherwise expressly set forth.

(b) Seller may terminate this Agreement during the Term if the Rate Adjustment exceeds the Adjustment Maximum pursuant to Section 4(a)(ii)(4) of Schedule 1-2 of Exhibit 1. Upon Seller's written notice to Purchaser of its intent to terminate this Agreement, this Agreement shall terminate automatically, and all rights, interests, duties, and obligations shall cease except as otherwise expressly set forth in this Agreement.

2.3 Conditions of this Agreement Prior to Commercial Operation Date.

(a) In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Seller may (in its sole discretion) provide written notice to Purchaser that it is terminating this Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

- (i) Seller determines that the Premises, as is, is insufficient to accommodate the System or unsuitable for construction or operation of the System.
- (ii) Premises conditions (including environmental conditions) or construction requirements exist that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the Electrical Energy from the System as designed.
- (iii) There is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the System.
- (iv) Seller is unable to obtain financing for the System on terms and conditions satisfactory to it.
- (v) There has been a material adverse change in the rights of Seller to construct the System on the Premises.
- (vi) Seller has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to energy generated by the System or that interconnection costs or interconnection schedule are not obtained from CAISO on terms and conditions satisfactory to it.
- (vii) There has been a material change in Seller's ability to obtain and maintain all necessary consents, approvals, or permits required for Seller to perform its obligations under this Agreement.
- (viii) There has been a material adverse change in Purchaser's creditworthiness.

(b) If any of the conditions set forth in Section 2.3(a) are partly or wholly unsatisfied, and Seller wishes to revise the information in Exhibit 1 (Special Terms and Conditions), then Seller may propose modifications to Exhibit 1 (Special Terms and Conditions) for acceptance by Purchaser. If Purchaser does not accept such modified Special Conditions, Seller may terminate this Agreement as provided in Section 2.3(a). If Purchaser accepts such revised Special Conditions, such revised Special Conditions shall be deemed an amendment of this Agreement, and this Agreement shall remain in force and effect upon execution of the modification by both Parties.

3. **CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.**

3.1 Installation Work. Seller will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1-1 of Exhibit 1 (Special Terms and Conditions) and Applicable Law. At its request, Purchaser shall have the right to review all construction plans and designs, including engineering evaluations of the impact of the System.

3.2 Approvals; Permits. Seller shall obtain and maintain all necessary consents, approvals and permits required to for Seller to perform its obligations under this Agreement, including but not limited to those related to the Utility, any Governmental Approval, and any consents, waivers, approvals or releases required pursuant to any applicable contract; provided, that, Purchaser shall reasonably assist Seller in obtaining any such consents, approvals and permits at no cost to the Purchaser. Seller shall pay for all costs and expenses needed to obtain such approvals and permits.

3.3 System Acceptance Testing.

(a) Seller shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States.

(b) If the results of such testing indicate that the System is capable of generating and delivering both Pumping Energy and Export Energy for a sum total of four continuous hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Utility, then Seller shall send a written notice to Purchaser to that effect, and the date of such notice shall be the "Commercial Operation Date."

4. **SYSTEM OPERATIONS.**

4.1 Seller as Owner and Operator. The System will be owned by Seller or Seller's Financing Party and will be operated and maintained and, as necessary, repaired by Seller at its sole cost and expense; provided, that any repair or maintenance costs incurred by Seller as a result of Purchaser's negligence or breach of its obligations hereunder, shall be reimbursed by Purchaser.

4.2 Metering. Seller shall install and maintain a revenue grade kilowatt-hour (kWh) meter for the measurement of Electrical Energy provided by the System and may, at its election, install a revenue grade kilowatt-hour (kWh) meter for the measurement or calculation of Export Energy and Pumping Energy.

4.3 System Disruptions. In the event any act or omission of Purchaser or Purchaser's employees, Affiliates, agents or subcontractors (collectively, a "Purchaser Act") results in a disruption or outage in System production, then, in either case, Purchaser shall (i) pay Seller for all work required by Seller to disassemble or move the System and (ii) continue to make all payments for the Solar Services during such period of System disruption (the "Disruption Period"), and (iii) reimburse Seller for any other lost revenue during the Disruption Period, including any lost revenue associated with any reduced Solar Incentives during the Disruption Period. For the purpose of calculating Solar Services Payments and lost revenue for such Disruption Period, Solar Services for each month of said months shall be deemed to have been produced at the average rate over the same month for which data exists (or, if the disruption occurs within the first 12 months of operation, the average over such period of operation). Upon Purchaser's written request, Seller will provide reasonable documentation supporting its lost revenue calculations.

5. **DELIVERY OF SOLAR SERVICES.**

5.1 Electric Power Purchase Requirement. Purchaser agrees to accept and purchase 100% of the Electrical Energy generated by the System and made available by Seller to Purchaser during each relevant month of the Term. While the Electrical Energy is calculated and billed on a per kWh basis as set forth in Schedule 1-2 of Exhibit 1 (Special Terms and Conditions), it represents a package of services and benefits, including any reduction in Purchaser's peak demand from the Utility.

5.2 Estimated Annual Production. The annual estimate of Electrical Energy with respect to the System for any given year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each year of the Term is set forth in Schedule 1-4 of Exhibit 1 (Special Terms and Conditions).

5.3 Environmental Attributes and Solar Incentives. Purchaser's purchase of the Pumping Energy and Export Energy includes the associated Environmental Attributes (collectively, the "Solar Services"), which shall be owned by Purchaser for the duration of the Term. Purchaser's purchase of Solar Services does not include Solar Incentives, which shall be owned by Seller or Seller's Financing Party for the duration of the System's operating life. Purchaser disclaims any right to Solar Incentives based upon the installation of the System at the Premises, and shall, at the request, and sole expense, of Seller, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.3.

5.4 Title to System. Throughout the duration of this Agreement, Seller or Seller's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Seller or Seller's Financing Party and shall not attach to or be deemed to be a part of, or fixture to, the Premises.

6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Seller a monthly payment (the “Solar Services Payment”) for the Electrical Energy generated by the System during each calendar month of the Term equal to the sum of (x) the product of (i) the Pumping Energy and (ii) the Pumping Rate and (y) the product of (i) the Export Energy and (ii) the Export Rate.

6.2 Invoice. Seller shall invoice Purchaser on or about the first day of each month (each, an “Invoice Date”), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Solar Services Payment in respect of the immediately preceding month. The invoice shall include a detailed summary of the calculations set forth in Section 6.1. The last invoice shall include production only through the Termination Date of this Agreement.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within 20 days after the date of the applicable Invoice Date.

6.4 Method of Payment. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under this Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

7. GENERAL COVENANTS.

7.1 Seller’s Covenants. Seller covenants and agrees to the following:

(a) Notice of Damage or Emergency. Seller shall (x) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, and (y) immediately notify Purchaser if it becomes aware of any event or circumstance relating to the System or the Premises that poses a significant risk to human health, the environment, the System or the Premises.

(b) System Condition. Seller shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Services at a commercially reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work, Solar Services, and System Operations, Seller shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Seller and to enable Seller to perform such obligations.

(d) Health and Safety. Seller shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Solar Services, and System Operations that shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property.

7.2 Purchaser’s Covenants. Purchaser covenants and agrees as follows:

(a) Notice of Damage or Emergency. Purchaser shall (x) promptly notify Seller if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (y) immediately notify Seller if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises.

(b) Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect to the System or any interest therein. If Purchaser breaches its obligations under this Section, it shall immediately notify Seller in writing, shall promptly cause such Lien to be discharged and released of record without cost to Seller, and

shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

(c) Consents and Approvals. Purchaser shall comply with Applicable Law in performing any of its obligations under this Agreement. Purchaser shall ensure that any authorizations required in order to enter into this Agreement are obtained or provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, Governmental Approvals, rebates or other financial incentives, Purchaser shall reasonably cooperate with Seller to obtain or issue such approvals, Governmental Approvals, rebates or other financial incentives in the name of Seller.

(d) Use of System. Purchaser will not use Electrical Energy generated by the System for the purposes of heating a swimming pool within the meaning of Section 48 of the Internal Revenue Code.

(e) Financial Statements. Purchaser shall provide to Seller its publicly available and audited financial statements as requested by Seller within 15 Business Days of Seller's request.

8. REPRESENTATIONS & WARRANTIES.

8.1 Representations and Warranties of Both Parties. In addition to any other representations and warranties contained in this Agreement, each Party represents and warrants to the other as of the Effective Date that:

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;
- (e) to its actual knowledge, there is no litigation, action, proceeding or investigation pending or threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein; and
- (f) its execution and performance of this Agreement and the transactions contemplated hereby do not and will not constitute a breach of any term or provision of, or a default under, (i) any contract, agreement or Governmental Approval to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations of Purchaser. Purchaser represents and warrants to Seller as of the Effective Date that:

- (a) Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party;
- (b) no existing lease, mortgage, security interest or other interest in or lien upon the Premises exists that could attach to the System as an interest adverse to Seller's Financing Party's Security Interest therein;
- (c) there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement; and
- (d) all information provided by Purchaser to Seller as it pertains to Purchaser's estimated electricity requirements, is accurate in all material respects.

8.3 NO OTHER WARRANTIES. THE WARRANTIES SET FORTH IN SECTIONS 8.1 AND 8.2 OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 8, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 8.1 AND 8.2, NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT.

9. TAXES AND GOVERNMENTAL FEES.

9.1 Purchaser's Taxes. Purchaser is responsible for the payment of, or reimbursement of Seller, for all taxes, fees, or charges assessed on the generation, sale, delivery or consumption of Electrical Energy produced by the System. Seller shall notify Purchaser in writing with a detailed statement of such amounts, which shall be invoiced by Seller and payable by Purchaser.

9.2 Seller's Taxes. Seller is responsible for: (1) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of Electrical Energy under this Agreement; and (2) personal property taxes imposed on the System.

10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums), including, without limitation, the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of Seller or as a result of such party's failure to comply with a collective bargaining agreement); (v) action or inaction by a Governmental Authority, with jurisdiction thereof (unless Purchaser is a Governmental Authority and Purchaser is the Party whose performance is affected by such action or inaction). A Force Majeure Event shall not be based on the economic hardship of either Party.

10.2 Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Article 10 shall as soon as practicable after becoming aware of the circumstances constituting Force Majeure (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that Purchaser shall not be excused from making any payments and paying any unpaid amounts due in respect of Solar Services delivered to Purchaser prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. Notwithstanding anything in this Agreement to the contrary, if a Force Majeure Event shall have occurred that has affected Seller's performance of its obligations hereunder and that has continued for a continuous period of 180 days, then Purchaser shall be entitled to terminate this Agreement upon 90 days' prior written notice to Seller. If at the end of such 90 day period such Force Majeure Event shall still continue, this Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination), and the provisions of Section 2.2(a) (Early Termination) shall be inapplicable.

11. DEFAULT.

11.1 Seller Defaults and Purchaser Remedies.

(a) Seller Defaults. The following events shall be defaults with respect to Seller (each, a “Seller Default”):

(i) A Bankruptcy Event shall have occurred with respect to Seller; and

(ii) Seller breaches any material representation, covenant or other term of this Agreement and (A) if such breach can be cured within 30 days after Purchaser’s written notice of such breach and Seller fails to so cure, or (B) Seller fails to commence and pursue a cure within such 30 day period if a longer cure period is needed.

(b) Purchaser’s Remedies. If a Seller Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, Purchaser may terminate this Agreement and exercise any other remedy it may have at law or equity or under this Agreement.

(c) No Early Termination Fee. Seller shall not be entitled to the Early Termination Fee pursuant to Section 2.2(a) if this Agreement is terminated due to Seller's Default.

11.2 Purchaser Defaults and Seller’s Remedies.

(a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a “Purchaser Default”):

(i) A Bankruptcy Event shall have occurred with respect to Purchaser;

(ii) Purchaser breaches any material representation, covenant or other term of this Agreement if (A) such breach can be cured within 30 days after Seller’s notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such 30 day period if a longer cure period is needed; and

(iii) Purchaser fails to pay Seller any undisputed amount due to Seller under this Agreement within 30 days from receipt of notice from Seller of such past due amount.

(b) Seller’s Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, Seller may terminate this Agreement and upon such termination, (A) Seller shall be entitled to receive from Purchaser the Early Termination Fee pursuant to Section 2.2(a), and (B) Seller may exercise any other remedy it may have at law or equity or under this Agreement.

12. **LIMITATIONS OF LIABILITY.**

12.1 Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Parties for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with this Agreement.

12.2 A Party’s maximum liability to the other Party under this Agreement, shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, provided, however, the limits of liability under this Section 12.2 shall not apply with respect to (i) indemnity obligations hereunder in respect of personal injury, intellectual property infringement or environmental claims and (ii) any obligation of Purchaser to pay Solar Service Payments, or the Early Termination Fee.

13. **ASSIGNMENT.**

13.1 Assignment by Seller. Seller shall not sell, transfer or assign (collectively, an “Assignment”) this Agreement or any interest therein, without providing prior written notice to Purchaser. Purchaser acknowledges that Seller may assign this Agreement to a Financing Party or an Affiliate in connection with development, construction and/or permanent financing facilities, including without limitation structured tax equity and/or securitization financing. In the event that Seller identifies a secured Financing Party in Schedule 1-5 of Exhibit 1 (Special Terms and Conditions), or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Schedule 2-1 of this Exhibit 2 (General Terms and Conditions)

and agrees to provide such estoppels and acknowledgments as Seller may reasonably request from time to time. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1.

13.2. Acknowledgment of Collateral Assignment. In the event that Seller identifies a secured Financing Party in Schedule 1-5 of Exhibit 1 (Special Terms and Conditions), or in a subsequent notice to Purchaser, then Purchaser hereby acknowledges:

(a) the collateral assignment by Seller to the Financing Party, of Seller's right, title and interest in, to and under this Agreement.

(b) that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Seller's interests in this Agreement.

(c) that it has been advised that Seller has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System.

13.3 Assignment by Purchaser. Purchaser shall not assign this Agreement or any interest therein, without Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Within 90 days of Purchaser providing the Seller with information on credit, interconnection transferability, and any other information reasonably requested by Seller, Seller will provide Purchaser a determination if it consents to such Assignment. Any Assignment by Purchaser without the prior written consent of Seller shall be void and not release Purchaser of its obligations hereunder.

14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 1-5 of Exhibit 1 (Special Terms and Conditions), or at such other address as may be designated in writing to the other Party from time to time. In the event a Party (including a Financing Party) desires to change the notice address, the Party desiring such change shall provide written notice to all other Parties of such change.

14.2 Notice. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, by commercial overnight delivery service, or transmitted by email (with PDF notice attached) and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by email (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under this Agreement shall be sent e-mailed as a PDF to the e-mail address provided by Purchaser in Exhibit 1, Schedule 1-5, or other e-mail address as the Purchaser may request by delivering a notice of change of address to the Seller.

15. RESERVED.

16. INDEMNITY.

16.1 General. Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party's and its affiliates' respective directors, officers, shareholders, partners, members, agents and employees (collectively, the "Indemnified Parties"), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from (1) any Claim (as defined in Section 16.2 relating to the Indemnifying Party's breach of any representation or warranty set forth in Section 8 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified

Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 16.1 does not apply to Liabilities arising out of or relating to any form of Hazardous Materials or other environmental contamination, such matters being addressed exclusively by Section 16.3.

16.2 Notice and Participation in Third Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 16.2 unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 16.2 for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

16.3 Environmental Indemnification. Purchaser shall indemnify, defend, and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Materials to the extent deposited, spilled or otherwise caused by Purchaser or any of its contractors, agents or employees.

17. INSURANCE.

17.1 Generally. Seller shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: (a) Workers' Compensation Insurance as may be from time to time required under applicable federal and state law and (b) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence. Additionally, Seller shall carry adequate property loss insurance on the System. The amount and terms of property insurance coverage will be determined at Seller's sole discretion. It is understood that all such insurance shall be independent and not tied to any indemnity provision. It is the intention of the Parties that the additional insured coverage to be provided hereunder shall provide primary and first dollar coverage. In addition, it is understood and agreed that Seller's obtaining or failure to obtain the required insurance shall in no way relieve Seller from its indemnity obligations hereunder. Further, Seller's indemnity obligations shall extend to the full amount of any damage, loss or liability described in the indemnity provisions of this Agreement, and the Seller's indemnity obligations shall not be limited to the amount of insurance obtained or required. Failure of Seller to obtain and maintain insurance provided herein shall be deemed a Seller Default pursuant to Section 11.1, and Purchaser shall be entitled to relief as set forth therein. Seller shall cause each contractor, subcontractor, material supplier, and/or its agents employed/engaged by Seller to purchase and maintain insurance of the type coverage and with limits specified above.

17.2 Certificates of Insurance. Each Party, upon request, shall furnish current certificates evidencing that the insurance required under Section 17.1 is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insured agrees to give the other Party 30 days' written notice before the insurance is cancelled or materially altered.

17.3 Additional Insureds. Each Party's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear.

17.4 Insurer Qualifications. All insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

18. MISCELLANEOUS.

18.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto or incorporated by reference, constitute the entire agreement and understanding between Seller and Purchaser with respect to

the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof which are of no further force or effect. The Exhibits and Schedules attached to this Agreement, including these General Conditions as incorporated by reference, are integral parts of this Agreement and are an express part of this Agreement. In the event of a conflict between the provisions of these General Conditions and any applicable Special Conditions, the provisions of Exhibit 1 (Special Terms and Conditions) shall prevail.

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Purchaser.

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

18.4 EXCLUSIVE REMEDIES. TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

18.5 Sovereign Immunity. To the extent permitted by Applicable Law, Purchaser hereby waives any defense of sovereign immunity that Purchaser might otherwise have in connection with any action taken by Seller to enforce its rights against Purchaser under this Agreement.

18.6 Limited Effect of Waiver. The failure of Seller or Purchaser to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

18.7 Survival. The obligations under Sections 2.2 (Early Termination), Section 7.1(d) (Seller Covenant), Section 8.3 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 16 (Indemnity), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to any choice of law principles.

18.9 Severability. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

18.10 Relation of the Parties. The relationship between Seller and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Seller and Purchaser, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

18.11 Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective successors and permitted assigns.

18.12 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

18.13 Electronic Delivery. This Agreement may be duly executed and delivered by a Party by electronic “pdf” delivery of the signature page or DocuSign.

18.14 No Third-Party Beneficiaries. Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.

18.15 Liquidated Damages Not Penalty. Upon early termination, Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages. Purchaser further acknowledges that Seller’s actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser’s rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Seller’s actual damages.

[Remainder of page intentionally left blank.]

Schedule 2-1

Certain Agreements for the Benefit of the Financing Parties

Purchaser acknowledges that Seller will be receiving financing accommodations from one or more Financing Parties and that Seller may sell or assign the System or this Agreement and/or may secure Seller's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such Financing Party, Purchaser agrees as follows:

(a) Consent to Collateral Assignment. Purchaser consents to either the assignment, sale or conveyance to a Financing Party or the collateral assignment by Seller to a Financing Party, of Seller's right, title and interest in and to this Agreement.

(b) Notices of Default. Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Seller, a copy of each notice of default given by Purchaser under this Agreement, inclusive of a reasonable description of Seller default. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with Seller to cancel, modify or terminate this Agreement without the written consent of the Financing Party.

(c) Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement:

(i) The Financing Party, shall be entitled to exercise, in the place and instead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement and only in the event of Seller's or Purchaser's default. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

(ii) The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller thereunder or cause to be cured any default of Seller thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Seller under this Agreement or (unless the Financing Party has succeeded to Seller's interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Purchaser hereby gives it the option to do so.

(iii) Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Purchaser of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

(iv) Upon any default not reasonably susceptible to cure by a Finance Party, including, without limitation, rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of the Financing Party made within ninety (90) days of such default, Purchaser shall enter into a new agreement with the Financing Party or its designee having the same terms and conditions as this Agreement.

(d) Right to Cure.

(i) Purchaser will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Seller) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement. The Parties agree that the cure rights described herein are in addition to and apply and commence following the expiration of any notice and cure period applicable to Seller. The Parties respective obligations will otherwise remain in effect during any cure period; provided that if such Seller default reasonably cannot be cured by the Financing Party within such period and

the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days.

(ii) If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Seller's assets and shall, within the time periods described in Sub-section (d)(i) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect

(e) Release and Waiver; Financing Agreement Defaults. Until such time as all of Seller's obligations to any Financing Party under an agreement between Seller and a Financing Party (a "Financing Agreement") (excluding contingent indemnification and reimbursement obligations that, by their express terms, survive the repayment of the loans, interest, fees and other amounts owed under said Financing Agreement) have been paid in full, Purchaser hereby waives, releases and relinquishes to said Financing Party all right, title, interest, claim and lien which Purchaser has or may in the future have, under any and all Applicable Laws, including statutory rights, in, to or against the System. The System shall not be subject to levy, sale on distress or distraint for rent or any claim, lien or demand of any kind by Purchaser. If an event of default occurs and is continuing under a Financing Agreement, Purchaser agrees that the affected Financing Party has the right to (i) enter the Premises to remove or dispose of the System at any time; (ii) take possession of and succeed to all of Seller's right, title and interest under this Agreement, including the right to operate the System, and/or (iii) prepare the System for sale and/or conduct a sale or liquidation of the System on the Premises and/or store the System on the Premises for a reasonable period in connection therewith. The Financing Party shall not be liable for rental storage charges under this Agreement or otherwise. Nothing herein or elsewhere shall be deemed to prevent or limit a Financing Party, at its option, from abandoning any part of the System. Purchaser agrees that any action taken by a Financing Party to exercise its remedies under a Financing Agreement shall not constitute a default or event of default under this Agreement, and this Agreement shall continue in full force and effect following the exercise of such remedies. Any assignment of the membership interests in the Seller shall constitute a permitted assignment under this Agreement and this Agreement shall continue in full force and effect following such assignment, without the requirement of any further documentation regarding such assignment between Seller and Purchaser.

EXHIBIT 3**Performance Guarantee**

This Performance Guaranty (“Guaranty”) sets forth the terms and conditions of a performance guaranty provided by Seller in conjunction with this Agreement. Capitalized terms not otherwise defined herein have the meanings given such terms in this Agreement. The term of this Guaranty will be concurrent with the Term of this Agreement. The Parties acknowledge and agree that Table 1.A of this Exhibit 3 will be updated prior to the Commercial Operations Date based upon final System design, with figures equal to 75% of the updated Estimated Annual Production (kWh) set forth in Schedule 1-4.

1. **Guaranty**. Seller guarantees that during the Term of this Agreement, for each Contract Year, the System will generate not less than the Pre-Adjustment Annual Production (kWh) of the System as set forth in **Table 1.A** below; provided that the **Table 1.A** values are subject to downward adjustment for weather conditions (such adjusted value, the “Guaranteed kWh”). For clarity purposes, any Electrical Energy exported to the Utility shall be included in the Pre-Adjustment Annual Production (kWh) value.

A. Seller will use local weather data to determine the System’s Guaranteed kWh, based on the following methods if available and in descending order of preference:

- (i) satellite data provided by an independent third-party vendor of Seller; or
- (ii) available data from a locally installed weather station at the Premises.

Table 1.A, projected production values assuming average weather conditions:

Contract Year	Pre-Adjustment Annual Production (kWh)
Year 1	7,525,710
Year 2	7,488,082
Year 3	7,450,641
Year 4	7,413,388
Year 5	7,376,321
Year 6	7,339,439
Year 7	7,302,742
Year 8	7,266,228
Year 9	7,229,897
Year 10	7,193,748
Year 11	7,157,779
Year 12	7,121,990
Year 13	7,086,380
Year 14	7,050,948
Year 15	7,015,694
Year 16	6,980,615
Year 17	6,945,712
Year 18	6,910,984
Year 19	6,876,428
Year 20	6,842,046
Year 21	6,807,836

Contract Year	Pre-Adjustment Annual Production (kWh)
Year 22	6,773,797
Year 23	6,739,928
Year 24	6,706,229
Year 25	6,672,698
Year 26	6,639,334
Year 27	6,606,137
Year 28	6,573,107
Year 29	6,540,241
Year 30	6,507,539
Year 31	6,475,002
Year 32	6,442,627
Year 33	6,410,414
Year 34	6,378,362
Year 35	6,346,470

B. If at the end of each successive Contract Year (set forth in Table 1.A) the Electrical Energy produced by the System as measured and recorded by Seller (the “Actual kWh”) is less than the Guaranteed kWh for that Contract Year, then Seller shall pay Purchaser the Prorated Amount.

The “Prorated Amount” shall be an amount equal to (i) the kWh Shortfall *multiplied* by (ii) the applicable Performance Guarantee Payment Rate.

The “kWh Shortfall” shall be an amount equal to the *difference* between (i) the Guaranteed kWh and (ii) the Actual kWh.

Any such payment payable to Purchaser shall be credited to Purchaser as a credit on the invoice that is submitted by Seller at the end of such Contract Year.

C. If a payment of greater than fifty dollars (\$50) is due under Section 1(B), Seller will deliver a statement to Purchaser detailing the Guaranteed kWh and the calculation of the payment due. If no payment is due, then no statement or payment will be issued.

D. “Performance Guarantee Payment Rate” means the dollar value per kWh set forth in **Table 1.D** below:

Contract Year	Performance Guarantee Payment Rate
Year 1	██████
Year 2	██████
Year 3	██████
Year 4	██████
Year 5	██████
Year 6	██████
Year 7	██████

Contract Year	Performance Guarantee Payment Rate
Year 8	
Year 9	
Year 10	
Year 11	
Year 12	
Year 13	
Year 14	
Year 15	
Year 16	
Year 17	
Year 18	
Year 19	
Year 20	
Year 21	
Year 22	
Year 23	
Year 24	
Year 25	
Year 26	
Year 27	
Year 28	
Year 29	
Year 30	
Year 31	
Year 32	
Year 33	
Year 34	
Year 35	

2. **Exclusions.** The Guaranty set forth in Section 1 does not apply to the extent of any reduced generation from the System due to the following (including the downtime required for repair, replacement or correction):

- A. Force Majeure Event (as defined in this Agreement) and (i) a power or voltage surge caused by someone other than Seller, including a grid supply voltage outside of the standard range specified by CAISO; and (ii) theft of the System.
- B. Purchaser's material breach of its obligations under this Agreement.

3. **Liquidated Damages; Waiver of Cost Savings.** The Parties agree that the payment described in Section 1(B) is a fair and reasonable approximation of the damages suffered by Purchaser as a result of underperformance of the System.