



City of Palo Alto

City Council Staff Report

(ID # 10700)

Report Type: Consent Calendar

Meeting Date: 10/21/2019

Summary Title: Resource Adequacy Transaction Process and Confirms

Title: Adoption of a Resolution Approving the Process for Executing Resource Adequacy Capacity Purchases and Sales; Approving Standard Form Resource Adequacy Confirmation Letters; and Delegating Authority to the City Manager to Execute Resource Adequacy Purchases and Sales Under Established Guidelines

From: City Manager

Lead Department: Utilities

Recommendation

Staff recommends that the City Council adopt a resolution (Attachment A) to:

- a) Clarify the process the City will employ for purchases and sales of Resource Adequacy (RA) capacity, including eligibility requirements for counterparties wishing to transact with the City for RA capacity products;
- b) Approve an updated standard form RA Confirmation Letter (confirm) to the City's Edison Electric Institute (EEI) Master Agreement (Exhibit A to Attachment A);
- c) Approve an updated standard form RA Confirmation Letter (confirm) to the City's Western Systems Power Pool (WSPP) Master Agreement (Exhibit B to Attachment A); and
- d) Delegate authority to the City Manager, and/or his/her designee, to execute RA capacity purchases and sales under the EEI and/or WSPP Master Agreements using the standard form RA Confirmation Letters.

Executive Summary

The California Independent System Operator (CAISO) manages the state's transmission grid and operates a Resource Adequacy (RA) program designed to ensure grid capacity and reliability. Since 2008, in order to meet RA compliance obligations imposed by the CAISO and the California Public Utilities Commission to procure generation capacity, and to do so at the lowest possible total cost, the City has acted as both a buyer and a seller of RA capacity products. The City's Energy Risk Management (ERM) Guidelines authorize the purchase and sale of RA under Council-approved Master Agreements. While the Palo Alto Municipal Code provides clear guidelines on how the City can procure (buy) RA capacity, and the limitations on doing so, the Code is less clear on the authority and limits on RA capacity *sales*. This report provides

additional clarity around the process and requirements that staff must follow in selling RA capacity and is intended to supplement the direction already provided in the City’s municipal code and Energy Risk Management Policies and Guidelines.

The City Council has previously delegated the authority to the City Manager to enter into RA transactions with other members of the Northern California Power Agency (NCPA), as well as a group of nine pre-qualified suppliers with whom the City has executed EEI or WSPP Master Agreements. In previous years, this limited pool of potential counterparties was enough to allow the City to meet its RA capacity obligations. But as the RA capacity markets have developed recently—and as Community Choice Aggregators (CCAs) have arrived as important players in this market—staff seeks to broaden the pool of potential counterparties for RA capacity transactions, to permit the City to transact with any creditworthy counterparty who is willing and able to transact via the City’s Council-approved standard form Master Agreements and RA Confirmation Letters.

Background

Since 2008 the California Independent System Operator (CAISO) has allocated responsibility to load-serving entities to maintain enough generation capacity to support transmission grid reliability. Like all load-serving entities, Palo Alto Utilities (CPAU) is required on a monthly basis to demonstrate its ability to cover 115% of its monthly peak capacity with qualifying system capacity resources. Similarly, CPAU is required to own or contract for local capacity every year in an amount equivalent to about 50% of its summer peak load from generation resources located in one of the CAISO-designated local capacity areas in Northern California (such as the San Francisco Bay Area, Stockton, or the Greater Fresno area) or be subject to an allocation of CAISO’s backstop procurement costs to compensate for any shortfall in capacity. Finally, starting in CY 2015, load-serving entities in California began to incur flexible capacity obligations in order to help manage the increased ramping requirements (i.e., the “duck curve”) that are now occurring in the CAISO system as a result of the large volume of variable renewable energy resources coming online. Because the City now buys the output of five large-scale solar projects, the City began receiving a flexible capacity procurement obligation starting in CY 2017.

To comply with its obligation to procure RA capacity, the City adopted an Electric Utility Resource Adequacy Program in 2008 ([Resolution 8870](#)). The City satisfies a portion of these obligations with its hydroelectric and renewable energy contract commitments, and contracts for RA capacity products for the rest. In general, the City currently has moderately large deficits of local and flexible capacity every year, and moderately large surpluses of system capacity¹, as indicated in the summary table below for CY 2019.

¹ “System capacity,” also known as “generic capacity,” is qualifying generating capacity that supports the reliability of the electric grid. It can be located anywhere in the CAISO balancing authority area. “Local capacity” is qualifying generating capacity located in certain generation-constrained areas within the CAISO balancing authority area. Local capacity can also be counted toward an entity’s system capacity requirements.

Table 1: Palo Alto's RA Capacity Balances for CY 2019 (in Megawatts)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Local RA Requirement	81	81	81	81	81	81	81	81	81	81	81	81
City-owned Local RA Resources	23	28	33	42	43	51	43	40	39	29	21	24
Deficit (-) or Surplus (+) Position	(59)	(54)	(49)	(40)	(39)	(30)	(39)	(41)	(42)	(52)	(60)	(57)
Flexible RA Requirement	105	88	104	99	96	105	88	100	114	112	95	98
City-owned Flexible RA Resources	58	58	58	58	58	58	58	58	58	58	58	58
Deficit (-) or Surplus (+) Position	(47)	(30)	(46)	(41)	(39)	(47)	(30)	(42)	(56)	(54)	(37)	(40)
System RA Requirement	145	142	149	158	169	182	182	181	177	162	150	146
City-owned System RA Resources	200	242	229	282	258	302	288	278	234	209	219	220
Local RA Requirement Purchases	59	54	49	40	39	30	39	41	42	52	60	57
Deficit (-) or Surplus (+) Position	114	153	128	164	127	149	144	138	100	99	130	130
System RA Available to Resell	64	64	64	64	64	64	64	64	64	64	64	64

Over the past ten years, the net cost of complying with these RA capacity procurement obligations has hovered around \$1 to \$2 million per year. However, the market for system RA capacity has recently tightened considerably, driving up the price of these resources. The City has received additional sales revenue from selling its excess system RA capacity using the Council-approved EEI and WSPP agreements. As a result, in FY 2018 the net cost of the City's RA capacity purchases and sales was only about \$0.3 million (\$1.35 million in capacity purchases, versus \$1.06 million in capacity sales).

Discussion

Current RA Transaction Authority

In the early years of the CAISO RA procurement requirement, the City's RA transactions primarily involved buying local RA capacity from already enabled counterparties under the City's existing EEI master agreements. The authority for the City to transact for RA, a type of wholesale utility commodity, is provided in the City's Municipal Code (PAMC) and Energy Risk Management Policy. PAMC [Section 2.30.225](#) states that "The City Manager, the director of utilities and their designated employees, may enter into and execute transactions for wholesale utilities commodities and services in accordance with the authority, limits and procedures set forth in the Energy Risk Management Policies, Guidelines and Procedures Manual, as amended from time to time." Section G of the City's Energy Risk Management (ERM) Policy lists resource adequacy capacity as one of the "Authorized Products" that the City may purchase and sell

under the Council-approved Master Agreements, provided that such transactions are “consistent with the needs of CPAU and fall within the authority granted by the Council to the City Manager.” Further, in accordance with [PAMC section 2.30.210\(k\)](#), the City Manager has the authority to award contracts for wholesale utility commodities for terms of up to five years and for a price not to exceed \$250,000 or more in any one year. [PAMC section 2.30.270\(b\)](#) governs the City Manager’s delegation of authority to contract for wholesale utility commodities to the Director of Utilities.

However, the PAMC is primarily oriented around situations where the City is *purchasing* electricity products such as RA capacity, laying out the requirements for competitive solicitation of such products, contract terms, and the City Manager’s transaction authority. Neither the PAMC nor the Energy Risk Management Policy and Guidelines explicitly describe a process or requirements governing RA *sales*. While the overarching goals of the PAMC and the ERM Policy and Guidelines still apply—to ensure that transactions are commercially reasonable and protect City funds—some of the specific requirements and procedures are not precisely applicable to situations in which City is selling the RA.

Updated RA Transaction Guidelines

The objective of this report is to set forth a process under which the City Manager is delegated the authority to both purchase and sell the City’s RA under certain conditions, and to provide clarity around how counterparties become eligible to either purchase the City’s excess RA, or sell RA to the City for the City’s own compliance obligations. Since Section G of the ERM Policy states that the Council shall delegate to the City Manager the authority to transact under Council-approved Master Agreements, staff recommends that the Council delegate authority to the City Manager, or his designee, to execute RA purchase and/or sale transactions subject to the following guidelines:

- **Purpose** – The principal purpose of RA capacity purchases is to meet the City’s RA compliance obligation, and the principal purpose of RA capacity sales is to reduce the City’s electric supply costs associated with its RA compliance obligation;
- **Eligible Counterparties** – The City shall only execute RA transactions with counterparties who satisfy the eligibility criteria described in the section below, which include being deemed creditworthy by the City’s Energy Risk Manager (in accordance with Section 2.30.340(c)(3) of the PAMC);
- **Contract Form** – RA capacity transactions shall be executed using a standard form RA confirm² to either the EEI Master Agreement or the WSPP Master Agreement, in accordance with Section 2.30.340 of the PAMC. The RA confirms presented as Exhibits A and B to Attachment A are the City’s standard form RA confirms; these documents will

² A confirmation letter (“confirm”) is a document that memorializes the terms of an individual transaction between two counterparties when that transaction is executed under the overall terms of an existing master agreement between those parties. The confirm, along with the governing terms of the master agreement, together constitute “the agreement.”

be modified to fit specific circumstances, in accordance with the purposes outlined above, and with approval by the City Attorney's Office;

- **ERM Guidelines** – All RA capacity transactions shall be conducted in accordance with the City's applicable ERM Guidelines, which establish limits on counterparty credit exposure, transaction volume, contract term, and delegated approval authority; and also establish requirements related to reporting, risk analysis, competitive solicitations, and the trade capture process;
- **Periodic Reporting** – Staff shall report on a quarterly basis to the Utilities Advisory Commission and City Council on the status of RA capacity purchase costs and sales revenue, as is currently the practice; and
- **Disposition of Funds** – Sales revenue received through RA capacity sales shall be used to offset supply costs of the Electric Fund, as is currently the practice, and projections of RA capacity sales revenue shall continue to be considered in the annual budget process.

The above RA transaction guidelines are consistent with the PAMC and the ERM Policy and Guidelines, and they further the objective of protecting City funds while maintaining a transparent and competitive procurement process.

Eligible Counterparties

At present, the City Manager is authorized to execute RA capacity transactions, subject to certain expenditure limits, with other members of the Northern California Power Agency (NCPA) (per [Resolution 8763](#)) and with a set of nine pre-qualified suppliers with whom the City has an executed EEI Master Agreement (per [Resolution 9324](#)). For many years, despite the absence of a centralized capacity market in California, this relatively small group of approved counterparties was sufficient to allow the City to meet its RA capacity procurement needs—which, as noted above, were primarily focused on *purchases* of local RA capacity.

However, in recent years, the RA capacity market in California has grown in size and complexity (with the introduction of the flexible RA capacity product and obligation), and in dollar volume (with overall RA prices rising sharply in the past two years). These changes are partly due to the changing makeup of the generation mix in the state—as more solar capacity comes online it creates a need for more fast-ramping, flexible generation that can meet the system's evening peak demand needs. And in part these changes are due to the surge of Community Choice Aggregators (CCAs) serving California customers, which has created a far larger pool of RA capacity market participants and increased market demand.

In order to remain competitive in these market conditions and help keep electric supply costs down, staff recommends broadening the pool of eligible RA capacity counterparties to include all entities who are deemed creditworthy by the City's Energy Risk Manager, and who are able and willing to transact via the City's approved RA confirms (which are attached as exhibits to the City's standard form Master Agreements). This will expand the number of eligible counterparties (since most market participants in California are WSPP members) while maintaining the City's required contract terms and creditworthiness requirements, thus

protecting the City's interests.

This change is necessary because the City's current pool of eligible counterparties is not always capable of providing enough flexible RA capacity to meet the City's CAISO obligations, and they do not always have sufficient demand for the City's excess system RA capacity. For example, in a recent competitive solicitation where the City sought to buy (local and flexible) and sell (system) RA capacity for CY 2020, the City received only a few proposals from currently-eligible suppliers, but it received several very attractive proposals from CCAs and other not-yet eligible suppliers.

An expansion of the pool of eligible RA transaction counterparties is consistent with recent precedent. When the City was unable to meet its local RA capacity obligations for CY 2013 from its pool of eligible suppliers, the City Council passed [Resolution 9276](#), which allowed the City Manager to purchase local RA capacity products from any supplier meeting the City's creditworthiness requirements for wholesale utility commodity contracts, subject to a \$2 million annual expenditure limit. However, this authority only applied to transactions needed to meet the City's RA capacity obligations for CY 2013.

Resource Impact

Adoption of the attached resolution has no budgetary impact and will not commit the City to engaging in any transactions. However, adoption of the attached resolution will enable the City to proceed with individual transactions with any qualified counterparties. Potential budget impacts from RA transactions will continue to be analyzed as part of the annual budget process.

Policy Implications

Approval of the attached resolution is consistent with the Council-approved Electric Integrated Resource Plan and supports the Council-approved 2018 Utilities Strategic Plan's strategy to achieve a sustainable and resilient energy supply.

Environmental Review

Adoption of the attached resolution is not subject to California Environmental Quality Act (CEQA) review, as it is an administrative governmental activity that will not result in any direct or indirect physical change to the environment (CEQA Guidelines section 15378(b)(5)).

Attachments:

- Attachment A: Resolution Approving an RA Transaction Process and Confirmation Letters

* NOT YET APPROVED *

Resolution No. _____

Resolution of the Council of the City of Palo Alto Approving a Process for Executing Resource Adequacy Capacity Purchases and Sales, Approving Standard Form Resource Adequacy Confirmation Letters, and Delegating Authority to the City Manager to Execute Resource Adequacy Purchases and Sales Under Established Guidelines

R E C I T A L S

A. The City of Palo Alto (the "City") is an electric load-serving entity operating within the California electric transmission grid operated by the California Independent System Operator ("CAISO").

B. The CAISO, in order to serve electric load in a reliable manner, coordinates the development of coherent Resource Adequacy ("RA") capacity standards that conform to state law, and assigns pro rata shares of the overall RA capacity standards to all load-serving entities operating within the CAISO balancing authority area.

C. To comply with its obligation to procure RA capacity, the City adopted an Electric Utility Resource Adequacy Program in 2008 (Resolution 8870).

D. The City satisfies a portion of its CAISO RA capacity obligations through its long-term contracts for renewable and hydroelectric resources, but also regularly purchases local and flexible RA capacity products, and sells excess system RA capacity through bilateral transactions to reduce the City's electric supply costs associated with its RA compliance obligation.

E. Section 2.30.225 of the Palo Alto Municipal Code ("PAMC") states that "The City Manager, the director of utilities and their designated employees may enter into and execute transactions for wholesale utilities commodities and services in accordance with the authority, limits and procedures set forth in the Energy Risk Management Policies, Guidelines and Procedures Manual, as amended from time to time."

F. Section G of the City's Energy Risk Management (ERM) Policy lists capacity as one of the "Authorized Products" that the City may purchase and sell under the Council-approved Master Agreements, provided that such transactions are "consistent with the needs of CPAU and fall within the authority granted by the Council to the City Manager."

G. The PAMC and the ERM Policy and Guidelines documents are primarily oriented around situations where the City is purchasing electricity products, but these documents do not explicitly describe a process or requirements involved in sales of such products.

H. In 2007, through Resolution 8763, the Council delegated authority to the City Manager, or his designee, to execute purchases and sales of RA capacity products with members of the Northern California Power Agency ("NCPA"), with a cost limitation of \$4 million

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per year.

I. In 2013, through Resolution 9324, the Council authorized the City Manager to execute Master Agreements with a group of nine pre-qualified suppliers, through which the City Manager or his designee, the Director of Utilities, could execute purchases and sales of electricity-related products and services, including RA capacity.

J. Section 2.30.340(c) of the PAMC authorizes the City to execute wholesale utility commodity contracts via standard form contracts, including those published by the Edison Electric Institute (“EEI”) and the Western Systems Power Pool (“WSPP”). Both of these master agreements include RA capacity confirmation letters that can be used to execute RA capacity transactions.

K. An active set of counterparties is essential to ensure that the City of Palo Alto meets its electric supply portfolio objectives and various program needs in a competitive and efficient manner. In recent years the City’s pool of eligible counterparties has at times been unable to satisfy the City’s demand for flexible RA capacity, and at times has been unable to absorb the City’s excess system RA capacity.

L. To address a lack of counterparties able to provide the City with sufficient local RA capacity, in 2012, through Resolution 9276, the Council authorized the City Manager, or his designee, to execute local RA capacity transactions with any counterparty who met the City’s creditworthiness requirement. But this authorization extended only to purchases of local RA capacity for calendar year 2013, and was subject to a \$2 million cost limitation.

The Council of the City of Palo Alto does hereby RESOLVE, as follows:

SECTION 1. The Council hereby approves updated standard form RA capacity confirmation letters to the EEI Master Agreement (Exhibit A) and to the WSPP Master Agreement (Exhibit B).

SECTION 2. The Council hereby establishes a process for executing both purchases and sales of RA capacity products, intended to supplement the direction provided in the City’s municipal code and Energy Risk Management Policies and Guidelines, and authorizes the City Manager, and/or his/her designee, to execute RA purchase and/or sale transactions subject to the following guidelines:

- Purpose – The principal purpose of all RA capacity purchases is to meet the City’s RA compliance obligation, and the principal purpose of RA capacity sales is to reduce the City’s electric supply costs associated with its RA compliance obligation;
- Eligible Counterparties – The City shall only execute RA transactions with counterparties who are deemed creditworthy by the City’s Energy Risk Manager and who are able and willing to transact via one of the City’s standard form RA confirmation letters (Exhibits A and B);
- Contract Form – RA capacity transactions shall be executed using one of the City’s standard form RA confirmation letters (Exhibits A and B). The RA confirms presented as

* NOT YET APPROVED *

Exhibits A and B to Attachment A are the City’s standard form RA confirms; these documents will be modified to fit specific circumstances, in accordance with the purposes outlined above, and with approval by the City Attorney’s Office;

- ERM Guidelines – All RA capacity transactions shall be conducted in accordance with the City’s applicable ERM Guidelines;
- Periodic Reporting – Staff shall report on a quarterly basis to the Council and Utilities Advisory Commission on the status of RA capacity purchase costs and sales revenue; and
- Disposition of Funds – Sales revenue received through RA capacity sales shall be used to offset supply costs of the Electric Fund, and projections of RA capacity sales revenue shall continue to be considered as part of the annual budget process

SECTION 3. The Council finds that the adoption of this resolution extending the City Manager’s authority to execute purchases (and incidental sales) of RA capacity is not a project subject to California Environmental Quality Act (CEQA) review because adoption of this resolution is an administrative government activity that will not result in any direct or indirect physical change to the environment as a result (CEQA Guidelines section 15378(b)(5)).

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Utilities

Director of Administrative Services



California Resource Adequacy Product – Form Confirmation to the EEI Master Power Purchase & Sale Agreement Version 1.0

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RESOURCE ADEQUACY CONFIRMATION LETTER

This confirmation letter (“Confirmation”) confirms the Transaction agreed to on _____, _____ (the “Confirmation Date”), between _____ and _____, by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product, and is governed by the Master Power Purchase and Sale Agreement between the Parties, effective as of [Date of EEI Master between Parties], together with the Cover Sheet to the EEI Agreement, [the Collateral Annex and Paragraph 10 to the Collateral Annex,] and any other annexes thereto (collectively, as amended, restated, supplemented, or otherwise modified from time to time, the “Master Agreement”). Capitalized terms not otherwise defined in this Confirmation or the Master Agreement are defined in the Tariff. References to Sections are references to Sections of this Confirmation unless stated to be references to Sections of the Master Agreement or a statute.

**ARTICLE 1
TRANSACTION TERMS**

Buyer: _____

Seller: _____

Product, Delivery Period, Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A B and C are incorporated into this Confirmation.

**ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS**

2.1 Sale and Delivery of Product

(a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Buyer, and Buyer will purchase and receive from Seller, the Quantity of the Product from the Shown Unit(s).

(b) Seller will deliver the Quantity by submitting to CAISO in its Supply Plan the Shown Unit and the characteristics of the Shown Unit and Product for Buyer, as further specified in Appendix B, all in compliance with this Confirmation.

(c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller will submit, or cause the Unit’s SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Buyer for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month will equal the Quantity, less any excused deductions to the Quantity in the case of Flexible RA Capacity for excused reductions in Unit EFC.

*** NOT YET APPROVED ***

(d) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B. Seller will identify the Shown Unit(s) and Quantity by providing Buyer with the specific Unit information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.

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

(f) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Shown Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Buyer has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Quantity for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. Buyer will have received the Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or (ii) Seller complies with Buyer's instruction to withhold all or part of the Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Quantity if Buyer fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(g) The Shown Unit must not have characteristics that would trigger the need for Buyer or Seller to file an advice letter or other request for authorization with the CPUC or for Buyer to make a compliance filing pursuant to California Public Utilities Code Section 380.¹

(h) Excused Reductions in Unit EFC: If the Product includes FCR Attributes, then Seller's failure to deliver any of the Quantity of FCR Attributes during the Delivery Period will be excused if the Unit experiences a reduction in Unit EFC after the Confirmation Date as determined by CAISO and Seller has provided notice of such reduction to Buyer by the Notification Deadline for the applicable Showing Month. The extent to which Seller's failure is excused will equal (i) the Quantity of FCR Attributes for such day multiplied by (ii) the total amount (in MW) by which the Unit EFC was reduced since the Confirmation Date, divided by (iii) the Unit EFC as of the Confirmation Date. If the Unit experiences such a reduction in Unit EFC, then Seller

¹ For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046.

* NOT YET APPROVED *

may, but is not obligated to, provide the applicable part of the Quantity of FCR Attributes for such day from the Shown Unit.

2.2 Buyer's Remedies for Seller's Failure to Deliver Quantity

(a) If Seller fails to deliver any part of the Quantity as required herein for any Showing Month, Seller is liable for damages pursuant to Section 4.1 of the Master Agreement.

(b) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs, including Environmental Costs, assessed against Buyer by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Buyer may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the Master Agreement.

2.3 Buyer's Re-Sale of Product

(a) Buyer may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.3(a). For any such a resale, Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of Subsequent Buyer. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.

(b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than two Business Days before the Notification Deadline for the Showing Month. Buyer will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

* NOT YET APPROVED *

ARTICLE 3
PAYMENTS

3.1 Payment

After Seller has delivered the Quantity in accordance with Section 2.1 and issued its invoice, Buyer must pay for the Product as provided in Article Six of the Master Agreement. The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Quantity for the Showing Month, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places).

3.2 Allocation of Other Payments and Costs

(a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Buyer must promptly report receipt of any such revenues to Seller. Buyer must pay to Seller any such amounts described in this Section 3.2(a) received by Buyer or a Subsequent Buyer. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Buyer under the Master Agreement.

(b) Buyer is to receive and retain all revenues associated with the Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller must promptly report receipt of any such revenues to Buyer. Seller must pay to Buyer any such amounts received by Seller, or a Unit's SC, owner, or operator. Without prejudice to its other rights, Buyer may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the Master Agreement.

(c) If CAISO designates any part of the Quantity as Capacity Procurement Mechanism Capacity, then Seller will, or will cause the Unit's SC to, within one Business Day of the time Seller receives notification from CAISO, notify Buyer and not accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

(d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4
OTHER BUYER AND SELLER COVENANTS

4.1 CAISO Requirements

*** NOT YET APPROVED ***

Seller must schedule or cause the Unit's SC to schedule or make available to CAISO the Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Buyer is not liable for, and Seller will indemnify and hold Buyer harmless from, the failure of Seller or the Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Unit's SC, owner, or operator for noncompliance.

4.2 Seller's and Buyer's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Buyer and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure Buyer's rights to the Quantity for the sole benefit of Buyer or any Subsequent Buyer. If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.3 Seller's Representations and Warranties

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

- (a) no part of the Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) the Unit qualifies under the Tariff for the Product, and the Unit and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Unit during the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit;
- (d) if applicable, Seller has notified either the Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Quantity of Product for the Delivery Period to Buyer; and
- (e) Seller has notified or will notify the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 5

ADDITIONAL MASTER AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 Termination Payment

*** NOT YET APPROVED ***

For this Transaction, the following is added to the end of Section 5.3 of the Master Agreement:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Buyer or a Subsequent Buyer is not able to include the applicable Quantity in a Compliance Showing due to Seller’s Event of Default, then Buyer may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Buyer’s estimate exceeds the actual amount of penalties, fines or costs, Buyer must promptly remit to Seller the excess amount with interest in accordance with Section 6.2 of the Master Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

5.2 Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, (i) Buyer may disclose information in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose to a Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information to the independent evaluator or other administrator of any competitive solicitation process of Buyer, which in turn may disclose such information to CAISO or any Governmental Body; and (iv) Buyer may disclose information to any Subsequent Buyer.

5.3 Dodd-Frank Act

Each Party represents and warrants to the other that it is an “eligible commercial entity” and an “eligible contract participant” within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively. Without limiting Section 10.10 of the Master Agreement, the Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

5.4 Governing Law

Nothing contained in this Confirmation shall be construed as a grant of CPUC jurisdiction over a Party not otherwise subject to such jurisdiction by law. For this Transaction, Section 10.6 of the Master Agreement is amended to replace “NEW YORK” with “CALIFORNIA”.

* NOT YET APPROVED *

AGREED AS OF THE CONFIRMATION DATE:

[SELLER]

[BUYER]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

* NOT YET APPROVED *

**APPENDIX A
DEFINED TERMS**

“CAISO” means the California ISO.

“Capacity Attributes” means attributes of the Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“FCR” means the Flexible Capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Unit, any and all resource adequacy attributes of the Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

*** NOT YET APPROVED ***

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

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.

“MW” means megawatt.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Product” means RAR, Local RAR and FCR, for the Delivery Period, Unit, Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Confirmation Date that is dedicated to Buyer under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Confirmation Date that is dedicated to Buyer under this Transaction.

“RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Buyer on the Confirmation Date.

“Subsequent Buyer” means the buyer of Product from Buyer in a re-sale of Product by Buyer.

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit described in Appendix B and any Shown Unit.

*** NOT YET APPROVED ***

“Unit EFC” means Unit Effective Capacity and is the lesser of that of the Unit as set by CAISO as of the Confirmation Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means Unit Net Qualifying Capacity and is the lesser of that of the Unit as set by CAISO as of the Confirmation Date and that of the Unit on a subsequent date of determination.

* NOT YET APPROVED *

**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: _____

MCC Bucket: _____

CPUC Local Area (if applicable): _____

Flexible Capacity Category (if applicable): _____

Delivery period: [Begin Date] through [End Date] [Showing Months of xxxx, xxxx, xxxxxx].

Quantity and Contract Price:

RAR and Local RAR, as applicable

Showing Month and Year	Quantity (MW)	Contract Price (\$/kW-mo)
[MM] [YY]	[XX]	

Flexible Capacity, if applicable

Showing Month and Year	Quantity (MW)	Contract Price (\$/kW-mo)
[MM] [YY]	[XX]	

* NOT YET APPROVED *

Unit 1

Unit Specific Information	
Resource Name	_____
Physical Location	_____
CAISO Resource ID	_____
SCID of Resource	_____
Unit NQC by month (e.g., Jan=50, Feb=65):	_____
Unit EFC by month (e.g., Jan=30, Feb=50)	_____
Resource Type (e.g., gas, hydro, solar, etc.)	_____
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	_____
TAC Area (e.g., PG&E, SCE)	_____
Prorated Percentage of Unit Factor	_____
Prorated Percentage of Unit Flexible Factor	_____
Capacity Area (CAISO System, Fresno, Sierra, , Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	_____
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	_____

(Repeat for additional Units)

[Information for specific Shown Units may be provided after the Confirmation Date pursuant to the Confirmation.]

* NOT YET APPROVED *

**APPENDIX C
NOTICE INFORMATION**

Seller: _____	Buyer: _____
All notice information for Seller will be as set forth on the Cover Sheet to the Master Agreement unless otherwise set forth below.	All notice information for Buyer will be as set forth on the Cover Sheet to the Master Agreement unless otherwise set forth below.
All Notices: Attn: Phone: Facsimile: Duns: Federal Tax ID Number:	All Notices: Attn: Phone: Facsimile: Duns: Federal Tax ID Number:
Invoices:	Invoices:
Scheduling:	Scheduling:
Wire Transfer:	Wire Transfer:
Credit and Collections:	Credit and Collections:
Defaults: Additional notices of an Event of Default to:	Defaults: Additional notices of an Event of Default to:

* NOT YET APPROVED *

**WSPP
California Resource Adequacy Product
Form Confirmation**

**Version 1.0
10/2/2018**

This document was developed by the WSPP Contract Subcommittee for use with the WSPP Agreement (see § 32.8). This document is not filed with the Federal Energy Regulatory Commission and is not part of the WSPP Agreement.

* NOT YET APPROVED *

WSPP RESOURCE ADEQUACY CONFIRMATION

This Confirmation under the WSPP Agreement confirms the transaction between _____ and _____ dated as of [date] (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). Capitalized terms not otherwise defined in this Confirmation or the WSPP Agreement are defined in the Tariff.

ARTICLE 1 **TRANSACTION TERMS**

Purchaser: _____

Seller: _____

Product, Delivery Period, Contract Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A, B and C are incorporated into this Confirmation

ARTICLE 2 **DELIVERY OBLIGATIONS AND ADJUSTMENTS**

2.01 Sale and Delivery of Product

- (a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Purchaser, and Purchaser will purchase and receive from Seller, the Contract Quantity of the Product from the Shown Unit(s).
- (b) Seller will deliver the Contract Quantity by submitting to CAISO in its Supply Plan the Shown Unit and the characteristics of the Shown Unit and Product for Purchaser, as further specified in Appendix B, all in compliance with this Confirmation.
- (c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller will submit, or cause the Unit’s SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Purchaser for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month will equal the Contract Quantity, less any excused deductions to the Contract Quantity in the case of Flexible RA Capacity for excused reductions in Unit EFC.
- (d) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Appendix B. Seller will identify the Shown Unit(s) and Contract Quantity by providing Purchaser with the specific Unit information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.

* NOT YET APPROVED *

- (e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Contract Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.
- (f) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Shown Unit by CAISO or Seller complies with Purchaser's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Purchaser has elected to submit the Product from the Shown Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO notwithstanding performance of Section 2.1(e) or (ii) Seller fails to submit the volume of Contract Quantity for any Showing Month in such amount as instructed by Purchaser for the applicable Showing Month. Purchaser will have received the Contract Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or (ii) Seller complies with Purchaser's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Purchaser fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.
- (g) The Shown Unit must not have characteristics that would trigger the need for Purchaser or Seller to file an advice letter or other request for authorization with the CPUC or for Purchaser to make a compliance filing pursuant to California Public Utilities Code Section 380.²
- (h) Excused Reductions in Unit EFC: Unless the Parties have designated this Section 2.1(h) as "Not applicable", if the Product includes FCR Attributes, then Seller's failure to deliver any of the Contract Quantity of FCR Attributes during the Delivery Period will be excused if the Unit experiences a reduction in Unit EFC after the Effective Date as determined by CAISO and Seller has provided notice of such reduction to Purchaser by the Notification Deadline for the applicable Showing Month. The extent to which Seller's failure is excused will equal (i) the Contract Quantity of FCR Attributes for such day multiplied by (ii) the total amount (in MW) by which the Unit EFC was reduced since the Effective Date, divided by (iii) the Unit EFC as of the Effective Date. If the Unit experiences such a reduction in Unit EFC, then Seller may, but is not

² For example, contracts with Once-Through Cooling resources that terminate one year or less before the State Water Resources Control Board compliance deadline require an advice letter filing under CPUC Decision 12-04-046

* NOT YET APPROVED *

obligated to, provide the applicable part of the Contract Quantity of FCR Attributes for such day from the Shown Unit.

2.02 Purchaser's Remedies for Seller's Failure to Deliver Contract Quantity

- (a) If Seller fails to deliver any part of the Contract Quantity as required herein for any Showing Month, Seller is liable for damages pursuant to Section 21.3 of the WSPP Agreement, without reference to the word "hourly" therein.
- (b) Seller agrees to indemnify, defend and hold harmless Purchaser from any penalties, fines or costs, including Environmental Costs, assessed against Purchaser by the CPUC, CAISO or other Governmental Body resulting from Seller's failure to deliver the Product. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Purchaser may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the WSPP Agreement.

2.03 Purchaser's Re-Sale of Product

- (a) Purchaser may re-sell all or part of the Product; provided that any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.3(a). For any such a resale, Resource Adequacy Plan of Purchaser as used herein will refer to the Resource Adequacy Plan of Subsequent Purchaser. Seller will, or will cause the Unit's SC, to follow Purchaser's instructions with respect to providing such resold Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the same amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the Product.
- (b) Purchaser will notify Seller in writing of any resale of Product and the Subsequent Purchaser no later than two Business Days before the Notification Deadline for the Showing Month. Purchaser will notify Seller of any subsequent changes or further resales no later than two Business Days before the Notification Deadline for the Showing Month.

* NOT YET APPROVED *

ARTICLE 3
PAYMENTS

3.01 Payment

After Seller has delivered the Contract Quantity in accordance with Section 2.1 and issued its invoice, Purchaser must pay for the Product as provided in Article 9 of the WSPP Agreement. The Monthly RA Capacity Payment shall equal the product of (a) the applicable Contract Price for that Showing Month, (b) the Contract Quantity for the Showing Month and (c) 1,000, rounded to the nearest penny (i.e., two decimal places).

3.02 Allocation of Other Payments and Costs

- (a) Seller will receive any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Purchaser must promptly report receipt of any such revenues to Seller. Purchaser must pay to Seller any such amounts described in this Section 3.2(a) received by Purchaser or a Subsequent Purchaser. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Purchaser under the WSPP Agreement.
- (b) Purchaser is to receive and retain all revenues associated with the Contract Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller must promptly report receipt of any such revenues to Purchaser. Seller must pay to Purchaser any such amounts received by Seller, or a Unit's SC, owner, or operator. Without prejudice to its other rights, Purchaser may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the WSPP Agreement.
- (c) If CAISO designates any part of the Contract Quantity as Capacity Procurement Mechanism Capacity, then Seller will, or will cause the Unit's SC to, within one Business Day of the time Seller receives notification from CAISO, notify Purchaser and not accept any such designation by CAISO unless and until Purchaser has agreed to accept such designation.
- (d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

* NOT YET APPROVED *

ARTICLE 4
OTHER PURCHASER AND SELLER COVENANTS

4.01 CAISO Requirements

Seller must schedule or cause the Unit's SC to schedule or make available to CAISO the Contract Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Purchaser is not liable for, and Seller will indemnify and hold Purchaser harmless from, the failure of Seller or the Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Unit's SC, owner, or operator for noncompliance.

4.02 Seller's and Purchaser's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Purchaser and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure Purchaser's rights to the Contract Quantity for the sole benefit of Purchaser or any Subsequent Purchaser. If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the benefits of the Transaction.

4.03 Seller's Representations and Warranties

Seller represents and warrants to Purchaser throughout the Delivery Period that:

- (a) no part of the Contract Quantity during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;
- (b) the Unit qualifies under the Tariff for the Product, and the Unit and Seller are capable of delivering the Product;
- (c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Unit during the Delivery Period does not exceed the Unit NQC and, if applicable, the Unit EFC, for that Unit;
- (d) if applicable, Seller has notified either the Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Contract Quantity of Product for the Delivery Period to Purchaser; and
- (e) Seller has notified or will notify the Unit's SC that Purchaser is entitled to the revenues set forth in Section 3.2(b), and such SC is obligated to promptly deliver those revenues to Purchaser, along with appropriate documentation supporting the amount of those revenues.

* NOT YET APPROVED *

ARTICLE 5
ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.01 Termination Payment

For this Transaction, the following is inserted as a penultimate paragraph in Section 22.2(b) of the WSPP Agreement:

“If Purchaser is the Non-Defaulting Party and Purchaser reasonably expects to incur or be liable for any penalties, fines or costs from CAISO, or any Governmental Body, because Purchaser or a Subsequent Purchaser is not able to include the applicable Contract Quantity in a Compliance Showing due to Seller’s Event of Default, then Purchaser may, in good faith, estimate the amount of those penalties, fines or costs and include the estimate in its determination of the Termination Payment, subject to accounting to Seller when those penalties, fines or costs are finally ascertained. If this accounting establishes that Purchaser’s estimate exceeds the actual amount of penalties, fines or costs, Purchaser must promptly remit to Seller the excess amount with interest in accordance with Section 9.3 of the WSPP Agreement. The rights and obligations with respect to determining and paying any Termination Payment, and any dispute resolution provisions with respect thereto, survive the termination of this Transaction and continue until after those penalties, fines or costs are finally ascertained.”

5.02 Confidentiality

Notwithstanding Section 30.1 of the WSPP Agreement, (i) Purchaser may disclose information in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose to a Unit’s SC or as necessary for Supply Plans; (iii) each Party may disclose information to the independent evaluator or other administrator of any competitive solicitation process of Purchaser, which in turn may disclose such information to CAISO or any Governmental Body; and (iv) Purchaser may disclose information to any Subsequent Purchaser.

5.03 Dodd-Frank Act

The Parties intend this Transaction to be a “customary commercial arrangement” as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a “Forward Capacity Transaction” within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

5.04 Governing Law

*** NOT YET APPROVED ***

For this Transaction, Section 13.1 of the WSPP Agreement is amended to change “FERC” to “FERC or the CPUC”, and Section 24 of the WSPP Agreement is amended to replace “Utah” with “California”.

AGREED AS OF THE EFFECTIVE DATE:

[SELLER]

[PURCHASER]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

* NOT YET APPROVED *

**APPENDIX A
DEFINED TERMS**

“CAISO” means the California ISO.

“Capacity Attributes” means attributes of the Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR and FCR.

“Compliance Showings” means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

“CPUC Decisions” means any currently effective or future decisions, resolutions, or rulings related to resource adequacy.

“Environmental Costs” means (i) costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, (ii) the Product’s compliance with all applicable environmental laws, rules, and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product, (iii) all operating and maintenance costs for operation of pollution mitigation or control equipment, (iv) costs of permit maintenance fees and emission fees as applicable, (v) the costs of all emission reductions that have been authorized by a local air pollution control district or emissions trading credits or units pursuant to the California Health & Safety Code, market based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, authorizations to emit sulfur dioxide and oxides of nitrogen by the Environmental Protection Agency, and any costs related to greenhouse gas emissions required by any applicable environmental laws, rules, regulations, or permits to operate, and (vi) costs associated with the disposal, clean-up, decontamination or remediation, on or off site, of hazardous substances.

“FCR” means the Flexible Capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

“FCR Attributes” means, with respect to a Unit, any and all resource adequacy attributes of the Unit, as may be identified from time to time by the CPUC, CAISO, or other Governmental Body having jurisdiction over Compliance Obligations, that can be counted toward an LSE’s FCR.

* NOT YET APPROVED *

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

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“LSE” means “Load Serving Entity” as such term is used in Section 40.9 of the Tariff.

“MW” means megawatt.

“Notification Deadline” is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

“Product” means RAR, Local RAR and FCR, for the Delivery Period, Unit, Contract Quantity, Contract Price and other specifications contained in Appendix B.

“Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix B, of the Unit NQC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“Prorated Percentage of Unit Flexible Factor” means the percentage, as specified in Appendix B, of the Unit EFC as of the Effective Date that is dedicated to Purchaser under this Transaction.

“RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

“SC” means Scheduling Coordinator as defined in the Tariff.

“Showing Month” means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

“Shown Unit” means a Unit specified by Seller in a Supply Plan, but not necessarily identified by Seller to Purchaser on the Effective Date.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Unit” means the generation unit described in Appendix B and any Shown Unit.

*** NOT YET APPROVED ***

“Unit EFC” means Unit Effective Capacity and is the lesser of that of the Unit as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

“Unit NQC” means Unit Net Qualifying Capacity and is the lesser of that of the Unit as set by CAISO as of the Effective Date and that of the Unit on a subsequent date of determination.

**APPENDIX B
PRODUCT AND UNIT INFORMATION**

Product:

RAR Local RAR Flexible Capacity

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):

CAISO Zone: _____

MCC Bucket: _____

CPUC Local Area (if applicable): _____

Flexible Capacity Category (if applicable): _____

Delivery period: [Begin Date] through [End Date] [Showing Months of xxxx, xxxx, xxxxx].

Contract Quantity and Contract Price:

RAR and Local RAR, as applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo)
[MM] [YY]	[XX]	

Flexible Capacity, if applicable

Showing Month and Year	Contract Quantity (MW)	Contract Price (\$/kW-mo)
[MM] [YY]	[XX]	

Unit 1

Unit Specific Information	
Resource Name	_____
Physical Location	_____
CAISO Resource ID	_____
SCID of Resource	_____
Unit NQC by month (e.g., Jan=50, Feb=65):	_____
Unit EFC by month (e.g., Jan=30, Feb=50)	_____
Resource Type (e.g., gas, hydro, solar, etc.)	_____
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	_____
TAC Area (e.g., PG&E, SCE)	_____
Prorated Percentage of Unit Factor	_____
Prorated Percentage of Unit Flexible Factor	_____
Capacity Area (CAISO System, Fresno, Sierra, , Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	_____
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	_____

(Repeat for additional Units)

[Information for specific Shown Units may be provided after the Effective Date pursuant to the Confirmation.]

**APPENDIX C
NOTICE INFORMATION**

Seller: _____	Purchaser: _____
All Notices: Attn: Phone: Facsimile: Duns: Federal Tax ID Number:	All Notices: Attn: Phone: Facsimile: Duns: Federal Tax ID Number:
Invoices:	Invoices:
Scheduling:	Scheduling:
Wire Transfer:	Wire Transfer:
Credit and Collections:	Credit and Collections:
Defaults: Additional notices of an Event of Default to:	Defaults: Additional notices of an Event of Default to: