



**TOWN OF TIBURON**  
1505 Tiburon Boulevard  
Tiburon, CA 94920


Town Council Meeting  
December 7, 2009  
Agenda Item: \_\_\_\_

## STAFF REPORT

To: **Mayor and Members of the Town Council**

From: **Department of Public Works**

Subject: **Recommendation to Accept the Cypress Hollow Park Improvement Project, and Authorize The Filing Of The Notice Of Completion For The Work.**

Reviewed By: 

## BACKGROUND

On April 15, 2009, Council authorized staff to seek bids for the construction of the Cypress Hollow Park Improvement Project. The project equipment was subsequently negotiated and sole-sourced to Playground By Design and its installation partner, Community Playgrounds Inc, due to the unique and specific nature of the playground equipment required and its installation. A budget of \$40,000 was programmed for the project in fiscal year 08-09 and carried over to 09-10.

The contract was awarded to Community Playgrounds Inc. on June 3, 2009, in the amount of \$28,840.00. The work was substantially completed on August 7, 2009. The improvements included installation of a new concrete four (4) square pad, decomposed granite pathway and rest area and header board, 3-Rung Vertical Ladder, "S" Horizontal Loop Ladder and a Turning Bar play structure with a poured in place rubber surfacing. Other items included concrete curbing, wood header boards and the installation of a town provided 8' teak bench.

There were no change orders as part of this project. Based on the work performed and material installed the final construction cost is \$28,840.00, delivering the project within budget.

## FISCAL IMPACT

There is no cost associated with the following recommended action aside from releasing the retention funds.

## RECOMMENDATION

Staff recommends that the Town Council:

Move to adopt a resolution accepting this project as complete and authorizing the Director of Public Works / Town Engineer to execute the Notice of Completion on behalf of the Town Council, and upon completion of the 35 day period, release the retention funds to the contractor.

Exhibits: Resolution Of The Town Council Of The Town Of Tiburon Accepting The Cypress Hollow Park Improvement Project And Authorizing The Filing Of The Notice Of Completion For The Work.

Prepared By: Nicholas T. Nguyen, Director of Public Works/Town Engineer

RESOLUTION NO. \_\_\_\_ - 2009

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TIBURON  
ACCEPTING THE CYPRESS HOLLOW PARK IMPROVEMENT PROJECT, AND  
AUTHORIZING THE FILING OF THE NOTICE OF COMPLETION FOR THE WORK**

**WHEREAS**, The Town Council budgeted funds in Fiscal Year 2008-2009 to complete the project;

**WHEREAS**, Community Playgrounds Inc. was awarded the contract on June 3, 2009 to perform the work;

**WHEREAS**, The construction of the project was substantially completed within budget on August 7, 2009; and

**WHEREAS**, The final construction cost, including payment of total quantities installed, is \$28,840.00.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Tiburon as follows:

**Section 1.** The Town Council does hereby accept the Cypress Hollow Park Improvement Project as complete by Community Playgrounds Inc.

**Section 2.** The Town Council authorizes the Director of Public Works / Town Engineer to execute the Notice of Completion and the Town Clerk to record the Notice of Completion.

**Section 3.** The Town Council authorizes the Director of Public Works / Town Engineer to release the retention payment 35 days after the recordation date of the Notice of Completion, pending release of any stop notices or Town claims.

PASSED AND ADOPTED at a regular meeting of the Town Council on the 7<sup>th</sup> day of December, 2009, by the following vote, to wit:

AYES:           COUNCILMEMBERS:  
NOES:           COUNCILMEMBERS:  
ABSENT:        COUNCILMEMBERS:

---

DICK COLLINS, MAYOR  
TOWN OF TIBURON

ATTEST:

---

DIANE CRANE IACOPI, TOWN CLERK

**When recorded mail to:**

Town of Tiburon  
Diane Crane Iacopi, Town Clerk  
1505 Tiburon Blvd  
Tiburon, CA 94920

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**Town of Tiburon  
NOTICE OF COMPLETION OF IMPROVEMENT**

TO ALL PERSONS WHOM IT MAY CONCERN:

NOTICE IS HEREBY GIVEN for and on behalf of the Town of Tiburon, County of Marin, State of California, that there has been a cessation of labor upon the work or improvement and that said work or improvement was completed upon the **7th day of August, 2009**, and accepted the **7th day of December, 2009**; that the name, address and nature of the title of the party giving this notice is as follows: The Town of Tiburon, a municipal corporation, in the County of Marin, State of California, within the boundaries of which said work or improvement was made upon land owned by said Town and/or over which said Town has an easement; that said work or improvement is described as follows:

**Cypress Hollow Park Improvements**

and reference is hereby made for a further description thereof to the contract approved for said work or improvements now on file in the office of the Town Clerk of said Town, and said contract is hereby incorporated herein by reference thereto; and that the name of the Contractor who contracted to perform said work and make such improvement is

**Community Playgrounds, Inc.**

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Tiburon, California, on \_\_\_\_\_, 20\_\_.

TOWN OF TIBURON  
A Municipal Corporation

By: \_\_\_\_\_  
Nicholas T. Nguyen, P.E.  
Director of Public Works / Town Engineer

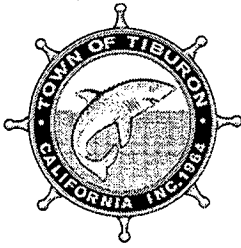
STATE OF CALIFORNIA  
COUNTY OF MARIN

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, DIANE CRANE IACOPI, Notary Public, personally appeared Nicholas T. Nguyen, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person (s) whose name (s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature (s) on the instrument the person (s), or the entity upon behalf of which the person (s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
DIANE CRANE IACOPI



TOWN OF TIBURON  
1505 Tiburon Boulevard  
Tiburon, CA 94920


Special Town Council Meeting  
December 7, 2009  
Agenda Item:

## STAFF REPORT

**To:** Mayor and Members of the Town Council

**From:** Office of the Town Manager  
Office of the Town Attorney

**Subject:** **Town Participation in Marin Clean Energy Program:** Review of Marin Energy Authority Contract for Renewable Electric Power; Final Decision Whether to Remain in, or Withdraw from, the Marin Clean Energy Community Choice Aggregation (CCA) Program

**Reviewed By:** 

## INTRODUCTION

This Special Meeting of the Town Council is to allow the Council to hear from presenters and the public, and to decide whether Tiburon should participate in the Marin Clean Energy CCA program or withdraw from membership in the Marin Energy Authority. The deadline for giving notice of withdrawal is January 5, 2010.

Dawn Weisz of MEA will be on hand to describe the contract the Town Council is being asked to consider. William (Bill) Monson of MRW & Associates will be in attendance and will briefly summarize the conclusions of the risk analysis he conducted on behalf of the Marin Manager's Association. A PG&E representative will also be present.

## BACKGROUND

In 2006 the state of California adopted AB32, the Global Warming Solutions Act. AB32 requires that by 2020 the greenhouse gas (GHG) emissions be reduced to 1990 levels, roughly a 25% reduction. In response, Tiburon and other Marin public agencies formed a new Joint Powers Authority, the Marin Energy Authority (MEA) on December 19, 2008 to develop and implement region-wide programs to reduce Marin's GHG. MEA is composed of nine elected representatives, one from each member jurisdictions as follows: Belvedere, Fairfax, Mill Valley, Ross, San Anselmo, San Rafael, Sausalito, Tiburon, and the County of Marin. Mayor Collins is Tiburon's member on the MEA Board.

MEA's purpose is to address climate change by reducing energy related greenhouse gas emissions and securing energy supply, price stability, energy efficiencies and local economic and workforce benefits. MEA members intend to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including solar and wind energy production, at competitive rates for customers.

MEA's initial and most significant effort is a community choice aggregation (CCA) program to supply electric power to customers. Toward this end, on May 7, 2009, the MEA Board approved and released a Request for Proposal (RFP) for 'full requirements' electricity supply. This competitive solicitation process resulted in 12 bids for power with prices in the expected range described in Marin's CCA business plan. The power costs projected in the bid proposals would be at or below PG&E's projected rates for the light green option (starting at 25% renewable energy, growing to 50% in four years). The deep green option (100% renewable energy) would also be available to customers for a slight premium above PG&E's projected rates. On September 3, 2009, the MEA Board selected three of the twelve bidders for contract negotiations.

On October 1, 2009, the MEA Board approved and released a draft contract for power purchase. Feedback on the draft contract was solicited from each of the member jurisdictions, including Tiburon. On October 21, 2008, the Council heard an extensive presentation on the proposed contract from the MEA staff and Supervisor Charles McGlashan. The Council also heard numerous public comments, both supporting and opposing Town participation in the CCA program.

On November 5, 2009, the MEA Board approved and released a final draft contract for power purchase. This action initiated the 90-day review period for participating agencies. The contract package includes an overview summarizing the Power Purchase Agreement (PPA) documents as well as the three components of the draft PPA for the Marin Energy Authority to secure power supply for the Marin Clean Energy program. The final draft PPA is the result of extensive negotiations and review by the MEA Board, its ad hoc contract committee, staff, technical and legal consultants, the Marin Managers Association's peer review and input from the public.

General terms of the draft contract are as follows:

- Contract is based on the industry-standard Edison Electric Institute Master Power Purchase and Sale Agreement (PPA)
- Contract insulates municipal funds before, during and after the delivery period
- Five year delivery period, beginning on June 1, 2010 and ending on May 31, 2015
- Fixed annual pricing throughout the term

The MEA Joint Powers Agreement provides that any party may withdraw its membership in the MEA prior to the MEA's execution of Program Agreement 1 (the PPA), by giving at least 30 days advance written notice of its election to do so. Staff expects that MEA will execute the contract with an energy service provider at the end of the 90-day review period, which is February 4, 2010. Accordingly, if the Town wishes to withdraw from MEA, it must provide notice by January 5, 2010.

In addition to the CCA implementation activities, MEA has been engaged in several other activities related to GHG reductions in Marin. All MEA documents, as well as meeting agendas, minutes, and audio recordings, are available at: [www.marinenergyauthority.org](http://www.marinenergyauthority.org).

## **ANALYSIS**

There are potential benefits and risks associated with remaining in the Marin Energy Authority for this program. Benefits include the promise of a minimum of 25% renewable energy sources for electrical generation for participating customers, with an expected rise in that percentage over time to 100%. Public power has a long history in California and the country, so the notion of a public agency governing the development and procurement of power is not new or unusual. Because public power agencies by definition do not have to make a profit for shareholders, they are often able to provide power at lower rates than privately-held companies.

There are risks associated with this action as well. As the MRW & Associates report points out, costs could be higher – or lower – for MEA power relative to PG&E's rates, although this risk appears likely to diminish over time if MEA develops its own renewable resources as planned. MEA will set its initial rates after PG&E's rates are approved for the upcoming year, but thereafter, PG&E may be able to drop its rates below MEA's. If gas prices drop, a complicated formula set by the California Public Utilities Commission will cause effective rates for the CCA to rise temporarily. The converse is also true: if gas prices rise, costs will drop for CCA customers. The point is that these are unknowns at this time. There are always risks with start-up enterprises, too, although the thoroughness and professionalism of the approach thus far bodes well for the creation of a solid and enduring institution for power delivery. Bill Monson of MRW & Associates will be available to address Town Council questions about the risks associated with this endeavor.

Residents in Tiburon can only participate in the CCA if Tiburon remains in the Marin Energy Authority JPA. In that event, they will automatically become CCA customers unless they choose to 'opt out' and remain with PG&E. State law requires many notices be sent to inform customers of this choice, and PG&E will certainly make every effort to let people know they have options.

If Tiburon withdraws from MEA, Tiburon electric customers may not participate in the CCA and will have no alternative to PG&E as their power provider. This element alone creates a powerful argument for remaining in MEA: doing so affords customer choice; dropping out eliminates customer choice.

## **FINANCIAL IMPACT**

The Joint Power Authority, Marin Energy Authority, was constructed so as to insulate all member agencies from any financial exposure to the CCA. Ratepayers, not taxpayers, form the financial basis for the CCA and that is where the CCA must turn for its resources. The Town has incurred minor expenses associated with analyzing the MEA, including several thousand dollars for Tiburon's contribution to the commissioning of the MRW & Associates risk analysis report and their attendance at two regional meetings and this evening's meeting.

## RECOMMENDATION

If the Town Council takes no action, Tiburon will remain in the Marin Energy Authority. If the Council wishes to withdraw from the Marin Energy Authority, an affirmative vote calling for withdrawal must be passed. It is therefore recommended that the Mayor, at the end of the evening's presentations and public hearing, inquire if any member of Council wishes to make a motion to withdraw. If none is forthcoming or fails to win a majority, the matter is decided that Tiburon will remain in the Marin Energy Authority.

Staff recommends that the Town Council:

1. Hear a Town Staff report;
2. Hear a presentation from MEA representative Dawn Weisz, MRW & Associates representative Bill Monson and the PG&E representative;
3. Conduct the Public Hearing;
4. Close the Public Hearing and discuss the matter;
5. Mayor: Ask Council if any member wishes to propose a motion to withdraw from the Marin Energy Authority; and
6. If a motion is made and seconded, vote on the motion.

Exhibits:

1. November 6, 2009 Letter from Dawn Weisz of MEA
2. Overview of Power Supply Agreement
3. Draft Power Supply Agreement (Cover Letter and Confirmation)
4. MRW & Associates Report to the Marin Managers Association

Prepared By:       Peggy Curran, Town Manager  
                          Ann Danforth, Town Attorney



RECEIVED

NOV - 9 2009

TOWN MANAGERS OFFICE  
TOWN OF TIBURON

Peggy Curran  
Town Manager  
Town of Tiburon  
1505 Tiburon Boulevard  
Tiburon, CA 94920

DAWN WEISZ  
Interim Director

November 6, 2009

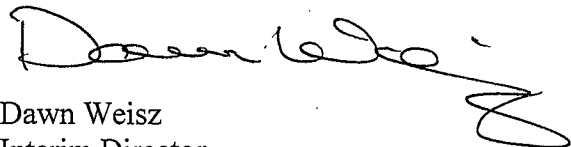
Dear Ms. Curran:

Enclosed for review by your Town Council is the final draft Power Purchase Agreement that the Board of Directors of the Marin Energy Authority at its November 5, 2009 meeting directed be released to your Agency. The attachments include an overview summarizing the Power Purchase Agreement (PPA) documents as well as the three components of the draft PPA for the Marin Energy Authority to secure power supply for the Marin Clean Energy program.

Section 7.1.1.1 of the Marin Energy Authority Joint Powers Agreement provides that prior to the Authority's execution of Program Agreement 1 (the Power Purchase Agreement), any Party may withdraw its membership in the Authority by giving no less than 30 days advance written notice of its election to do so. This section further provides that the Authority shall provide a copy of the proposed agreement to each Party at least 90 days prior to the consideration of such agreement by the Board. The Board is expecting to consider the adoption of the Power Purchase Agreement at its February 4, 2010 meeting. The Power Purchase Agreement is being transmitted to your agency for the required final 90 day review.

The final draft Power Purchase Agreement is the result of extensive negotiations and review by the MEA Board, its ad hoc contract committee, staff, technical and legal consultants, and input from the public. We are pleased to answer any questions that your agency may have and offer any assistance that you desire in your review of the Agreement.

Sincerely,

  
Dawn Weisz  
Interim Director

california  
AB 32

Cc: Greg Stepanicich, General Counsel

Marin  
Clean  
Energy

## Overview

### Marin Energy Authority Draft Power Purchase and Sale Agreement

Attached you will find three components of the draft Power Purchase Agreement (PPA) for the Marin Energy Authority to secure power supply for the Marin Clean Energy program. The three components of the Agreement are described below. In addition, key terms of the contract are outlined below in the overview section.

#### 1. EEI Master Power Purchase & Sale Agreement

This Edison Electric Institute (EEI) Agreement is a standard industry document used by public and private utilities across the United States for power purchase and sale.

#### 2. EEI Master Power Purchase & Sale Agreement Cover Sheet

This document provides additional detail related to MEA's specific transaction, identifying exceptions, clarifications and areas of applicability which modify the standards terms and conditions of the Master EEI Agreement.

#### 3. Confirmation

This document is referenced in the EEI Agreement and defines the commercial terms of MEA's transaction. Key details include energy quantities, pricing and delivery term. The Confirmation also contains the terms and conditions pertinent to renewable energy content and environmental attributes.

### -----Contract Overview-----

#### General Contract Terms

- Contract is based on the industry-standard Edison Electric Institute (EEI), Master Power Purchase and Sale Agreement
- Contract insulates municipal funds/budgets before, during and after the delivery period
- Five year delivery period, beginning on June 1, 2010 and ending on May 31, 2015

#### Commercial Terms

- Full requirements product to be provided by the supplier, including all: electric energy, renewable energy, capacity, ancillary services (as required by the California Independent System Operator) and scheduling coordination services
- All MEA customers will receive at least 25% of energy deliveries from California Energy Commission eligible renewable resources
- Supplier must maintain a minimum, "investment grade" credit rating
- MEA's credit exposure is limited to customer receipts/revenues

---

# Master Power Purchase & Sale Agreement



NOTE: Forty page standard contract was previously distributed to Council. Copies are available upon request at Front Desk.



**EDISON ELECTRIC  
INSTITUTE**



Version 2.1 (modified 4/25/00)

©COPYRIGHT 2000 by the Edison Electric Institute and National Energy Marketers Association

ALL RIGHTS RESERVED UNDER U.S. AND FOREIGN LAW, TREATIES AND CONVENTIONS  
AUTOMATIC LICENSE - PERMISSION OF THE COPYRIGHT OWNERS IS GRANTED FOR REPRODUCTION BY DOWNLOADING  
FROM A COMPUTER AND PRINTING ELECTRONIC COPIES OF THE WORK. NO AUTHORIZED COPY MAY BE SOLD. THE  
INDUSTRY IS ENCOURAGED TO USE THIS MASTER POWER PURCHASE AND SALE AGREEMENT IN ITS TRANSACTIONS.  
ATTRIBUTION TO THE COPYRIGHT OWNERS IS REQUESTED.

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase and Sale Agreement ("Master Agreement") is made as of the following date: \_\_\_\_\_, 2010 ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this Master Agreement are the following:

Name ("\_\_\_\_\_ " or "Party A")

Name ("Marin Energy Authority" or "Party B")

All Notices:

All Notices:

Street: \_\_\_\_\_

Street: [3501 Civic Center Drive, Room 308]

City: \_\_\_\_\_ Zip: \_\_\_\_\_

City: [San Rafael, CA] Zip: [94903]

Attn: Contract Administration

Attn: Contract Administration

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Duns: \_\_\_\_\_

Duns: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

Federal Tax ID Number: \_\_\_\_\_

Invoices:

Invoices:

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Scheduling:

Scheduling:

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Payments:

Payments:

Attn: \_\_\_\_\_

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Wire Transfer:

Wire Transfer:

BNK: \_\_\_\_\_

BNK: \_\_\_\_\_

ABA: \_\_\_\_\_

ABA: \_\_\_\_\_

ACCT: \_\_\_\_\_

ACCT: \_\_\_\_\_

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff      Tariff \_\_\_\_\_      Dated \_\_\_\_\_      Docket Number \_\_\_\_\_

Party B Tariff      Tariff \_\_\_\_\_      Dated \_\_\_\_\_      Docket Number \_\_\_\_\_

**Article Two**

Transaction Terms and Conditions

Optional provision in Section 2.4. If not checked, inapplicable.

**Article Four**

Remedies for Failure to Deliver or Receive

Accelerated Payment of Damages. If not checked, inapplicable.

**Article Five**

Events of Default; Remedies

Cross Default for Party A:

Party A      Cross Default Amount  
US\$50,000,000

Other      Cross Default Amount  
Entity: \_\_\_\_\_ \$ \_\_\_\_\_

Cross Default for Party B:

Party B      Cross Default Amount  
US\$500,000

Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

5.6 Closeout Setoff

Option A (Applicable if no other selection is made.)

Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_

Option C (No Setoff)

**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

Option A

Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ \_\_\_\_\_

Party A Rounding Amount: \$ \_\_\_\_\_

its reasonable discretion to the extent that Party A's lien on the amounts in the lockbox is at least pari passu with the lien of Party B's lender(s). The Parties agree that the lockbox account shall be in the name of Party B, and any interest earned thereon shall accrue in favor of Party B.

**Other Changes**

- 1) In Section 1.1, add the following sentence at the end of the definition of "Affiliate": "

The Parties hereby agree and acknowledge that the members of Party B shall not constitute or otherwise be deemed an "Affiliate" for the purposes of this Master Agreement or any Confirmation executed in connection therewith."

- 2) In Section 1.27 delete the word "transferable" in the first line and insert the following after the last sentence:

"The value of the Letter of Credit shall be its principal amount (the "Value"), provided that if the Letter of Credit expires within thirty days after the date its Value is being determined, its Value shall be zero. If a Party has delivered more than one form of Performance Assurance to the Secured Party, when a return of Performance Assurance is to be made, the Secured Party may elect which form to transfer." The issuer of any Letter of Credit shall be rated, at all times when such Letter of Credit is outstanding, no less than A by S&P and A by Moody's.

- 3) Section 1.50 (Recording) is hereby deleted in its entirety.

- 4) In Section 2.1, delete "orally or, if expressly required by either Party with respect to a particular Transaction," in the 2<sup>nd</sup> line.

- 5) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

"Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, the Party A acknowledges that no employee may amend or otherwise materially modify this Master Agreement or

Agreement or otherwise which are due and payable as of the Early Termination Date (including for these purposes amounts payable pursuant to Excluded Transactions) have been fully and finally performed and that the Defaulting Party has returned any Performance Assurance of the Non-Defaulting Party's that is held simultaneously or before the Non Defaulting Party makes any Termination Payment hereunder."

12) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

13) In Sections 8.1(b) and 8.2 (b) change "three (3) Business Days" to "five (5) Business Days".

14) In Sections 8.1(d) and 8.2(d) on line 5, change "three (3) Business Days" to "five (5) Business Days".

15) The following new section 8.2(f) shall be added to Section 8.2:

"Upon the occurrence of an Event of Default by Party A under the Master Agreement, Party A shall reimburse Party B for (i) the costs associated with the posting and payment of the CCA Bond which is posted by Party B and (ii) any actual reentry fees assessed by PG&E in connection with such Event of Default by Party A regardless of the amount of the security posted. The term "CCA Bond" means the bond required to be posted, in form and substance satisfactory to Party B in its sole discretion, pursuant to the Settlement Agreement in Rulemaking R.03-10-003 (Phase 3 – Community Choice Aggregation Bond Proceeding). The CCA Bond [shall be/has been] posted [no later than [\_\_\_\_], 20\_\_] and Party B shall advise Party A of the amount of such CCA Bond promptly after an Event of Default."

16) In Section 10.1, the phrase "by either Party upon thirty (30) days' prior written notice" shall be deleted and replaced by "upon mutual agreement of the Parties".

17) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

"Each party acknowledges and agrees that (i) certain transaction(s) hereunder constitute a "forward contract" providing a "contractual right" within the meaning of such

- 21) In section 10.9 and insert the words "copies of" after the word "examine". In line 9, change twelve (12) months to twenty-four (24) months.
- 22) Section 10.10 Bankruptcy Issues. Delete Section 10.10 in its entirety and replace with the following: "The Parties intend that (i) all Transactions constitute a "forward contract" within the meaning of the United States Bankruptcy Code (the "Bankruptcy Code") or a "swap agreement" within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute "settlement payments" within the meaning of the Bankruptcy Code; (iii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code; and (iv) this Agreement constitutes a "master netting agreement" within the meaning of the Bankruptcy Code."

- 23) The following sentence shall be added at the end of Section 10.11:

"Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the California Public Records Act (Government Code Section 6250 et seq.)."

- 24) The following Mobile-Sierra clause shall be added as Section 10.12:

10.12 Standard of Review/Modifications.

- (a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

no rights and shall not make any claim, take any actions or assert any remedies against any of Party B's members in connection with this Agreement or any of the Transactions.

26) The following new Section shall be added as Section 10.14: No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

27) The Parties agree to add the following representations and warranties to Section 10.2:

Party B represents and warrants to Party A continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Joint Power Agreement and all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Joint Power Agreement and other applicable laws, (iii) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Joint Power Agreement or other relevant constitutional, organic or other governing documents and applicable law, (iv) Party B's obligations to make payments hereunder are, except as otherwise specifically set forth herein or in the account control agreement or any other agreement documenting the security of Party B to Party A, unsubordinated obligations which enjoy

including CEQA and any other applicable California environmental statutes relating to the construction and operation thereof. Party A further agrees to waive any claims against Party B for failure to perform Party B's obligations under this Master Agreement or under any Confirmation to the extent that such failure is a result of Party A's violation or breach of the foregoing representations, warranties and covenants or as a result of litigation against Party B as a result of Party A's violation or breach of the foregoing representations, warranties and covenants.

- 29) The following sentence shall be added at the end of Section 10.9: Party A agrees to cooperate with Party B's audits in connection with this Master Agreement and the Confirmation, which shall commence on the first Business Day of January and June of each year. To the extent that an audit reveals that Energy Party A sold to Party B was incorrectly classified by Party A as Eligible Renewable Energy or Renewable Energy, Party A (i) shall pay for all audit costs incurred by Party B and (ii) shall, at Party A's cost, deliver to Party B replacement Eligible Renewable Energy or Renewable Energy in a quantity equal to the incorrectly classified Energy.
- 30) The following shall be added as a new Section 10.15: Party B's Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party A (i) certified copies of the Joint Powers Agreement and such relevant ordinances, resolutions, public notices and other public documents issued by Party B evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement, (ii) a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, subject to the limitations set forth in Section 2.1 and (iii) opinions of legal counsel for Party B, in form and substance reasonably satisfactory to Party A, with appropriate qualifications, assumptions and limitations, regarding such the following matters: (A) Party B is a validly existing community choice aggregation ("CCA"), (B) Party B has the power and authority to execute, deliver and perform the Master Agreement and the

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

Party A

Party B **Marin Energy Authority**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

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

**CONFIRMATION**

Reference:

Master Power Purchase and Sale Agreement  
 Between <Company Legal Name> ("Seller")  
 And Marin Energy Authority ("Buyer")  
 As of <Month, Day, Year> (the "Effective Date")  
 Transaction Date: <Month, Day, Year>

**RECITALS:**

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

**WHEREAS**, Buyer is an independent public agency formed in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) and established by that certain Joint Powers Agreement, effective as of December 19, 2008 ("Joint Powers Agreement") to protect the environment by furthering the environmental goals of AB 32, the Global Warming Solutions Act of 2006 (the "GWSA"), and reducing greenhouse gas emissions by studying, promoting, developing, conducting, operating and managing energy and energy-related climate change programs, including but not limited to the CCA program;

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

**WHEREAS**, pursuant to the GWSA, the State of California has established a timetable to implement measures reduce greenhouse gas emissions;

**WHEREAS**, pursuant to its regulatory authority and the purposes of the Joint Powers Agreement, Buyer required as part of its Request for Proposals that at least 25% of the Full Requirements Product Supply include Eligible Renewable Energy;

**WHEREAS**, Buyer, pursuant to this Confirmation, will be taking a regulatory action that will purchase Renewable Energy to promote the regulatory goals established in the GWSA and thereby qualify for Class 8 categorical exemption under Section 15308 of Title 14 of the California Code of Regulations;

**WHEREAS**, Buyer issued a Request for Proposals for Full Requirements Product Supply for Buyer serving as the CCA;

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

**WHEREAS**, Buyer will in turn supply the Full Requirements Product for use by the Members; and

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

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

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

"Ancillary Services" means those ancillary services, including but not limited to those described in FERC Order No. 888, that may from time to time be required by FERC to be supplied by CAISO.

"Applicable Law" means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction; or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time.

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

"CAISO Charges" mean those amounts [(other than for imbalance Energy)] billed by CAISO and associated with the procurement and delivery at the Delivery Point of any full requirements product through the CAISO market to CCA Customers as such charges may be adjusted from time to time pursuant to the Tariff.

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

"Capacity Requirement" means Capacity as required for Buyer to meet its RAR.

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

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

"Tariff" shall mean the electric tariff filed by CAISO with the Federal Energy Regulatory Commission, as such document is amended and replaced by CAISO from time to time.

"Weighted Average Price" shall mean a price determined on a monthly basis as a function of Buyer's actual energy consumption and the corresponding CAISO Real-Time PG&E LAP Price. [The Parties to agree to the specific formula for calculating the actual weighted average price].

2. **PRODUCT.**

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

- (a) a quantity of electrical Energy determined in accordance with this Confirmation;
- (b) a quantity of Renewable Energy as set forth in Section 2.2;
- (c) a quantity of Capacity equal to the Capacity Requirement;
- (d) Ancillary Services required to supply the foregoing electrical Energy identified in this Section 2.1 (the "Full Requirements Energy") to the Delivery Point;
- (e) distribution losses incurred in supplying Full Requirements Energy at the Delivery Point; and
- (f) CAISO scheduling coordination services as set forth in the SC Agreement.

2.2 **Renewable Energy.** During the Delivery Period, Seller shall provide to Buyer Renewable Energy in amounts sufficient to ensure that (i) Customers participating in Buyer's (a) "Light Green" service receive at least 25% (and 26.5% during the Delivery Period in 2015) of their Energy from Eligible Renewable Energy Sources, and (b) "Deep Green" service receive 25% (and 26.5% during the Delivery Period in 2015) of their Energy from Eligible Renewable Energy Sources and 100% of their Energy from Renewable Energy Sources and (ii) Buyer meets any RPS obligations. The Renewable Energy sold by Seller to Buyer shall also include any and all Environmental Attributes associated with such Renewable Energy. If due to any action by the CPUC or any state, federal or local governmental authority or agency, or any change in Applicable Law which occur after the execution date hereof (a "Change in Law"), the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Renewable Energy on economic terms equal to those in force on the execution date hereof. In the event the Parties cannot reach agreement on any amendments to this Confirmation within 60 days following the Change in Law, Seller shall perform its obligations hereunder with regard to Renewable Energy in accordance with the Applicable Law immediately prior to the Change in Law.

2.3 **No New Construction.** Seller covenants and agrees, during the Delivery Period, that (a) no new facilities are required to be constructed in order for Seller to meet its supply obligation, and (b) it shall not construct any new facilities to meet its supply obligation hereunder unless such new facility has satisfied all Applicable Law, including CEQA and any other applicable California environmental statutes relating to the construction and operation of such facility.

2.4 **Non-Renewable Energy.** The Energy provided under this Confirmation may be procured from unit-specific sources, provided such resources are not coal or nuclear, under terms and conditions to be agreed between the Parties. To the extent unit-specific resources have not been agreed to by the Parties, Seller will use System Power to provide the required Energy.

3. **DELIVERY PERIOD.** This Confirmation shall be in full force and effect as of the Transaction Date. The terms set forth herein shall apply from the Start Date through the End Date:

| Start Date:  | End Date:    |
|--------------|--------------|
| June 1, 2010 | May 31, 2015 |

4. **LOCATION AND DELIVERY POINT.**

| Market Area | Supply Point    | Delivery Point | Buyer's Local Utility |
|-------------|-----------------|----------------|-----------------------|
| CAISO       | NP15 EZ Gen Hub | PG&E LAP       | PG&E                  |

5. **PRICING.**

5.6. Distribution Losses: Buyer shall be responsible for the costs of additional Energy, Renewable Energy and Capacity provided by Seller necessary to cover Distribution Losses, which shall be determined as follows: for energy by using the distribution loss factors required for settlements with the CAISO during the billing period; for Renewable Energy by using the distribution loss factors required by the California Public Utilities Commission for Renewable Portfolio Standards compliance for the compliance year; and for capacity by using the distribution loss factors required by the California Energy Commission for Resource Adequacy compliance for the compliance year.

6. CONTRACT QUANTITY. Seller shall service 100% of Buyer's Energy requirements. Energy prices pursuant to this Confirmation will relate to the quantities set forth in the table below (the "Contract Quantities"):

| The Contract Price relates to the Contract Quantities at (choose one)   |                                     |  |   |
|---|-------------------------------------|--|---|
| <input checked="" type="checkbox"/> the Supply Point <input type="checkbox"/> the Delivery Point <input type="checkbox"/> Buyer's Meter |                                     |  |   |
| Commodity   |                                     |  |   |
| Month   | Energy Baseline Monthly Usage (MWh) | Renewable Energy Baseline Annual Usage (MWh) | Resource Adequacy Obligation (in kW/month)        |
| «ContractedQuantity»<br>«date»  | «monthly_usage»                     | «annual_usag<br>e»                           | «Calc_Demand_RA»«TableEnd:<br>ContractedQuantity» |

Buyer shall be liable for all costs associated with delivering Energy from the Supply Point to the Delivery Point and Seller shall assist Buyer (at Buyer's cost) with obtaining all Congestion Revenue Rights ("CRRs") required relating to the congestion from the Supply Point to the Delivery Point. [For unit-specific Energy delivered hereunder pursuant to Section 2.4, Buyer shall be liable for all costs associated with delivering Energy from the generation point (the load aggregation point) to the Delivery Point and Seller shall assist Buyer (at Buyer's cost) with obtaining all Congestion Revenue Rights ("CRRs") required relating to the congestion from such generation point to the Delivery Point.]

7. MONTHLY BILLING SETTLEMENT. For monthly volumes within the Balanced Monthly Usage, Seller shall invoice Buyer at the Contract Price for the actual monthly usage.

7.1. Usage Above Upper Limit: During any month of delivery, if Buyer's metered usage for Energy (expressed in MWh) exceeds the Upper Limit ("Excess Quantity"), Seller shall invoice Buyer an amount equal to the Upper Limit multiplied by the Contract Price (Electricity). For the Excess Quantity, Buyer shall reimburse Seller at the monthly Weighted Average Price plus all related CAISO Charges at the Delivery Point.

7.2. Usage Below Lower Limit: During any month of delivery, if Buyer's metered usage for Energy (expressed in MWh) is less than the Lower Limit ("Underused Quantity"), Seller shall invoice Buyer for an amount equal to the Lower Limit multiplied by the Contract Price (Electricity) and shall credit Buyer's account by an amount equal to the Underused Quantity multiplied by the monthly Weighted Average Price.

7.3. Resource Adequacy Capacity Usage Above Limit. During any month of delivery, if Buyer's received Capacity with respect to its Resource Adequacy Requirement exceeds the Upper Limit ("Excess Resource Adequacy Capacity Quantity"), Seller shall invoice Buyer an amount equal to the Upper Limit multiplied by the Contract Price (Resource Adequacy Capacity). For the Excess Resource Adequacy Capacity Quantity, Buyer shall reimburse Seller for its actual cost of buying the Excess Resource Adequacy Capacity Quantity. Seller shall make commercially reasonable efforts to minimize the cost of Excess Resource Adequacy Capacity Quantity purchased on behalf of Buyer provided that Seller shall not enter into any such transactions for such purchases without Buyer's consent and acceptance of such transactions.

7.4. Resource Adequacy Capacity Usage Below Limit. During any month of delivery, if Buyer's received Capacity with respect to its Resource Adequacy Requirement is less than the Lower Limit ("Underused Resource Adequacy Capacity Quantity"), Seller shall invoice Buyer for an amount equal to the Lower Limit multiplied by the Contract Price (Resource Adequacy Capacity) and shall credit Buyer's account for the revenues obtained by Seller from remarketing the Underused Resource Adequacy Capacity Quantity. Seller shall make commercially reasonable efforts to maximize the value of Underused Resource Adequacy Capacity Quantity remarketed on behalf of Buyer provided that Seller shall not enter into any such transactions for remarketing without Buyer's consent and acceptance of such transactions.

8. SEMI-ANNUAL RENEWABLE ENERGY RECONCILIATION. No later than [January 1<sup>st</sup> and June 1<sup>st</sup>] of each calendar year during the term of this Confirmation, Buyer shall provide Seller with notice stating Buyer's then-current estimate of Buyer's compliance with the Renewable Portfolio Standards for such calendar year together with documentation setting forth amounts of Renewable Energy which were required to be delivered for the preceding six-month period pursuant to Section 2.2. Following delivery of this notice, the Parties shall work together promptly to determine whether they anticipate Seller to be compliant or not with the requirements set forth in Section 2.2 for such calendar year and the Parties shall work together in good faith to determine appropriate actions to ensure that Seller will deliver sufficient amounts of Renewable Energy to be compliant with the requirements set forth in Section 2.2.

**SELLER**

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

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

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

**MARIN ENERGY AUTHORITY**

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

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

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

**SELLER**

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

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

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

**MARIN ENERGY AUTHORITY**

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

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

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

1999 HARRISON STREET  
SUITE 1440  
OAKLAND, CALIFORNIA  
94612-3517



TEL 510.834.1999  
FAX 510.834.0918  
mrw@mrwassoc.com

November 20, 2009

Marin Manager's Association

Attention: Matthew Hymel, Marin County Administrator  
Peggy Curran, Tiburon Town Manager  
Debbie Stutsman, San Anselmo Town Manager

Re: Analysis of Service Agreements and Financial Risk to MEA

Dear Mr. Hymel, Ms. Curran, and Ms. Stutsman:

As requested, MRW & Associates, LLC (MRW) reviewed copies of several documents being negotiated by the Marin Energy Authority (MEA) and Shell Energy North America (SENA)<sup>1</sup> related to SENA providing power to MEA for the period from 2010-2015.<sup>2</sup> The purpose of this examination was to identify risks faced by MEA, the member agencies that make up MEA, and the customers that would ultimately receive commodity electricity from MEA.

Based on our review, MRW does not find any fatal flaws with the Agreements. Nonetheless, we find that there are certain issues that would place financial risk<sup>3</sup> on MEA or its customers. We point out these risks and propose some suggested changes to the Agreements for two reasons: (1) so that policymakers can make informed decisions regarding the potential benefits and risks of the CCA (given the current form of the Agreements), and (2) to suggest ways that policymakers might choose to modify the agreements to address these risks.

It is important to understand MRW's scope of work for this assignment. Our review focused on identifying potential risks associated with the CCA program rather than enumerating the benefits of the CCA. MEA, in its Business Plan and other documents, has laid out these potential benefits. Some of these potential benefits include:

- Providing residents and businesses of Marin the opportunity to purchase 100% green power.

<sup>1</sup> MEA has not yet decided that SENA will be the supplier to MEA. However, SENA is in the "first position" and, as a result, MEA and SENA are negotiating the Agreements. In the memorandum, we use SENA and supplier interchangeably.

<sup>2</sup> MEA is considering forming Marin Clean Energy, a Community Choice Aggregation (CCA) program. For simplicity, this memo refers to MEA.

<sup>3</sup> By financial risk we mean the risk that customers would pay more for power than they would have otherwise had they remained with PG&E, or that MEA incur costs greater than its revenues. We note that there is, of course, upside risk—that MEA consistently provides power at a cost less than PG&E, which is MEA's intent.

- Assisting local governments meet state greenhouse gas reduction compliance requirements.
- Over the long run, potentially providing power at costs comparable to, or less than, PG&E.
- Insulating Marin power users from volatile natural gas and power commodity markets through the use of renewable energy.
- Providing local control over power procurement and ratemaking decisions.

We do not dispute these potential benefits, nor do we attempt to weigh these potential benefits against the potential risks we identify here. Such an analysis is unavoidably subjective and is more appropriately done by local policymakers, who better understand the values and concerns of their constituents. While we make some recommendations regarding possible changes to the Agreements (or potential MEA policies), creative thinkers may also come up with alternatives that address the issues in ways that better meet Marin's policy goals and risk preferences.

### **Approach**

MRW received copies of various draft documents from MEA. The documents (jointly, the Agreements) were<sup>4</sup>:

- Master Power Purchase & Sale Agreement, Edison Electric Institute
- Cover Sheet, Master Power Purchase & Sale Agreement (Cover Sheet)
- Confirmation, Master Power Purchase & Sale Agreement (Confirmation)

The Edison Electric Institute Master Power Purchase & Sale Agreement is an industry standard agreement used in numerous wholesale power transactions (which is what MEA and SENA are negotiating). The proposed Cover Sheet specifies choices regarding options in the Master Power Purchase & Sales Agreement and also establishes other broad changes that define the overall goals and boundaries of the agreement. The Confirmation defines terms and conditions specific to the initial power purchase by MEA from the supplier.<sup>5</sup>

MRW reviewed the draft Agreements in order to understand the services SENA would provide to MEA, the allocation of risks between the two entities, and the risks that the member agencies and MEA's customers would face.<sup>6</sup> MRW also reviewed a presentation by MEA that outlined the key attributes of the Agreements and the goals of MEA.<sup>7</sup>

---

<sup>4</sup> MRW is aware of five versions of the Agreements. The first version of the Agreement was provided to MRW by MEA. The second version is found on MEA's website: <http://www.marinenergyauthority.org/key.cfm>. The third version of the Agreement was a confidential draft developed by SENA and provided to MEA on October 28, 2009. A fourth version was a confidential draft provided to MRW on November 2, 2009. A fifth, the draft final Agreement, was provided via email and is dated November 5, 2009.

<sup>5</sup> As discussed below, MEA will sign other Confirmations with the supplier when MEA makes additional purchases.

<sup>6</sup> MRW cannot provide a legal opinion of the Agreements. Instead, MRW's review was based on our professional judgment and experience.

<sup>7</sup> [http://www.marinenergyauthority.org/PDF/MEA\\_Presentation.pdf](http://www.marinenergyauthority.org/PDF/MEA_Presentation.pdf).

After completing our initial review of version 1 of the Agreements, MRW held several extensive conversations with representatives of MEA to clarify questions MRW had regarding the Agreements and to understand MEA's perspective regarding specific provisions of the Agreements. Conversations were also held following MRW's review of the third and fifth version of the Agreements.

MRW also requested that MEA perform several *pro forma* financial analyses using MEA's proprietary financial model so that MRW could understand the effect that different assumptions would have on the financial performance of MEA. MRW reviewed the results of these sensitivity analyses.

During the engagement, MRW found MEA staff to be responsive to our requests for information and analysis. MRW also found MEA staff to be willing to address with SENA issues identified by MRW in the draft Agreements. MRW appreciates the difficulty MEA staff faces in trying to negotiate favorable terms and conditions with SENA and to finalize the Agreements while responding to questions and concerns raised by MRW.<sup>8</sup>

### ***Risks and Issues with the Agreements***

MRW's initial review of the Agreements (version 1) identified a number of issues and concerns. Some of these concerns were eliminated by MEA explaining and clarifying the language of the Agreements. Others were explicitly addressed in subsequent drafts of the Agreements. We discuss below the remaining issues with the Agreements that were not clarified by MEA or addressed in subsequent drafts.

1. **Basis Risk from Point of Supply to Point of Delivery.** Under the Agreements, SENA prices its product at the Supply Point ("NP15 EZ GEN HUB"), which is a supply point in the California power market. However, MEA receives the power at the Delivery Point ("PG&E LOAD AGGREGATION POINT"). This means that MEA is responsible for all costs to deliver power from the Supply Point to the Delivery Point. MEA indicates that this risk is mitigated because MEA will receive a *pro rata* amount of Congestion Revenue Rights (CRRs) from PG&E. However, these CRRs are not all applicable to deliveries from MEA's Supply Point to its Delivery Point. MEA also states that it will purchase other CRRs to mitigate the risk of congestion between the Supply Point and Delivery Point. MEA estimates that the congestion costs between the Supply and Delivery points to be \$1-\$2 per MWh. These costs represent only a few percent of MEA's overall costs. However given that the current wholesale market framework in California has existed only since April 1, 2009, there is relatively little data on the volatility of either CRRs or the price differentials between the proposed Supply and Delivery Points in the Agreement.

---

<sup>8</sup> In addition, MRW has had prior professional experience with MEA's technical advisors, Navigant Consulting, and its counsel addressing the power agreements, Milbank, Tweed, Hadley & McCloy, LLP, and has found their work to be excellent.

**Recommendation:** While the CRRs that will be allocated to MEA upon CCA formation may be valuable, MRW believes that MEA should focus on providing clean electricity at low, stable prices to its customers and not be distracted by attempting to extract the maximum value out of the CRRs allocated to it by PG&E. Also, unless otherwise specified, CRRs are only valid for one year. Thus, under the current approach, MEA will have to purchase additional CRRs in the future, regardless of the CRRs it receives from PG&E. Given the relatively limited amount of information regarding the volatility of CRRs prices between the Supply and Delivery points, there is some risk that future CRR costs may exceed MEA's estimated costs. Therefore, we recommend that MEA explore the cost of having its supplier price its power at the Delivery Point, rather than having MEA bear the risk of delivery charges between the Supply Point and the Delivery Point. One possible way to do this would be to request pricing from potential suppliers at both the Supply Point and the Delivery Point. With that information, MEA can make an informed choice as to whether the potential revenues gained by retaining and selling unused CRRs plus the future risk of price volatility of CRRs is superior to transferring the allocated CRRs to SENA and having SENA bear the congestion cost risk between the Supply and Delivery Points.

2. **Uncertainty in customer loads.** Under its current schedule, MEA plans to sign the Agreements in early February 2010 for service of its Phase I loads, which MEA characterizes as about 20% of its ultimate potential load. At that time, MEA must either specify the quantity of renewable and non-renewable energy and other services that it will receive from the supplier or establish some other mechanism whereby its Phase I loads are met. This is a concern because if MEA over-procures, then it will have to resell its excess supplies into the market (at unknown prices) and could face significant costs (or gains) from those sales. On the other hand, if MEA under-procures, then it needs to purchase power in the future at unknown rates, which could be higher (or lower) than the fixed prices to be specified in the Agreement in February 2010.

**Recommendation:** Phase I will consist of the government load of the member agencies plus some unspecified non-governmental load. Given that only around 10% of the Phase I load will be that of the MEA member agencies (which MEA assumes will not opt-out), the uncertainty in Phase I customer load is only slightly less than for Phase II. Nonetheless, MRW recommends that MEA consider ways to address the uncertainty associated with the level of opt outs. MRW suggests three approaches:

- MEA could require its supplier to provide MEA's entire Phase I load, regardless of the level of opt-outs, at a fixed price. Under this approach, the supplier bears all volume risk rather than MEA having to pre-specify load and facing the risk of under- or over-procuring, as is currently the case in the Agreements;
- MEA could request fixed pricing for two tranches of energy. The load for the first tranche would be much less than the expected Phase I load and would be specified prior to contract signing. The load for the second tranche would be specified after the end of the opt-out period (when MEA would have a much better idea of its total Phase I load requirements). The Supplier would, in essence, be selling MEA an option to adjust the

- quantity of load in the second tranche; and
- MEA could request pricing quotes for different “deadbands” around its expected Phase I load. That is, the supplier would provide all needed power, as long as the actual load fell within the expected load plus or minus some percentage. In this case, only if the usage fell outside of that plus-or-minus band would MEA be responsible for buying or selling the excess power.

With these three pricing options, MEA decision-makers can then weigh the additional cost of having the supplier bear all the risk of load uncertainty versus the cost of MEA bearing a certain amount of the risk of the actual loads deviating significantly from the expected load.

In addition to the issues identified above, there are several outstanding issues in the Confirmation that are less important. These are addressed in Attachment 1.

### ***Risks and Issues Facing MEA That Are Independent of the Agreements***

In addition to reviewing the draft Agreements, MRW was also asked to assess, at a high level, any additional risks the MEA CCA might face. Below are MRW's findings.

1. **Uncertainty in PG&E Exit Fees.** Depending upon its ratemaking policies, MEA or MEA's customers may face financial risks due to the level of exit fees they will pay to PG&E. Under base case assumptions, the overall level of exit fees during the five-year term of the Agreements is modest, averaging 0.3¢/kWh.<sup>9</sup> However, if wholesale power prices are significantly (33%) lower than currently forecast (driven down by natural gas prices lower than assumed under MEA's base case), exit fees can increase by nearly an order of magnitude, up to 2.5¢/kWh. At the same time, lower gas/power prices would also reduce PG&E's rates relative to base case assumptions. Since MEA proposes to purchase power from SENA at fixed prices,<sup>10</sup> its costs would not decrease with lower gas/power prices.<sup>11</sup> Thus, under a substantially lower gas/power price scenario, MEA customers could pay between 12%-15% more than the forecasted level of PG&E rates.<sup>12,13</sup> Alternatively, if MEA chose to bear the CRS price risk, it would have to have credit, reserves or hedging mechanisms in place to keep its light green customers' overall electricity rates at or below PG&E's.<sup>14</sup>

In assessing this risk, the key questions are: “How likely is it that gas and power prices will be below that forecasted by MEA, and for how long would such low prices would persist?”

<sup>9</sup> All cost and rate values presented here are based on pro forma analyses provided to MRW by MEA.

<sup>10</sup> The Phase I agreements reviewed here present a fixed-price product. We assume, consistent with MEA's pro forma analysis, that Phase II would likewise be at a fixed price.

<sup>11</sup> See discussion below regarding MEA costs that are not necessarily fixed.

<sup>12</sup> Percentage based on all-in rate (i.e., includes all applicable PG&E transmission and distribution charges in addition to MEA power charges and PG&E exit fees).

<sup>13</sup> Assumes that MEA does not mitigate CRS risk.

<sup>14</sup> Value based on full, post-Phase II loads.

While a quantitative assessment of power and gas price volatility is beyond the scope of this assignment, power and gas prices assumed in the low price sensitivity case have occurred in the past ten years, and given the historical volatility of the natural gas market, have a finite chance of occurring again in the next five years. Nonetheless, extraordinarily low prices are not likely to persist for multiple years in a row, meaning that a prolonged period—more than a year—of adverse market conditions is remote.

**Recommendation:** MEA, as a market participant, is better suited to mitigate the risk of low gas prices than are individual customers. MRW recommends that MEA explore establishing some form of hedge against high exit fees (i.e., a hedge against very low gas prices) so as to shield MEA customers from this market risk. Such action would also reduce the overall volatility of MEA customers' power prices, which is one of the stated benefits of participation in MEA.

2. **Need to Establish an MEA Departing Load Fee.** MEA's Business Plan assumes that MEA will construct renewable supply sources starting in 2011, with an expected online date of 2014. To undertake this construction program, MEA would issue debt (as is typically the case for other utilities). This effort would allow MEA to increase its level of renewable resources beyond the level assumed in the Agreements and would form the basis for MEA's renewable portfolio after the end of the Agreements. The Agreements allow MEA to undertake such a development program. MEA has indicated to MRW that it would only undertake such a construction program if it appeared to be cost-effective at the time the decision was being made. MRW believes that if MEA adds its own resources then that action has certain consequences: (1) SENA would likely have to liquidate some portion of the resources that it procured for MEA under the Agreements, with MEA customers being responsible for any losses (or benefiting from any gains) resulting from those sales and (2) MEA would have fixed debt service obligations to pay for its renewable resources. If MEA customers choose to leave MEA's service after the end of the opt-out period, then either the departing customers must pay a "Departing Load Fee" to MEA or the electric rates for remaining customers would increase.

Note that customers choosing not to receive power from MEA during the opt-out period (two months prior to MEA providing power to two months after MEA starts providing power) **would not** be subject to any MEA Departing Load Fee. The is Departing Load Fee would be only applicable to customers who did not opt out during the four month opt-out window and then subsequently, at some later date, chose to take electric service from someone other than MEA.<sup>15</sup>

**Recommendation:** MEA has indicated to MRW that it expects to establish a Departing Load Fee using an approach consistent with the method used by PG&E. MRW believes that MEA needs to adopt a clear policy stating (1) that it will charge a Departing Load Fee to customers that depart MEA service and (2) how MEA will determine that fee. This is critical in the case

---

<sup>15</sup> Also note that if an MEA customer returns to PG&E service after the end of the opt-out period, that customer would not continue to pay Exit Fees to PG&E; they would only have to pay Departing Load Fees to MEA.

where MEA owns its own resources.<sup>16</sup> MRW believes that MEA should include this policy in the Implementation Plan that it files with the California Public Utilities Commission (CPUC).

- CCA bonding obligation:** CCAs must post a bond that would be sufficient to cover the costs to PG&E of having to unexpectedly serve the former CCA customers in the event of CCA failure. A settlement agreement at the CPUC set forth a complex formula for calculating the required bond level. This formula is recalculated biannually so as to account for prevailing wholesale power market conditions. If the wholesale power market is unusually high (above average retail rates), then the bond amount increases to cover the cost PG&E would incur to serve the returned customers. For MEA, this could be on the order of a few million dollars, which is ten times more than is shown in the MEA budget provided to MRW. However, the high power prices that would cause a high bond requirement would also depress PG&E's exit fee and would also raise PG&E rates, which would in turn likely provide MEA sufficient headroom to handle the higher bonding requirement and keep its customers' overall costs competitive with what they would have paid had they remained with PG&E.

**Recommendation:** Although MEA might face significantly higher bond requirements than shown in the budget provided to MRW, it would occur in circumstances when MEA should have the ability to cover it without undue financial stress.

### Additional Policy Considerations

- Meaning of "Projection" to meet or beat PG&E rate.** MEA has stated that one of the benefits for customers is "Costs at or below PG&E."<sup>17</sup> In discussions with MRW, MEA has clarified that this condition is based on comparing the *projected* overall costs of MEA assuming power supply by a third party over the term of the Agreements against MEA's costs assuming power supply was provided by PG&E at MEA's forecast of PG&E's tariffed generation rate. In other words, the following inequality must occur for MEA to sign the Agreements:

$$\text{MEA Power Supply Costs} + \text{Customer Exit Fees} + \text{MEA Overhead} \leq \text{PG\&E Gen Rate}^{18}$$

Of course, all of the above factors are somewhat uncertain, although MEA Power Supply Costs are less uncertain than the other factors.

**Recommendation:** MRW is concerned that customers might misinterpret MEA's statements regarding the rates for the Light Green product. To avoid that, MRW recommends that MEA make it very clear that such a commitment is based on reasonable commercial efforts. This

<sup>16</sup> MRW believes that an exit fee policy is needed even if MEA does not develop its own renewable supply options.

<sup>17</sup> MEA presentation, October 2009, p. 12.

<sup>18</sup> MEA Power Supply Costs, Customer Exit Fees, MEA Overheads, and PG&E Gen Rate are all forecasted values in early February 2010.

would provide MEA with the flexibility it may need to meet its other policy goals (e.g., greenhouse gas reductions, greater levels of renewables, local control) even if, in one particular year or another, market pricing turns against MEA, resulting in costs to MEA customers being higher than if they were PG&E customers.

2. **Clarify MEA's rate design policies.** MEA informs MRW that it plans to keep its rate design consistent with PG&E's rate design in MEA's first year of operation. This will simplify comparisons between MEA's rates and PG&E's generation rate. However, MEA has not yet clarified how it plans to design rates after the first year of operation.

**Recommendation:** MRW believes that clarification regarding rate design policies is needed. This is not to say that it is necessary to restrict MEA's rate design at the present time. However, a policy statement regarding how MEA plans to design rates would provide customers with a better understanding of how their rates might look under MEA and allow for more informed decision-making.

## Points of Information

1. **MEA plans to procure power in two separate transactions: one for power to serve the Phase I load (beginning on or about June 1 2010) and one for power to serve the Phase II load (at a later date no sooner than January 1, 2011).** This means that either prices will differ for Phase I and Phase II customers or Phase I customers will have their rates change at the onset of Phase II. The Agreements being considered in this analysis only pertain to the Phase I load. According to MEA, it intends to negotiate a separate Confirmation agreement<sup>19</sup> with its Phase I supplier when MEA is ready to start Phase II. MEA envisions this negotiation to address primarily price but also "may consider slight revisions to the Confirm for Phase II to the extent our better information (about opt outs, operations streamlining, other lessons learned) requires revision."<sup>20</sup> The pro forma financial analysis provided to MRW shows the Phase II load being served on January 1, 2012, however MEA has said that depending upon market conditions, it intends to remain flexible as to the start date of Phase II, moving it forward or backward by a year (or more) so as to take best advantage of pricing in the power markets. This phase-in approach has both positive and negative aspects.<sup>21</sup> Since power prices are volatile, it is likely that the prices MEA receives from its supplier for Phase II will differ from its pricing for Phase I. If power prices do differ, MEA will need to decide whether it establishes similar rates for all customers or sets rates for its Phase II customers

---

<sup>19</sup> The Confirmation contains prices, quantities, and other important aspects of the agreement between MEA and its supplier.

<sup>20</sup> Email communication, Elizabeth Rasmussen to Mark Fulmer November 5, 2009.

<sup>21</sup> The positive aspects include simplifying the initial startup of MEA and negotiating a new agreement based on better understanding of opt-out risk. Negative aspects include possibly re-opening issues that were settled in Phase I, seeing wholesale power prices prior to Phase II that do not allow MEA to proceed (because its rates would not meet or beat PG&E's rates at that time) and having to negotiate with a supplier that has great deal of negotiating leverage.

different than for its Phase I customers.<sup>22</sup> **The phase-in approach has both benefits and risks but, on balance, it appears to be a reasonable strategy. MRW recommends that MEA limit the issues in the Confirmation that it revisits when establishing Phase II pricing and consider accepting pricing proposals from alternate suppliers.**

2. **The Agreements depend, in part, on the Scheduling Coordinator Agreement, which is not yet finalized.** The Agreements refer in several places to the Scheduling Coordinator Agreement (SC Agreement). MEA and SENA are just beginning to negotiate the terms of the SC Agreement. MEA believes that it will finalize the SC Agreement in November 2009 and also believes that the SC Agreement will not significantly affect the relative risk allocation in the Agreements. **Until MEA finalizes the SC Agreement, the degree to which costs and risks are ultimately allocated between MEA and SENA is unresolved.**
3. **Although relatively small, some MEA costs are uncertain.** MEA indicates that "Five year energy pricing will be known prior to contract signing."<sup>23</sup> SENA's pricing will include Resource Adequacy, non-renewable energy, RPS-compliant renewable energy, and other renewable energy. SENA's pricing will also cover power scheduling and forecasting services provided by SENA. However, SENA's pricing explicitly does not include ancillary services, net supply costs outside of the pre-determined Balanced Monthly Usage, distribution losses, and any net costs incurred by SENA to unwind positions if MEA decides to bring on its own resources. **In other words, since SENA's price is not all-inclusive, customers should be advised that there are certain costs that are not "known prior to contract signing." However, MRW expects that these "uncertain" costs will be relatively small. Also, MEA has included estimates for costs not included in SENA's price in its financial models.**

---

<sup>22</sup> This is exacerbated by the fact that the exit fees charged to CCA customers by PG&E vary depending upon when the customer begins CCA service. If MEA decides to have similar rates for both Phase I and Phase II customers, then the rates for Phase I customers might increase or decrease relative to the rates those customers saw during Phase I.

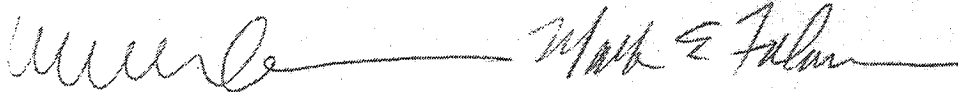
<sup>23</sup> MEA Presentation, October 2009, p. 36.

### **Conclusions**

Based on our review, MRW does not find any fatal flaws with the Agreements. However, as noted above, there are certain issues that would place financial risk on MEA or its customers that should be addressed by MEA.<sup>24</sup>

Please give us a call at (510) 834-1999 if you have questions about this material.

Best regards,

Handwritten signatures of William A. Monsen and Mark E. Fulmer, with a horizontal line drawn through them.

William A. Monsen and Mark E. Fulmer  
Principals

attachment

---

<sup>24</sup> By financial risk we mean the risk that customers would pay more for power than they would have otherwise had they remained with PG&E. We note that there is, of course, upside risk—that MEA consistently provides power at a cost less than PG&E.

## ATTACHMENT 1

### ADDITIONAL ISSUES IN CONFIRMATION

1. **Open issues in the Confirmation.** In the final draft of the Confirmation dated November 5, 2009, there are three issues that remain open (i.e., they are denoted with [square brackets]). These are (1) definition of CAISO Charges, (2) Definition of "Weighted Average Price", and the final sentence in Section 6 (regarding the party that is responsible for paying transportation charges for unit-specific purchases). The open issues all represent potential costs that will be borne by MEA customers rather than the supplier. The magnitudes of the potential costs are unknown but are likely not so great that they would endanger MEA's viability.

**Recommendation:** MEA should finalize these three open issues in the following manner:

- Definition of CAISO Charges: The open issue is whether "Imbalance charges" are included in the definition of CAISO Charges. MRW believes that the supplier should bear these imbalance charges (as is indicated in Appendix 1, section 1(c).) MEA has indicated that the final draft of the Confirmation will not include Imbalance Charges within the definition of CAISO Charges (i.e., the supplier will bear them, not MEA).
  - Definition of Weighted Average Price: The Weighted Average Price is used to determine the price that MEA would pay/receive if it uses more/less energy than allowed under the Agreement. MRW recommends that MEA clearly define how this important factor is calculated. MEA agrees, and has held this issue open awaiting the MEA load profile data necessary to better understand the weighted average price.
  - Responsibility for delivery of energy from unit-specific resources: Section 2.4 states "[For unit-specific Energy delivered hereunder pursuant to Section 2.4, **Buyer shall be liable for all costs associated with delivering Energy from the generation point (the load aggregation point) to the Delivery Point** and Seller shall assist Buyer (at Buyer's cost) with obtaining all Congestion Revenue Rights ("CRRs") required relating to the congestion from such generation point to the Delivery Point.]" (emphasis added). MEA indicates that it intends to bear the costs associated with transmitting power from any unit-specific generator approved by MEA to the Delivery Point. Per the discussion in Issue 1, above, MRW believes MEA should request pricing whereby (1) the supplier bear the costs of delivery from the unit-specific resource(s) to the Delivery Point, and (2) the supplier bears the cost of delivery from the unit-specific resource(s) to NP15 EZ Gen Hub, just as it does for all system power being supplied under the Agreements.
2. **Requirement to Supply "Baseline hourly volumes" (Section 5.2):** The Confirmation now includes a new exhibit: Baseline hourly volumes. To date, all volumes have been either monthly or annual volumes. MRW does not understand the need for providing these data, since MRW understands that all purchase obligations are on a monthly or annual basis. MEA indicates that this will be deleted.

**Recommendation:** MRW concurs with MEA that since no other sections of the Agreements reference baseline hourly volumes, this should be deleted.

3. **Commercially Reasonable Efforts (Sections 7.1 and 7.2):** The Confirmation now does not include a provision that the supplier will use “Commercially Reasonable Efforts” to minimize/maximize the costs/revenue associated with under-/over-use of non-renewable energy. The Confirmation states that the supplier will use Commercially Reasonable Efforts if it has to buy/sell additional renewable energy and other services (see Sections 7.3, 7.4, 8.1, and 8.2).

**Recommendation:** MEA should insist that the supplier use Commercially Reasonable Efforts in the case where it must buy or sell non-renewable energy to meet MEA’s loads. MEA concurs and intends to include such language in the final version.