

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



May 30, 2017

Advice Letter 4918-G

Ronald van der Leeden
Director, Regulatory Affairs
Southern California Gas
555 W. Fifth Street, GT14D6
Los Angeles, CA 90013-1011

**SUBJECT: Establishment of Distributed Energy Resources Services (DERS) in
Compliance with D.15-10-049**

Dear Mr. van der Leeden:

Advice Letter 4918-G is effective as of May 25, 2017, per Resolution G-3523 Ordering Paragraphs.

Sincerely,

A handwritten signature in cursive script that reads "Edward Randolph".

Edward Randolph
Director, Energy Division



Ronald van der Leeden
Director
Regulatory Affairs

555 W. Fifth Street, GT14D6
Los Angeles, CA 90013-1011
Tel: 213.244.2009
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RvanderLeeden@semprautilities.com

January 19, 2016

Advice No. 4918
(U 904 G)

Public Utilities Commission of the State of California

Subject: Establishment of Distributed Energy Resources Services (DERS) in Compliance with D.15-10-049

Southern California Gas Company (SoCalGas) hereby submits for filing with the California Public Utilities Commission (Commission or CPUC) revisions to its tariff, applicable throughout its service territory, as shown in Attachment A.

Purpose

The purpose of this Advice Letter filing is to comply with Decision (D.) 15-10-049, Regarding the Decision Granting SoCalGas' Application to Establish a Distributed Energy Resources Services Tariff with Modifications, Ordering Paragraph (OP) 9 which states the following:

The Southern California Gas Company Tier 3 Advice Letter shall include the following as modified herein:

- a. Revised Distributed Energy Resources Services Pro Forma Agreement;
- b. Revised Feasibility Analysis Agreement;
- c. Revised Tariff Sheets;
- d. Revised Competitively Neutral Materials;
- e. Preliminary Statements to create a tracking account and balancing account to track costs associated with the Tariff;
- f. Proof of creation of tracking numbers; and
- g. Standard Agreement for third-party contractors.

Background

On August 8, 2014, SoCalGas filed Application (A.) 14-08-007 for Commission approval of its proposed fully elective, optional, nondiscriminatory tariff service which provides its customers an opportunity to employ Distributed Energy Resources Services. D.15-10-049, issued on October 26, 2015 and effective October 22, 2015, granted SoCalGas' DERS Tariff application with modifications. The decision finds that "with the modifications to the terms and conditions, including the cost-based pricing methodology, enhanced mitigation measures, and reporting and accounting requirements, the DERS Tariff is in the public interest because it meets untapped demand in underserved markets for smaller customers who would benefit from CHP, offers additional choices to customers, and supports innovative business partnerships."¹ SoCalGas is authorized to offer the DERS Tariff for a 10-year period commencing on the date D.15-10-049 was issued. Additionally, the Commission ruled that shareholders and customers are ultimately responsible for any costs associated with the program, and ratepayers should not and will not subsidize any direct or indirect program costs.² The decision concludes that it is reasonable and in the public's interest to authorize the DERS Tariff subject to the reporting, cost tracking, and marketing restrictions adopted in the decision and authorizes SoCalGas to file a Tier 3 Advice Letter for a DERS Tariff within six months of the effective date of the decision that offers combined heat and power systems to all classes of customers.

Proposed Revisions

Based on the Commission's key goal in the decision to ensure greater fairness and in compliance with OP 9, SoCalGas submits revisions to Schedule No. GO-DERS, DERS Pro Forma Agreement (Agreement), Feasibility Analysis Agreement, included in Attachment A, and Competitively Neutral Materials Script, Attachment B, which allows for mutual negotiations. Additionally, for ease of review, redlined versions are also included as Attachments D through G.

Tariff Revisions

- Schedule No. GO-DERS includes additional language in the rates and applicability sections of the tariff in compliance with OP 13 and OP 18, respectively. A redline version of Schedule No. GO-DERS is included as Attachment D.
- The Distributed Energy Resources Services Balancing Account (DERSBA) is an interest bearing balancing account recorded on SoCalGas' financial statements. Pursuant to D.15-10-049, the purpose of this account is to record the ratepayer's

¹ D.15-10-049 at 2.

² D.15-10-049 at 24.

allocation of the general rate case embedded costs used in providing distributed energy resources services under Schedule No. GO-DERS.

- The Distributed Energy Resources Services Tracking Account (DERSTA) is a tracking account that is not reflected on SoCalGas' financial statements. The purpose of the DERSTA is to track the difference between actual operations and maintenance (O&M) and capital revenue requirements associated with providing distributed energy resources services under Schedule No. GO-DERS and the revenues collected from customers for this service.
- The DERS Agreement (Form 7400) modifies any prescriptive terms to balance the interests of SoCalGas with that of the customer and permits the maximum amount of flexibility for mutual negotiations to ensure fairness in contract negotiations for both the customer and Utility. Under the DERS Agreement, SoCalGas will design, install, own, operate, and/or maintain the distributed energy resources facility on or adjacent to the tariff service customer's premises and charge the tariff service customer the negotiated price of providing the service under the service agreement. A redline version of the DERS Agreement is included as Attachment E.
- The Feasibility Analysis Agreement (Form 7401) will conduct a feasibility analysis with the intent of determining the technical and economic feasibility of the design, installation, operation and maintenance of the facility as provided in the Feasibility Analysis Agreement. A redline version of the Feasibility Analysis Agreement is included as Attachment F.

Competitively Neutral Materials Script

- In compliance with OP 16 and consistent with Appendix A of D.15-10-049, SoCalGas submits as Attachment B, a revised Competitively Neutral Materials Script that will be used in answering inquiries concerning the DERS Tariff. Employees who will respond to these inquiries will be trained on the use of this script and will be required to communicate the competitively neutral information to customers inquiring about the DERS Tariff. The redline version of the revised Competitively Neutral Materials Script is included as Attachment G.

Other Ordered Requirements

- In compliance with OP 14, SoCalGas submits Attachment C which provides proof that SoCalGas created an internal order number within five days to the mailing of the proposed decision issued on July 14, 2015.³

³ The DERS tracking internal order was created on July 20, 2015. Per Rule 1.15 of the Rules of Practice and Procedure, if the last day falls on Sunday, the time limit is extended to include the first day thereafter.

- In compliance with OP 9 to include SoCalGas' standard agreement for third-party contractors, SoCalGas has elected to use its most current standard terms and conditions agreement for any third-party negotiations at the time of the negotiation. A standard terms and conditions agreement would provide for fair competition and allow the flexibility for mutually negotiable terms as they are modified to meet a third party's scope of services. Additionally, SoCalGas' standard service agreements are dynamic and continuously updated to reflect the latest local, state and federal regulations, requirements and practices including environmental, equal employment opportunities, taxes and insurance provisions.

Protests

Anyone may protest this Advice Letter to the Commission. The protest must state the grounds upon which it is based, including such items as financial and service impact, and should be submitted expeditiously. The protest must be made in writing and received within 20 days of the date of this Advice Letter which is February 8, 2016. There is no restriction on who may file a protest. The address for mailing or delivering a protest to the Commission is:

CPUC Energy Division
Attn: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102

Copies of the protest should be sent via e-mail to the Energy Division Tariff Unit (EDTariffUnit@cpuc.ca.gov). A copy of the protest should also be sent via both e-mail and facsimile to the addresses shown below on the same date it is mailed or delivered to the Commission.

Attn: Sid Newsom
Tariff Manager - GT14D6
555 West Fifth Street
Los Angeles, CA 90013-1011
Facsimile No: (213) 244-4957
E-mail: snewsom@SempraUtilities.com

Attn: Yvonne Mejia Peña
Regulatory Case Manager - GT14D6
555 West Fifth Street
Los Angeles, CA 90013-1011
Facsimile No: (213) 244-3214
E-Mail: ymejia@semprautilities.com

Effective Date

D.15-10-049 authorizes SoCalGas to file this Advice Letter as Tier 3 and, as such, requires a resolution to be issued by the Commission. SoCalGas respectfully requests that it be included as an item in the Commission Meeting Agenda on February 25, 2016.

Notice

A copy of this Advice Letter is being sent to SoCalGas' GO 96-B service list and the Commission's service list in A.14-08-007. Address change requests to the GO 96-B should be directed by electronic mail to tariffs@socalgas.com or call 213-244-3387. For changes to all other service lists, please contact the Commission's Process Office at 415-703-2021 or by electronic mail at Process_Office@cpuc.ca.gov.

Ronald van der Leeden
Director – Regulatory Affairs

Attachments

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **SOUTHERN CALIFORNIA GAS COMPANY (U 904G)**

Utility type:

ELC

GAS

PLC

HEAT

WATER

Contact Person: Sid Newsom

Phone #: (213) 244-2846

E-mail: SNewsom@semprautilities.com

EXPLANATION OF UTILITY TYPE

ELC = Electric

GAS = Gas

PLC = Pipeline

HEAT = Heat

WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 4918

Subject of AL: Establishment of Distributed Energy Resources Services (DERS) in Compliance with D.15-10-049

Keywords (choose from CPUC listing): Preliminary Statement, Agreements, Forms, Balancing Account

AL filing type: Monthly Quarterly Annual One-Time Other

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:

D.15-10-049

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL No

Summarize differences between the AL and the prior withdrawn or rejected AL¹: N/A

Does AL request confidential treatment? If so, provide explanation: No

Resolution Required? Yes No

Tier Designation: 1 2 3

Requested effective date: 2/25/16

No. of tariff sheets: 22

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: PS V, PS VII, GO-DERS, Sample Forms - Contracts, and TOC's

Service affected and changes proposed¹: N/A

Pending advice letters that revise the same tariff sheets: None

Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division

Attention: Tariff Unit

505 Van Ness Ave.,

San Francisco, CA 94102

EDTariffUnit@cpuc.ca.gov

Southern California Gas Company

Attention: Sid Newsom

555 West 5th Street, GT14D6

Los Angeles, CA 90013-1011

SNewsom@semprautilities.com

Tariffs@socalgas.com

¹ Discuss in AL if more space is needed.

ATTACHMENT A
Advice No. 4918

Cal. P.U.C. Sheet No.	Title of Sheet	Cancelling Cal. P.U.C. Sheet No.
Revised 52275-G	PRELIMINARY STATEMENT - PART V - BALANCING ACCOUNTS, DESCRIPTION AND LISTING OF BALANCING ACCOUNTS, Sheet 1	Revised 51893-G
Original 52276-G	PRELIMINARY STATEMENT - PART V - BALANCING ACCOUNTS, DISTRIBUTED ENERGY RESOURCES SERVICES BALANCING ACCOUNT (DERSBA), Sheet 1	
Revised 52277-G	PRELIMINARY STATEMENT - PART VII - TRACKING ACCOUNTS, DESCRIPTION AND LISTING OF TRACKING ACCOUNTS, Sheet 1	Revised 49865-G
Original 52278-G	PRELIMINARY STATEMENT - PART VII - TRACKING ACCOUNTS, DISTRIBUTED ENERGY RESOURCES SERVICES , TRACKING ACCOUNT (DERSTA), Sheet 1	
Original 52279-G	Schedule No. GO-DERS, DISTRIBUTED ENERGY RESOURCES SERVICES, Sheet 1	
Original 52280-G	Schedule No. GO-DERS, DISTRIBUTED ENERGY RESOURCES SERVICES, Sheet 2	
Original 52281-G	Schedule No. GO-DERS, DISTRIBUTED ENERGY RESOURCES SERVICES, Sheet 3	
Original 52282-G	Schedule No. GO-DERS, DISTRIBUTED ENERGY RESOURCES SERVICES, Sheet 4	
Original 52283-G	Schedule No. GO-DERS, DISTRIBUTED ENERGY RESOURCES SERVICES, Sheet 5	
Original 52284-G	Schedule No. GO-DERS, DISTRIBUTED ENERGY RESOURCES SERVICES, Sheet 6	
Original 52285-G	Schedule No. GO-DERS, DISTRIBUTED ENERGY RESOURCES SERVICES, Sheet 7	
Original 52286-G	Schedule No. GO-DERS, DISTRIBUTED ENERGY RESOURCES SERVICES, Sheet 8	
Original 52287-G	SAMPLE FORMS - CONTRACTS, Distributed Energy Resources Services (DERS) Agreement (Form 7400)	
Original 52288-G	SAMPLE FORMS - CONTRACTS, Distributed Energy Resources Services (DERS), Feasibility Analysis Agreement (Form 7401)	
Revised 52289-G	TABLE OF CONTENTS	Revised 52252-G
Revised 52290-G	TABLE OF CONTENTS	Revised 51750-G
Revised 52291-G	TABLE OF CONTENTS	Revised 51750-G

ATTACHMENT A
Advice No. 4918

Cal. P.U.C. Sheet No.	Title of Sheet	Cancelling Cal. P.U.C. Sheet No.
Original 52292-G	TABLE OF CONTENTS	Revised 50598-G Revised 50598-G
Revised 52293-G	TABLE OF CONTENTS	Revised 52272-G
Revised 52294-G	TABLE OF CONTENTS	Revised 51896-G
Revised 52295-G	TABLE OF CONTENTS	Revised 52218-G
Original 52296-G	TABLE OF CONTENTS	Revised 52218-G

PRELIMINARY STATEMENT - PART V - BALANCING ACCOUNTS
DESCRIPTION AND LISTING OF BALANCING ACCOUNTS

Sheet 1

A. GENERAL

Balancing accounts are those regulatory accounts where authorized expenses are compared with revenues from rates designed to recover those expenses. The resulting under or overcollection, plus interest calculated in the manner described in Preliminary Statement, Part I, is recorded on the Utility's financial statements as an asset or liability, which is owed from or due to the ratepayers. Balances in balancing accounts are to be amortized in rates.

B. LISTING OF BALANCING ACCOUNTS

- Purchased Gas Account (PGA)
- Core Fixed Cost Account (CFCA)
- Noncore Fixed Cost Account (NFCA)
- Enhanced Oil Recovery Account (EORA)
- Noncore Storage Balancing Account (NSBA)
- California Alternate Rates for Energy Account (CAREA)
- Hazardous Substance Cost Recovery Account (HSCRA)
- Gas Cost Rewards and Penalties Account (GCRPA)
- Pension Balancing Account (PBA)
- Post-Retirement Benefits Other Than Pensions Balancing Account (PBOPBA)
- Research Development and Demonstration Gas Surcharge Account (RDDGSA)
- Demand Side Management Balancing Account (DSMBA)
- Direct Assistance Program Balancing Account (DAPBA)
- Integrated Transmission Balancing Account (ITBA)
- Compressor Station Fuel and Power Balancing Account (CFPBA)
- Distribution Integrity Management Program Balancing Account (DIMPBA)
- Rewards and Penalties Balancing Account (RPBA)
- On-Bill Financing Balancing Account (OBFBA)
- Company Use Fuel for Load Balancing Account (CUFLBA)
- Backbone Transmission Balancing Account (BTBA)
- Advanced Metering Infrastructure Balancing Account (AMIBA)
- New Environmental Regulation Balancing Account (NERBA)
- Transmission Integrity Management Program Balancing Account (TIMPBA)
- Post-2011 Distribution Integrity Management Program Balancing Account (POST-2011 DIMPBA)
- Compression Services Balancing Account (CSBA)
- Biogas Conditioning/Upgrading Services Balancing Account (BCSBA)
- Master Meter Balancing Account (MMBA)
- Safety Enhancement Capital Cost Balancing Account (SECCBA)
- Safety Enhancement Expense Balancing Account (SEEBBA)
- Greenhouse Gas Balancing Account (GHGBA)
- Advanced Meter Opt-Out Program Balancing Account (AMOPBA)
- Low-Carbon Fuel Standard Balancing Account (LCFSBA)
- Biomethane Cost Incentive Program Balancing Account (BCIPBA)
- Distributed Energy Resources Services Balancing Account (DERSBA)

N

(TO BE INSERTED BY UTILITY)
 ADVICE LETTER NO. 4918
 DECISION NO. 15-10-049

ISSUED BY
Dan Skopec
 Vice President
 Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)
 DATE FILED Jan 19, 2016
 EFFECTIVE May 25, 2017
 RESOLUTION NO. _____

PRELIMINARY STATEMENT - PART V - BALANCING ACCOUNTS
DISTRIBUTED ENERGY RESOURCES SERVICES BALANCING ACCOUNT (DERSBA)

Sheet 1

N
N

1. Purpose

The DERSBA is an interest bearing balancing account recorded on SoCalGas' financial statements. Pursuant to Decision (D.) 15-10-049, the purpose of this account is to record the ratepayer's allocation of the general rate case embedded costs used in providing distributed energy resources services under Schedule No. GO-DERS.

2. Applicability

The DERSBA shall apply to all gas customers.

3. Rates

The projected year-end DERSBA balance will be applied to gas transportation rates.

4. Accounting Procedures

SoCalGas shall maintain the DERSBA by recording entries at the end of each month, net of FF&U, as follows:

- a. A credit entry equal to the embedded costs (e.g., ratepayer-funded personnel or assets, including ratepayer-funded third party contractor work, if any) used in providing Distributed Energy Resources services, including costs in developing the GO-DERS Tariff and participating in DERS proceeding as recorded in an internal order established in SoCalGas' accounting system as required by D.15-10-049;
- b. A credit entry equal to the embedded costs used in decommissioning or removing a DERS facility;
- c. An entry to amortize the previous year's balance; and
- d. An entry equal to interest on the average balance in the account during the month, calculated in the manner described in Preliminary Statement, Part I, J.

5. Disposition

In each annual October regulatory account balance update filing, SoCalGas will amortize the projected year-end DERSBA balance effective January 1 of the following year. The projected year-end balance will be allocated to core and noncore customers based on the relative percentage of revenues from core and noncore DERS customers. In the event that a DERS Tariff customer is not a Southern California Gas Company core or noncore customer, the refund of the costs associated with the use of embedded resources in providing DERS will be allocated to core and noncore customers on an Equal Percent Authorized Margin basis.

N

N

(TO BE INSERTED BY UTILITY)
ADVICE LETTER NO. 4918
DECISION NO. 15-10-049

ISSUED BY
Dan Skopec
Vice President
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)
DATE FILED Jan 19, 2016
EFFECTIVE May 25, 2017
RESOLUTION NO. _____

PRELIMINARY STATEMENT - PART VII - TRACKING ACCOUNTS
DESCRIPTION AND LISTING OF TRACKING ACCOUNTS

Sheet 1

A. GENERAL

Tracking accounts reconcile the difference between Commission-authorized forecasted costs and SoCalGas' recorded costs. Balances in the tracking accounts shall be reconciled in revenue requirement in SoCalGas' next BCAP or other appropriate rate proceeding.

B. LISTING OF TRACKING ACCOUNTS

Other Hazardous Substance Tracking Account (OHSTA)
Vernon Revenue Tracking Account (VRTA)
Montebello True-Up Tracking Account (MTTA)
Native Gas Tracking Account (NGTA)
Compression Services Tracking Account (CSTA)
Biogas Conditioning/Upgrading Services Tracking Account (BCSTA)
Aliso Canyon True-Up Tracking Account (ACTTA)
Distributed Energy Resources Services Tracking Account (DERSTA)

N

(TO BE INSERTED BY UTILITY)

ADVICE LETTER NO. 4918
DECISION NO. 15-10-049

1C13

ISSUED BY

Dan Skopec
Vice President
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)

DATE FILED Jan 19, 2016
EFFECTIVE May 25, 2017
RESOLUTION NO. _____

PRELIMINARY STATEMENT - PART VII - TRACKING ACCOUNTS
DISTRIBUTED ENERGY RESOURCES SERVICES
TRACKING ACCOUNT (DERSTA)

Sheet 1

N
N
N

1. Purpose

The DERSTA is a tracking account that is not reflected on SoCalGas' financial statements. The purpose of the DERSTA is to track the difference between actual O&M and capital revenue requirements associated with providing distributed energy resources services under Schedule No. GO-DERS and the revenues collected from customers for this service. The DERSTA will be mainly used by SoCalGas to monitor SoCalGas' effectiveness in providing distributed energy resources services to customers. Since recovery of distributed energy resources services costs will be recovered directly from distributed energy resources services customers through miscellaneous revenues under Schedule No. GO-DERS, these costs and miscellaneous revenues will be excluded for cost recovery in SoCalGas' general rate case proceedings. This will ensure that ratepayers are not impacted by any under or over-collection of revenue associated with providing distributed energy resources services.

N

2. Applicability

See Purpose Section.

3. Rates

Not Applicable.

4. Accounting Procedures

SoCalGas shall maintain the DERSTA by recording entries at the end of each month as follows:

- a) A debit entry equal to the actual revenue requirements (i.e., O&M and capital-related costs such as depreciation, taxes and return) associated with providing distributed energy resources services as tracked in an internal order number in SoCalGas' accounting system for each specific DERS project where a signed Feasibility Agreement is obtained from a DERS customer;
- b) A debit entry equal to the cost of decommissioning or removing a DERS facility;
- c) A debit entry for uncollectible costs associated with distributed energy resources services; and
- d) A credit entry for distributed energy resources services revenues billed to customers for this service.

5. Disposition

See Purpose Section.

N

(TO BE INSERTED BY UTILITY)
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DECISION NO. 15-10-049

ISSUED BY
Dan Skopec
Vice President
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)
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Schedule No. GO-DERS
DISTRIBUTED ENERGY RESOURCES SERVICES

Sheet 1

APPLICABILITY

Applicable to Applicants requesting Distributed Energy Resources (DER) Services located on the Premises. DER Services under this Schedule is conditioned upon arrangements mutually satisfactory to Applicant and Utility for design, location, construction, and operation of required DER Facilities.

SoCalGas shall provide the tariff on a non-discriminatory basis, dependent only on factors such as safety, system capacity, SoCalGas resource availability, technical feasibility, and acceptability of commercial terms.

Service under this Schedule is optional, subject to the terms and conditions set forth herein.

TERRITORY

Applicable throughout Utility's service territory.

GENERAL

1. **APPLICANT REQUIREMENTS.** Applicant shall provide Utility with electric, heat, cooling, and/or any other loads, as well as any Applicant energy requirements for Utility to determine through a Feasibility Analysis the appropriate level of DER Services required.
2. **DESIGN.** Utility will be responsible for planning, designing, procuring, installing, constructing, and engineering the DER Facilities using Utility's specifications for design, materials, and construction.
3. **OWNERSHIP.** DER Facilities installed under the provisions of this Schedule shall be owned, operated, and maintained by Utility and/or its contractors or agents. Applicant shall own, operate, and maintain any and all equipment and facilities downstream of the DER Point of Service Delivery for the energy outputs provided by the DER Facility, and have the legal rights to and ownership of the energy outputs provided by the DER Facility and the full power and authority to perform all obligations under the Agreement, including those obligations related to the DER Facilities and Premises.
4. **PLACEMENT OF DER FACILITIES AND RIGHTS-OF-WAY.** Applicant shall provide an appropriate location and Protective Structures for the safe and secure placement and operation of DER Facilities as required by Utility. Applicant shall provide rights-of-way, leases and/or easements as required by Utility, for Utility to install, operate and maintain DER Facilities on Premises to serve Applicant.

(Continued)

(TO BE INSERTED BY UTILITY)
ADVICE LETTER NO. 4918
DECISION NO. 15-10-049

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Dan Skopec
Vice President
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)
DATE FILED Jan 19, 2016
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Schedule No. GO-DERS
DISTRIBUTED ENERGY RESOURCES SERVICES

Sheet 2

(Continued)

GENERAL (Continued)

5. **ACCESS TO PREMISES.** Whether or not pursuant to rights-of-way, Utility, including its employees, contractors and agents, shall have at all times the right to enter and leave Premises for any purpose connected with the furnishing of DER Services or other gas services including, but not limited to, construction, operations, maintenance, and necessary deliveries on and off-site, and the exercise of any and all rights secured to it by law, or under Utility's tariff schedules. These rights include, but are not limited to:
- a. The use of a Utility-approved locking device to prevent unauthorized access to DER Facilities and any other of Utility's facilities;
 - b. Safe and ready access for Utility personnel and/or its contractors or agents;
 - c. Unobstructed ready access for Utility's vehicles and equipment to install, remove, repair, or maintain DER Facilities and any other of Utility's facilities; and
 - d. Removal of any and all of DER Facilities or any other of Utility and/or its contractors or agents' facilities installed on or below Premises after the termination of DER Services.
6. **SERVICE CONNECTIONS.** Only personnel duly authorized by Utility are allowed to connect or disconnect DER Facilities, remove DER Facilities, or perform any work upon DER Facilities or Utility-owned existing facilities.
7. **APPLICANT'S RESPONSIBILITIES.** In accordance with Utility's design, specifications, and requirements for the installation, maintenance and operation of DER Facilities, Applicant shall have the following responsibilities:
- a. Applicant shall be solely responsible for electric and natural gas service and all electric and natural gas bills and electric and natural gas costs, including electricity and natural gas to run DER Facilities, during construction and operating periods and all other required utility services.
 - b. Applicant or Applicant's designee shall be solely responsible for owning the energy outputs of the DER Facility.
 - c. Applicant shall be solely responsible, at Applicant's own liability, risk and expense, to provide fuel to the DER Receipt Point. Applicant's facilities shall conform to industry standards and applicable laws, codes, and ordinances of all governmental authorities having jurisdiction, including any applicable environmental laws.

(Continued)

(TO BE INSERTED BY UTILITY)
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Schedule No. GO-DERS
DISTRIBUTED ENERGY RESOURCES SERVICES

Sheet 3

(Continued)

GENERAL (Continued)

7. APPLICANT'S RESPONSIBILITIES (Continued)

- d. Applicant shall make arrangements to stop deliveries of fuel and shut down the operation of any existing equipment as needed by Utility including, but not limited to, the following: to tie into existing gas piping, to tie into the electrical system to provide power to the DER Facilities, to tie into the existing grounding system, to tie into existing control/emergency systems, and as necessary during the DER Facilities startup, commissioning and throughout the term of the Agreement for scheduled and un-scheduled maintenance.
- e. Applicant (i) shall limit access and take all reasonably necessary steps to prevent DER Facilities from being damaged or destroyed, (ii) shall not interfere with Utility's ongoing operation of DER Facilities, and (iii) shall provide adequate notice to Utility through Utility's representative identified in the Agreement prior to any inspection of DER Facilities by regulatory agencies.
- f. Utility shall incur no liability whatsoever, for any damage, loss, or injury occasioned by or resulting from:
 - i. The selection, installation, operation, maintenance or condition of Applicant's facilities or equipment; or
 - ii. The negligence, omission of proper shut-off valves or other protective and safety devices, want of proper care, or wrongful act of Applicant, or any agents, employees, or licensees of Applicant, on the part of Applicant installing, maintaining, using, operating, or interfering with its own pipes, fittings, valves, regulators, appliances, fixtures, or apparatus.
- g. Applicant shall meet on an on-going basis the Creditworthiness Requirements and maintain all required amounts and categories of insurance.
- h. Applicant shall indemnify, defend and hold harmless Utility and its authorized officers, employees, and agents from any and all claims, actions, losses, damages and/or liability of every kind and nature in any way connected with or resulting from the violation or non-compliance with any local, state, or federal environmental law or regulation as a result of pre-existing conditions at the Premises, release or spill of any pre-existing hazardous materials or waste, or out of the management and disposal of any pre-existing contaminated soils or groundwater, hazardous or nonhazardous, removed from the ground as a result of the DER Services or DER Facilities ("Pre-Existing Environmental Liability"), including, but not

(Continued)

(TO BE INSERTED BY UTILITY)
ADVICE LETTER NO. 4918
DECISION NO. 15-10-049

ISSUED BY
Dan Skopec
Vice President
Regulatory Affairs

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Schedule No. GO-DERS
DISTRIBUTED ENERGY RESOURCES SERVICES

(Continued)

GENERAL (Continued)

7. APPLICANT'S RESPONSIBILITIES (Continued)

h. (Continued)

limited to, liability for the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs. As between Applicant and Utility, Applicant agrees to accept full responsibility for, and bear all costs associated with, Pre-Existing Environmental Liability. Applicant agrees that Utility may stop work, terminate DER Services, redesign the DER Facilities for a different location or take other action reasonably necessary to install the DER Facilities without incurring any Pre-Existing Environmental Liability.

i. Applicant shall be responsible for the additional costs required to modify or maintain DER Facilities or to provide DER Services due to any changes in Applicant's requirements or operating conditions or damage to DER Facilities due to Applicant's negligence or willful misconduct after DER Facilities' commissioning.

8. UTILITY RESPONSIBILITIES

a. Utility and/or its contractors or agents will be responsible for the planning, design, procurement, installation, construction, ownership, maintenance, and operation of DER Facilities and equipment from the DER Receipt Point for the fuel through the DER Point of Service Delivery for the energy outputs consistent with the terms of the Agreement.

b. Utility shall be responsible for applying for any necessary permits to construct and operate the DER Facilities, however, Applicant shall, unless otherwise agreed to by the Parties, be responsible, at its own cost and expense without any dollar contribution or reimbursement from Utility, for any modification(s) to Premises required by any permit.

c. Utility and/or its contractors or agents shall be responsible for the operation of the DER Facilities and shall perform all maintenance, including regular inspections, on DER Facilities consistent with the manufacturer's recommendations and regulatory requirements.

d. Utility and/or its contractors or agents shall be responsible to remove DER Facilities at the end of the term of the Agreement or any extensions thereof, and Applicant shall allow Utility a sufficient amount of time to complete removal of DER Facilities.

(Continued)

(TO BE INSERTED BY UTILITY)
ADVICE LETTER NO. 4918
DECISION NO. 15-10-049

ISSUED BY
Dan Skopec
Vice President
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)
DATE FILED Jan 19, 2016
EFFECTIVE May 25, 2017
RESOLUTION NO. _____

Schedule No. GO-DERS

DISTRIBUTED ENERGY RESOURCES SERVICES

(Continued)

RATES

Utility and Applicant will negotiate a rate based on Applicant's unique circumstances ("Services Fee"). The Services Fee shall be set forth in the Agreement and shall, unless otherwise specified in the Agreement, be billed in monthly installments over the term of the Agreement.

The rate structure shall be designed to recover costs including, but not limited to, depreciation, returns to capital, income taxes, property taxes, Operation and Maintenance (O&M) expense, repair expense, Administrative and General (A&G) expense, Franchise Fees, Uncollectibles, and insurance. Upon early termination of the Distributed Resources Energy Resources Services Agreement other than Utility's default under the Distributed Energy Resources Services Agreement, Utility shall recover from Applicant an amount based on Utility's unrecovered ownership and removal costs and any early-termination provisions in Utility's subcontracts.

SPECIAL CONDITIONS

1. The definitions of principal or capitalized terms used in this schedule are found either herein, in the Agreement, or in Rule No. 01, Definitions.
2. Service may be denied, suspended or discontinued for nonpayment, unsafe apparatus, or other reasons in accordance with Rule No. 09, Discontinuance of Service.
3. Any disputed bill will be treated in accordance with Rule No. 11, Disputed Bills.
4. As a condition precedent to service under this schedule, a fully executed Agreement generally in the form of the Distributed Energy Resources Agreement is required. All contracts, rates and conditions are subject to revision and modification as a result of Commission order.
5. Utility may file in the public records, including real estate records, such instruments as may be appropriate or desirable (such as UCC financing statements and fixture filings) to put others on notice of Utility's ownership of the DER Facilities.
6. Applicant may request changes to DER Services or DER Facilities as a result of changes to Applicant's requirements at any time during the term of the Agreement, however, Utility has sole discretion whether to make any changes to DER Services or DER Facilities, and Applicant shall be responsible for the full costs related to the resulting changes in DER Services or DER Facilities.

(Continued)

(TO BE INSERTED BY UTILITY)
ADVISE LETTER NO. 4918
DECISION NO. 15-10-049

ISSUED BY
Dan Skopec
Vice President
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)
DATE FILED Jan 19, 2016
EFFECTIVE May 25, 2017
RESOLUTION NO. _____

Schedule No. GO-DERS
DISTRIBUTED ENERGY RESOURCES SERVICES

(Continued)

DEFINITIONS (Continued)

2. CREDITWORTHINESS REQUIREMENTS (Continued)

Applicant may submit a security deposit in lieu of the creditworthiness evaluation to qualify for DER Services. The security deposit is due at Agreement execution and will secure Applicant's obligations during both the construction period and the service period. The security deposit may be in the form of (a) cash, (b) an irrevocable and automatic annually renewing standby letter of credit in form, substance and amount reasonably acceptable to Utility and issued by a major financial institution within the United States, acceptable to Utility, or (c) renewable surety bond(s) in a form reasonably acceptable to Utility and issued by a major insurance company within the United States, acceptable to Utility.

Applicant may be required to reestablish credit if in the reasonable determination of Utility, the conditions under which credit was originally established have changed, or if in the opinion of Utility a condition of high risk exists.

At the time of termination, if Applicant has not paid Utility billings, any security held on Applicant's accounts shall be applied to recoup unpaid bills. In addition, if Applicant is terminated and/or declares bankruptcy, Applicant will be liable to Utility for any and all costs, expenses, and attorney's fees incurred by Utility as a result of such termination or bankruptcy. Payment by Applicant of all such costs, expenses and attorney's fees will be a condition of re-entry into, or continuation of, DER Services.

Notwithstanding anything to the contrary set forth in this Schedule, upon the mutual agreement of Utility and Customer, such parties may modify the Creditworthiness Requirements of this Section 2 and reflect such modified requirements in the Agreement.

3. DER FACILITIES. Facilities to be placed on the Premises in order to provide DER Services (to be identified in Exhibit A of the Agreement) including, but not limited to:

- a. Prime movers, compressors, heat recovery equipment, condensers, thermal storage, chillers, steam generators, electrical conditioning equipment, balance of plant systems and any other equipment needed to provide DER Services;
- b. Integrated equipment that includes a prime mover and peripheral equipment related to Applicant's specific application; and
- c. Other associated equipment that may be requested by Applicant and agreed to by Utility.

(Continued)

(TO BE INSERTED BY UTILITY)
ADVICE LETTER NO. 4918
DECISION NO. 15-10-049

ISSUED BY
Dan Skopec
Vice President
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)
DATE FILED Jan 19, 2016
EFFECTIVE May 25, 2017
RESOLUTION NO. _____

SAMPLE FORMS - CONTRACTS
Distributed Energy Resources Services (DERS) Agreement (Form 7400)

N
N

(See Attached Form)

N

(TO BE INSERTED BY UTILITY)
ADVICE LETTER NO. 4918
DECISION NO. 15-10-049

ISSUED BY
Dan Skopec
Vice President
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)
DATE FILED Jan 19, 2016
EFFECTIVE May 25, 2017
RESOLUTION NO. _____

Instructions: Terms that are boxed and shaded in light gray are instructions for preparing this Agreement and must be removed before this Agreement is finalized. Terms that are bracketed or highlighted in yellow are transaction-specific terms that must be removed, accepted, revised, expanded upon, or completed (as applicable) before this Agreement is finalized.

This Agreement is subject to negotiation and, upon the mutual agreement of the Parties, may be modified as necessary or appropriate based on the requirements of contemplated transaction, the unique circumstances of the Customer, or in order to maximize the value of the transaction, subject to Regulatory Requirements.

DISTRIBUTED ENERGY RESOURCES SERVICES AGREEMENT

This Distributed Energy Resources Services Agreement is entered into and effective as of [insert date of execution] (the “Effective Date”) by and between Southern California Gas Company, a California corporation (“Utility”), and [insert full legal name of Customer], a [insert form of business entity and state of registration] (“Customer”).

RECITALS

- A. Customer (a) owns and operates [insert name or description of Customer Facility] (the “Customer Facility”) located at [insert address of Customer Facility] (as further described in Exhibit A, the “Premises”), or (b) has the necessary legal rights and the full power and authority to perform all of its obligations under this Agreement related to the Customer Facility and the Premises.
- B. Customer desires to retain Utility to perform, and Utility desires to perform the DER Services in accordance with and subject to the terms of this Agreement.

The Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINITIONS AND EXHIBIT LIST

1.1 Definitions. As used in this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

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

“Applicable Law” means (a) any constitution, charter, act, statute, law, Environmental Law, ordinance, code, rule, regulation, order, or other legislative or administrative action of a Governmental Authority, or a final decree, judgment, or order of a court or tribunal, including, in each case, any and all requirements thereof or set forth therein, or (b) laws, orders, ordinances, rules, regulations, certificates, consents, Permits, or any other authorizations of a Governmental Authority or public officer that relate to the design, construction, maintenance, operation, repair, upgrade, renovation, removal, alteration, use, occupancy, or control of the Customer Facility, the DER Facilities, or the Premises (including the Regulatory Requirements, the Customer-Acquired Permits, and the Utility-Acquired Permits).

“Capital Charge” is defined in Section 5.1(b).

“Change in Services” is defined in Section 9.1(b).

“Confidential Information” means confidential or proprietary information concerning the business, operations, or assets of each Party or its affiliates, whether or not reduced to writing or other tangible form, including (a) the terms and conditions of this Agreement or any related agreement (including the Services Fee, the calculation thereof, and all other information related thereto), (b) information or materials prepared in connection with the

performance of DER Services under this Agreement or any related agreement, (c) designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies, and financial information, (d) any information defined as “trade secrets” under the Uniform Trade Secrets Act of California, or (e) information of a similar nature as that which is set forth in subsections (a)-(e). Confidential Information does not include information that is (i) is known to the receiving Party before obtaining the same from the disclosing Party, (ii) in the public domain at the time of disclosure by the disclosing Party, (iii) is disclosed to the receiving Party by a third party having a bona fide right to do so, (iv) independently developed by an individual or entity that had no access to the Confidential Information; or (v) approved for release by express prior written consent of an authorized officer of the disclosing Party.

“Consequential Damages” means damages for loss of anticipated profits, loss by reason of the DER Facilities’ shutdown, non-operation or increased expense of operation, service interruptions, cost of purchased or replacement gas or power, cost of money, loss of use of capital or revenue, or any other indirect, incidental, special, punitive, exemplary, or consequential loss or damage, whether arising from defects, delay, or from any other cause whatsoever.

“Construction Commencement Date” is defined in Section 4.1(a).

“CPUC” means the Public Utilities Commission of the State of California.

“Creditworthiness Requirements” has the meaning set forth in the Tariff.

“Customer” is defined in the introductory paragraph of this Agreement.

“Customer-Acquired Permits” is defined in Section 3.3.

“Customer Event of Default” is defined in Section 18.1.

“Customer Facility” is defined in Recital A.

“Customer Representative” is defined in Section 3.5.

“DER Facilities” is defined in Section 2.2.

“DER Services” has the meaning set forth in the Tariff.

“Disputes” is defined in Section 22.1.

“Effective Date” is defined in the introductory paragraph of this Agreement.

“Environmental Attributes” is defined in Section 7.1(a).

“Environmental Laws” is defined in Section 21.2.

“Feasibility Analysis” has the meaning set forth in the Tariff and is attached to this Agreement as Exhibit D.

“Force Majeure” means any occurrence beyond the reasonable control of and to the extent occurring without the fault or negligence of the Party claiming Force Majeure that, in whole or part, delays a Party’s performance under this Agreement or causes the Party to be unable to perform its obligations under this Agreement (other than a Party’s ability to pay debts as they become due), which by exercise of due foresight such Party could not reasonably have been expected to avoid and which such Party is unable to overcome by the exercise of due

diligence. Such occurrences may include acts of God, disruption of natural gas supplies, power outages or disruptions, flood, drought, earthquake, storm, fire, pestilence, lightning, and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or actions or inactions of any Governmental Authority.

“Governmental Authority” means (a) any federal, state, local, municipal, or other government, (b) 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, or (c) any court or governmental tribunal.

“Hazardous Substances” is defined in Section 21.1.

“Index” means [insert applicable agreed-upon Index, if any.]

Instructions: Whether and which Index should be included is to be determined by the mutual agreement of the Parties. If the Parties do not use an Index, this definition and references to it in this Agreement must be removed.

“Latent Site Defects” is defined in Section 6.2(f).

“O&M Charge” is defined in Section 5.1(b).

“Party” refers to Utility or Customer individually, and “Parties” refers to Utility and Customer collectively.

“Performance Requirements” is defined in Section 4.3 and is specified in Exhibit E.

“Permits” means all local, state, and federal permits, licenses, consents, orders, waivers, franchises, registrations, variances, extensions, filings, certificates, exemptions, approvals, and other authorizations obtained from or made with a Governmental Authority.

“Premises” has the meaning set forth in the Tariff and as further described in Recital A.

“Regulatory Requirements” is defined in Article 8.

“Remedial Work” is defined in Section 21.3.

“Services Commencement Date” means the date that is the first day of the month following the date Utility causes the DER Facilities to achieve the Performance Requirements.

“Services Fee” is defined in Section 5.1(a).

“Tariff” means Schedule GO-DERS in force at the time of interpretation and incorporated herein by reference.

“Taxes” means all federal, state, regional, municipal, and local sales, use, excise, ad valorem and other taxes, charges, or contributions.

“Termination by Utility Payment” is defined in Section 19.1(b).

“Utility” is defined in the introductory paragraph of this Agreement.

“Utility-Acquired Permits” is defined in Section 4.2.

“Utility Representative” is defined in Section 4.5.

“Work Notice” is defined in Section 21.3.

1.2 Exhibit List. The following Exhibits are specifically made a part of this Agreement by this reference:

Exhibit A	–	Description and Location of the Premises and the DER Facilities
Exhibit B	–	Safety and Security Requirements
[Exhibit C	–	[Easement][Lease Agreement]
Exhibit D	–	Feasibility Analysis
Exhibit E	–	Statement of Services and Performance Requirements
Exhibit F	–	Services Fee
[Exhibit G	–	Bill of Sale]

ARTICLE 2 TERM; DESCRIPTION OF THE DER FACILITIES

2.1 Term. The term of this Agreement commences on the Effective Date and will be in full force and effect for a period of [insert years] years after the Services Commencement Date, unless terminated earlier in accordance with the terms hereof. At least ninety (90) days before the end of the term of this Agreement and assuming that all required payments have been made by Customer, the Parties shall meet and confer in order to determine whether to extend the term of this Agreement for a period and at a Services Fee to be mutually agreed upon.

2.2 Description of the DER Facilities. [Provide a brief description of the DER Facilities] (as further described in Exhibit A and the Tariff, the “DER Facilities”).

2.3 Location of the DER Facilities. The DER Facilities will be located at the Premises, as further described in Exhibit A.

ARTICLE 3 RESPONSIBILITIES OF CUSTOMER

3.1 Premises and Security Requirements. Customer shall provide an appropriate location at the Premises for the delivery of equipment and materials, layout and storage of equipment and materials, ingress and egress, and parking of construction or installation-related vehicles and the construction or installation of the DER Facilities, including ongoing safeguards at the Premises for the protection of the DER Facilities and provision of the DER Services, and all individuals and other property related thereto, including lights and barriers, guard service, controlled access, and other measures developed pursuant to a continuous safety and security assurance program acceptable to Utility, or otherwise reasonably required to prevent vandalism, theft, and danger to the DER Facilities, all as described in greater detail in Exhibit B. Unless otherwise stated in Exhibit B, within thirty (30) days after the Construction Commencement Date, Customer shall provide a notice satisfactory to Utility describing Customer’s safety and security assurance program.

3.2 Access to Premises. At all times and as necessary for Utility or its subcontractors or agents to perform the DER Services and for the purpose of delivery and acceptance of equipment, construction or installation and testing of the DER Facilities and all related construction or installation activities, as well as the operation and maintenance of the DER Facilities or the exercise of Utility’s rights under this Agreement, including Utility’s rights under Section 4.4, Company shall provide Utility and its subcontractors and agents with reasonable access to the Premises and the DER Facilities, including unobstructed ready ingress and egress for all personnel, equipment, materials, and vehicles [all in accordance with the [Easement][Lease Agreement] attached hereto as Exhibit C].

3.3 Permits. Customer shall provide reasonable assistance and shall promptly provide all requested information, at no additional cost to Utility, to enable Utility to apply for and obtain all necessary Utility-Acquired

Permits. As between Customer and Utility, Customer shall at all times remain responsible for all of the Permits relating to the ownership and operation of the Customer Facility and the Premises (the “Customer-Acquired Permits”), and shall expeditiously acquire any additional Permits related to the operation of the Customer Facility that are made necessary for Customer to operate the Customer Facility due to the DER Facilities.

- 3.4 Cooperation. Customer shall reasonably cooperate and cause its contractors and agents to cooperate with Utility and its subcontractors and agents while working at or near the Premises in order to assure that Customer does not unreasonably hinder or interfere with the DER Services. Each Party shall use its commercially reasonable efforts to cause its contractors and agents to maintain good working relationships with the other Party’s contractors and agents.
- 3.5 Customer Representative. Within fourteen (14) days after the Effective Date, Customer shall designate by written notice an individual as Customer’s representative for all matters relating to this Agreement (the “Customer Representative”). The Customer Representative or designee shall be reasonably available during all business hours and shall provide or facilitate all access, scheduling and operating and maintenance at the Premises to support Utility’s performance of the DER Services and other rights and obligations under this Agreement. The actions taken by the Customer Representative shall be deemed acts of Customer. Customer may at any time, upon written notice to Utility, change the Customer Representative.

ARTICLE 4 RESPONSIBILITIES OF UTILITY

- 4.1 Scope of Services. In accordance with and subject to the terms of this Agreement and the Feasibility Analysis, Utility shall, directly or through its subcontractors or agents, perform the DER Services, as set forth in Exhibit E, in the following phases:
- (a) Construction or Installation of the DER Facilities. Upon the date of Utility’s issuance of a notice to Customer of Utility’s intent and authorization to proceed with the supply and construction or installation of the DER Facilities (the “Construction Commencement Date”), which date shall be at Utility’s discretion (but subject to Article 11), Utility or its subcontractors or agents shall initiate the construction or installation of the DER Facilities.
 - (b) Start-up and Testing of the DER Facilities. Before the Services Commencement Date, Utility or its subcontractors or agents shall perform all start-up and testing of the DER Facilities to confirm that it meets or exceeds the Performance Requirements, all as further described in Exhibit E.
 - (c) Commencement of Operation of the DER Facilities. Utility shall provide Customer with thirty (30) days advance written notice of the Services Commencement Date. As of the Services Commencement Date, Utility shall commence operation of the DER Facilities.

Utility shall provide the DER Services on a non-discriminatory basis, dependent only on factors such as safety, system capacity, Utility resource availability, technical feasibility, and acceptability of the commercial terms.

- 4.2 Utility-Acquired Permits. Utility shall be responsible for acquiring all Permits necessary to do business in the jurisdiction where the DER Facilities is located and the DER Services are to be performed, and all other Permits necessary to perform the DER Services (the “Utility-Acquired Permits”); *provided that* Utility is not required to obtain or maintain any Permits for the ownership or operation of the DER Facilities or Customer Facility that are required to be held by Customer.
- 4.3 Performance Requirements. Utility or its subcontractors or agents shall operate the DER Facilities so that, as of the Services Commencement Date, the DER Facilities satisfy the performance requirements set forth in Exhibit E (the “Performance Requirements”).

- 4.4 Decommissioning. Upon expiration or termination of this Agreement, and subject to Article 13 and Applicable Law, Utility or its subcontractors or agents shall be responsible for safely decommissioning or removing the DER Facilities and all of the improvements made thereto pursuant to this Agreement by Utility.
- 4.5 Utility Representative. Within fourteen (14) days after the Effective Date, Utility will designate by written notice an individual as Utility's representative for all matters relating to Utility's performance of the DER Services under this Agreement (the "Utility Representative"). The actions taken by the Utility Representative with respect to such performance shall be deemed acts of Utility. Utility may at any time, upon written notice to Customer, change the Utility Representative.

ARTICLE 5 FEE FOR SERVICES

5.1 Services Fee.

- (a) Commencing as of the Services Commencement Date and continuing throughout the term of this Agreement, Customer shall pay Utility the services fee ("Services Fee") in accordance with and as set forth in this Article and Exhibit F.
- (b) The Services Fee shall consist of (i) a capital-related charge ("Capital Charge"), (ii) an operations and maintenance-related charge ("O&M Charge"), and (iii) any other charge or cost mutually agreed to by the Parties, each as further described in Exhibit F. [The O&M Charge is subject to annual adjustment on each yearly anniversary of the Services Commencement Date by the positive percentage change in the Index most recently published as of such anniversary over the Index determined for the prior annual period (or in the case of the first anniversary, the Index most recently published as of the Effective Date).]

Instructions: Include the bracketed language if the Parties agree to an Index.

- 5.2 Invoicing. Utility shall provide Customer with an invoice on a monthly basis and Customer shall pay each such invoice within nineteen (19) days after the date of such invoice. If payment is not received by Utility by the due date, late payment charges shall be imposed by Utility. Notwithstanding the foregoing, billing and late payment charges shall be consistent with Utility's applicable tariff schedules as filed from time to time with the CPUC.

ARTICLE 6 COVENANTS, WARRANTIES, AND REPRESENTATIONS

Instructions: Upon the mutual agreement of the Parties, disclosure schedules may be added to this Agreement with respect to Article 6.

- 6.1 Utility Covenants, Representations, and Warranties. Utility covenants, represents, and warrants to Customer that:
- (a) Organization, Standing and Qualification. Utility is a corporation, duly organized, validly existing, and in good standing under the laws of California, and has full power and authority to execute, deliver, and perform its obligations under this Agreement and to engage in the business it presently conducts and contemplates conducting.
- (b) Professional Skills. Utility and its subcontractors and agents shall have all the required authority, ability, skills, experience, and capacity necessary to perform and shall diligently perform the DER Services in a timely and professional manner, utilizing sound engineering principles, project management procedures, construction procedures, and supervisory procedures, all in accordance with industry standards.

- (c) Enforceable Agreement. This Agreement has been duly authorized, executed, and delivered by or on behalf of Utility and is, upon execution and delivery, the legal, valid, and binding obligation of Utility, enforceable against Utility in accordance with its terms, except as such enforceability may be limited by the Regulatory Requirements, applicable bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by general equitable principles.
- (d) No Conflict. The execution, delivery, and performance by Utility of this Agreement will not:
 - (i) Conflict with, violate, or cause any default under: (1) its organizational documents; (2) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales agreement, loan or credit arrangement, or any other agreement or instrument to which Utility is a party or by which it or its properties may be bound or affected; or (3) any Applicable Laws; or
 - (ii) Subject the Customer Facility, the DER Facilities, or any component part thereof, or the Premises or any portion thereof to any lien other than as may be contemplated or permitted by this Agreement.

6.2 Customer Covenants, Representations, and Warranties. Customer covenants, represents, and warrants to Utility that:

- (a) Organization, Standing and Qualification. Customer is a [insert business entity type] duly formed, validly existing, and in good standing under the laws of the State of [insert state of registration], and has full power and authority to execute, deliver, and perform its obligations under this Agreement and to engage in the business Customer presently conducts and contemplates conducting.
- (b) Enforceable Agreement. This Agreement has been duly authorized, executed, and delivered by or on behalf of Customer and is, upon execution and delivery, the legal, valid, and binding obligation of Customer, enforceable against Customer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by general equitable principles.
- (c) No Conflict. The execution, delivery and performance by Customer of this Agreement will not conflict with, violate, or cause any default under: (i) its organizational documents; (ii) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales agreement, loan or credit arrangement, or any other agreement or instrument to which Customer is a party or by which it or its properties may be bound or affected; or (iii) any Applicable Laws.
- (d) Governmental Approvals. No authorization, approval, exemption, or consent by any Governmental Authority is required in connection with the execution, delivery, and performance of this Agreement by Customer. The Customer-Acquired Permits either have been obtained and are in full force and effect on the date hereof or will be obtained and will be in full force and effect, so as to permit Utility to commence and prosecute the DER Services to completion.
- (e) No Suits, Proceedings. There are no material actions, suits, proceedings, or investigations pending or, to Customer's knowledge, threatened against it at law or in equity before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Customer or in any impairment of its ability to perform its obligations under this Agreement. Customer has no knowledge of any violation or default with respect to any order, writ, injunction, or any decree of any Governmental Authority that may result in any such materially adverse effect or such impairment.
- (f) No Latent Site Defects. There are no Latent Site Defects at the Premises that will impede Utility from obtaining the Utility-Acquired Permits. "Latent Site Defects" means any conditions or circumstances that were not revealed to or ascertained by Utility during the development of the Feasibility Analysis, and

include the presence of legally significant cultural resources, endangered species, dangerous site conditions, earthquake fault lines, or air, soil, or water contamination.

- (g) Control of Premises. On the Effective Date and continuing throughout the term of this Agreement, Customer (i) shall own and operate the Customer Facility and the Premises, or (ii) shall have the necessary legal rights to the Customer Facility and the Premises, and shall have the full power and authority to perform all of its obligations under this Agreement and with respect to the Customer Facility, the DER Facilities, and the Premises.

ARTICLE 7 ENVIRONMENTAL ATTRIBUTES

- 7.1 Definition. “Environmental Attributes” means any and all current or future credits, benefits, air quality credits, renewable energy credits, emission reductions, offsets and allowances, howsoever entitled or referred to, earned by or in connection with the reduction of air pollutants or the avoidance of the emission of any gas, chemical or other substance, including any Environmental Attributes arising out of laws or regulations involving or administered by the Environmental Protection Agency, the California Air Resources Board, California Energy Commission, South Coast Air Quality Management District, or any state, federal or international entity given jurisdiction over a program involving transferability of Environmental Attributes, and any reporting rights to such Environmental Attributes. Environmental Attributes include (i) voluntary and mandatory international, federal, state or local credits associated with the construction or operation of air quality projects, (ii) any other financial incentives in the form of credits, reductions, or allowances associated with the Customer Facility or the DER Facilities that are applicable to a Tax obligation, and (iii) any corporate citizen or corporate sustainability measurements, ratings or benefits.
- 7.2 Ownership of Environmental Attributes. Customer shall be entitled to all Environmental Attributes that relate to the DER Facilities. Both Parties shall provide reasonable assistance to fulfill any requirements related to the Environmental Attributes but the Party holding legal title to the particular Environmental Attribute shall be responsible for reimbursing any additional costs incurred by the other Party in providing reasonable assistance.

ARTICLE 8 REGULATORY MATTERS

This Agreement shall at all times be (a) subject to changes or modifications by the CPUC, as the CPUC may, from time to time, direct in the exercise of its jurisdiction, (b) subject to and incorporate by reference all of Utility’s applicable tariff schedules (including the Tariff) as filed from time to time with the CPUC (collectively, the “Regulatory Requirements”), and (c) subject to all Permits.

ARTICLE 9 CHANGE IN SERVICES

9.1 Change Events.

- (a) Minor Variations in Services. Utility shall have the right, at any time, to make minor variations in the DER Services that do not involve an adjustment in the Services Fee and are compatible with the design concept of the DER Facilities.
- (b) Change in Services. If, during the term of this Agreement, as a result of a change in Applicable Law, a Latent Site Defect (subject to Section 19.1), or Customer’s requirements, there needs to be a change to the cost or time required for the performance of the DER Services or a change in the DER Services or to the DER Facilities (a “Change in Services”), the Parties shall negotiate in good faith to enter into a contract modification providing for an equitable adjustment of Services Fees reflecting any additional

costs incurred by Utility, as well as any other contract modification necessary to implement such Change in Services.

- (c) Customer-Requested Change in Services. Customer may request a Change in Services in writing to Utility. In such event, Utility shall prepare and submit to Customer a written estimate relating to the proposed Change in Services, including: (i) any projected change in the cost of the performance of the DER Services and any projected modification of the Services Fee occasioned by such Change in Services; and (ii) the effect such Change in Services could be expected to have on the performance of the DER Facilities. If Customer elects to proceed with a more detailed examination of such proposed Change in Services, within such period as shall be agreed upon by the Parties, Utility shall submit to Customer a detailed estimate relating to the contemplated change and Customer shall be responsible for the cost of preparing the detailed estimate. If Customer elects to proceed with the proposed Change in Services, Customer and Utility shall agree upon a change order that shall include (x) an adjustment in the Services Fee for the costs expected to be incurred by Utility as a result of such Change in Services less any savings or costs not incurred as a result of such Change in Services, and (y) an adjustment in other terms of this Agreement, including the Performance Requirements, as a result of such Change in Services.

**ARTICLE 10
NOTICES**

Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) personally delivered; or (b) as of the date of signed return receipt after deposit with the U.S. Postal Service by certified or registered mail, postage prepaid, with a return receipt requested; or (c) if sent by email or facsimile with confirmation sent as provided in (b) above. Notices shall be addressed as follows to:

If to Utility: [redacted]
[redacted]
[redacted]
[redacted]
Fax: [redacted]
Email: [redacted]

with a copy to: [redacted]
[redacted]
[redacted]
[redacted]
Fax: [redacted]
Email: [redacted]

If to Customer: [redacted]
[redacted]
[redacted]
[redacted]
Fax: [redacted]
Email: [redacted]

with a copy to: [redacted]
[redacted]
[redacted]

[REDACTED]
Fax: [REDACTED]
Email: [REDACTED]

or, as to each Party, at such other or additional address as may be designated by such Party in a written notice to the other Party.

ARTICLE 11 TERMINATION BY EITHER PARTY

If the Construction Commencement Date has not occurred by [insert date], either Party shall have the right to terminate this Agreement upon notice to the other Party, in which case neither Party shall have any further rights or obligations hereunder (other than such rights and obligations that by the express terms of this Agreement survive the expiration or earlier termination of this Agreement).

ARTICLE 12 INSURANCE, CREDIT AND SECURITY REQUIREMENTS

12.1 Customer Insurance. Customer agrees to obtain and maintain at Customer's sole cost and expense the following types and amounts of insurance coverage consistent with the following requirements for the entire term of this Agreement to insure against any and all claims, losses, damages or expenses resulting from Customer's facilities located at the Premises and Customer's responsibilities under the Tariff or this Agreement:

- (a) Workers' Compensation and Employers' Liability Insurance. In accordance with the laws of California, Customer shall maintain in force workers' compensation insurance for all of its employees. Customer shall also maintain Employers' Liability coverage in an amount of not less than \$[REDACTED] (REDACTED Million Dollars) per accident and per employee for disease. In lieu of such insurance, Customer may maintain a self-insurance program meeting the requirements of California along with the required Employers' Liability insurance. Such insurance shall contain a waiver of subrogation in favor of Utility.
- (b) Commercial or Business Automobile Liability Insurance. Customer shall maintain an automobile liability policy or policies insuring against liability for damages because of bodily injury, death, or damage to property (including loss of use thereof), and occurring in any way related to the use by or on behalf of Customer, including loading or unloading of any of Customer's automobiles (including owned, non-owned, leased, rented or hired vehicles). Such coverage shall be in an amount of not less than \$[REDACTED] (REDACTED Million Dollars) combined single limit.
- (c) Commercial General Liability Insurance. Customer shall carry and maintain on an "occurrence" form commercial general liability policy or policies, insuring against liability arising from bodily injury, death, property damage, personal and advertising injury, products/completed operations liability, contractual liability covering all operations of Customer on the Premises which policy shall contain a waiver of subrogation in favor of Utility. There shall be no explosion, collapse or underground exclusion. Such coverage shall be in an amount of not less than \$[REDACTED] (REDACTED Million Dollars) per occurrence. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.
- (d) Pollution Liability Insurance. Customer shall maintain pollution liability insurance or insurance policies in an amount not less than \$[REDACTED] (REDACTED Million Dollars) each claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.
- (e) Policy Requirements. The required policies and any of Customer's policies providing coverage in excess of the required policies shall provide that the coverage is primary for all purposes and Customer shall not

seek any contribution from any insurance or self-insurance maintained by Utility. All required policies of insurance shall be written by companies having an A.M. Best rating of “A -, VII” or better, or equivalent. Customer shall be solely responsible for any deductible or self-insured retention on insurance required under this Agreement.

- (f) Additional Insureds. Utility, its parent company, and its subsidiaries, affiliates, contractors and their respective officers, directors, employees, successors and assigns shall be named as additional insureds for policies listed above, except for workers’ compensation. Commercial General Liability insurance shall provide a severability of interest or cross-liability clause. Customer shall not violate nor knowingly permit to be violated any condition of the policies required under this Section.

Instructions: Coverage for (a) workers’ compensation and employers’ liability insurance, and (b) commercial or business automobile liability insurance must each be no less than \$1,000,000. Coverage for (x) commercial general liability insurance and (y) pollution liability insurance must each be no less than \$5,000,000. In all instances, such amounts are subject to approval by Utility.

12.2 Certificates of Insurance. On or before the Effective Date, and thereafter upon Utility’s request during the term of this Agreement, Customer shall provide Utility with original, current certificates of insurance, and renewal certificates of insurance thereafter, executed by a duly authorized representative of each insurer, or by the insurance agent or broker authorized to do so, as evidence of all insurance policies required under this Section. Utility shall not commence any of the DER Services until Customer has obtained all insurance required by this Article and has provided acceptable certificates of insurance to Utility for review and approval. No insurance policy may be canceled, materially revised, or subject to non-renewal without at least thirty (30) days prior written notice being given to Utility, ten (10) days for non-payment of premium. Customer shall provide Utility with renewal certificates of insurance or binders within seven (7) days before or after such expiration. Insurance shall be maintained without lapse in coverage during the Term.

12.3 Recorded and Secured Interest. At Utility’s election, Utility shall be entitled to record in the public records a [memorandum of lease describing its leasehold interest in the Premises][an easement describing its interest in the Premises]. To the extent that either presently or in the future, there is any individual or entity other than Customer and Utility holding any interests in the Premises, Customer and Utility shall enter into a subordination and non-disturbance agreement that secures Utility’s interest in the Customer Facility and the Premises in a manner satisfactory to Utility. At Utility’s election, Utility may file a Uniform Commercial Code (“UCC”) Financing Statement identifying Utility as the owner of the Customer Facility. Customer shall fully cooperate with the UCC filing if pursued by Utility.

12.4 Creditworthiness Requirements. Customer shall be responsible for meeting all Creditworthiness Requirements.

ARTICLE 13 OPTION TO PURCHASE THE DER FACILITIES

13.1 Option to Purchase. Customer shall have the option to purchase the DER Facilities upon the expiration of term of this Agreement and in accordance with the following terms and conditions (the “Option”):

- (a) Customer may purchase the DER Facilities pursuant to the Option;
- (b) Any conveyance made pursuant to the Option shall be made by bill of sale, in the form set forth in Exhibit G, and which shall be delivered by Utility to Customer at the Closing;
- (c) Customer shall exercise the Option, if at all, by giving written notice to Utility, at any time during the term of this Agreement, but, in any event, no later than ninety (90) days before the expiration of the term of this Agreement;

- (d) The purchase price for the DER Facilities shall be [REDACTED];
- (e) Each Party shall be responsible for its own closing costs, including attorney's fees, at every level. Customer shall pay all transfer taxes, surtax and similar Taxes due in connection with the conveyance of the DER Facilities by Utility to Customer, other than income taxes;
- (f) Unless otherwise agreed to in writing by the Parties, the closing on the Option shall occur immediately following the expiration of the term of this Agreement (the "Closing"); and
- (g) A Customer Event of Default or a default under a related agreement or obligation (as described in Article 17) by Customer shall void the Option, notwithstanding that Customer may have given notice of its intent to exercise the Option before such Customer Event of Default or a default under a related agreement or obligation.
- (h) Ownership of Facilities. The Parties acknowledge and agree that, prior to the Closing, Utility shall be the sole owner of the DER Facilities.

Instructions: Article 13 is an optional provision and is subject to modification upon mutual agreement of the Parties. If the Parties do not desire to have this Article included in the Agreement, it should be removed in its entirety and replaced with "[Intentionally omitted]."

ARTICLE 14 CONFIDENTIALITY

14.1 Confidentiality.

- (a) A Party may only disclose Confidential Information of the other Party to its directors, officers, employees, agents, subcontractors, or representatives (collectively, "Representatives"), and only to the extent that such Representatives require such Confidential Information in order to carry out such Party's obligations under this Agreement. The Party receiving Confidential Information shall, and shall cause its Representatives to use such Confidential Information solely for the limited purpose of performing its obligations under this Agreement and not for its or their own benefit, and to keep confidential and not disclose the Confidential Information. Each Party agrees to use the same degree of care with the other Party's Confidential Information that such Party uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information of the other Party. Each Party shall cause each of its Representatives to become familiar with and abide by the terms of this Agreement. Each Party shall be responsible for any breach of this Agreement by its Representatives.
- (b) Notwithstanding Section 14.1, a Party may disclose the Confidential Information of the other Party in the event, but only to the extent, that, based upon the reasonable advice of counsel, such Party is required to do so by the disclosure requirements of any Applicable Laws. Before making or permitting any such disclosure, such Party shall provide the other Party with prompt written notice of any such requirement so that the Party seeking to prevent disclosure (with the other Party's assistance, at the expense of the Party seeking to prevent disclosure) may seek a protective order or other appropriate remedy. Notwithstanding anything to the contrary set forth herein, Utility may, without providing notice thereof to Customer, disclose Confidential Information to regulatory agencies with jurisdiction over Utility, including the CPUC and the Federal Energy Regulatory Commission.
- (c) The confidentiality provisions set forth in this Agreement shall remain in full force and effect with respect to specific Confidential Information until the later of the end of the term of this Agreement or the date that is five (5) years after the date of disclosure of such Confidential Information.

- (d) The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of each Party are specifically enforceable. Accordingly, the Parties agree that in the event of a breach or threatened breach of this Agreement by either Party, the other Party shall be entitled to seek an injunction preventing such breach. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to the Parties under any Applicable Law.

ARTICLE 15 FORCE MAJEURE

- 15.1 Force Majeure. A Party shall promptly notify the other Party in writing of any delay or anticipated delay in that Party's ability to perform its obligations under this Agreement due to the occurrence of events of Force Majeure and the reason for and anticipated length of such delay.
- 15.2 Excuse of Performance. If, because of an occurrence of an event of Force Majeure, either Party is unable to perform its obligations under this Agreement (other than a Party's ability to pay debts as they become due), the affected Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent so affected, *provided that* the suspension of performance is of no greater scope and of no longer duration than is required by the event of Force Majeure and the affected Party shall use commercially reasonable efforts to mitigate damages.
- 15.3 Termination Due to Force Majeure. In the event a Party's performance of obligations hereunder (other than a Party's ability to pay debts as they become due) is prevented by an event of Force Majeure for a period of more than one hundred twenty (120) days, the unaffected Party may elect to terminate this Agreement. In such case, if the terminating Party is Utility, following such termination, Customer shall be liable for the Termination by Utility Payment.

ARTICLE 16 TAXES

- 16.1 Utility Tax Obligations. Utility assumes the benefit of any tax credits related to the DER Facilities and exclusive liability for and shall pay before delinquency any and all Taxes imposed on, or with respect to, or measured by, the materials, supplies or labor furnished hereunder, or the wages, salaries or other remunerations paid to individuals employed in connection with the performance of the DER Services. Utility agrees to comply with all applicable laws and regulations setting forth withholding requirements for Taxes and unemployment and disability insurance premiums applicable to its employees and independent contractors (collectively, the "Withholding Requirements"). Utility also agrees to secure the agreement of each of its subcontractors and agents to comply with all Withholding Requirements applicable to such subcontractor's and agent's employees.
- 16.2 Customer Obligations. Customer assumes exclusive liability for and shall pay before delinquency for (i) any and all increased real property or other applicable Taxes it may be subject to as a result of the ownership and operation of the Premises, including the Customer Facility, and (ii) any and all sales Taxes imposed on, or with respect to, the DER Facilities.

ARTICLE 17 RELATED AGREEMENT

Any violation of the terms of the Tariff [or the Easement][or the Lease] shall constitute a default under this Agreement. Any notice of default given under [the Easement][the Lease,] this Agreement, or the Tariff shall be deemed to have also been given under the other agreements. Any cure periods under such agreements for any act or omission that constitutes a default shall run concurrently. [This Agreement and [the Easement][the Lease] are

indivisible for purposes of section 365 of the Bankruptcy Code. In the event that any part of this Agreement [or the Easement] [or the Lease] is assumed or assigned pursuant to section 365, the other parts of this Agreement [and the Easement][and the Lease] shall similarly be assumed or assigned.]

ARTICLE 18 DEFAULT

- 18.1 Customer Default. At any time during the term of this Agreement, if Customer (a) abandons the Premises, (b) tampers with or otherwise affects the operations of the DER Facilities, (c) creates a condition at the Premises that poses a risk to health or safety, (d) fails to pay the Services Fee, (e) files a petition or otherwise commences a proceeding or case under bankruptcy, or becomes bankrupt or insolvent, (f) is unable to pay its debts as they fall due, or has a receiver, custodian, trustee, or similar official appointed with respect to it or substantially all of its assets, or (g) violates or fails to perform any material provision of this Agreement, including if any representation or warranty made by Customer herein was materially false or misleading when made, and, in each case, Customer fails to cure such event of default within sixty (60) days (or, with respect to Section 18.1(d), within seven (7) days) after written notice from Utility (each, a “Customer Event of Default”), Utility may notify Customer and exercise its rights under Section 19.1.
- 18.2 Utility Event of Default. At any time during the term of this Agreement, if Utility violates or fails to perform any material provision of this Agreement, including if any representation or warranty made by Utility herein was materially false or misleading when made (“Utility Event of Default”), and Utility fails to cure such event of default within sixty (60) days after written notice from Customer, Customer may notify Utility and exercise its rights under Section 19.2.

ARTICLE 19 REMEDIES

- 19.1 Utility Remedies. In the event of a Customer Event of Default, or in the event of a Latent Site Defect that cannot reasonably be remedied by a Change in Services and subject to Section 19.3, Utility shall have the following non-exclusive rights and remedies, which Utility may exercise in its sole discretion:
- (a) To suspend performance of the DER Services until Customer cures such Customer Event of Default or removes the Latent Site Defect, in which event Customer shall be liable for all additional costs and expenses incurred by Utility arising out of such suspension;
 - (b) To terminate this Agreement, in which event Customer shall be liable for all of Utility’s unrecovered Capital Charge and other ownership costs and including any costs resulting from early termination provisions in Utility’s subcontracts (“Termination by Utility Payment”); or
 - (c) To avail itself of any equitable remedy to enforce the obligations of Customer under this Agreement.
- 19.2 Customer Remedies. In the event of a Utility Event of Default that is uncured by Utility following notice from Customer as required by Section 18.2, Customer shall have the right to terminate this Agreement, in which case Utility, as its sole liability and Customer’s sole remedy, shall be responsible for the removal of the DER Facilities and restoration of the Customer Facility and the Premises to a condition similar to that which existed before the construction or installation of the DER Facilities.
- 19.3 Limitation of Remedies. Except as set forth as a specific remedy hereunder, each Party waives any and all Consequential Damages from the other Party that may result from a breach of this Agreement by such other Party. Except as expressly limited by the terms of this Agreement, the Parties shall have all remedies, at law or equity, for any cause of action based on or arising out of this Agreement.

ARTICLE 20
INDEMNIFICATION

20.1 Indemnification.

- (a) Utility Indemnification. Utility shall indemnify, defend, and hold Customer and its affiliates, and their respective shareholders, officers, directors, employees, agents, contractors and subcontractors harmless from any and all liabilities, damages, fines, penalties, costs, claims, interest and expenses (including costs of defense, settlement, and reasonable attorney fees) that arise from third party claims, allegations, suits and causes of action for losses, penalties, judgments, awards, or damages of any kind to the extent such claims, allegations, suits and causes of action arise out of (i) the negligence or willful misconduct of Utility or its employees, agents, contractors and subcontractors, or intentional act of Utility or its employees, agents, contractors and subcontractors, or (ii) violations of any Applicable Law by Utility or its agents or subcontractors; except to the extent any such claim, allegation, suit, cause of action, loss, penalty, judgment, or award for damages arises from the breach of this Agreement by, or the negligence, intentional misconduct or other fault of, Customer.
- (b) Customer Indemnification. Customer shall indemnify, defend, and hold Utility and its shareholders, officers, directors, employees, agents, contractors and subcontractors harmless from and against any and all liabilities, damages, fines, penalties, costs, claims, interest and expenses (including costs of defense, settlement, and reasonable attorney fees) that arise from third party claims, allegations, suits and causes of action for losses, penalties, judgments, awards, or damages of any kind to the extent such claims, allegations, suits and causes of action arise out of (i) Customer's breach of this Agreement or any representation or warranty made in this Agreement, (ii) entries upon, occupancy, use, operation, alteration, maintenance, repair or other activities on or about the DER Facilities by Customer or its employees, agents, contractors, or subcontractors, (iii) the negligence or willful misconduct of Customer or its employees, agents, contractors and subcontractors, or the intentional acts of Customer or its employees, agents, contractors and subcontractors, or (iv) violations of any Applicable Law by Customer or its agents or contractors; except to the extent any such claim, allegation, suit, cause of action, loss, penalty, judgment, or award for damages arises from the breach of this Agreement by, or the negligence, intentional misconduct or other fault of, Utility. Notwithstanding any other provision in this Agreement, Utility shall not be liable to Customer for any loss or damage to individuals or property arising from Customer's entries upon, occupancy, use, operation, alteration, maintenance, repair or other activities on or about the Customer Facility or from any damage caused by fire or other casualty or by any individual or entity not employed or controlled by Utility, or as the result of any existing or future condition of the Customer Facility.
- (c) Survival. The provisions of Article 20 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 21
HAZARDOUS SUBSTANCES

- 21.1 Definition of Hazardous Substances. "Hazardous Substances" for purposes of this Agreement shall be interpreted broadly to include any material or substance that is defined, regulated, or classified under any Environmental Law or other Applicable Law and the regulations promulgated thereunder as (a) a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14), the Federal Water Pollution Control Act, 33 U.S.C. §1321(a)(14), as now or hereafter amended; (b) a "hazardous waste" pursuant to section 1004 or section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903(5), 6921; (c) toxic pollutant under section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1); (d) a "hazardous air pollutant" under section 112 of the Clean Air Act, 42 U.S.C. §7412(a)(6), as now or hereafter amended; (e) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. §5102(2), as now or hereafter amended; (e) toxic or hazardous pursuant to regulations promulgated now or hereafter under the

aforementioned laws or any state or local counterpart to any of the aforementioned laws; or (f) presenting a risk to human health or the environment. “Hazardous Substances” shall also mean any substance that after release into the environment or upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities and specifically includes asbestos, polychlorinated biphenyls, radioactive materials (including radon and naturally occurring radio nuclides) natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives and urea formaldehyde.

21.2 Customer’s Representation and Warranty. Customer warrants and represents to Utility that the Customer Facility and the Premises do not contain any Hazardous Substances and that, to the best of Customer’s knowledge, Customer and its predecessors and their respective agents or employees have not caused or permitted any such Hazardous Substances to be released, discharged or deposited onto or in the vicinity of the Premises. Customer warrants and represents further that (a) to the best of Customer’s knowledge Customer or the Customer Facility and Premises are not subject to any existing, pending or threatened investigation by any Governmental Authority under any applicable federal, state or local law, regulation or ordinance pertaining to soil, groundwater, air and water quality, the handling, transportation, storage, treatment, usage or disposal of Hazardous Substances, air emissions and other environmental matters (collectively, “Environmental Laws”), (b) to the best of Customer’s knowledge any handling, transportation, storage, treatment or use of Hazardous Substances that has occurred on the Customer Facility and Premises has been in compliance with all Environmental Laws, and (c) to the best of Customer’s knowledge, the Customer Facility and Premises, the soil, groundwater, air and water are free of the deposit of Hazardous Substances during the time Customer has owned the Facility and Premises. “Best of Customer’s knowledge” is actual knowledge of Customer’s managerial level employees and information acquired through any source including environmental reports and analyses, all as it relates to environmental matters.

21.3 Customer’s Covenant. Customer shall be responsible at its expense for conducting any clean-up, repair or other work in response to any Hazardous Substances to the extent the Hazardous Substances were accepted by or introduced by Customer or parties claiming under Customer, its agents or contractors on the Premises, the Customer Facility, the DER Facilities, and any surrounding areas (“Remedial Work”). Customer shall perform all Remedial Work in accordance with all Applicable Laws in order to obtain a “No Further Action” determination from the applicable Governmental Authority, to the extent such determination is necessary. Customer shall provide fifteen (15) days’ advance written notice to the Utility Representative of any Remedial Work to be performed on the DER Facilities, the Premises, or the Customer Facility (“Work Notice”), except in the event of an emergency in which case Customer shall proceed without a Work Notice to abate the release and shall provide the Utility Representative with a Work Notice as soon thereafter as practicable. Said Work Notice shall describe the anticipated start and completion dates of Remedial Work, the work to be performed including the cleanup action plan, and the identity of the proposed contractor. The Utility Representative shall respond in writing to the Work Notice within fifteen (15) days of receipt. Utility’s failure to respond within such fifteen (15) day period shall be deemed approval of the Work Notice but only in the event that Customer has obtained written proof that the Work Notice was actually received by the Utility Representative. Unless otherwise agreed to by the Utility Representative, Customer shall be responsible for restoring the DER Facilities to substantially the condition it was in before the commencement of the Remedial Work. Customer shall timely provide the Utility Representative with all monitoring, status, or other reports submitted in furtherance of obtaining a “No Further Action” determination. Customer shall conduct any such Remedial Work not located at the Premises pursuant to a commercially reasonable license agreement.

21.4 Survival. The provisions of Article 21 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 22
DISPUTE RESOLUTION

22.1 Dispute Resolution. All claims, disputes and other matters in question between the Parties arising out of or relating to this Agreement or the breach thereof, including contract, tort, property, statutory, or common law claims (“Disputes”) shall be addressed and resolved as follows:

- (a) Negotiation. The resolution of the Dispute shall first be negotiated in good faith by the Parties.
- (b) Mediation. If the Parties are unable to resolve a Dispute through negotiation, the Parties shall first try in good faith to settle the Dispute by mediation administered by the American Arbitration Association under its Commercial Arbitration Rules and Mediation Procedures, or through private mediation upon agreement of the Parties. The mediator’s fees and costs shall be paid equally by the Parties. Any and all mediations arising out of or relating to this Agreement shall include, by consolidation or joinder, any other individual or entity not a party to this Agreement that is substantially involved in a common issue of law or fact and whose involvement in the consolidated mediation is necessary to achieve a final resolution of a matter in controversy therein. The Parties’ obligation to mediate shall be specifically enforceable by any court with jurisdiction thereof.
- (c) Litigation. If the Parties do not settle the Dispute through mediation within forty-five (45) days of the written notice to the other Party requesting mediation, then either Party shall have the right to pursue litigation as provided for herein. In the event of any litigation to enforce or interpret any terms of this Agreement, unless the Parties agree in writing otherwise, such action shall be brought in a Superior Court of the State of California located in the County of _____ (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the _____ District of California), and the Parties hereby submit to the exclusive jurisdiction of said courts. In any action in litigation to enforce or interpret any of the terms of this Agreement, the prevailing Party shall be entitled to recover from the unsuccessful Party all costs, expenses (including expert testimony), and reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) incurred therein by the prevailing Party.

ARTICLE 23
MISCELLANEOUS

23.1 Integration. This Agreement shall completely and fully supersede all prior undertakings or agreements, both oral and written, between Customer and Utility relating to the subject matter of this Agreement. This Agreement (including the Tariff and the Exhibits) are intended to be read together, and shall be given full force to the maximum extent practicable. In the event of any conflict between this Distributed Energy Resources Services Agreement (including its Exhibits) and the Tariff, the Tariff at the time of interpretation shall control, regardless of whether there is a similar provision herein.

23.2 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

23.3 Waiver. No provisions of this Agreement may be waived except in writing by the waiving Party. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

23.4 No Benefits to Outside Parties. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give to any party other than Customer and Utility any right, remedy, or claim under or by reason of this Agreement; and the covenants and agreements contained herein are and shall be for the sole and exclusive benefit of the Parties and their successors and assigns.

- 23.5 Binding on Successors. Subject to any restrictions upon assignments, this Agreement shall inure to the benefit of, and shall be binding upon, Customer, Utility, and their respective successors and assigns.
- 23.6 Construction. All references herein to any (i) agreement, law, or tariff shall be to such agreement, law, or tariff as amended, supplemented or modified from time to time, and (ii) Governmental Authority or other organization, shall be to any successor of such Governmental Authority or other organization. The words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. The singular shall include the plural and the masculine shall include the feminine and neuter and vice versa. “Includes” or “including” shall mean “including, without limitation.” The word “or” when used in this Agreement includes the meaning “and” unless the context unambiguously dictates otherwise. THE PARTIES HEREBY AGREE THAT NO TRADE USAGE, PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.
- 23.7 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- 23.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means will be deemed to be their original signatures for all purposes.
- 23.9 Subcontracting. Utility shall be authorized to subcontract its duties and obligations established by this Agreement. Notwithstanding any subcontract, Utility shall not be relieved from fulfilling any provisions of this Agreement, and Utility will be fully responsible for the acts and omissions of its respective subcontractors and of individuals and entities either directly or indirectly employed by such subcontractors.
- 23.10 Assignment. This Agreement is personal to the Parties and shall not be transferable or assignable without the written consent of both Parties. Any direct or indirect change of control of a Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 23.11 Survival. The rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides survive any such termination and those that arise from each Party’s covenants, agreements, representations, and warranties applicable to, or to be performed at or during any time before or as a result of the termination of this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its authorized representative as of the Effective Date.

SOUTHERN CALIFORNIA GAS COMPANY

[INSERT CUSTOMER'S LEGAL NAME]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A
**Description and Location of the Premises
and the DER Facilities**

1. DER Facilities Description. *[Provide a detailed description of the DER Facilities, including a description of the type of facility, any equipment, metering, systems, control systems and features, nameplate, related pipelines and other appurtenances. Refer to Feasibility Analysis as necessary. Identify the DER Receipt Point and DER Point of Service Delivery (each as defined in the Tariff).]*

2. Location of the Premises and the DER Facilities. *[Provide a legal description of the Premises, including a map of the Premises showing where the DER Facilities will be located, as well as areas for deliveries, lay down and storage.]*

Exhibit B
Safety and Security Requirements

Instructions: Customer will be required to comply with Utility's standard safety and security requirements and policies, which may be included in this Exhibit B, as well as any other safety and security requirements to be included in this Exhibit B that are reasonable or necessary given, among other things, the type of DER Facilities, location of the Premises and the Customer Facility, the scope of services.

Exhibit C
[Easement][Lease Agreement]

Instructions: As applicable, the Easement or Lease Agreement shall be mutually agreed to by the Parties at the time of execution of this Agreement.

Exhibit D
Feasibility Analysis

[See attached.]

Exhibit E
Statement of Services and Performance Requirements

1. Utility shall plan, design, procure, install, construct, engineer, own, operate, and maintain the DER Facilities. Utility shall be responsible for:
 - a. The operation of the DER Facilities and performance of all maintenance for the DER Facilities consistent with the manufacturer's recommendations and the Regulatory Requirements. The DER Facilities' operation and maintenance activities include, but are not limited to, the following: preventative maintenance, corrective maintenance, spare parts and consumables inventory tracking, on-call support, media change-out and disposal, process control and data monitoring, collection, storage and reporting.
 - b. Meeting the following Performance Requirements: **[TBD]**

Instructions: This Exhibit may be revised to include any additional or more detailed statement of DER Services and Performance Requirements mutually agreed upon by the Parties.

Exhibit F
Services Fee

The Services Fee shall consist of the components as specified below.

	Annual			Services Fee	Monthly Services Fee
	Capital Charge	O&M Charge	[Insert additional charges or costs, if any]		
Year 1					
Year 2					
Year 3					
Year 4					
Year 5					
Year 6					
Year 7					
Year 8					
Year 9					
Year 10					
Year xx**					

Instructions: The table above is for illustrative purposes only. Upon the mutual agreement of the Parties, the Services Fee, including its components as described in the table above, may be restructured or revised as necessary or appropriate based on the requirements of contemplated transaction, the unique circumstances of the Customer, or in order to maximize the value of the transaction, subject to Regulatory Requirements.

Exhibit G
Bill of Sale

Instructions: If applicable, the form of the Bill of Sale shall be mutually agreed to by the Parties at the time of execution of this Agreement.

SAMPLE FORMS - CONTRACTS
Distributed Energy Resources Services (DERS)
Feasibility Analysis Agreement (Form 7401)

N
N
N

(TO BE INSERTED BY UTILITY)
ADVICE LETTER NO. 4918
DECISION NO. 15-10-049

ISSUED BY
Dan Skopec
Vice President
Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)
DATE FILED Jan 19, 2016
EFFECTIVE May 25, 2017
RESOLUTION NO. _____

Instructions: This Feasibility Agreement is subject to negotiation and, upon the mutual agreement of the Parties, may be modified as necessary or appropriate based on the requirements of the contemplated transaction, the unique circumstances of Applicant, or in order to maximize the value of the transaction.

FEASIBILITY ANALYSIS AGREEMENT

This Feasibility Analysis Agreement (this “*Feasibility Agreement*”) is made, entered into and effective as of _____, 20__ (the “*Effective Date*”) by and between Southern California Gas Company, a California corporation (“*Utility*”), and _____, a _____ (“*Company*”), for certain preconstruction feasibility assessments relating to Utility’s potential development of a _____ facility (the “*Proposed Project*”) adjacent to and as a functional part of _____ located at _____, California (the “*Facility*”). Utility and Company may be referred to herein individually each as a “*Party*” and collectively as the “*Parties*.”

ARTICLE 1 DESCRIPTION AND STANDARD OF SERVICES

1.1 Utility shall conduct feasibility analyses described in **Exhibit A** (the “*Services*”), attached hereto and incorporated herein, with the intent of (a) determining the technical and economic feasibility of the design, equipment procurement, construction, operation and maintenance of the Proposed Project, (b) providing sufficient information to prepare the scope of work and pricing (“*Scope of Work*”) for the Distributed Energy Resources Services Agreement (“*DERS Agreement*”), and (c) providing an estimate of potential greenhouse gas emissions reductions that will be achieved as a result of the development of the Proposed Project.

1.2 If the Scope of Work is acceptable to Company, and the feasibility analysis determines that the Proposed Project is, for each Party, feasible from an economic and technical perspective, Utility shall prepare the DERS Agreement in accordance with Schedule GO-DERS.

1.3 Utility and Company acknowledge and agree that: (a) all Services shall be performed by Utility for the mutual benefit of the Parties; (b) Utility shall exercise its independent, professional and trade judgment in performing the Services; and (c) in its preparation of the Scope of Work, Utility will be relying on information provided by Company, which Company represents is complete and accurate except as noted in writing by Company to Utility prior to Utility’s preparation of the Scope of Work.

ARTICLE 2 SERVICES FEE

2.1 As consideration for performance of the Services, Company shall pay Utility _____ Dollars (\$_____) (the “*Feasibility Services Fee*”).

ARTICLE 3 TERM

The term of this Feasibility Agreement shall be _____ (“*Term*”).

ARTICLE 4 RECORDS/OWNERSHIP AND USE OF DOCUMENTS

4.1 Utility shall own such studies, plans, designs, know-how, specifications, and other intellectual property and work product of Utility that are incorporated in the Scope of Work (“*Work Product*”), and such Work Product shall at all times be the exclusive property of Utility. If any of the Work Product contains intellectual property of Company or Company’s affiliates, contractors or agents that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws (“*Proprietary Work Product*”), it shall be conspicuously marked and identified as such by Company prior to its delivery to Utility. In the event the Parties, subsequent to this Feasibility Agreement, execute a DERS Agreement, Company hereby grants, and Company shall cause its affiliates, contractors and agents to grant to Utility a perpetual, royalty-free, fully paid-up, nonexclusive and irrevocable license to copy, reproduce, perform, dispose of, use, in whole or in part, and to

authorize others to do so for the benefit of Utility, all Proprietary Work Product, including: databases, templates, file formats, scripts, links, procedures, materials, training manuals and other training materials, specially-created key commands, and any other information, designs, plans, or works provided or delivered to Utility or produced by Company or its subcontractors or its agents. If the Parties fail to execute a DERS Agreement or terminate negotiations, Utility shall have no license to use Proprietary Work Product and shall return all Proprietary Work Product to Company.

ARTICLE 5 INDEMNIFICATION

5.1 Each Party shall indemnify, hold harmless, reimburse and defend the other Party and its current and future parent company, subsidiaries, affiliates and their respective shareholders, members, partners, officers, directors, employees, representatives and agents, and the successors in interest of the foregoing from, for and against any and all third party claims, actions, suits, proceedings, demands, damages, losses, expenses, liabilities, fees, fines and penalties, including reasonable attorneys' and expert witnesses' fees (including fees and disbursements of in-house and outside counsel) ("**Third Party Claims**"), for damages to property or injuries to or death of any person arising out of or relating to this Feasibility Agreement, but only to the extent caused by the negligent or other wrongful acts or omissions of the indemnifying Party or any person or entity for whose acts or omissions the indemnifying Party is responsible.

5.2 Each Party shall give prompt written notice to the other Party of any Third Party Claim or notice of a Third Party Claim made against the other Party for acts or omissions related to, or that may impact the completion of, the Services, in no event later than ten (10) business days after becoming aware of such Third Party Claim or receiving such notice of Third Party Claim.

ARTICLE 6 LIMITATION OF LIABILITY

Notwithstanding anything to the contrary contained in this Feasibility Agreement, in no event shall a Party be liable to the other Party for any claims, actions, suits, proceedings, demands, damages, losses, expenses, liabilities, fees, fines and penalties, including to reasonable attorneys' and expert witnesses' fees (including fees and disbursements of in-house and outside counsel) arising out of or relating to the Services provided or to be provided hereunder in excess of _____, regardless of whether such liability arises out of breach of contract, tort, product liability, contribution, strict liability or any other legal theory.

ARTICLE 7 ASSIGNMENT

7.1 Except with respect to Utility's subcontractors, neither Utility nor Company shall assign or transfer any of its interest in this Feasibility Agreement, in whole or in part, without the prior written consent of the other Party, such consent not to be unreasonably withheld.

7.2 The provisions of this Feasibility Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

ARTICLE 8 INDEPENDENT CONTRACTOR; TAXES; SAFETY

8.1 Utility shall perform the Services as an independent contractor and employing unit.

8.2 Utility shall be responsible for remittance of all federal, state and local taxes applicable to any compensation or payments paid to Utility under this Feasibility Agreement, which is included in the Feasibility Services Fee.

8.3 Utility shall be responsible for the safety of its employees and those of its subcontractors, and shall take all reasonable precautions to prevent personal injury, death and property damage resulting from the Services and its acts and omissions and those of its subcontractors. At all times during the performance of any

Services at the Facility, Utility shall comply with all Company safety rules, provided such rules are communicated to Utility in writing by Company.

ARTICLE 9 TERMINATION OF CONTRACT

9.1 A Party ("**Non-Defaulting Party**") may terminate this Feasibility Agreement if the other Party ("**Defaulting Party**") violates or fails to perform any material provision of this Feasibility Agreement (including a failure by the Defaulting Party to make payment when due or if any representation or warranty made by the Defaulting Party was materially false or misleading when made) and, if such violation or failure is capable of cure, the Defaulting Party does not cure such violation or failure within ten (10) calendar days after receipt of a written notice from the Non-Defaulting ("**Cure Period**").

9.2 The Parties agree that Utility will incur substantial liabilities to third parties upon the commencement of the Services and that the extent and amount of loss or damage to Utility as a result of Company's breach of this Feasibility Agreement is impractical and difficult to determine with certainty. Therefore, if Company breaches this Feasibility Agreement and fails to cure such breach within the Cure Period, Company shall pay Utility liquidated damages equal to the Service Fee. The Parties agree that such liquidated damages are a genuine pre-estimate of the damages suffered by Utility by reason of Company's failure to perform under this Feasibility Agreement, and are not intended as a penalty. The amounts payable by Utility under this Section shall be Company's sole and exclusive liability to Utility, and Utility's sole and exclusive remedy, with respect to Company's breach. Nothing in this Section shall be construed as relieving Company of its duty to fulfill its obligations under this Feasibility Agreement.

9.3 Subject to Article 6 and Section 9.2, the rights and remedies of the Non-Defaulting Party provided in this Article are not exclusive and are in addition to any other rights and remedies provided by law or under this Feasibility Agreement. All rights and remedies of the Non-Defaulting Party shall be cumulative and may be exercised successively or concurrently.

ARTICLE 10 FORCE MAJEURE

10.1 Neither Company nor Utility shall be held responsible for delay in the performance of the Services or default under this Feasibility Agreement to the extent caused by fire, riot, an act of God, war, terrorist attack or other cause beyond, respectively, Company's or Utility's reasonable control ("**Force Majeure Events**"). So long as the conditions set forth in this Article are satisfied, other than a Party's ability to pay debts as they become due, neither Party shall be responsible or liable for or deemed in breach of this Feasibility Agreement because of any failure or delay in complying with its obligations under or pursuant to this Feasibility Agreement to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof; provided that in such event:

10.1.1 any liability of either Party that arose before the occurrence of the Force Majeure Event causing the suspension of performance shall not be excused as a result of such Force Majeure Event;

10.1.2 the affected Party shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Force Majeure Event, remedy its inability to perform, and limit damages to the other Party;

10.1.3 the affected Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and

10.1.4 when the affected Party is able to resume performance of the affected obligations under this Feasibility Agreement, that Party shall give the other Party written notice to that effect, and the affected Party promptly shall resume performance under this Feasibility Agreement.

ARTICLE 11 FACILITY ACCESS

Within five (5) calendar days after the Effective Date, Company shall designate by written notice an individual as Company's representative for all matters relating to this Feasibility Agreement ("Company Representative"). The Company Representative or designee shall be reasonably available during all business hours and shall provide or facilitate all access by Utility and its subcontractors to the Facility and to the Company's operational records in order to support Utility's performance of the Services. The actions taken by the Company Representative shall be deemed acts of Company. Company may at any time, upon written notice to Utility, change the Company Representative.

ARTICLE 12 CONFIDENTIALITY; PUBLICITY

12.1 Each Party shall hold in confidence: (a) any information provided or supplied by the other Party or its Representatives (as defined below) that is marked confidential, including such information as may have been provided or supplied prior to the Effective Date; (b) the Scope of Work and all exhibits thereto; and (c) the contents of this Feasibility Agreement (collectively, "**Confidential Information**"). Notwithstanding the foregoing, the following categories of information will not constitute Confidential Information:

12.1.1 information that was in the public domain prior to receipt thereof by such Party or that subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of such Party or its Representatives;

12.1.2 information that such Party can show was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;

12.1.3 information received by such Party from a third party having no obligation of confidentiality with respect thereto; and

12.1.4 information at any time developed independently by such Party provided that it is not developed from otherwise Confidential Information.

12.2 Notwithstanding anything herein to the contrary, a Party may disclose Confidential Information as follows:

12.2.1 Confidential Information may be disclosed pursuant to and in conformity with applicable laws or in connection with any legal proceedings, provided that the Party required to disclose such information shall give prior notice to the other Party of such required disclosure and, if so requested by the other Party, shall use all reasonable efforts to oppose the requested disclosure as appropriate under the circumstances or to seek, through a protective order or other appropriate mechanism, to maintain the confidentiality of the Confidential Information;

12.2.2 Confidential Information may be disclosed as required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries;

12.2.3 In the case of Utility, Confidential Information may, without providing notice thereof to Applicant, be disclosed to regulatory agencies with jurisdiction over Utility and their staffs, including the California Public Utilities Commission ("CPUC") and the Federal Energy Regulatory Commission;

12.2.4 Confidential Information may be disclosed to affiliates, subcontractors, employees, directors, officers, agents, advisors or representatives (collectively, "**Representatives**") of such Party solely as necessary in connection with the Services; provided that (a) each such Representative is informed of the confidential nature of the Confidential Information, (b) such Party shall require each such Representative to adhere to the provisions of this Article, and (c) such Party shall be liable to the other Party for any disclosure by any Representative in violation of the terms of this Article; and

12.2.5 either Party may disclose Confidential Information with the express written consent of the other Party, which consent shall not be unreasonably conditioned, withheld, or delayed.

12.3 It is agreed that each Party shall be entitled to relief both at law and in equity, including injunctive relief and specific performance, in the event of any breach or anticipated breach of this Article, without proof of any actual or special damages.

12.4 All right and title to, and interest in, a Party's Confidential Information shall remain with such Party. All Confidential Information obtained, developed or created by or for Utility exclusively for the Services, including copies thereof, is the exclusive property of Utility whether delivered to Company or not. No right or license is granted to Company or any third party respecting the use of Confidential Information by virtue of this Feasibility Agreement, except to the extent required for Utility's performance of its obligations hereunder. Company shall deliver the Confidential Information, including all copies thereof, to Utility upon request.

ARTICLE 13 DISPUTE RESOLUTION

All claims, disputes and other matters in question between the Parties arising out of or relating to this Feasibility Agreement or the breach thereof, including contract, tort, property, statutory, or common law claims ("*Dispute*") shall be addressed and resolved as follows:

13.1 Negotiation. The resolution of the Dispute shall first be negotiated in good faith by the Parties.

13.2 Mediation. If the Parties are unable to resolve a Dispute through negotiation, the Parties agree first to try in good faith to settle the Dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures, or through private mediation upon agreement of the Parties. The mediator's fees and costs shall be paid equally by the Parties. Any and all mediations arising out of or relating to this Feasibility Agreement shall include, by consolidation or joinder, any other person or entity not a party to this Feasibility Agreement that is substantially involved in a common issue of law or fact and whose involvement in the consolidated mediation is necessary to achieve a final resolution of a matter in controversy therein. The Parties' obligation to mediate shall be specifically enforceable by any court with jurisdiction thereof.

13.3 Litigation. If the Parties do not settle the Dispute through mediation within ninety (90) calendar days of the written notice to the other Party requesting mediation, then either Party shall have the right to pursue litigation as provided for herein. In the event of any litigation to enforce or interpret any terms of this Feasibility Agreement, unless the parties agree in writing otherwise, such action shall be brought in a Superior Court of the State of California located in the County of _____ (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in either the U.S. District Court for the _____ District of California), and the Parties hereby submit to the exclusive jurisdiction of said courts. In any action in litigation to enforce or interpret any of the terms of this Feasibility Agreement, the prevailing Party shall be entitled to recover from the unsuccessful Party all costs, expenses (including expert testimony) and reasonable attorney's fees (including fees and disbursements of in-house and outside counsel) incurred therein by the prevailing Party.

ARTICLE 14 WAIVER

The failure of either Party to enforce any provision of this Feasibility Agreement shall not constitute a waiver by that party of that or any other provision of this Feasibility Agreement.

ARTICLE 15 NOTICES

Any notice, request, demand or other communication required or permitted under this Feasibility Agreement shall be deemed to be properly given by the sender and received by the addressee if made in writing and (1) personally delivered; or (2) as of the date of signed return receipt after deposit with the U.S. Postal Service by certified or registered mail, postage prepaid, with a return receipt requested; or (3) if sent by email or facsimile with

confirmation sent as provided in (2) above. All such notices, requests, demands or other communication shall be addressed as follows:

If to Utility:

Fax: _____
Email: _____

If to Company:

Fax: _____
Email: _____

ARTICLE 16 GOVERNING LAW

The laws of the State of California shall govern this Feasibility Agreement.

ARTICLE 17 SEVERABILITY

If any provision of this Feasibility Agreement is determined to be illegal, in conflict with any law, void or otherwise unenforceable, and if the provisions of this Feasibility Agreement that are essential to each Party’s interests otherwise remain valid and enforceable, then the remaining provisions shall continue to be valid and enforceable and the offending provision shall be given the fullest meaning and effect intended by the Parties as allowed by applicable law.

ARTICLE 18 SURVIVAL

The terms, conditions, representations, and warranties contained in this Feasibility Agreement shall survive the termination or expiration of this Feasibility Agreement.

ARTICLE 19 ENTIRE CONTRACT

This Feasibility Agreement constitutes the entire legally-binding contract between the Parties regarding its subject matter. No waiver, consent, modification or change of terms of this Feasibility Agreement shall bind either party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

ARTICLE 20 SIGNATURES

This Feasibility Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. A facsimile signature or an electronically scanned and electronically mailed (e-mail) signature shall be considered an original. The individuals signing this Feasibility Agreement certify that they are authorized to execute this Feasibility Agreement on behalf of Utility and Company, respectively.

ARTICLE 21 CONSTRUCTION

All references herein to any (i) agreement, law, or tariff shall be to such agreement, law, or tariff as amended, supplemented or modified from time to time, and (ii) governmental authority or other organization, shall be to any successor of such Governmental Authority or other organization. The words “herein,” “hereof” and

“hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. The singular shall include the plural and the masculine shall include the feminine and neuter and vice versa. “Includes” or “including” shall mean “including, without limitation.” The word “or” when used in this Agreement includes the meaning “and” unless the context unambiguously dictates otherwise. THE PARTIES HEREBY AGREE THAT NO TRADE USAGE, PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.

ARTICLE 22 REGULATORY MATTERS

This Agreement shall at all times be (a) subject to changes or modifications by the CPUC, as the CPUC may, from time to time, direct in the exercise of its jurisdiction, and (b) subject to and incorporate by reference all of Utility’s applicable tariff schedules.

[Signature Page Follows]

UTILITY:

Southern California Gas Company

Signature: _____

Printed Name: _____

Title: _____

Date: _____

COMPANY:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

SCOPE OF SERVICES

Utility shall conduct the Services with the intent of determining the technical and economic feasibility of the design, equipment procurement, construction, operation and maintenance of the Proposed Project. The Scope of Work may include, but is not limited to, the following:

Comprehensive Scope Definition

- Define the project execution processes for technical execution, construction, operations & maintenance, and other business related aspects of the project.
- Prepare the scope of work and pricing for the DERS Agreement.

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(TO BE INSERTED BY UTILITY)

ADVICE LETTER NO. 4918
 DECISION NO. 15-10-049

3H16

ISSUED BY

Dan Skopec
 Vice President
 Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)

DATE FILED Jan 19, 2016
 EFFECTIVE May 25, 2017
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(TO BE INSERTED BY UTILITY)
 ADVICE LETTER NO. 4918
 DECISION NO. 15-10-049

ISSUED BY
Dan Skopec
 Vice President
 Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)
 DATE FILED Jan 19, 2016
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(TO BE INSERTED BY UTILITY)
 ADVICE LETTER NO. 4918
 DECISION NO. 15-10-049

ISSUED BY
Dan Skopec
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(TO BE INSERTED BY UTILITY)

ADVICE LETTER NO. 4918
 DECISION NO. 15-10-049

6H13

ISSUED BY

Dan Skopec
 Vice President
 Regulatory Affairs

(TO BE INSERTED BY CAL. PUC)

DATE FILED Jan 19, 2016
 EFFECTIVE May 25, 2017
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 ADVICE LETTER NO. 4918
 DECISION NO. 15-10-049

ISSUED BY
Dan Skopec
 Vice President
 Regulatory Affairs

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 DATE FILED Jan 19, 2016
 EFFECTIVE May 25, 2017
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ATTACHMENT B

Advice No. 4918

Revised Competitively Neutral Materials

Competitively Neutral Script

In response to customer inquiries regarding the Distributed Energy Resources Services Tariff, SoCalGas will use the following competitively neutral script to respond to customer questions:

Customer Question: What is the Distributed Energy Resources Services Tariff?

SoCalGas Response: The Distributed Energy Resources Services (DERS) Tariff is an optional cost-based tariff service for customers that allows SoCalGas (or third-party provider on behalf of SoCalGas) to plan, design, procure, construct, own, operate, and/or maintain distributed energy equipment on or adjacent to customer premises to satisfy onsite energy requirements as requested by the customer and agreed to by SoCalGas. Non-utility service providers may offer services that are the same or similar to the DERS Tariff and customers are encouraged to explore these service options. To assist customers in understanding all of their service options, SoCalGas maintains and provides customers with a list of non-utility service providers that can be found on our website at _____. (This list includes the Department of Energy's Qualified List of Energy Service Companies which have been qualified by a qualification review board comprised of Department of Energy staff.)

Customer Question: What are some examples of end-use applications that would use this tariff?

SoCalGas Response: SoCalGas can provide combined heat and power (CHP) technologies, including but not limited to topping- and bottoming-cycle applications.

Customer Question: Is the Distributed Energy Resources Services Tariff mandatory if customers want to have a distributed energy system?

SoCalGas Response: No. Customers may elect to install and maintain their own distributed energy equipment or engage a third party to install and maintain their distributed energy equipment rather than take the Distributed Energy Resources Services Tariff from SoCalGas.

Customer Question: Does enrollment in this tariff result in any preferential treatment when it comes to getting gas service?

SoCalGas Response: No. The Distributed Energy Resources Services Tariff is a fully elective, optional, non-discriminatory tariff service that is neither tied to any other tariff or non-tariff services the customer may receive from SoCalGas nor will it change the manner in which these services are delivered. As an example, requests for natural gas service are processed on a "first come, first served" basis for all customers, including customers that elect to take the Distributed Energy Resources Services Tariff and customers that do not.

Customer Question: Can anyone receive service under the Distributed Energy Resources Services Tariff?

SoCalGas Response: The Distributed Energy Resources Services Tariff is not restricted to a particular customer class. Any agreement to provide service under the Distributed Energy Resources Services Tariff is at SoCalGas' discretion and will depend on nondiscriminatory factors such as safety, system capacity, SoCalGas resource availability, technical feasibility, and acceptability of commercial terms.

Customer Question: Under this service, would SoCalGas be responsible for all equipment connected to the distributed energy facilities?

SoCalGas Response: No, this service will not cover any activities upstream of the Distributed Energy Resources Services Tariff Receipt Point where fuel is delivered to the distributed energy system or downstream of the DER Point of Service Delivery where energy outputs are delivered to the customer.

Customer Question: What other limitations apply to the Distributed Energy Resources Services Tariff?

SoCalGas Response: Other limitations that apply to the DERS Tariff include, but are not limited to, the following:

- 1) Combined heat and power systems provided through the DERS Tariff will meet the California Public Utilities Commission's Self-Generation Incentive Program (SGIP) efficiency and greenhouse gas emission standards.
- 2) SoCalGas will only install combined heat and power facilities that are fueled wholly by natural gas, biogas, or other gaseous fuels such as hydrogen or hythane.
- 3) The nameplate capacity of the installed combined heat and power system will be less than or equal to 20 Megawatts (MW). If SoCalGas installs multiple systems on one customer's premises, the total nameplate generating capacity built on that premises must be less than or equal to 20 MW.
- 4) The combined heat and power systems installed through the DERS Tariff will meet the requirement that all facilities meet the "fundamental use test" as defined in the federal definition of cogeneration, which requires the energy outputs from the system to be useful

ATTACHMENT C

Advice No. 4918

Proof of Creation of Tracking Numbers

ATTACHMENT C
Proof of Creation of Tracking Numbers

Change Documents in Status Management

History Overview

List of all status changes

Object: ORD 300773708 DISTRIBUTED ENERGY RESOURCES TRACKING OR

User status		Action	Date	Time	User	Transaction
NOST	No User Status	Active	07/20/2015	16:29:56	[REDACTED]	Create Internal Order

System status		Action	Date	Time	User	Transaction
CRID	Created	Inactive	07/20/2015	16:29:56	[REDACTED]	Create Internal Order
		Active	07/20/2015	16:29:56	[REDACTED]	Create Internal Order
REL	Released	Active	07/20/2015	16:29:56	[REDACTED]	Create Internal Order
SEIC	Settlement rule created	Active	07/20/2015	16:29:56	[REDACTED]	Create Internal Order

* Information in the "User" field has been redacted to protect personal information.

ATTACHMENT D

Advice No. 4918

Revised Schedule No. GO-DERS

Redline

ATTACHMENT E

Advice No. 4918

Revised Distributed Energy Resources Services Pro Forma Agreement

Redline

Instructions: Terms that are boxed and shaded in light gray are instructions for preparing this Agreement and must be removed before this Agreement is finalized. Terms that are bracketed ~~and or~~ highlighted in yellow are transaction-specific terms that must be removed, accepted, revised, expanded upon, or completed (as applicable) before this Agreement is finalized.

This Agreement is subject to negotiation and, upon the mutual agreement of the Parties, may be modified as necessary or appropriate based on the requirements of contemplated transaction, the unique circumstances of the Customer, or in order to maximize the value of the transaction, subject to Regulatory Requirements.

DISTRIBUTED ENERGY RESOURCES SERVICES AGREEMENT

This Distributed Energy Resources Services Agreement is entered into and effective as of [insert date of execution] (the “Effective Date”) by and between Southern California Gas Company, a California corporation (“Utility”), and [insert full legal name of Customer], a [insert form of business entity and state of registration] (“Customer”).

RECITALS

- A. Customer (a) owns and operates [insert name or description of Customer Facility] (the “Customer Facility”) located at [insert address of Customer Facility] (as further described in Exhibit A, the “Premises”), or (b) has the necessary legal rights and the full power and authority to perform all of its obligations under this Agreement related to the Customer Facility and the Premises.
- B. Customer desires to retain Utility to perform, and Utility desires to perform the DER Services in accordance with and subject to the terms of this Agreement.

The Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINITIONS AND EXHIBIT LIST

1.1 Definitions. As used in this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

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

“Applicable Law” means (a) any constitution, charter, act, statute, law, Environmental Law, ordinance, code, rule, regulation, order, or other legislative or administrative action of a Governmental Authority, or a final decree, judgment, or order of a court or tribunal, including, in each case, any and all requirements thereof or set forth therein, or (b) laws, orders, ordinances, rules, regulations, certificates, consents, Permits, or any other authorizations of a Governmental Authority or public officer that relate to the design, construction, maintenance, operation, repair, upgrade, renovation, removal, alteration, use, occupancy, or control of the Customer Facility, the DER Facilities, or the Premises (including the Regulatory Requirements, the Customer-Acquired Permits, and the Utility-Acquired Permits).

“Capital Charge” is defined in Section 5.1(b).

“Change in Services” is defined in Section 9.1(b).

“Confidential Information” means confidential or proprietary information concerning the business, operations, or assets of each Party ~~and or~~ its affiliates, whether or not reduced to writing or other tangible form, including (a) the terms and conditions of this Agreement or any related agreement (including the Services Fee, the calculation thereof, and all ~~other~~ information related thereto), (b) information or materials prepared in connection with the

performance of DER Services under this Agreement or any related agreement, (c) designs, drawings, specifications, techniques, models, data, documentation, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies, and financial information, (d) any information defined as “trade secrets” under the Uniform Trade Secrets Act of California, ~~and-or~~ (e) information of a similar nature as that which is set forth in subsections (a)-(e). Confidential Information does not include information that is (i) is known to the receiving Party before obtaining the same from the disclosing Party, (ii) in the public domain at the time of disclosure by the disclosing Party, (iii) is disclosed to the receiving Party by a third party having a bona fide right to do so, (iv) independently developed by an individual or entity that had no access to the Confidential Information; or (iv) approved for release by express prior written consent of an authorized officer of the disclosing Party.

“Consequential Damages” means damages for loss of anticipated profits, loss by reason of the DER Facilities’ shutdown, non-operation or increased expense of operation, service interruptions, cost of purchased or replacement gas or power, cost of money, loss of use of capital or revenue, or any other indirect, incidental, special, punitive, exemplary, or consequential loss or damage, whether arising from defects, delay, or from any other cause whatsoever.

“Construction Commencement Date” is defined in Section 4.1(a).

“CPUC” means the Public Utilities Commission of the State of California.

“Creditworthiness Requirements” has the meaning set forth in the Tariff.

“Customer” is defined in the introductory paragraph of this Agreement.

“Customer-Acquired Permits” is defined in Section 3.3.

“Customer Event of Default” is defined in Section 18.1.

“Customer Facility” is defined in Recital A.

“Customer Representative” is defined in Section 3.5.

“DER Facilities” is defined in Section 2.2.

“DER Services” has the meaning set forth in the Tariff.

“Disputes” is defined in Section 22.1.

“Effective Date” is defined in the introductory paragraph of this Agreement.

“Environmental Attributes” is defined in Section 7.1(a).

“Environmental Laws” is defined in Section 21.2.

“Feasibility Analysis” has the meaning set forth in the Tariff and is attached to this Agreement as Exhibit D.

“Force Majeure” means any occurrence beyond the reasonable control of and to the extent occurring without the fault or negligence of the Party claiming Force Majeure that, in whole or part, delays a Party’s performance under this Agreement or causes the Party to be unable to perform its obligations under this Agreement (~~other than a Party’s ability to pay debts as they become due in each case, other than payment obligations of a Party, including payment of the Services Fee~~), which by exercise of due foresight such Party could not reasonably have been

expected to avoid and which such Party is unable to overcome by the exercise of due diligence. Such occurrences may include acts of God, disruption of natural gas supplies, power outages or disruptions, flood, drought, earthquake, storm, fire, pestilence, lightning, and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or actions or inactions of any Governmental Authority.

“Governmental Authority” means (a) any federal, state, local, municipal, or other government, (b) 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, or (c) any court or governmental tribunal.

“Hazardous Substances” is defined in Section 21.1.

“Index” means [insert applicable agreed-upon Index, if any.]

Instructions: Whether and which Index should be included is to be determined by the mutual agreement of the Parties. If the Parties do not use an Index, this definition and references to it in this Agreement must be removed.

“Latent Site Defects” is defined in Section 6.2(f).

“O&M Charge” is defined in Section 5.1(b).

“Party” refers to Utility or Customer individually, and “Parties” refers ~~collectively~~ to Utility and Customer collectively.

“Performance Requirements” is defined in Section 4.3 and is specified in Exhibit E.

“Permits” means all local, state, and federal permits, licenses, consents, orders, waivers, franchises, registrations, variances, extensions, filings, certificates, exemptions, approvals, and other authorizations obtained from or made with a Governmental Authority.

“Premises” has the meaning set forth in the Tariff and as further described in Recital A.

“Regulatory Requirements” is defined in Article 8.

“Remedial Work” is defined in Section 21.3.

“Services Commencement Date” means the date that is the first day of the month following the date Utility causes the DER Facilities to achieve ~~or to be deemed to have achieved (as determined by Utility in its sole reasonable discretion)~~ the Performance Requirements.

“Services Fee” is defined in Section 5.1(a).

“Tariff” means Schedule GO-DERS in force at the time of interpretation and incorporated herein by reference.

“Taxes” means all federal, state, regional, municipal, and local sales, use, excise, ad valorem and other taxes, charges, or contributions.

“Termination by Utility Payment” is defined in Section 19.1(b).

“Utility” is defined in the introductory paragraph of this Agreement.

“Utility-Acquired Permits” is defined in Section 4.2.

“Utility Representative” is defined in Section 4.5.

“Work Notice” is defined in Section 21.3.

1.2 Exhibit List. The following Exhibits are specifically made a part of this Agreement by this reference:

Exhibit A	–	Description and Location of the Premises and the DER Facilities
Exhibit B	–	Safety and Security Requirements
[Exhibit C	–	[Easement][Lease Agreement]
Exhibit D	–	Feasibility Analysis
Exhibit E	–	Statement of Services and Performance Requirements
Exhibit F	–	Services Fee
[Exhibit G	–	Bill of Sale]

ARTICLE 2

TERM; DESCRIPTION OF THE DER FACILITIES

2.1 Term. The term of this Agreement commences on the Effective Date and will be in full force and effect for a period of [insert years] years after the Services Commencement Date, unless terminated earlier in accordance with the terms hereof. At least ninety (90) days before the end of the term of this Agreement and assuming that all required payments have been made by Customer, the Parties shall meet and confer in order to determine whether to extend the term of this Agreement for a period and at a Services Fee to be mutually agreed upon.

2.1.2 Description of the DER Facilities. [Provide a brief description of the DER Facilities] (as further described in Exhibit A and the Tariff, the “DER Facilities”).

2.2.3 Location of the DER Facilities. The DER Facilities will be located at the Premises, as further described in Exhibit A.

ARTICLE 3

RESPONSIBILITIES OF CUSTOMER

3.1 Premises and Security Requirements. Customer shall provide an appropriate location at the Premises for the delivery of equipment and materials, layout and storage of equipment and materials, ingress and egress, and parking of construction or installation-related vehicles and the construction or installation of the DER Facilities, including ongoing safeguards at the Premises for the protection of the DER Facilities and provision of the DER Services, and all individuals and other property related thereto, including lights and barriers, guard service, controlled access, and other measures developed pursuant to a continuous safety and security assurance program acceptable to Utility, or otherwise reasonably required to prevent vandalism, theft, and danger to the DER Facilities, all as described in greater detail in Exhibit B. Unless otherwise stated in Exhibit B, within thirty (30) days after the Construction Commencement Date, Customer shall provide a notice satisfactory to Utility describing Customer’s safety and security assurance program.

3.2 Access to Premises. At all times and as necessary for Utility or its subcontractors or agents to perform the DER Services and for the purpose of delivery and acceptance of equipment, construction or installation and testing of the DER Facilities and all related construction or installation activities, as well as the operation and maintenance of the DER Facilities or the exercise of Utility’s rights under this Agreement, including Utility’s rights under Section 4.4, Company shall provide Utility and its subcontractors and agents with reasonable access to the Premises and the DER Facilities, including unobstructed ready ingress and egress for all personnel, equipment, materials, and vehicles [all in accordance with the [Easement][Lease Agreement] attached hereto as Exhibit C].

- 3.3 Permits. Customer shall provide reasonable assistance and shall promptly provide all requested information, at no additional cost to Utility, to enable Utility to apply for and obtain all necessary Utility-Acquired Permits. As between Customer and Utility, Customer shall at all times remain responsible for all of the Permits relating to the ownership and operation of the Customer Facility and the Premises (the “Customer-Acquired Permits”), and shall expeditiously acquire any additional Permits related to the operation of the Customer Facility that are made necessary for Customer to operate the Customer Facility due to the DER Facilities.
- 3.4 Cooperation. Customer shall reasonably cooperate and cause its contractors and agents to cooperate with Utility and its subcontractors and agents while working at or near the Premises in order to assure that Customer does not unreasonably hinder or interfere with the DER Services. Each Party shall use its commercially reasonable efforts to cause its contractors and agents to maintain good working relationships with the other Party’s contractors and agents.
- 3.5 Customer Representative. Within fourteen (14) days after the Effective Date, Customer shall designate by written notice an individual as Customer’s representative for all matters relating to this Agreement (the “Customer Representative”). The Customer Representative or designee shall be reasonably available during all business hours and shall provide or facilitate all access, scheduling and operating and maintenance at the Premises to support Utility’s performance of the DER Services and other rights and obligations under this Agreement. The actions taken by the Customer Representative shall be deemed acts of Customer. Customer may at any time, upon written notice to Utility, change the Customer Representative.

ARTICLE 4 RESPONSIBILITIES OF UTILITY

- 4.1 Scope of Services. In accordance with and subject to the terms of this Agreement and the Feasibility Analysis, Utility shall, directly or through its subcontractors or agents, perform the DER Services, as set forth in Exhibit E, in the following phases:
- (a) Construction or Installation of the DER Facilities. Upon the date of Utility’s issuance of a notice to Customer of Utility’s intent and authorization to proceed with the supply and construction or installation of the DER Facilities (the “Construction Commencement Date”), which date shall be at Utility’s discretion (but subject to Article 11), Utility or its subcontractors or agents shall initiate the construction or installation of the DER Facilities.
 - (b) Start-up and Testing of the DER Facilities. Before the Services Commencement Date, Utility or its subcontractors or agents shall perform all start-up and testing of the DER Facilities to confirm that it meets or exceeds the Performance Requirements, all as further described in Exhibit E.
 - (c) Commencement of Operation of the DER Facilities. Utility shall ~~provide notify~~ Customer with thirty (30) days advance written notice in writing (which may be provided through its invoice) of the Services Commencement Date. As of the Services Commencement Date, Utility shall commence operation of the DER Facilities.
- Utility shall provide the DER Services on a non-discriminatory basis, dependent only on factors such as safety, system capacity, Utility resource availability, technical feasibility, and acceptability of the commercial terms.
- 4.2 Utility-Acquired Permits. Utility shall be responsible for acquiring all Permits necessary to do business in the jurisdiction where the DER Facilities is located and the DER Services are to be performed, and all other Permits necessary to perform the DER Services (the “Utility-Acquired Permits”); *provided that* Utility is not required to obtain or maintain any Permits for the ownership or operation of the DER Facilities or Customer Facility that are required to be held by Customer.

- 4.3 Performance Requirements. Utility or its subcontractor(s) or agents shall operate the DER Facilities so that, as of the Services Commencement Date, the DER Facilities satisfy the performance requirements set forth in Exhibit E (the “Performance Requirements”).
- 4.4 Decommissioning. Upon expiration or termination of this Agreement, and subject to Article 13 and Applicable Law, Utility or its subcontractors or agents shall be responsible for safely decommissioning or removing the DER Facilities and all of the improvements made thereto pursuant to this Agreement by Utility.
- 4.5 Utility Representative. Within fourteen (14) days after the Effective Date, Utility will designate by written notice an individual as Utility’s representative for all matters relating to Utility’s performance of the DER Services under this Agreement (the “Utility Representative”). The actions taken by the Utility Representative with respect to such performance shall be deemed acts of Utility. Utility may at any time, upon written notice to Customer, change the Utility Representative.

ARTICLE 5 FEE FOR SERVICES

5.1 Services Fee.

(a) Commencing as of the Services Commencement Date and continuing throughout the term of this Agreement, Customer shall pay Utility the following services fee (“Services Fee”) ~~on a monthly basis: [REDACTED] Dollars (\$ [REDACTED]) per month in accordance with and as set forth in pursuant to this Article and Exhibit F.~~

(a)(b) The Services Fee shall consist of (ia) a capital-related charge (“Capital Charge”), (iib) an operations and maintenance-related charge (“O&M Charge”), and (iiie) any other charge or cost mutually agreed to by the Parties, each as further described in Exhibit F. [The O&M Charge is subject to annual adjustment on each yearly anniversary of the Services Commencement Date by the positive percentage change in the Index most recently published as of such anniversary over the Index determined for the prior annual period (or in the case of the first anniversary, the Index most recently published as of the Effective Date).]

Instructions: Include the bracketed language if the Parties agree to an Index.

5.2 Invoicing. Utility shall provide Customer with an invoice on a monthly basis and Customer shall pay each such invoice within nineteen (19) days after the date of such invoice. If payment is not received by Utility by the due date, late payment charges shall be imposed by Utility. Notwithstanding the foregoing, bBilling and late payment charges shall be consistent with Utility’s applicable tariff schedules as filed from time to time with the CPUC.

ARTICLE 6 COVENANTS, WARRANTIES, AND REPRESENTATIONS

Instructions: Upon the mutual agreement of the Parties, disclosure schedules may be added to this Agreement with respect to Article 6.

6.1 Utility Covenants, Representations, and Warranties. Utility covenants, represents, and warrants to Customer that:

(a) Organization, Standing and Qualification. Utility is a corporation, duly organized, validly existing, and in good standing under the laws of California, and has full power and authority to execute, deliver, and

perform its obligations under this Agreement and to engage in the business it presently conducts and contemplates conducting.

- (b) Professional Skills. Utility and its subcontractors and agents shall have all the required authority, ability, skills, experience, and capacity necessary to perform and shall diligently perform the DER Services in a timely and professional manner, utilizing sound engineering principles, project management procedures, construction procedures, and supervisory procedures, all in accordance with industry standards.
- (c) Enforceable Agreement. This Agreement has been duly authorized, executed, and delivered by or on behalf of Utility and is, upon execution and delivery, the legal, valid, and binding obligation of Utility, enforceable against Utility in accordance with its terms, except as such enforceability may be limited by the Regulatory Requirements, applicable bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by general equitable principles.
- (d) No Conflict. The execution, delivery, and performance by Utility of this Agreement will not:
 - (i) Conflict with, violate, or cause any default under: (1) its organizational documents; (2) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales agreement, loan or credit arrangement, or any other agreement or instrument to which Utility is a party or by which it or its properties may be bound or affected; or (3) any Applicable Laws; or
 - (ii) Subject the Customer Facility, the DER Facilities, or any component part thereof, or the Premises or any portion thereof to any lien other than as may be contemplated or permitted by this Agreement.

6.2 Customer Covenants, Representations, and Warranties. Customer covenants, represents, and warrants to Utility that:

- (a) Organization, Standing and Qualification. Customer is a [insert business entity type] duly formed, validly existing, and in good standing under the laws of the State of [insert state of registration], and has full power and authority to execute, deliver, and perform its obligations under this Agreement and to engage in the business Customer presently conducts and contemplates conducting.
- (b) Enforceable Agreement. This Agreement has been duly authorized, executed, and delivered by or on behalf of Customer and is, upon execution and delivery, the legal, valid, and binding obligation of Customer, enforceable against Customer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditors' rights generally and by general equitable principles.
- (c) No Conflict. The execution, delivery and performance by Customer of this Agreement will not conflict with, violate, or cause any default under: (i) its organizational documents; (ii) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales agreement, loan or credit arrangement, or any other agreement or instrument to which Customer is a party or by which it or its properties may be bound or affected; or (iii) any Applicable Laws.
- (d) Governmental Approvals. No authorization, approval, exemption, or consent by any Governmental Authority is required in connection with the execution, delivery, and performance of this Agreement by Customer. The Customer-Acquired Permits either have been obtained and are in full force and effect on the date hereof or will be obtained and will be in full force and effect, so as to permit Utility to commence and prosecute the DER Services to completion.
- (e) No Suits, Proceedings. There are no material actions, suits, proceedings, or investigations pending or, to Customer's knowledge, threatened against it at law or in equity before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Customer

or in any impairment of its ability to perform its obligations under this Agreement. Customer has no knowledge of any violation or default with respect to any order, writ, injunction, or any decree of any Governmental Authority that may result in any such materially adverse effect or such impairment.

(f) No Latent Site Defects. There are no Latent Site Defects at the Premises that will impede Utility from obtaining the Utility-Acquired Permits. “Latent Site Defects” means any conditions or circumstances that were not revealed to or ascertained by Utility during the development of the Feasibility Analysis, and include the presence of legally significant cultural resources, endangered species, dangerous site conditions, earthquake fault lines, or air, soil, or water contamination.

(g) Control of Premises. On the Effective Date and continuing throughout the term of this Agreement, Customer (i) shall own and operate the Customer Facility and the Premises, or (ii) shall have the necessary legal rights to the Customer Facility and the Premises, and shall have the full power and authority to perform all of its obligations under this Agreement ~~or~~ and with respect to the Customer Facility, the DER Facilities, and the Premises.

ARTICLE 7 ENVIRONMENTAL ATTRIBUTES

7.1 Definition. “Environmental Attributes” means any and all current or future credits, benefits, air quality credits, renewable energy credits, emission reductions, offsets and allowances, howsoever entitled or referred to, earned by or in connection with the reduction of air pollutants or the avoidance of the emission of any gas, chemical or other substance, including any Environmental Attributes arising out of laws or regulations involving or administered by the Environmental Protection Agency, the California Air Resources Board, California Energy Commission, South Coast Air Quality Management District, or any state, federal or international entity given jurisdiction over a program involving transferability of Environmental Attributes, and any reporting rights to such Environmental Attributes. Environmental Attributes include (i) voluntary and mandatory international, federal, state or local credits associated with the construction or operation of air quality projects, (ii) any other financial incentives in the form of credits, reductions, or allowances associated with the Customer Facility or the DER Facilities that are applicable to a Tax obligation, and (iii) any corporate citizen or corporate sustainability measurements, ratings or benefits.

7.2 Ownership of Environmental Attributes. Customer shall be entitled to all Environmental Attributes that relate to the DER Facilities. Both Parties shall provide reasonable assistance to fulfill any requirements related to the Environmental Attributes but the Party holding legal title to the particular Environmental Attribute shall be responsible for reimbursing any additional costs incurred by the other Party in providing reasonable assistance.

ARTICLE 8 REGULATORY MATTERS

This Agreement shall at all times be (a) subject to changes or modifications by the CPUC, as the CPUC may, from time to time, direct in the exercise of its jurisdiction, (b) subject to and incorporate by reference all of Utility’s applicable tariff schedules (including the Tariff) as filed from time to time with the CPUC (collectively, the “Regulatory Requirements”), and (c) subject to all Permits.

**ARTICLE 9
CHANGE IN SERVICES**

9.1 Change Events.

- (a) Minor Variations in Services. Utility shall have the right, at any time, to make minor variations in the DER Services that do not involve an adjustment in the Services Fee and are compatible with the design concept of the DER Facilities.
- (b) Change in Services. If, during the term of this Agreement, as a result of a change in Applicable Law, a Latent Site Defect (subject to Section 19.1), or Customer’s requirements, there needs to be a change to the cost or time required for the performance of the DER Services or a change in the DER Services or to the DER Facilities (a “Change in Services”), the Parties shall negotiate in good faith to enter into a contract modification providing for an equitable adjustment of Services Fees reflecting any additional costs incurred by Utility, as well as any other contract modification necessary to implement such Change in Services.
- (c) Customer-Requested Change in Services. Customer may request a Change in Services in writing to Utility. In such event, Utility shall prepare and submit to Customer a written estimate relating to the proposed Change in Services, including: (i) any projected change in the cost of the performance of the DER Services and any projected modification of the Services Fee occasioned by such Change in Services; and (ii) the effect such Change in Services could be expected to have on the performance of the DER Facilities. If Customer elects to proceed with a more detailed examination of such proposed Change in Services, within such period as shall be agreed upon by the Parties, Utility shall submit to Customer a detailed estimate relating to the contemplated change and Customer shall be responsible for the cost of preparing the detailed estimate. If Customer elects to proceed with the proposed Change in Services, Customer and Utility shall agree upon a change order that shall include (x) an adjustment in the Services Fee for the costs expected to be incurred by Utility as a result of such Change in Services less any savings or costs not incurred as a result of such Change in Services, and (y) an adjustment in other terms of this Agreement, including the Performance Requirements, as a result of such Change in Services.

**ARTICLE 10
NOTICES**

Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) personally delivered; or (b) as of the date of signed return receipt after deposit with the U.S. Postal Service by certified or registered mail, postage prepaid, with a return receipt requested; or (c) if sent by email or facsimile with confirmation sent as provided in (b) above. Notices shall be addressed as follows to:

If to Utility:

[Redacted]
[Redacted]
[Redacted]
[Redacted]
Fax: [Redacted]
Email: [Redacted]

with a copy to:

[Redacted]
[Redacted]
[Redacted]
[Redacted]
Fax: [Redacted]

Email: []

If to Customer:

[]

[]

[]

[]

Fax: []

Email: []

with a copy to:

[]

[]

[]

[]

Fax: []

Email: []

or, as to each Party, at such other or additional address as may be designated by such Party in a written notice to the other Party.

**ARTICLE 11
TERMINATION BY EITHER PARTY**

If the Construction Commencement Date has not occurred by [insert date], either Party shall have the right to terminate this Agreement upon notice to the other Party, in which case neither Party shall have any further rights or obligations hereunder (other than such rights and obligations that by the express terms of this Agreement survive the expiration or earlier termination of this Agreement).

**ARTICLE 12
INSURANCE, CREDIT AND SECURITY REQUIREMENTS**

12.1 Customer Insurance. Customer agrees to obtain and maintain at Customer’s sole cost and expense the following types and amounts of insurance coverage consistent with the following requirements for the entire term of this Agreement to insure against any and all claims, losses, damages or expenses resulting from Customer’s facilities located at the Premises and Customer’s responsibilities under the Tariff or this Agreement:

- (a) Workers’ Compensation and Employers’ Liability Insurance. In accordance with the laws of California, Customer shall maintain in force workers’ compensation insurance for all of its employees. Customer shall also maintain Employers’ Liability coverage in an amount of not less than \$[_,000,000.00 (___ Million Dollars)] per accident and per employee for disease. In lieu of such insurance, Customer may maintain a self-insurance program meeting the requirements of California along with the required Employers’ Liability insurance. Such insurance shall contain a waiver of subrogation in favor of Utility.
- (b) Commercial or Business Automobile Liability Insurance. Customer shall maintain an automobile liability policy or policies insuring against liability for damages because of bodily injury, death, or damage to property (including loss of use thereof), and occurring in any way related to the use by or on behalf of Customer, including loading or unloading of any of Customer’s automobiles (including owned, non-owned, leased, rented or hired vehicles). Such coverage shall be in an amount of not less than \$[_,000,000.00 (___ Million Dollars)] combined single limit.

- (c) Commercial General Liability Insurance. Customer shall carry and maintain on an “occurrence” form commercial general liability policy or policies, insuring against liability arising from bodily injury, death, property damage, personal and advertising injury, products/completed operations liability, contractual liability covering all operations of Customer on the Premises which policy shall contain a waiver of subrogation in favor of Utility. There shall be no explosion, collapse or underground exclusion. Such coverage shall be in an amount of not less than [\$ __,000,000.00 (__ Million Dollars)] per occurrence. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.
- (d) Pollution Liability Insurance. Customer shall maintain pollution liability insurance or insurance policies in an amount not less than [\$ __,000,000.00 (__ Million Dollars)] each claim. If the policy maintains a policy aggregate, such aggregate shall not be less than twice the per occurrence limit.
- (e) Policy Requirements. The required policies and any of Customer’s policies providing coverage in excess of the required policies shall provide that the coverage is primary for all purposes and Customer shall not seek any contribution from any insurance or self-insurance maintained by Utility. All required policies of insurance shall be written by companies having an A.M. Best rating of “A -, VII” or better, or equivalent. Customer shall be solely responsible for any deductible or self-insured retention on insurance required under this Agreement.
- (f) Additional Insureds. Utility, its parent company, and its subsidiaries, affiliates, contractors and their respective officers, directors, employees, successors and assigns shall be named as additional insureds for policies listed above, except for workers’ compensation. Commercial General Liability insurance shall provide a severability of interest or cross-liability clause. Customer shall not violate nor knowingly permit to be violated any condition of the policies required under this Section.

Instructions: Coverage for (a) workers’ compensation and employers’ liability insurance, and (b) commercial or business automobile liability insurance must each be no less than \$1,000,000. Coverage for (x) commercial general liability insurance and (y) pollution liability insurance must each be no less than \$5,000,000. In all instances, such amounts are subject to approval by Utility.

12.2 Certificates of Insurance. On or before the Effective Date, and thereafter upon Utility’s request during the term of this Agreement, Customer shall provide Utility with original, current certificates of insurance, and renewal certificates of insurance thereafter, executed by a duly authorized representative of each insurer, or by the insurance agent or broker authorized to do so, as evidence of all insurance policies required under this Section. Utility shall not commence any of the DER Services until Customer has obtained all insurance required by this Article and has provided acceptable certificates of insurance to Utility for review and approval. No insurance policy may be canceled, materially revised, or subject to non-renewal without at least thirty (30) days prior written notice being given to Utility, ten (10) days for non-payment of premium. Customer shall provide Utility with renewal certificates of insurance or binders within seven (7) days before or after such expiration. Insurance shall be maintained without lapse in coverage during the Term.

12.3 Recorded and Secured Interest ~~in Premises and the Customer Facility.~~ At Utility’s election, Utility shall be entitled to record in the public records a [memorandum of lease describing its leasehold interest in the Premises] ~~an easement describing its interest in the Premises].~~ To the extent that either presently or in the future, there is any individual or entity other than Customer and Utility holding any interests in the Premises, Customer and Utility shall enter into a subordination and non-disturbance agreement that secures Utility’s interest in the Customer Facility and the Premises in a manner satisfactory to Utility. At Utility’s election, Utility may file a Uniform Commercial Code (“UCC”) Financing Statement identifying Utility as the owner of the Customer Facility. Customer shall fully cooperate with the UCC filing if pursued by Utility.

12.4 Creditworthiness Requirements. Customer shall be responsible for meeting all Creditworthiness Requirements.

ARTICLE 13
OPTION TO PURCHASE THE DER FACILITIES

13.1 Option to Purchase. Customer shall have the option to purchase the DER Facilities upon the expiration of term of this Agreement and in accordance with the following terms and conditions (the “Option”):

- (a) Customer may purchase the DER Facilities pursuant to the Option;
- (b) Any conveyance made pursuant to the Option shall be made by bill of sale, in the form set forth in Exhibit G, and which shall be delivered by Utility to Customer at the Closing;
- (c) Customer shall exercise the Option, if at all, by giving written notice to Utility, at any time during the term of this Agreement, but, in any event, no later than ninety (90) days before the expiration of the term of this Agreement;
- (d) The purchase price for the Property-DER Facilities shall be [] Dollars (~~\$~~);
- (e) Each Party shall be responsible for its own closing costs, including attorney’s fees, at every level. Customer shall pay all transfer taxes, surtax and similar Taxes due in connection with the conveyance of the Property-DER Facilities by Utility to Customer, other than income taxes; ~~and~~
- (f) ~~Unless otherwise agreed to in writing by the Parties, the closing on the Option shall occur within ninety (90) days after Customer’s exercise of the Option immediately following the expiration of the term of this Agreement (the “Closing”); and~~
- (g) ~~A Customer Event of Default or a default under a related agreement or obligation (as described in Article 17) by Customer shall void the Option, notwithstanding that Customer may have given notice of its intent to exercise the Option before such Customer Event of Default or a default under a related agreement or obligation. -~~
- (h) Ownership of Facilities. The Parties acknowledge and agree that, prior to the Closing, Utility shall be the sole owner of the DER Facilities.

Instructions: Article 13 is an optional provision and is subject to modification upon mutual agreement of the Parties. If the Parties do not desire to have this Article included in the Agreement, it should be removed in its entirety and replaced with “[Intentionally omitted].”

ARTICLE 14
CONFIDENTIALITY

14.1 Confidentiality.

- (a) A Party may only disclose Confidential Information of the other Party to its directors, officers, employees, agents, subcontractors, or representatives (collectively, “Representatives”), and only to the extent that such Representatives require such Confidential Information in order to carry out such Party’s obligations under this Agreement. The Party receiving Confidential Information shall, and shall cause its Representatives to use such Confidential Information solely for the limited purpose of performing its obligations under this Agreement and not for its or their own benefit, and to keep confidential and not disclose the Confidential Information. Each Party agrees to use the same degree of care with the other Party’s Confidential Information that such Party uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of

care to prevent unauthorized use or disclosure of the Confidential Information of the other Party. Each Party shall cause each of its Representatives to become familiar with and abide by the terms of this Agreement. Each Party shall be responsible for any breach of this Agreement by its Representatives.

- (b) Notwithstanding Section 14.1, a Party may disclose the Confidential Information of the other Party in the event, but only to the extent, that, based upon the reasonable advice of counsel, such Party is required to do so by the disclosure requirements of any Applicable Laws. Before making or permitting any such disclosure, such Party shall provide the other Party with prompt written notice of any such requirement so that the Party seeking to prevent disclosure (with the other Party's assistance, at the expense of the Party seeking to prevent disclosure) may seek a protective order or other appropriate remedy. Notwithstanding anything to the contrary set forth herein, Utility may, without providing notice thereof to Customer, disclose Confidential Information to regulatory agencies with jurisdiction over Utility, including the CPUC and the Federal Energy Regulatory Commission.
- (c) The confidentiality provisions set forth in this Agreement shall remain in full force and effect with respect to specific Confidential Information until the later of the end of the term of this Agreement or the date that is five (5) years after the date of disclosure of such Confidential Information.
- (d) The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Agreement and the obligations of each Party are specifically enforceable. Accordingly, the Parties agree that in the event of a breach or threatened breach of this Agreement by either Party, the other Party shall be entitled to seek an injunction preventing such breach. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to the Parties under any Applicable Law.

ARTICLE 15 FORCE MAJEURE

- 15.1 Force Majeure. A Party shall promptly notify the other Party in writing of any delay or anticipated delay in that Party's ability to perform its obligations under this Agreement due to the occurrence of events of Force Majeure and the reason for and anticipated length of such delay.
- 15.2 Excuse of Performance. If, because of an occurrence of an event of Force Majeure, either Party is unable to perform its obligations under this Agreement (~~other than a Party's ability to pay debts as they become due other than payment obligations~~), the affected Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent so affected, *provided that* the suspension of performance is of no greater scope and of no longer duration than is required by the event of Force Majeure and the affected Party shall use commercially reasonable efforts to mitigate damages.
- 15.3 Termination Due to Force Majeure. In the event a Party's performance of obligations hereunder (~~other than a Party's ability to pay debts as they become due other than payment obligations~~) is prevented by an event of Force Majeure for a period of more than one hundred twenty (120) days, the unaffected Party may elect to terminate this Agreement. In such case, if the terminating Party is Utility, following such termination, Customer shall be liable for the Termination by Utility Payment.

ARTICLE 16 TAXES

- 16.1 Utility Tax Obligations. Utility assumes the benefit of any tax credits related to the DER Facilities and exclusive liability for and shall pay before delinquency any and all Taxes imposed on, or with respect to, or

measured by, the materials, supplies or labor furnished hereunder, or the wages, salaries or other remunerations paid to individuals employed in connection with the performance of the DER Services. Utility agrees to comply with all applicable laws and regulations setting forth withholding requirements for Taxes and unemployment and disability insurance premiums applicable to its employees and independent contractors (collectively, the “Withholding Requirements”). Utility also agrees to secure the agreement of each of its subcontractors and agents to comply with all Withholding Requirements applicable to such subcontractor’s and agent’s employees.

- 16.2 Customer Obligations. Customer assumes exclusive liability for and shall pay before delinquency for (i) any and all increased real property or other applicable Taxes it may be subject to as a result of the ownership and operation of the Premises, including the Customer Facility, and (ii) any and all sales Taxes imposed on, or with respect to, the DER Facilities.

ARTICLE 17 RELATED AGREEMENT

Any violation of the terms of the Tariff [or the Easement][or the Lease] shall constitute a default under this Agreement. Any notice of default given under [the Easement][the Lease,] this Agreement, or the Tariff shall be deemed to have also been given under the other agreements. Any cure periods under such agreements for any act or omission that constitutes a default shall run concurrently. [This Agreement and [the Easement][the Lease] are indivisible for purposes of section 365 of the Bankruptcy Code. In the event that any part of this Agreement [or the Easement] [or the Lease] is assumed or assigned pursuant to section 365, the other parts of this Agreement [and the Easement][and the Lease] shall similarly be assumed or assigned.]

ARTICLE 18 DEFAULT

- 18.1 Customer Default. At any time during the term of this Agreement, if Customer (a) abandons the Premises, (b) tampers with or otherwise affects the operations of the DER Facilities, (c) creates a condition at the Premises that poses a risk to health or safety, (d) fails to pay the Services Fee, (e) files a petition or otherwise commences a proceeding or case under bankruptcy, or becomes bankrupt or insolvent, (f) is unable to pay its debts as they fall due, or has a receiver, custodian, trustee, or similar official appointed with respect to it or substantially all of its assets, or (g) violates or fails to perform any material provision of this Agreement, including if any representation or warranty made by Customer herein was materially false or misleading when made, and, in each case, Customer fails to cure such event of default within sixty (60) days (or, with respect to Section 18.1(d), within seven (7) days) after written notice from Utility (each, a “Customer Event of Default”), Utility may notify Customer and exercise its rights under Section 19.1.
- 18.2 Utility Event of Default. At any time during the term of this Agreement, if Utility violates or fails to perform any material provision of this Agreement, including if any representation or warranty made by Utility herein was materially false or misleading when made (“Utility Event of Default”), and Utility fails to cure such event of default within sixty (60) days after written notice from Customer, Customer may notify Utility and exercise its rights under Section 19.2.

ARTICLE 19 REMEDIES

- 19.1 Utility Remedies. In the event of a Customer Event of Default, or in the event of a Latent Site Defect that cannot reasonably be remedied by a Change in Services and subject to Section 19.3, Utility shall have the following non-exclusive rights and remedies, which Utility may exercise in its sole discretion:
- (a) To suspend performance of the DER Services until Customer cures such Customer Event of Default or removes the Latent Site Defect, in which event Customer shall be liable for all additional costs and expenses incurred by Utility arising out of such suspension;

- (b) To terminate this Agreement, in which event Customer shall be liable for all of Utility's unrecovered Capital Charge and other ownership costs and including any costs resulting from early termination provisions in Utility's subcontracts ("Termination by Utility Payment"); or
- (c) To avail itself of any equitable remedy to enforce the obligations of Customer under this Agreement.

19.2 Customer Remedies. In the event of a Utility Event of Default that is uncured by Utility following notice from Customer as required by Section 18.2, Customer shall have the right to terminate this Agreement, in which case Utility, as its sole liability and Customer's sole remedy, shall be responsible for the removal of the DER Facilities and restoration of the Customer Facility and the Premises to a condition similar to that which existed before the construction or installation of the DER Facilities.

19.3 Limitation of Remedies. Except as set forth as a specific remedy hereunder, each Party waives any and all Consequential Damages from the other Party that may result from a breach of this Agreement by such other Party. Except as expressly limited by the terms of this Agreement, the Parties shall have all remedies, at law or equity, for any cause of action based on or arising out of this Agreement.

ARTICLE 20 INDEMNIFICATION

20.1 Indemnification.

- (a) Utility Indemnification. Utility shall indemnify, defend, and hold Customer and its affiliates, and their respective shareholders, officers, directors, employees, agents, contractors and subcontractors harmless from any and all liabilities, damages, fines, penalties, costs, claims, interest and expenses (including costs of defense, settlement, and reasonable attorney fees) that arise from third party claims, allegations, suits and causes of action for losses, penalties, judgments, awards, or damages of any kind to the extent such claims, allegations, suits and causes of action arise out of (i) the negligence or willful misconduct of Utility or its employees, agents, contractors and subcontractors, or intentional act of Utility or its employees, agents, contractors and subcontractors, or (ii) violations of any Applicable Law by Utility or its agents or subcontractors; except to the extent any such claim, allegation, suit, cause of action, loss, penalty, judgment, or award for damages arises from the breach of this Agreement by, or the negligence, intentional misconduct or other fault of, Customer.
- (b) Customer Indemnification. Customer shall indemnify, defend, and hold Utility and its shareholders, officers, directors, employees, agents, contractors and subcontractors harmless from and against any and all liabilities, damages, fines, penalties, costs, claims, interest and expenses (including costs of defense, settlement, and reasonable attorney fees) that arise from third party claims, allegations, suits and causes of action for losses, penalties, judgments, awards, or damages of any kind to the extent such claims, allegations, suits and causes of action arise out of (i) Customer's breach of this Agreement or any representation or warranty made in this Agreement, (ii) entries upon, occupancy, use, operation, alteration, maintenance, repair or other activities on or about the DER Facilities by Customer or its employees, agents, contractors, or subcontractors, (iii) the negligence or willful misconduct of Customer or its employees, agents, contractors and subcontractors, or the intentional acts of Customer or its employees, agents, contractors and subcontractors, or (iv) violations of any Applicable Law by Customer or its agents or contractors; except to the extent any such claim, allegation, suit, cause of action, loss, penalty, judgment, or award for damages arises from the breach of this Agreement by, or the negligence, intentional misconduct or other fault of, Utility. Notwithstanding any other provision in this Agreement, Utility shall not be liable to Customer for any loss or damage to individuals or property arising from Customer's entries upon, occupancy, use, operation, alteration, maintenance, repair or other activities on or about the Customer Facility or from any damage caused by fire or other casualty or by any individual or entity not employed or controlled by Utility, or as the result of any existing or future condition of the Customer Facility.

(c) Survival. The provisions of Article 20 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 21 HAZARDOUS SUBSTANCES

- 21.1 Definition of Hazardous Substances. “Hazardous Substances” for purposes of this Agreement shall be interpreted broadly to include any material or substance that is defined, regulated, or classified under any Environmental Law or other Applicable Law and the regulations promulgated thereunder as (a) a “hazardous substance” pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14), the Federal Water Pollution Control Act, 33 U.S.C. §1321(a)(14), as now or hereafter amended; (b) a “hazardous waste” pursuant to section 1004 or section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903(5), 6921; (c) toxic pollutant under section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1); (d) a “hazardous air pollutant” under section 112 of the Clean Air Act, 42 U.S.C. §7412(a)(6), as now or hereafter amended; (e) a “hazardous material” under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. §5102(2), as now or hereafter amended; (e) toxic or hazardous pursuant to regulations promulgated now or hereafter under the aforementioned laws or any state or local counterpart to any of the aforementioned laws; or (f) presenting a risk to human health or the environment. “Hazardous Substances” shall also mean any substance that after release into the environment or upon exposure, ingestion, inhalation or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities and specifically includes asbestos, polychlorinated biphenyls, radioactive materials (including radon and naturally occurring radio nuclides) natural gas, natural gas liquids, liquefied natural gas, synthetic gas, oil, petroleum and petroleum-based derivatives and urea formaldehyde.
- 21.2 Customer’s Representation and Warranty. Customer warrants and represents to Utility that the Customer Facility and the Premises do not contain any Hazardous Substances and that, to the best of Customer’s knowledge, Customer and its predecessors and their respective agents or employees have not caused or permitted any such Hazardous Substances to be released, discharged or deposited onto or in the vicinity of the Premises. Customer warrants and represents further that (a) to the best of Customer’s knowledge Customer or the Customer Facility and Premises are not subject to any existing, pending or threatened investigation by any Governmental Authority under any applicable federal, state or local law, regulation or ordinance pertaining to soil, groundwater, air and water quality, the handling, transportation, storage, treatment, usage or disposal of Hazardous Substances, air emissions and other environmental matters (collectively, “Environmental Laws”), (b) to the best of Customer’s knowledge any handling, transportation, storage, treatment or use of Hazardous Substances that has occurred on the Customer Facility and Premises has been in compliance with all Environmental Laws, and (c) to the best of Customer’s knowledge, the Customer Facility and Premises, the soil, groundwater, air and water are free of the deposit of Hazardous Substances during the time Customer has owned the Facility and Premises. “Best of Customer’s knowledge” is actual knowledge of Customer’s managerial level employees and information acquired through any source including environmental reports and analyses, all as it relates to environmental matters.
- 21.3 Customer’s Covenant. Customer shall be responsible at its expense for conducting any clean-up, repair or other work in response to any Hazardous Substances to the extent the Hazardous Substances were accepted by or introduced by Customer or parties claiming under Customer, its agents or contractors on the Premises, the Customer Facility, the DER Facilities, and any surrounding areas (“Remedial Work”). Customer shall perform all Remedial Work in accordance with all Applicable Laws in order to obtain a “No Further Action” determination from the applicable Governmental Authority, to the extent such determination is necessary. Customer shall provide fifteen (15) days’ advance written notice to the Utility Representative of any Remedial Work to be performed on the DER Facilities, the Premises, or the Customer Facility (“Work Notice”), except in the event of an emergency in which case Customer shall proceed without a Work Notice to abate the release and shall provide the Utility Representative with a Work Notice as soon thereafter as

practicable. Said Work Notice shall describe the anticipated start and completion dates of Remedial Work, the work to be performed including the cleanup action plan, and the identity of the proposed contractor. The Utility Representative shall respond in writing to the Work Notice within fifteen (15) days of receipt. Utility's failure to respond within such fifteen (15) day period shall be deemed approval of the Work Notice but only in the event that Customer has obtained written proof that the Work Notice was actually received by the Utility Representative. Unless otherwise agreed to by the Utility Representative, Customer shall be responsible for restoring the DER Facilities to substantially the condition it was in before the commencement of the Remedial Work. Customer shall timely provide the Utility Representative with all monitoring, status, or other reports submitted in furtherance of obtaining a "No Further Action" determination. Customer shall conduct any such Remedial Work not located at the Premises pursuant to a commercially reasonable license agreement.

21.4 Survival. The provisions of Article 21 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 22 DISPUTE RESOLUTION

22.1 Dispute Resolution. All claims, disputes and other matters in question between the Parties arising out of or relating to this Agreement or the breach thereof, including contract, tort, property, statutory, or common law claims ("Disputes") shall be addressed and resolved as follows:

- (a) Negotiation. The resolution of the Dispute shall first be negotiated in good faith by the Parties.
- (b) Mediation. If the Parties are unable to resolve a Dispute through negotiation, the Parties shall first try in good faith to settle the Dispute by mediation administered by the American Arbitration Association under its Commercial Arbitration Rules and Mediation Procedures, or through private mediation upon agreement of the Parties. The mediator's fees and costs shall be paid equally by the Parties. Any and all mediations arising out of or relating to this Agreement shall include, by consolidation or joinder, any other individual or entity not a party to this Agreement that is substantially involved in a common issue of law or fact and whose involvement in the consolidated mediation is necessary to achieve a final resolution of a matter in controversy therein. The Parties' obligation to mediate shall be specifically enforceable by any court with jurisdiction thereof.
- (c) Litigation. If the Parties do not settle the Dispute through mediation within forty-five (45) days of the written notice to the other Party requesting mediation, then either Party shall have the right to pursue litigation as provided for herein. In the event of any litigation to enforce or interpret any terms of this Agreement, unless the Parties agree in writing otherwise, such action shall be brought in a Superior Court of the State of California located in the County of ~~Los Angeles~~ _____ (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in the U.S. District Court for the _____ ~~Central~~ District of California), and the Parties hereby submit to the exclusive jurisdiction of said courts. In any action in litigation to enforce or interpret any of the terms of this Agreement, the prevailing Party shall be entitled to recover from the unsuccessful Party all costs, expenses (including expert testimony), and reasonable attorneys fees (including fees and disbursements of in-house and outside counsel) incurred therein by the prevailing Party.

ARTICLE 23 MISCELLANEOUS

23.1 Integration. This Agreement shall completely and fully supersede all prior undertakings or agreements, both oral and written, between Customer and Utility relating to the subject matter of this Agreement. This Agreement (including the Tariff and the Exhibits) are intended to be read together, and shall be given full force to the maximum extent practicable. In the event of any conflict between this Distributed Energy

Resources Services Agreement (including its Exhibits) and the Tariff, the Tariff at the time of interpretation shall control, regardless of whether there is a similar provision herein.

- 23.2 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California.
- 23.3 Waiver. No provisions of this Agreement may be waived except in writing by the waiving Party. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.
- 23.4 No Benefits to Outside Parties. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon or give to any party other than Customer and Utility any right, remedy, or claim under or by reason of this Agreement; and the covenants and agreements contained herein are and shall be for the sole and exclusive benefit of the Parties and their successors and assigns.
- 23.5 Binding on Successors. Subject to any restrictions upon assignments, this Agreement shall inure to the benefit of, and shall be binding upon, Customer, Utility, and their respective successors and assigns.
- 23.6 Construction. All references herein to any (i) agreement, law, or tariff shall be to such agreement, law, or tariff as amended, supplemented or modified from time to time, and (ii) Governmental Authority or other organization, shall be to any successor of such Governmental Authority or other organization. The words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. The singular shall include the plural and the masculine shall include the feminine and neuter and vice versa. “Includes” or “including” shall mean “including, without limitation.” The word “or” when used in this Agreement includes the meaning “~~or~~and” unless the context unambiguously dictates otherwise. THE PARTIES HEREBY AGREE THAT NO TRADE USAGE, PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.
- 23.7 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- 23.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means will be deemed to be their original signatures for all purposes.
- 23.9 Subcontracting. Utility shall be authorized to subcontract its duties and obligations established by this Agreement. Notwithstanding any subcontract, Utility shall not be relieved from fulfilling any provisions of this Agreement, and Utility will be fully responsible for the acts and omissions of its respective subcontractors and of individuals and entities either directly or indirectly employed by such subcontractors.
- 23.10 Assignment. This Agreement is personal to the Parties and shall not be transferable or assignable without the written consent of both Parties. Any direct or indirect change of control of a Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld.

23.11 Survival. The rights and obligations that are intended to survive a termination of this Agreement are all of those rights and obligations that this Agreement expressly provides survive any such termination and those that arise from each Party's covenants, agreements, representations, and warranties applicable to, or to be performed at or during any time before or as a result of the termination of this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its authorized representative as of the Effective Date.

SOUTHERN CALIFORNIA GAS COMPANY

[INSERT CUSTOMER'S LEGAL NAME]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Exhibit A
**Description and Location of the Premises
and the DER Facilities**

1. DER Facilities Description. *[Provide a detailed description of the DER Facilities, including a description of the type of facility, any equipment, metering, systems, control systems and features, nameplate, related pipelines and other appurtenances. Refer to Feasibility Analysis as necessary. Identify the DER Receipt Point and DER Point of Service Delivery (each as defined in the Tariff).]*

2. Location of the Premises and the DER Facilities. *[Provide a legal description of the Premises, including a map of the Premises showing where the DER Facilities will be located, as well as areas for deliveries, lay down and storage.]*

Exhibit B
Safety and Security Requirements

Instructions: Customer will be required to comply with Utility's standard safety and security requirements and policies, which may be included in this Exhibit B, as well as any other safety and security requirements to be included in this Exhibit B that are reasonable or necessary given, among other things, the type of DER Facilities, location of the Premises and the Customer Facility, the scope of services.

Exhibit C

[Easement]~~-or~~[Lease Agreement]

Instructions: As applicable, the Easement or Lease Agreement shall be mutually agreed to by the Parties at the time of execution of this Agreement.

Exhibit D
Feasibility Analysis

[See attached.]

Exhibit E
Statement of Services and Performance Requirements

1. Utility shall plan, design, procure, install, construct, engineer, own, operate, and maintain the DER Facilities. Utility shall be responsible for:
 - a. The operation of the DER Facilities and performance of all maintenance for the DER Facilities consistent with the manufacturer's recommendations and the Regulatory Requirements. The DER Facilities' operation and maintenance activities include, but are not limited to, the following: preventative maintenance, corrective maintenance, spare parts and consumables inventory tracking, on-call support, media change-out and disposal, process control and data monitoring, collection, storage and reporting.
 - b. Meeting the following Performance Requirements: **[TBD]**

Instructions: This Exhibit may be revised to include any additional or more detailed statement of DER Services and Performance Requirements mutually agreed upon by the Parties.

Exhibit F
Services Fee

The Services Fee shall consist of the components as specified below.

	Annual				Monthly
	Capital Charge	O&M Charge	[Insert additional charges or costs, if any]	Services Fee	Services Fee
Year 1					
Year 2					
Year 3					
Year 4					
Year 5					
Year 6					
Year 7					
Year 8					
Year 9					
Year 10					
Year xx**					

Instructions: The table above is for illustrative purposes only. Upon the mutual agreement of the Parties, the Services Fee, including its components as described in the table above, may be restructured or revised as necessary or appropriate based on the requirements of contemplated transaction, the unique circumstances of the Customer, or in order to maximize the value of the transaction, subject to Regulatory Requirements. If necessary for the specific DER Facilities or the contemplated transaction, include any additional or more detailed information regarding Services Fee, which may include a calculation or description of how the O&M Charge is determined, as well as a calculation or description of any other charge or cost mutually agreed to by the Parties.

Exhibit G
Bill of Sale

Instructions: If applicable, the form of the Bill of Sale shall be mutually agreed to by the Parties at the time of execution of this Agreement.

ATTACHMENT F

Advice No. 4918

Revised Feasibility Analysis Agreement

Redline

Instructions: This Feasibility Agreement is subject to negotiation and, upon the mutual agreement of the Parties, may be modified as necessary or appropriate based on the requirements of the contemplated transaction, the unique circumstances of Applicant, or in order to maximize the value of the transaction.

FEASIBILITY ANALYSIS AGREEMENT

This Feasibility Analysis Agreement (this “*Feasibility Agreement*”) is made, entered into and effective as of _____, 20__ (the “*Effective Date*”) by and between Southern California Gas Company, a California corporation (“*Utility*”), and ~~(“*Company*”)~~ _____, a (“*Company*”), for certain preconstruction feasibility assessments relating to Utility’s potential development of a _____ facility (the “*Proposed Project*”) adjacent to and as a functional part of ~~Company’s~~ business located at _____, California (the “*Facility*”). Utility and Company may be referred to herein individually each as a “*Party*” and collectively as the “*Parties*.”

ARTICLE 1 DESCRIPTION AND STANDARD OF SERVICES

1.1 Utility shall conduct feasibility analyses described in **Exhibit A** (the “*Services*”), attached hereto and incorporated herein, with the intent of (a) determining the technical and economic feasibility of the design, equipment procurement, construction, operation and maintenance of the Proposed Project, ~~and~~ (b) providing sufficient information to prepare the scope of work and pricing (“*Scope of Work*”) for the Distributed Energy Resources Services Agreement (~~(“*Agreement*”)~~ *DERs Agreement*), and (c) providing an estimate of potential greenhouse gas emissions reductions that will be achieved as a result of the development of the Proposed Project.

1.2 If the Scope of Work is acceptable to Company, and the feasibility analysis determines that the Proposed Project is, for each Party, feasible from an economic and technical perspective. Utility shall prepare the DERs Agreement in accordance with Schedule GO-DERS.

1.3 Utility and Company acknowledge and agree that: (a) all Services shall be performed by Utility for the mutual benefit of the Parties; (b) Utility shall exercise its independent, professional and trade judgment in performing the Services; and (c) in its preparation of the Scope of Work, Utility will be relying on information provided by Company, which Company represents is complete and accurate except as noted in writing by Company to Utility prior to Utility’s preparation of the Scope of Work.

ARTICLE 2 SERVICES FEE

2.1 As consideration for performance of the Services, Company shall pay Utility _____ Dollars (\$ _____) (the “*Feasibility Services Fee*”).

ARTICLE 3 TERM

The term of this Feasibility Agreement shall be _____ (“*Term*”).

ARTICLE 4 RECORDS/OWNERSHIP AND USE OF DOCUMENTS

4.1 Utility shall own such studies, plans, designs, know-how, specifications, and other intellectual property and work product of Utility that are incorporated in the Scope of Work (“*Work Product*”), and such Work Product shall at all times be the exclusive property of Utility. If any of the Work Product contains intellectual property of Company or Company’s affiliates, contractors or agents that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, ~~(“*Proprietary Work Product*”)~~, it shall be conspicuously marked and identified as such ~~(“*Proprietary Work Product*”)~~ by Company prior to its delivery to Utility. In the event the Parties, subsequent to this Feasibility Agreement, execute ~~a~~ a DERs Agreement, Company hereby grants, and Company shall cause its affiliates, contractors and agents to grant to Utility a perpetual, royalty-free, fully paid-up, nonexclusive and irrevocable license to copy, reproduce, perform, dispose

of, use, in whole or in part, and to authorize others to do so for the benefit of Utility, all Proprietary Work Product, including ~~but not limited to~~: databases, templates, file formats, scripts, links, procedures, materials, training manuals and other training materials, specially-created key commands, and any other information, designs, plans, or works provided or delivered to Utility or produced by Company or its subcontractors ~~and~~/or its agents. If the Parties fail to execute ~~an~~ DERS Agreement ~~and the Parties or mutually~~ terminate negotiations, Utility shall have no license to use Proprietary Work Product and shall return all Proprietary Work Product to Company.

ARTICLE 5 INDEMNIFICATION

5.1 ~~Company~~ Each Party shall indemnify, hold harmless, reimburse and defend ~~Utility~~ the other Party and its current and future parent company, subsidiaries, affiliates and their respective shareholders, members, partners, officers, directors, employees, representatives and agents, and the successors in interest of the foregoing (~~“Utility Related Parties”~~) from, for and against any and all third party claims, actions, suits, proceedings, demands, damages, losses, expenses, liabilities, fees, fines and penalties, including ~~but not limited to~~ reasonable attorneys’ and expert witnesses’ fees (including fees and disbursements of in-house and outside counsel) (~~“Third Party Claims”~~), for damages to property or injuries to or death of any person arising out of or relating to this Feasibility Agreement, but only to the extent caused by the negligent or other wrongful acts or omissions of ~~Company~~ the indemnifying Party or any person or entity for whose acts or omissions ~~it~~ the indemnifying Party is responsible.

5.2 Each Party shall give prompt written notice to the other Party of any Third Party Claim or notice of a Third Party Claim made against the other Party ~~by any third party~~ for acts or omissions related to, or that may impact the completion of, the Services, in no event later than ten (10) business days after becoming aware of such Third Party Claim or receiving such notice of Third Party Claim.

ARTICLE 6 LIMITATION OF LIABILITY

Notwithstanding anything to the contrary contained in this Feasibility Agreement, in no event shall ~~Utility~~ a Party be liable to ~~Company~~ the other Party for any ~~Claims~~ claims, actions, suits, proceedings, demands, damages, losses, expenses, liabilities, fees, fines and penalties, including to reasonable attorneys’ and expert witnesses’ fees (including fees and disbursements of in-house and outside counsel) arising out of or relating to the Services provided or to be provided hereunder in excess of ~~the amount paid by Company to Utility as compensation under this Feasibility Agreement,~~ _____, regardless of whether such liability arises out of breach of contract, tort, product liability, contribution, strict liability or any other legal theory.

ARTICLE 7 ASSIGNMENT

7.1 Except with respect to Utility’s subcontractors, neither Utility nor Company shall assign or transfer any of its interest in this Feasibility Agreement, in whole or in part, without the prior written consent of the other Party, such consent not to be unreasonably withheld.

7.2 The provisions of this Feasibility Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

ARTICLE 8 INDEPENDENT CONTRACTOR; TAXES; SAFETY

8.1 Utility shall perform the Services as an independent contractor and employing unit.

8.2 Utility shall be responsible for remittance of all federal, state and local taxes applicable to any compensation or payments paid to Utility under this Feasibility Agreement, which ~~shall be~~ is included in the Feasibility Services Fee.

8.3 Utility shall be responsible for the safety of its employees and those of its subcontractors, and shall take all reasonable precautions to prevent personal injury, death and property damage resulting from the Services and its acts and omissions and those of its subcontractors. At all times during the performance of any Services at the Facility, Utility shall comply with all Company safety rules, provided such rules, ~~policies, programs and directives~~ are communicated to Utility in writing by Company.

ARTICLE 9 TERMINATION OF CONTRACT

~~9.1 Notwithstanding anything to the contrary set forth in this Agreement, Utility may terminate this Feasibility Agreement in whole or in part at any time for Utility's convenience or for cause. In the event Utility terminates this Feasibility Agreement for its convenience, the termination shall be effective upon Company's receipt of Utility's written notice of such termination. For a termination for cause, the termination shall be effective ten (10) calendar days after Company's receipt of Utility's written notice thereof and Company's failure during that period to cure the cause or default which is at issue and the reason for the notice of termination. In the event of a termination for convenience, as Company's sole and exclusive remedy, Utility shall refund any unused amounts paid as compensation hereunder, if any.~~

9.1 The A Party ("*Non-Defaulting Party*") may terminate this Feasibility Agreement if the other Party ("*Defaulting Party*") violates or fails to perform any material provision of this Feasibility Agreement (including a failure by the Defaulting Party to make payment when due or if any representation or warranty made by the Defaulting Party was materially false or misleading when made) and, if such violation or failure is capable of cure, the Defaulting Party does not cure such violation or failure within ten (10) calendar days after receipt of a written notice from the Non-Defaulting ("*Cure Period*").

9.2 The Parties agree that Utility will incur substantial liabilities to third parties upon the commencement of the Services and that the extent and amount of loss or damage to Utility as a result of Company's breach of this Feasibility Agreement is impractical and difficult to determine with certainty. Therefore, if Company breaches this Feasibility Agreement and fails to ~~cure~~ such breach within the Cure Period ~~ten (10) calendar days after receiving notice of the breach from Utility~~, Company shall pay Utility liquidated damages equal to the Service Fee. The Parties agree that such liquidated damages are a genuine pre-estimate of the damages suffered by Utility by reason of Company's failure to perform under this Feasibility Agreement, and are not intended as a penalty. The amounts payable by Utility under this Section shall be Company's sole and exclusive liability to Utility, and Utility's sole and exclusive remedy, with respect to Company's breach. Nothing in this Section shall be construed as relieving Company of its ~~obligation-duty~~ to fulfill its obligations under this Feasibility Agreement.

9.3 Subject to Article 6 and Section 9.2, the rights and remedies of ~~Utility~~ the Non-Defaulting Party provided in this Article are not exclusive and are in addition to any other rights and remedies provided by law or under this Feasibility Agreement. All rights and remedies of ~~Utility~~ the Non-Defaulting Party shall be cumulative and may be exercised successively or concurrently.

ARTICLE 10 FORCE MAJEURE

10.1 Neither Company nor Utility shall be held responsible for delay in the performance of the Services or default under this Feasibility Agreement to the extent caused by fire, riot, an ~~Act~~ act of God, war, terrorist attack or other cause beyond, respectively, Company's or Utility's reasonable control ("*Force Majeure Events*"). So long as the conditions set forth in this Article are satisfied, ~~except with regard to payment obligations other than a Party's ability to pay debts as they become due~~, neither Party shall be responsible or liable for or deemed in breach of this Feasibility Agreement because of any failure or delay in complying with its obligations under or pursuant to this Feasibility Agreement to the extent that such failure has been caused, or contributed to, by one or more Force Majeure Events or its effects or by any combination thereof; provided that in such event:

10.1.1 any liability of either Party that arose before the occurrence of the Force Majeure Event causing the suspension of performance shall not be excused as a result of such Force Majeure Event;

10.1.2 the affected Party shall continually exercise all commercially reasonable efforts to alleviate and mitigate the cause and effect of such Force Majeure Event, remedy its inability to perform, and limit damages to the other Party;

10.1.3 the affected Party shall use all reasonable efforts to continue to perform its obligations hereunder and to correct or cure the event or condition excusing performance; and

10.1.4 when the affected Party is able to resume performance of the affected obligations under this Feasibility Agreement, that Party shall give the other Party written notice to that effect, and the affected Party promptly shall resume performance under this Feasibility Agreement.

ARTICLE 11 FACILITY ACCESS

~~Company shall provide reasonable access to the Facility during regular business hours and the Company's operational records as requested by Utility and its subcontractors in connection with the performance of Services.~~

~~Within five (5) calendar days after the Effective Date, Company shall designate by written notice an individual as Company's representative for all matters relating to this Feasibility Agreement ("Company Representative"). The Company Representative or designee shall be reasonably available during all business hours and shall provide or facilitate all access by Utility and its subcontractors to the Facility and to the Company's operational records in order to support Utility's performance of the Services. The actions taken by the Company Representative shall be deemed acts of Company. Company may at any time, upon written notice to Utility, change the Company Representative.~~

~~11.1 Utility shall have no responsibility for the loss, theft, disappearance of or damage to equipment, tools, materials, supplies, and other property of Company or its employees whatsoever.~~

ARTICLE 12 CONFIDENTIALITY; PUBLICITY

12.1 Each Party shall hold in confidence: (a) any information provided or supplied by the other Party or its Representatives (as defined below) that is marked confidential, including such information as may have been provided or supplied prior to the Effective Date; (b) the Scope of Work and all exhibits thereto; and (c) the contents of this Feasibility Agreement (collectively, "**Confidential Information**"). Notwithstanding the foregoing, the following categories of information will not constitute Confidential Information:

12.1.1 information that was in the public domain prior to receipt thereof by such Party or that subsequently becomes part of the public domain by publication or otherwise except by a wrongful act of such Party or its Representatives;

12.1.2 information that such Party can show was lawfully in its possession prior to receipt thereof from the other Party through no breach of any confidentiality obligation;

12.1.3 information received by such Party from a third party having no obligation of confidentiality with respect thereto; and

12.1.4 information at any time developed independently by such Party ~~providing~~provided that it is not developed from otherwise Confidential Information.

12.2 Notwithstanding anything herein to the contrary, a Party may disclose Confidential Information as follows:

12.2.1 Confidential Information may be disclosed pursuant to and in conformity with applicable laws or in connection with any legal proceedings, provided that the Party required to disclose such information shall give prior notice to the other Party of such required disclosure and, if so requested by the other Party, shall use all reasonable efforts to oppose the requested disclosure as appropriate under the circumstances or to seek, through a protective order or other appropriate mechanism, to maintain the confidentiality of the Confidential Information;

12.2.2 Confidential Information may be disclosed as required to be disclosed under securities laws applicable to publicly traded companies and their subsidiaries;

~~12.2.3 In the case of Utility, Confidential Information may, without providing notice thereof to Applicant, be disclosed Confidential Information to regulatory agencies with jurisdiction over Utility and their staffs, including the California Public Utilities Commission (“CPUC”) and the Federal Energy Regulatory Commission;~~

~~12.2.3~~12.2.4 Confidential Information may be disclosed to affiliates, subcontractors, employees, directors, officers, agents, advisors ~~and~~ or representatives (collectively, “**Representatives**”) of such Party solely as necessary in connection with the Services; provided that (a) each such Representative is informed of the confidential nature of the Confidential Information, (b) such Party shall ~~require each such Representative of its obligations under this Article and~~ require each such Representative to adhere to the provisions ~~hereof of this Article~~, and (c) such Party shall be liable to the other Party for any disclosure by any Representative in violation of the terms of this Article; and

~~12.2.4~~12.2.5 either Party may disclose Confidential Information with the express written consent of the other Party, which consent shall not be unreasonably conditioned, withheld, or delayed.

12.3 It is agreed that each Party shall be entitled to relief both at law and in equity, including injunctive relief and specific performance, in the event of any breach or anticipated breach of this Article, without proof of any actual or special damages.

12.4 All right and title to, and interest in, a Party’s Confidential Information shall remain with such Party. All Confidential Information obtained, developed or created by or for Utility exclusively for the Services, including copies thereof, is the exclusive property of Utility whether delivered to Company or not. No right or license is granted to Company or any third party respecting the use of Confidential Information by virtue of this Feasibility Agreement, except to the extent required for Utility’s performance of its obligations hereunder. Company shall deliver the Confidential Information, including all copies thereof, to Utility upon request.

ARTICLE 13 DISPUTE RESOLUTION

All claims, disputes and other matters in question between the Parties arising out of or relating to this Feasibility Agreement or the breach thereof, including contract, tort, property, statutory, or common law claims (“**Dispute**”) shall be addressed and resolved as follows:

13.1 Negotiation. The resolution of the Dispute shall first be negotiated in good faith by the Parties.

13.2 Mediation. If the Parties are unable to resolve a Dispute through negotiation, the Parties agree first to try in good faith to settle the Dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures, or through private mediation upon agreement of the Parties. The mediator’s fees and costs shall be paid equally by the Parties. Any and all mediations arising out of or relating to this Feasibility Agreement shall include, by consolidation or joinder, any other person or entity not a party to this Feasibility Agreement that is substantially involved in a common issue of law or fact and whose involvement in the consolidated mediation is necessary to achieve a final resolution of a matter in controversy therein. The Parties’ obligation to mediate shall be specifically enforceable by any court with jurisdiction thereof.

13.3 Litigation. If the Parties do not settle the Dispute through mediation within ninety (90) calendar days of the written notice to the other Party requesting mediation, then either Party shall have the right to pursue litigation as provided for herein. In the event of any litigation to enforce or interpret any terms of this Feasibility Agreement, unless the parties agree in writing otherwise, such action shall be brought in a Superior Court of the State of California located in the County of ~~Los Angeles~~ _____ (or, if the federal courts have exclusive jurisdiction over the subject matter of the dispute, in either the U.S. District Court for the ~~Central~~ _____ District of California), and the Parties hereby submit to the exclusive jurisdiction of said courts. In any action in litigation to enforce or interpret any of the terms of this Feasibility Agreement, the prevailing Party shall be entitled to recover from the unsuccessful Party all costs, expenses (including expert testimony) and reasonable attorney's fees (including fees and disbursements of in-house and outside counsel) incurred therein by the prevailing Party.

ARTICLE 14 WAIVER

The failure of either Party to enforce any provision of this Feasibility Agreement shall not constitute a waiver by that party of that or any other provision of this Feasibility Agreement.

ARTICLE 15 NOTICES

Any notice, request, demand or other communication required or permitted under this Feasibility Agreement shall be deemed to be properly given by the sender and received by the addressee if made in writing and (1) personally delivered; or (2) as of the date of signed return receipt after deposit with the U.S. Postal Service by certified or registered mail, postage prepaid, with a return receipt requested; or (3) if sent by email or facsimile with confirmation sent as provided in (2) above. All such notices, requests, demands or other communication shall be addressed as follows:

If to Utility:

Fax: _____
Email: _____

If to Company:

Fax: _____
Email: _____

ARTICLE 16 GOVERNING LAW

The laws of the State of California shall govern this Feasibility Agreement.

ARTICLE 17 SEVERABILITY

If any provision of this Feasibility Agreement is determined to be illegal, in conflict with any law, void or otherwise unenforceable, and if the provisions of this Feasibility Agreement that are essential to each Party's interests otherwise remain valid and enforceable, then the remaining provisions shall continue to be valid and enforceable and the offending provision shall be given the fullest meaning and effect intended by the Parties as allowed by applicable law.

ARTICLE 18 SURVIVAL

The terms, conditions, representations, and warranties contained in this Feasibility Agreement shall survive the termination or expiration of this Feasibility Agreement.

ARTICLE 19 ENTIRE CONTRACT

This Feasibility Agreement constitutes the entire legally-binding contract between the Parties regarding its subject matter. No waiver, consent, modification or change of terms of this Feasibility Agreement shall bind either party unless in writing and signed by both Parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

ARTICLE 20 SIGNATURES

This Feasibility Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument. A facsimile signature or an electronically scanned and electronically mailed (e-mail) signature shall be considered an original. The individuals signing this Feasibility Agreement certify that they are authorized to execute this Feasibility Agreement on behalf of Utility and Company, respectively.

~~ARTICLE 21 EXHIBITS~~

~~The following documents are incorporated into and made a part of this Feasibility Agreement:~~

~~Exhibit A—Scope of Services~~

ARTICLE 21 CONSTRUCTION

All references herein to any (i) agreement, law, or tariff shall be to such agreement, law, or tariff as amended, supplemented or modified from time to time, and (ii) governmental authority or other organization, shall be to any successor of such Governmental Authority or other organization. The words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. The singular shall include the plural and the masculine shall include the feminine and neuter and vice versa. “Includes” or “including” shall mean “including, without limitation.” The word “or” when used in this Agreement includes the meaning “and” unless the context unambiguously dictates otherwise. THE PARTIES HEREBY AGREE THAT NO TRADE USAGE, PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.

ARTICLE 22 REGULATORY MATTERS

This Agreement shall at all times be (a) subject to changes or modifications by the CPUC, as the CPUC may, from time to time, direct in the exercise of its jurisdiction, and (b) subject to and incorporate by reference all of Utility’s applicable tariff schedules.

[Signature Page Follows]

UTILITY:

Southern California Gas Company

Signature: _____

Printed Name: _____

Title: _____

Date: _____

COMPANY:

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

SCOPE OF SERVICES

Utility shall conduct the Services with the intent of determining the technical and economic feasibility of the design, equipment procurement, construction, operation and maintenance of the Proposed Project. The Scope of Work may include, but is not limited to, the following:

Comprehensive Scope Definition

- Define the project execution processes for technical execution, construction, operations & maintenance, and other business related aspects of the project.
- Prepare the scope of work and pricing for the DERS Agreement

ATTACHMENT G

Advice No. 4918

Revised Competitively Neutral Materials

Redline

Competitively Neutral Script

In response to customer inquiries regarding the Distributed Energy Resources Services Tariff, SoCalGas will use the following competitively neutral script to respond to customer questions:

Customer Question: What is the Distributed Energy Resources Services Tariff?

SoCalGas Response: The Distributed Energy Resources Services (DERS) Tariff is an optional cost-based tariff service for customers that allows SoCalGas (or third-party provider on behalf of SoCalGas) to plan, design, procure, construct, own, operate, and/or maintain distributed energy equipment on or adjacent to customer premises to satisfy onsite energy requirements as requested by the customer and agreed to by SoCalGas. Non-utility service providers may offer services that are the same or similar to the DERS Tariff and customers are encouraged to explore these service options. To assist customers in understanding all of their service options, SoCalGas maintains and provides customers with a list of non-utility service providers that can be found on our website at _____. (This list includes the Department of Energy's Qualified List of Energy Service Companies which have been qualified by a qualification review board comprised of Department of Energy staff.)

Customer Question: What are some examples of end-use applications that would use this tariff?

SoCalGas Response: SoCalGas can provide combined heat and power (CHP) technologies, including but not limited to topping- and bottoming-cycle applications. Examples of customer end-use applications that can be served by the Distributed Energy Resources Services Tariff include Combine Heat and Power (CHP), Waste Heat to Power (WHP), fuel cells, and mechanical drives

Customer Question: Is the Distributed Energy Resources Services Tariff mandatory if customers want to have a distributed energy system?

SoCalGas Response: No. Customers may elect to install and maintain their own distributed energy equipment or engage a third party to install and maintain their distributed energy equipment rather than take the Distributed Energy Resources Services Tariff from SoCalGas.

Customer Question: Does enrollment in this tariff result in any preferential treatment when it comes to getting gas service?

SoCalGas Response: No. The Distributed Energy Resources Services Tariff is a fully elective, optional, non-discriminatory tariff service that is neither tied to any other tariff or non-tariff services the customer may receive from SoCalGas nor will it change the manner in which these services are delivered. As an example, requests for natural gas service are processed on a "first come, first served" basis for all customers, including customers that elect to take the Distributed Energy Resources Services Tariff and customers that do not.

Customer Question: Can anyone receive service under the Distributed Energy Resources Services Tariff?

SoCalGas Response: The Distributed Energy Resources Services Tariff is not restricted to a particular customer class. Any agreement to provide service under the Distributed Energy Resources Services Tariff is at SoCalGas' discretion and will depend on nondiscriminatory factors such as safety, system capacity, SoCalGas resource availability, technical feasibility, and acceptability of commercial terms.

Customer Question: Under this service, would SoCalGas be responsible for all equipment connected to the distributed energy facilities?

SoCalGas Response: No, this service will not cover any activities upstream of the Distributed Energy Resources Services Tariff Receipt Point where fuel is delivered to the distributed energy system or downstream of the DER Point of Service Delivery where energy outputs are delivered to the customer.

Customer Question: What other limitations apply to the Distributed Energy Resources Services Tariff?

SoCalGas Response: Other limitations that apply to the DERS Tariff include, but are not limited to, the following:

- 1) Combined heat and power systems provided through the DERS Tariff will meet the California Public Utilities Commission's Self-Generation Incentive Program (SGIP) efficiency and greenhouse gas emission standards.
- 2) SoCalGas will only install combined heat and power facilities that are fueled wholly by natural gas, biogas, or other gaseous fuels such as hydrogen or methane.
- 3) The nameplate capacity of the installed combined heat and power system will be less than or equal to 20 Megawatts (MW). If SoCalGas installs multiple systems on one customer's premises, the total nameplate generating capacity built on that premises must be less than or equal to 20 MW.
- 4) The combined heat and power systems installed through the DERS Tariff will meet the requirement that all facilities meet the "fundamental use test" as defined in the federal definition of cogeneration, which requires the energy outputs from the system to be useful