

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

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

Company name/CPUC Utility No. **Liberty Utilities (CalPeco Electric) LLC (U 933-E)**

Utility type:

ELC GAS

PLC HEAT WATER

Contact Person for questions and approval letters: Alain.Blunier

Phone #: (530) 546-1702

E-mail: Alain.Blunier@libertyutilities.com

EXPLANATION OF UTILITY TYPE

ELC = Electric

GAS = Gas

PLC = Pipeline

HEAT = Heat

WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: 68-E (PUBLIC VERSION)

Subject of AL: Liberty CalPeco - Request for Approval of Long-Term Purchase and Sale Agreement for Renewable Energy Credits from Biomass One, L.P.

Tier Designation: 1 2 3

Keywords (choose from CPUC listing):

AL filing type: Monthly Quarterly Annual One-Time Other _____

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

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL _____

Summarize differences between the AL and the prior withdrawn or rejected AL¹: _____

Resolution Required? Yes No

Requested effective date: January 12, 2017

No. of tariff sheets: n/a

Estimated system annual revenue effect: (%)

Estimated system average rate effect (%):

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:

Service affected and changes proposed¹:

Pending advice letters that revise the same tariff sheets:

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

Utility Info (including e-mail)
Liberty Utilities (CalPeco Electric) LLC
Attention: Advice Letter Protests
933 Eloise Avenue
South Lake Tahoe, CA 96150
Email: Alain.Blunier@libertyutilities.com

¹ Discuss in AL if more space is needed.



Liberty Utilities (CalPeco Electric) LLC
933 Eloise Avenue
South Lake Tahoe, CA 96150
Tel: 800-782-2506
Fax: 530-544-4811

VIA EMAIL AND HAND-DELIVERY

December 13, 2016

**Advice Letter 68-E
(U 933 E)**

California Public Utilities Commission
Energy Division, Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102-3298

Subject: Liberty Utilities (CalPeco Electric) LLC (U-933-E) Request for Approval of Long-Term Purchase and Sale Agreement for Renewable Energy Credits from Biomass One, L.P.

I. INTRODUCTION

A. Purpose of the Advice Letter

Liberty Utilities (CalPeco Electric) LLC (U 933-E) (“Liberty CalPeco”) requests approval from the California Public Utilities Commission (“Commission”) to enter into a long-term purchase and sale agreement (“Agreement”) with Biomass One, LLP (“Biomass One”) for the purchase of 2,500 Renewable Energy Credits (“RECs”) per year for 10 years.¹ The RECs to be purchased conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard (“RPS”) as set forth in Decision 08-08-028. Delivery of the RECs will begin in 2017 and continue through 2026.

This transaction will facilitate Liberty CalPeco’s satisfaction of its procurement requirement under the RPS program, and additionally comply with the Commission’s long-term RPS contracting requirement² and Decision 15-12-021.³ The costs of this transaction will be recovered through Liberty CalPeco’s Energy Cost Adjustment Clause.⁴

B. Subject of the Advice Letter

1. Project Name, Technology, General Location, Interconnection Point, and Owner/Developer

Liberty CalPeco is procuring RECs from Biomass One. Biomass One represents and warrants in the Agreement that throughout the Delivery Term,⁵ Biomass One will deliver RECs

¹ The Agreement is Attachment A.

² See Decision 07-05-028.

³ Decision 15-12-021, mimeo at 47 (Conclusions of Law 15).

⁴ See Liberty CalPeco Preliminary Statement, Section 6.

⁵ Capitalized terms have the same meaning as set forth in the Agreement.

that are from its California Energy Commission (“CEC”)-certified Eligible Renewable Energy Resource (“ERR”) as defined in Public Utilities Code section 399.12 or 399.16. The Biomass One facility received its CEC certification effective November 19, 2010. Biomass One is the owner and operator of the 30 MW wood-waste burning thermal electric power and steam generating facility located in White City, Oregon. Biomass One is connected to Pacific Power at the 115kV level through the plant switchyard in White City, Oregon.

2. Project Background (e.g., Expiring QF Contract, Phased Project, Previous Power Purchase Agreement, Contract Amendment)

The REC purchase is from Biomass One, which owns and operates the facility. The Project is an existing facility that went online at the end of 1986 and is currently operational. Biomass One sells its electric generation to Pacific Power through a fifteen-year power purchase agreement that expires at the end of 2026.

3. Source of Agreement (i.e., RPS Solicitation or Bilateral Negotiation)

On October 7, 2016, Liberty CalPeco widely distributed a Request for Proposals (“RFP”)⁶ to over 900 contacts⁷ at renewable generators, brokers, and marketers, and specifically reached out to a number of REC brokers. Liberty CalPeco received only one offer in response to its RFP — the one that turned into the Agreement for which Liberty CalPeco is seeking approval to enter into through this advice letter.

C. General Project(s) Description

Counterparty	Biomass One, L.P.
Product	CEC Certified Category Three RECs
Project Location	White City, Oregon
Delivery Point	Liberty CalPeco WREGIS Account
Technology	CEC-certified ERR
Delivery Term	10 years (2017–2026)
Expected Sales Volumes	25,000 RECs
Contract Type	Purchase and Sale Agreement
Special Terms/ CPs	Commission Approval and rate recovery

D. Project Location

Biomass One owns and operates a wood-waste burning thermal electric power and steam generating facility located in White City, Oregon.

E. General Deal Structure

The Agreement provides for a long-term contract of ten years with delivery of 2,500 RECs each year from CEC-certified ERRs to Liberty CalPeco’s WREGIS account.

⁶ See Liberty CalPeco Request for Proposal, Attachment B.

⁷ See Liberty CalPeco Distribution List, CONFIDENTIAL Attachment C.

F. RPS Statutory Goals

The Agreement is consistent with and contributes towards the RPS Program's goals set forth in Public Utilities Code section 399.11. Specifically, the Agreement will provide unbundled RECs from renewable resources, will create zero need for foreign fuel imports, and will help to maintain a diversified and balanced energy generation portfolio.

G. Confidentiality

Liberty CalPeco is requesting confidential treatment of certain language in the confidential version of this Advice Letter, Attachment C. The information for which Liberty CalPeco is seeking confidential treatment is identified in the Declaration of John D. Warshaw attached hereto and is entitled to confidentiality protection for the reasons described in the Declaration.

II. CONSISTENCY WITH COMMISSION DECISIONS

Liberty CalPeco's RPS procurement complies with the Commission's RPS-related decisions as described below.

A. RPS Procurement Plan

This transaction is consistent with Liberty CalPeco's 2016 Procurement Plan⁸ that is currently pending Commission approval.⁹ Specifically it meets Liberty CalPeco's compliance needs to meet the long-term contracting requirement of Decision 07-05-028 before the end of the Compliance Period in the least cost manner and through an open solicitation.

B. Decision 15-12-021

This transaction meets the requirement in Decision 15-12-021 obligating Liberty CalPeco to execute "one or more long-term contracts, as defined by D.12-06-038, in the same compliance period equaling at least 0.25% of Liberty [CalPeco's] total retail sales in 2011–2013." This 10-year Agreement is a long-term contract executed in the same compliance period as the short-term contract with NV Energy approved in Decision 15-12-021.

⁸ Liberty CalPeco RPS Procurement, at 6.

⁹ A pending decision that appears to approve Liberty CalPeco's Procurement Plan has been issued. See Proposed Decision Accepting Draft 2016 Renewables Portfolio Standard Procurement Plans in Rulemaking 15-02-020, mimeo at 2–3 (issued November 15, 2016).

As illustrated in the Table below, the 25,000 RECs to be purchased pursuant to the Agreement is significantly more than 0.25% of Liberty CalPeco’s total retail sales in 2011–2013.

	Retail Sales	0.25% of Sales
2011	593,434	1,484
2012	545,400	1,364
2013	556,387	1,391
	Total Requirement	4,239

C. Compliance with Least Cost Best Fit Methodology

As described above, Liberty CalPeco issued an open solicitation for RFPs on October 7, 2016 to over 900 contacts¹⁰ at renewable generators, brokers, and marketers, and specifically reached out to a number of REC brokers. Liberty CalPeco received only **ONE** offer to its RFP — the one that turned into the contract for which Liberty CalPeco is seeking approval to enter into through this advice letter. Accordingly, Liberty CalPeco was unable to compare bids to determine “least cost” as this was the only offer that would allow Liberty to meet its obligations in Decision 15-12-021. Due to the long-term nature of Liberty CalPeco’s requirement and the limited amount of RECs Liberty was seeking to purchase, Liberty CalPeco believes the market had no interest in providing Liberty CalPeco with the specific quantity of RECs it sought. While the quantity of RECs to be purchased is higher than required to meet Liberty CalPeco’s specific obligation in Decision 15-12-021, Liberty CalPeco will have a firm quantity of additional RECs to meet unforeseen shortages that may develop in the future.

D. Compliance with Standard Terms and Conditions

As described below, the Agreement includes the six non-modifiable standard terms and conditions required by Decision 07-11-025 and Decision 10-03-021, as modified by Decision 11-01-025.

Non-Modifiable Term	PSA Section
STC 1: CPUC Approval	Section 1.16
STC-2: Green Attributes & RECs	Sections 1.38 and 2.7
STC 6: Eligibility	Section 2.7

¹⁰ See Liberty CalPeco Distribution List, CONFIDENTIAL Attachment C.

STC 17: Applicable Law:	Article 7
STC REC-1: Transfer of RECs	Section 2.10
STC Rec-2: WREGIS Tracking of RECs	Section 2.11

E. Unbundled REC Transactions

The Agreement involves unbundled RECs, as that term is defined in Decision 10-03-021, and satisfies the requirements of Public Utilities Code section 399.16(b)(3).

F. Minimum Quantity

The Agreement ensures that Liberty CalPeco meets the statutory minimum quantity requirements and the requirements Decision 15-12-021 establishes.

G. Emissions Performance Standard

The Emissions Performance Standard¹¹ does not apply to the Agreement. The Agreement is not for the purchase of electricity for baseload generation, but instead for unbundled RECs.

H. Procurement Review Group Participation

The Commission does not require Liberty CalPeco to have a Procurement Review Group.¹²

I. Independent Evaluator

The Commission does not require Liberty CalPeco to have their procurement reviewed by an Independent Evaluator.¹³

III. PROJECT DEVELOPMENT STATUS

The Agreement obligates Biomass One to deliver RECs from a facility that is already operational.¹⁴ Therefore, this section is not applicable

¹¹ See Decision 07-01-039, mimeo at 2–3.

¹² See Decision 09-06-050, mimeo at 26, note 32 (“[Because this Commission does not exercise supervisory authority over the multijurisdictional utilities’ contracting, the requirements set out in § 3.7 regarding least-cost best-fit and § 3.8 regarding review by procurement review groups and independent evaluators would not apply to PacifiCorp or Sierra [i.e., Liberty CalPeco].”).

¹³ *Id.*

¹⁴ See Agreement, § 1.51

IV. CONTINGENCIES AND/OR MILESTONES

The Agreement is conditioned on Commission approval.¹⁵

V. SAFETY CONSIDERATIONS

The Agreement has no impact on any potential safety matters related to the generation of the energy.

VI. PROCEDURAL REQUIREMENTS

VII. EFFECTIVE DATE

Liberty CalPeco requests that this **Tier 2** Advice Letter be effective as of January 12, 2017.

VIII. PROTESTS

Anyone wishing to protest this Advice Letter may do so by letter sent via U.S. mail, by facsimile or by email, any of which must be received no later than January 3, 2017, which is 20 days after the date of this Advice Letter. There are no restrictions on who may submit a protest, but the protest shall set forth the grounds upon which it is based and shall be submitted expeditiously. Protests should be mailed to:

California Public Utilities Commission
Energy Division, Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102-3298
Facsimile: (415) 703-2200
Email: edtariffunit@cpuc.ca.gov

The protest should be sent via email and U.S. Mail (and by facsimile, if possible) to Liberty Utilities CalPeco at the address shown below on the same date it is mailed or delivered to the Commission:

Liberty Utilities (CalPeco Electric) LLC
Attn: Advice Letter Protests
933 Eloise Avenue
South Lake Tahoe, CA 96150
Fax: 530-544-4811
Email: Alain.Blunier@libertyutilities.com

Steven F. Greenwald
Vidhya Prabhakaran
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111
Fax: 415-276-6599
Email: stevegreenwald@dwt.com
Email: vidhyaprabhakaran@dwt.com

¹⁵ See Agreement, § 6.1.

Energy Division Tariff Unit
California Public Utilities Commission
December 13, 2016
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IX. NOTICE

In accordance with General Order 96-B, Section 4.3, a copy of this Advice Letter is being sent electronically to parties shown on the attached list.

If additional information is required, please do not hesitate to contact me.

Respectfully submitted,

LIBERTY UTILITIES (CALPECO ELECTRIC) LLC

/s/ Gregory S. Sorensen
Gregory S. Sorensen

Liberty Utilities (CalPeco Electric) LLC
933 Eloise Avenue
South Lake Tahoe, CA 96150
Phone: 530-546-1711
Email: greg.sorensen@libertyutilities.com

Attachments

cc: Liberty CalPeco Advice Letter Service List

Liberty Utilities (CalPeco Electric) LLC
Advice Letter Filing Service List
General Order 96-B, Section 4.3

VIA EMAIL

gbinge@ktminc.com;
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mas@cpuc.ca.gov;
txb@cpuc.ca.gov;
efr@cpuc.ca.gov;
tlg@cpuc.ca.gov;
dao@cpuc.ca.gov;
ljt@cpuc.ca.gov;
mmg@cpuc.ca.gov;
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usrb@cpuc.ca.gov;
Rob.Oglesby@energy.ca.gov;
stevegreenwald@dwt.com;
vidhyaprabhakaran@dwt.com;
judypau@dwt.com;
dwtcpucdockets@dwt.com;
patrickferguson@dwt.com;
travis.ritchie@sierraclub.org
dan.marsh@libertyutilities.com

**DECLARATION OF JOHN WARSHAW
IN SUPPORT OF THE CONFIDENTIAL TREATMENT OF ATTACHMENT C TO
LIBERTY UTILITIES (CALPECO ELECTRIC) LLC ADVICE LETTER 68-E**

I, John D. Warshaw, declare:

1. I am the Manager of Electric Supply at Liberty Utilities (New Hampshire) LLC and supported Liberty Utilities (CalPeco Electric) LLC with its recent 2016 Request for Proposal and subsequent transaction described in Advice Letter 68-E. I have been authorized by Gregory S. Sorensen, President of Liberty Utilities (CalPeco Electric) LLC (U 933-E) (“Liberty CalPeco”) to sign this declaration. This declaration is based on my personal knowledge of the confidential information contained in Attachment C to Advice Letter 68-E, which contains Liberty CalPeco’s email distribution list for its October 7, 2016 Request for Proposal for Bids to Provide California Renewable Portfolio Standard Compliant Category 3 Renewable Energy Certificates (“RFP Email Distribution List”).
2. Based on my knowledge and experience, I make this declaration seeking confidential treatment for the confidential information contained in the RFP Email Distribution List.
3. The confidential information contained in the RFP Email Distribution List includes the email addresses of the potential bidders to whom Liberty CalPeco submitted its October 7, 2016 RFP.
4. The email addresses should be confidential to prevent providing an unfair competitive business advantage to Liberty CalPeco counterparties and competitors. Liberty CalPeco considers the list of potential bidders that it has compiled to be proprietary, and disclosure of the list may lead to an unfair competitive business advantage to both Liberty CalPeco counterparties and competitors.

5. Public Utilities Code § 583, protects the disclosure of confidential information provided to the Commission unless specifically required to be open to public inspection.
6. The confidential information contained in the RFP Email Distribution List is information that is not already public, and information that cannot be aggregated, redacted, summarized or otherwise protected in a way that allows partial disclosure.

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

Executed on the 12th day of December 2016 at Londonderry, New Hampshire.



John D. Warshaw

LIBERTY UTILITIES (CALPECO ELECTRIC) LLC

ATTACHMENT A

**RENEWABLE ENERGY CREDIT
PURCHASE AND SALE AGREEMENT**

RENEWABLE ENERGY CREDIT
PURCHASE AND SALE AGREEMENT

This Renewable Energy Credit Purchase and Sale Agreement (this “Agreement”), together with the appendices and any other attachments referenced herein, is made and entered into this 8th day of DECEMBER, 2016 (the “Execution Date”), by and between Liberty Utilities (CalPeco Electric) LLC (“Liberty” or “Buyer”), a California limited liability company, and Biomass One, L.P. (“Seller”), a Delaware limited partnership. Liberty and Seller hereby agree to the following:

ARTICLE ONE: DEFINITIONS

1.1 “Affiliate” means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with “control” meaning the possession, directly or indirectly, of the power to direct management and policies, whether through the ownership of voting securities or by contract or otherwise.

1.2 “Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in ninety (90) days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

1.3 “Business Day” means any day on which banks in Sacramento, California are not authorized or required by Law to be closed, beginning at 6:00 a.m. and ending at 5:00 p.m. local time in California.

1.4 “CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

1.5 “California Renewables Portfolio Standard” means the renewable energy program and policies established by California State Senate Bills 1038 and 1078 as amended by Senate Bill SB1X, and codified in California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

1.6 “CAMD” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal entity given jurisdiction over a program involving transferability of Green Tags.

1.7 “CEC” means the California Energy Commission or any successor agency.

1.8 “CEC Certification and Verification” means that the CEC has certified that the Project is an ERR and eligible for purposes of the California Renewables Portfolio Standard and that all energy produced by the Project qualifies as generation from an ERR, and such

certification is effective, for purposes of compliance with the California Renewables Portfolio Standard.

1.9 “CEC Eligibility Guidelines” means the guidebook issued by the CEC on Renewables Portfolio Standard Eligibility, as may be amended or modified from time to time, or such successor document issued by the CEC to establish the eligibility of a generating facility to produce RECs for the purpose of compliance with the California Renewables Portfolio Standard.

1.10 “Conditions Precedent” is defined in Section 6.1.

1.11 “Contract Price” means the price in U.S. Dollars (\$U.S.) to be paid by Liberty to Seller for the purchase of the Product, as specified in Section 2.4(a).

1.12 “Contract Quantity” means TWENTY FIVE THOUSAND (25,000) ProductS, measured by RECs Delivered, in the Vintage Year and for the corresponding Contract Year, as designated in the chart shown in Section 2.4(a).

1.13 “Contract Year” means a period of twelve (12) consecutive calendar months beginning on January 1 and ending on December 31.

1.14 “Costs” means, with respect to the Non-Defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into new arrangements which replace a Terminated Transaction; and (b) all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.15 “CPUC” means the California Public Utilities Commission, or any successor entity.

1.16 “CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) Approves this Agreement in its entirety, including payments to be made by Liberty, subject to CPUC review of Liberty’s administration of the Agreement; and

(b) finds that any procurement pursuant to this Agreement is procurement of Renewable Energy Credits that conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation, for purposes of determining Liberty’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable. **[STC 1 – CPUC Approval, Non-Modifiable. (Source: D.07-11-025, Attachment A.)]**

1.17 [intentionally omitted]

1.18 [intentionally omitted]

1.19 [intentionally omitted]

1.20 “Defaulting Party” means the Party that is subject to an Event of Default.

1.21 “Deficiency Damages” means an amount equal to the product of: (i) the difference obtained by subtracting the amount of Product Delivered from the Contract Quantity, and (ii) the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price.

1.22 “Deliver”, “Delivered”, “Delivering” or “Delivery” means the transfer of Product from Seller to Liberty by Seller’s delivery to Liberty of a WREGIS Certificate and shall be deemed to be Delivered upon deposit or transfer of the WREGIS Certificate into Liberty’s WREGIS Account.

1.23 “Delivery Date” means each date upon which a WREGIS Certificate representing the Product is Delivered by Seller to Liberty and received by Liberty into Liberty’s WREGIS Account.

1.24 “Delivery Term” means the period of time beginning on the Initial Delivery Date and continuing until the later of 10 (TEN) years or all of the Product in the amount identified in the chart in Section 2.4(a) has been Delivered by Seller to Liberty, unless this Agreement is terminated earlier as provided by the terms hereof.

1.25 [intentionally omitted]

1.26 [intentionally omitted]

1.27 “Early Termination Date” is defined in Section 5.2.

1.28 “Effective Date” means the date on which all of the Conditions Precedent set forth in Section 6.1 have been satisfied or waived in writing by both Parties.

1.29 “Eligible Renewable Energy Resource” or “ERR” is defined in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

1.30 “Equitable Defenses” means any bankruptcy, insolvency, reorganization or other laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain the same.

1.31 “Event of Default” is defined in Section 5.1.

1.32 “Execution Date” means the latest signature date found on the signature page of this Agreement.

1.33 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.34 “Force Majeure” or “an event of Force Majeure” means an event that (a) is not reasonably anticipated as of the date hereof, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party’s negligence or failure to act, and (d) could not be overcome by the affected Party’s use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; fire; explosion; civil disturbance; sabotage; action or restraint by court order or public or government authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller’s ability to sell, or Liberty’s ability to purchase, energy or Green Tags at a more advantageous price than is provided hereunder; (ii) the cost or availability or unavailability of fuel, wind or motive force to operate the Project; (iii) economic hardship, including lack of money; (iv) any breakdown or malfunction of Project equipment (including any serial equipment defect) that is not directly caused by an independent event of Force Majeure, (v) the imposition upon a Party of costs or taxes allocated to such Party, (vi) delay or failure of Seller to perform any obligation, (vii) anything having to do with delay, alleged breach of contract, or failure by the transmission provider, network service provider or interconnection provider; (viii) maintenance upgrade or repair of any facilities or right of way corridors (except for repairs made necessary as a direct result of an event of Force Majeure); or (ix) Seller’s failure to obtain, or perform under, its contracts and obligations. Notwithstanding anything to the contrary herein, in no event will the increased cost of electricity, steel, labor, or transportation constitute an event of Force Majeure.

1.35 “Gains” means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.3. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant prices or other relevant market data in the relevant markets, market prices for a comparable transaction, all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

1.36 “Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the construction, use and operation of the Project.

1.37 “Governmental Authority” means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Liberty or this Agreement, including any municipality, township or county, and any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

1.38 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to RECs, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) any credit, allowance or instrument issued or issuable pursuant to a state implementation plan under the Clean Power Plan promulgated by the Environmental Protection Agency, (4) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. “Green Tag Reporting Rights” are the exclusive right of a Green Tag Buyer to report the ownership of accumulated Green Attributes and zero emission characteristic of the energy associated with the Green Attributes in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Buyer’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Attributes are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project. **[STC 2, RECs and Green Attributes, Non-Modifiable.]** Green Attributes also do not include (a) matters designated by Liberty as sources of liability or (b) adverse wildlife or environmental impacts.

1.39 “Green Tag Reporting Rights” are defined in the definition of Green Attributes

1.40 “Ineligible Product Determination” is defined in Section 2.8(b).

1.41 “Initial Delivery Date” means the first date that Seller Delivers Product to Liberty from the Project pursuant to this Agreement and shall occur within ten (10) Business Days following notice from Liberty to Seller that all of the applicable Conditions Precedent in Article 6 of the Agreement have been satisfied or waived in writing.

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

1.42 “JAMS” means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

1.43 “Law” means any statute, law, treaty, rule, regulation, CEC guidance document, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing.

1.44 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction for the remaining Delivery Term, determined in a commercially reasonable manner, subject to Section 5.3. If the Non-Defaulting Party is the Seller, then “Losses” shall exclude any loss of federal, state or local tax credits or benefits, investment credits, accelerated depreciation, grants or other subsidies related to the construction, ownership and operation of the Project or generation therefrom.

1.45 [intentionally omitted]

1.46 “MWh” means megawatt-hour.

1.47 “Non-Defaulting Party” is defined in Section 5.2.

1.48 [intentionally omitted]

1.50 “Product” means the Renewable Energy Credits that are created, produced or generated by the Project and to be Delivered pursuant to this Agreement, and include Green Attributes, and WREGIS Certificates evidencing the Product, but exclude energy and capacity.

1.51 “Project” means Biomass One, a wood-waste burning thermal electric power and steam generating facility located in White City, Oregon.

1.52 [intentionally omitted].

1.53 “Refund” is defined in Section 5.2.

1.54 “Refund Amount” means the amount resulting from the product of (a) the quantity of RECs purchased or transferred to Liberty, which in the case of transferred RECs are in Liberty’s WREGIS account, as of the Early Termination Date, and which RECs have not been retired for Liberty’s compliance with the California Renewables Portfolio Standard; multiplied by (b) the Contract Price.

1.55 “Renewable Energy Credit” or “REC” is defined in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law, is evidenced by a WREGIS Certificate, and is equivalent to one (1) MWh of energy from the Project which shall be qualified and certified as an ERR.

1.56 “Replacement Price” means the price at which Liberty, acting in a commercially reasonable manner, could purchase an equivalent replacement for any Product specified in this Agreement but not delivered by Seller, plus costs reasonably incurred by Liberty in purchasing such substitute Product, or at Liberty’s option, the market price for such Product not delivered as determined by Liberty in a commercially reasonable manner; provided that Liberty shall not have to enter into replacement transactions to establish a Replacement Price.

1.57 [intentionally omitted]

1.58 “Satisfaction Date” is defined in Section 2.1(a).

1.59 “Settlement Amount” is defined in Section 5.2.

1.60 “Term” is defined in Section 2.1(a).

1.61 “Terminated Transaction” means the Transaction terminated in accordance with Section 5.2.

1.62 “Termination Payment” is defined in Section 5.2.

1.63 “Transaction” is defined in Section 2.3.

1.64 “Vintage” means the defined period or calendar year in which the Product is created, generated, or produced for use under the California Renewables Portfolio Standard.

1.65 “WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

1.66 “WREGIS Certificate” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated by Law as eligible for complying with the California Renewables Portfolio Standard and for evidencing the Product.

1.67 “WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS, as amended, supplemented or replaced from time to time.

1.68 Rules of Interpretation. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity’s or index’s successors; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” means “including, without limitation” or “including, but not limited to”; (h) all references to a particular law or statute mean that law or statute as amended from time to time; and (i) the word “or” is not necessarily exclusive. Each term hereof shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term hereof shall be construed against a Party on the ground that the Party is the author of that provision. Example calculations and other

examples set forth herein are for purposes of illustration only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example. If there is a conflict between an example and the text hereof, the text shall control.

ARTICLE TWO:
TRANSACTIONS; PAYMENT, TAXES AND TRANSFER OF TITLE

2.1 Term.

(a) Term. The term of this Agreement shall commence upon the satisfaction or waiver of the Conditions Precedent and shall remain in effect until the conclusion of the Delivery Term, unless terminated sooner pursuant to Section 5.2 or Section 6.2 (the “Term”); provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations with respect to the Transaction, including Delivery of Product created, produced, or generated by the Project prior to the end of the Delivery Term, payment in full of amounts due for the Product Delivered prior to the end of the Term, the Settlement Amount, or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Performance Assurance is released or returned as applicable (the “Satisfaction Date”).

(b) Survival. Section 3.4 (Indemnity) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional thirty-six (36) months, Liberty’s rights and Seller’s obligations under Section 2.8(b) with respect to the refund due to an Ineligible Product Determination shall survive the Early Termination Date for an additional thirty-six (36) months, and all rights and obligations under Section 8.4 (Confidentiality) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years.

2.2 Binding Nature.

(a) Upon Execution Date. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under: Sections 2.1, 2.2(a), 3.1, 4.2, 4.3(a), 4.3(c), 4.4, 5.1(a)(ii), 5.1(a)(iii) (only with respect to the Sections identified in this Section 2.2(a)), 5.1(a)(iv)-(v), 5.1(b)(ii), 5.2 through 5.7, 8.1 through 8.5 and Articles 1, 6, 7 and 9.

(b) Upon Effective Date. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the Effective Date.

2.3 Transaction. The Parties enter into a transaction for the purchase and sale of the Product under and in accordance with the terms of this Agreement (“Transaction”).

(a) During the Delivery Term, Seller shall sell and Deliver, and Liberty shall purchase and receive, the Product at Liberty’s WREGIS Account, and Liberty shall pay Seller the Contract Price for the Product in accordance with the terms of this Agreement. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Liberty under this Agreement. Liberty shall have no obligation to receive or purchase Product from Seller produced, created or generated prior to or after the Vintages set forth in Section 2.4(a). Seller shall be responsible for any costs or charges imposed

on or associated with the Product or its delivery of the Product up to and at Liberty's WREGIS Account. Liberty shall be responsible for any costs or charges imposed on or associated with the Product after its receipt in Liberty's WREGIS Account. Seller understands and acknowledges that Liberty values the safety of the public and Liberty's employees and that Liberty expects Seller to act in a safe manner in the administration of this Agreement, including the Delivery of Product.

(b) The Contract Quantity shall be Delivered by Seller by May 1st following the end of each Contract Year, as set forth below. Seller shall Deliver to Liberty the Contract Quantity of Product, having been created, generated or produced by the Project, with the corresponding Vintages in Section 2.4(a), during the Delivery Term. Seller shall notify Liberty of the date upon which the Initial Delivery Date occurs on or prior to the date on which it occurs.

(c) Seller Failure to Deliver in any Contract Year. If, for any Contract Year, Seller delivers an amount of Product that is greater than or equal to eighty percent (80%) but less than one hundred percent (100%) of the Contract Quantity for such Contract Year, and such failure is not excused due to Force Majeure or by Liberty's failure to perform, then Seller shall pay Liberty, within five (5) Business Days of invoice receipt, Deficiency Damages. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount and Seller shall pay such invoiced amount within sixty (60) days of receipt and Seller's failure to make timely payment shall be an event of default in accordance with Section 5.1(a)(i).

(d) Force Majeure. Prior to the expiration of the second full Business Day subsequent to the commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely notice constitutes a waiver of a Force Majeure claim. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Liberty shall not be required to make any payments for any Product that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure. Liberty shall be excused from receiving and paying for the Product during periods of Force Majeure.

2.4 Contract Price; Payment.

(a) The Contract Price for the Product in the form of each unit of Product as demonstrated by RECs Delivered in each Vintage for each Contract Year shall be FIVE UNITED STATES DOLLARS AND NO CENTS (\$5.00).as follows:

2,500 RECs Contract Year 2017	2,500 RECs Contract Year 2022
2,500 RECs Contract Year 2018	2,500 RECs Contract Year 2023
2,500 RECs Contract Year 2019	2,500 RECs Contract Year 2024
2,500 RECs Contract Year 2020	2,500 RECs Contract Year 2025
2,500 RECs Contract Year 2021	2,500 RECs Contract Year 2026

(b) Payment. On or before the tenth (10th) day of the month following any month in which Seller has Delivered Product to Liberty, Seller shall issue an invoice to Liberty for Product Delivered since the last invoice. On the twenty-fifth (25th) day of the month, Liberty

shall pay the Contract Price for the Product in the form of each Renewable Energy Credit as evidenced by a WREGIS Certificate Delivered to Liberty's WREGIS account for the prior Contract Year in accordance with Section 2.3(b). If the payment date is not a Business Day, then such payment shall be provided on the next following Business Day. Liberty may offset any payment due hereunder against amounts owing from Seller to Liberty pursuant hereto or any other agreement between the Parties. Liberty's exercise of recoupment and set off rights shall not limit the other remedies available to Liberty hereunder, under such other agreements, or otherwise. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered hereunder, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred.

2.5 Transfer of Title. Seller's property rights, title and interest in and to the Product will pass to Liberty when the Delivery and payment are complete. Upon such completion, all rights, title and interest in and to the Product, to the full extent the same is property, will transfer to Liberty. In the event of the promulgation of a scheme involving Green Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Seller shall not report under § 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Green Attributes purchased by Liberty hereunder belong to any person other than Liberty. Without limiting the generality of Liberty's ownership of the RECs, Liberty may report under such program that such Environmental Attributes purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfers. Seller shall at its expense cause the Project to maintain its registration in good standing with the Center for Resource Solution's Green-e program throughout the Term. Seller shall at all times comply and be fully compliant with the Federal Trade Commission's "Green Guides", 77 F.R. 62122, 16 C.F.R. Part 260, as amended or restated. No Green Attribute, Product, or energy associated therewith may be used by Seller or any third party to comply with a renewable portfolio standard or greenhouse gas trading or reporting rule or law of any federal or state jurisdiction.

2.6 [intentionally omitted]

2.7 Transfer of Product.

(a) By Delivering a Product to Liberty and receiving payment for such Product by Liberty, Seller transfers any and all, and the exclusive, right to use that Product to meet its California Renewables Portfolio Standard requirements and for compliance under any other applicable environmental Law or regulatory requirement, as well as any and all Product Reporting Rights. Transfer of and payment for the Product does not transfer eligibility for, rights to, or ownership of production tax credits or other direct third-party subsidies for generation of electricity by the Eligible Renewable Energy Resource. Except as expressly excluded in this preceding sentence, Delivery to and payment for a Product by Liberty grants Liberty the right, exclusive to the full extent applicable, to verify, and otherwise take advantage of the rights, claims and ownership in the Product.

(b) Green Attributes: Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project. **[STC 2 - RECs and Green Attributes, Non-Modifiable. D.08-04-009 (3.2)]**

(c) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009]**

2.8 Certification and Verification.

(a) Seller shall, at Seller’s expense, and upon request of Liberty, provide Liberty with written documentation that the Projects have CEC Certification and Verification.

(b) Verification of Project. If during the Delivery Term Liberty retires and uses Product for compliance with the California Renewables Portfolio Standard, and it is determined that any of the Product is ineligible for compliance, including without limitation use of the electricity associated with the Product for compliance with or reporting as zero emission or renewable under any greenhouse gas reporting regime or any state or federal jurisdiction (“Ineligible Product Determination”), Seller will refund Liberty the amount paid for the ineligible Product. Liberty is not entitled to a refund if Liberty uses the Product incorrectly, impermissibly, out of time, in excess of permitted compliance quantities, or otherwise not in compliance with the California Renewables Portfolio Standard.

2.9 WREGIS. Seller, at its own cost and expense, shall register with, pay all fees required by, and comply with, all reporting and other requirements of WREGIS relating to the Project or RECs. Seller shall ensure that the Project will participate in and comply with, during the Term, all aspects of WREGIS. Seller shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of WREGIS Certificates to Liberty, and transfer such WREGIS Certificates to Liberty, in accordance with WREGIS reporting protocols and WREGIS Operating Rules. Seller shall promptly give Liberty copies of all documentation it submits to WREGIS. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with Product are issued and tracked prior to Delivery for purposes of satisfying the requirements of the California Renewables Portfolio Standard and CEC Eligibility Guidelines and are transferred to Liberty pursuant to Section 2.3(b) for Liberty’s sole benefit. Seller shall comply with all Laws, including, without limitation, the WREGIS Operating Rules, regarding the transfer of such WREGIS Certificates to Liberty and Liberty shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller’s WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates

from Seller's WREGIS Account to Liberty's WREGIS account. During the Delivery Term, Liberty shall establish and maintain Liberty's WREGIS Account. Seller shall ensure that each WREGIS Certificate evidencing Product indicates that the WREGIS Certificate qualifies for the California Renewables Portfolio Standard, as determined by the CEC, and that each certificate was created, produced or generated by an ERR with CEC Certification and Verification or such other designation as may be required in order to ensure compliance with the California Renewables Portfolio Standard and CEC Eligibility Guidelines. If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Agreement after the Execution Date, the Parties promptly shall cooperate as reasonably required to cause and enable Seller to Deliver to Liberty's WREGIS Account the quantity of WREGIS Certificates corresponding to RECs as set forth in Section 2.4(a) for each Contract Year.

2.10 Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC REC-1, Non-modifiable. D.11-01-025]**

2.11 Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. **[STC REC-2, Non-modifiable. D.11-01-025]**

ARTICLE THREE: REPRESENTATIONS AND WARRANTIES; COVENANTS

3.1 Mutual Representations and Warranties.

On the Execution Date, each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it has all Governmental Approvals necessary for it to perform its obligations under this Agreement, except on the Execution Date only for CPUC Approval in the case of Liberty;

(c) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable

against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally;

(e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(i) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take Delivery of the Product, as provided in this Agreement.

3.2 Seller Representations and Warranties.

Seller further represents and warrants to Liberty on throughout the Delivery Term:

(a) the Project qualifies and is certified by the CEC as an ERR;

(b) Seller has good and marketable title to the Product and all right, title and interest in and to such Product are free and clear of any liens, taxes, claims, security interests or other encumbrances;

(c) Seller has not sold the Product or any portion thereof, to any other person or entity, nor reported the energy associated with the Product as zero emission in any renewable or greenhouse gas program; and

(d) the Product is separate from the energy generated by the Project.

3.3 General Covenants.

Each Party covenants that throughout the Delivery Term:

(a) it shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement and the Transaction;

(c) it shall perform its obligations under this Agreement and the Transaction in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it; and

(d) it shall maintain its status as a “forward contract merchant” within the meaning of the United States Bankruptcy Code (for so long as such term has the same definition as in effect as of the date of this Agreement).

3.4 Indemnity.

(a) Indemnity by Seller. To the extent permitted by Law and subject to Section 3.4(d), Seller shall release, indemnify and hold harmless Liberty, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “Liberty Indemnities”) against and from any and all losses, fines, penalties, claims, demands, damages, liabilities, actions or suits of any nature whatsoever (including legal costs and attorney’s fees, both at trial and on appeal, whether or not suit is brought) (collectively, “Liabilities”) resulting from, or arising out of, or in any way connected with, the performance by Seller of its obligations hereunder, or relating to the Project, for or on account of (i) injury, bodily or otherwise, to, or death of, or (ii) for damage to, or destruction or economic loss of property of, any person or entity, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the Liberty Indemnities. Seller shall be solely responsible for (and shall defend and hold Liberty harmless against) any damage that may occur as a direct result of Seller’s breach of the Generation Interconnection Agreement.

(b) Indemnity by Liberty. To the extent permitted by Requirements of Law and subject to Section 3.4(d), Liberty shall release, indemnify and hold harmless Seller, its Affiliates, and each of its and their respective directors, officers, employees, agents, and representatives (collectively, the “Seller Indemnities”) against and from any and all Liabilities resulting from, or arising out of, or in any way connected with, the performance by Liberty of its obligations hereunder for or on account of (i) injury, bodily or otherwise, to, or death of, or (ii) for damage to, or destruction or economic loss of property of, any person or entity within the Liberty Indemnities, excepting only to the extent such Liabilities as may be caused by the gross negligence or willful misconduct of any person or entity within the Seller Indemnities.

(c) Additional Indemnity. Subject to Section 3.4(d), Seller shall release, indemnify and hold harmless the Liberty Indemnities from and against all Liabilities related to electricity associated with Green Attributes.

(D) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE. THE PARTIES AGREE THAT ANY SPECIFIED MEASURE OF DAMAGES EXPRESSLY PROVIDED FOR HEREIN IS NOT INTENDED BY THEM

TO REPRESENT SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

ARTICLE FOUR: FINANCIAL INFORMATION AND CREDIT SECURITY

4.1 Financial Information. If requested by Liberty from time to time, Seller shall, within five Business Days from receipt of a written request from Liberty, provide financial statements prepared in accordance with generally accepted accounting principles.

4.2 [intentionally omitted]

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

(a) An “Event of Default” means, with respect to either Party as the Defaulting Party, the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written Notice is received by the Party failing to make such payment;

(ii) any representation or warranty made by such Party herein (A) is false or misleading in any material respect when made, or (B) with respect to Sections 2.7(c) or 3.2(a) becomes false or misleading in any material respect during the Delivery Term; provided that, if a change in Law occurs after the Execution Date that causes the representation and warranty made by Seller in Sections 2.7(c) or 3.2(a) to be materially false or misleading, such breach of the representation or warranty in Section 2.7(c) or 3.2(a) shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law during the Delivery Term in order to make the representation and warranty no longer false or misleading;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within thirty (30) days after Notice;

(iv) such Party becomes Bankrupt; or

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

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time during the Term, Seller Delivers or attempts to Deliver Product (A) to Liberty for sale under this Agreement that was not created, generated or produced by the Project as an ERR, or (B) to a third party;

(ii) [intentionally omitted]or

(iii) failure to Deliver Product pursuant to this Agreement; provided that if the default arises solely in connection with Seller's Delivery of an amount of Product that is greater than or equal to eighty (80) percent but less than one hundred (100) percent of Contract Quantity in a specific Contract Year, the remedies in Section 2.3(c) shall apply to the default in that Contract Year.

5.2 Declaration of Early Termination Date.

If an Event of Default with respect to a Defaulting Party shall have occurred and is continuing, the other Party ("Non-Defaulting Party") shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date"), (b) to terminate the Transaction and end the Delivery Term effective as of the Early Termination Date, (c) in the event of any other Event of Default collect liquidated damages which shall be calculated in accordance with Section 5.3 below, defined as a "Termination Payment", (d) withhold any payments due to the Defaulting Party under this Agreement, (e) suspend performance, (f) in the case of Liberty, exercise its rights pursuant to Sections 4.2 and 4.3 to draw upon and retain Performance Assurance, and (g) if Liberty is the Non-Defaulting Party, then Liberty may also Notify Seller that Liberty shall return to Seller some or all of the Product that Liberty purchased or received prior to the Early Termination Date but has not retired for Liberty's compliance with the California Renewables Portfolio Standard ("Refund"), in accordance with Section 5.3(b) and Seller shall pay Liberty the Refund Amount associated with the Product returned to Seller. The "Termination Payment" will be the aggregate of all Settlement Amounts netted into a single amount, where the "Settlement Amount" is equal to the Losses or Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement and, if the Non-Defaulting Party is Liberty and Liberty has elected to exercise its Refund right, then the Refund Amount for the Product returned to Seller shall be included. Additionally, if Liberty is owed a refund due to an Ineligible Product Determination and such amount has not been paid by Seller prior to the Early Termination Date, then such amount shall also be included in the Settlement Amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. Disputes regarding the Termination Payment shall be determined in accordance with Article 9.

5.3 Calculation of Termination Payment and Product Refund Mechanism.

(a) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. The Non-Defaulting Party shall use the market price for a comparable transaction to determine the Gains or Losses and such price should be determined by using the average closing market price for Renewable Energy Credits (as published in an index for a liquid trading market for Renewable Energy Credits which includes California) for the thirty (30) days preceding the date of the Notice declaring an Event of Default triggering the Early Termination Date. The Gains

and Losses shall be calculated as the difference, plus or minus, between the economic value of the remaining Delivery Term of the Terminated Transaction and the equivalent quantities and relevant market price for the same term, as provided in this Section 5.3, or which are reasonably expected to be available in the market for a replacement contract for the Transaction. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

(b) If Liberty is the Non-Defaulting Party and a Refund Amount is paid as part of the Termination Payment, then within ten (10) Business Days following Liberty's receipt of a Refund Amount, Liberty shall cause all WREGIS Certificates evidencing Product subject to the Refund to be returned to Seller's WREGIS account or to such other account as directed in writing by Seller. Seller agrees that it shall cooperate with Liberty to take all actions to receive such WREGIS Certificates.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation or with respect to the Refund, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment or Refund Amount and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Refund Amount shall be made to the Non-Defaulting Party, if applicable, within ten (10) Business Days after such Notice is effective. As set forth in Section 2.1(b), Liberty's rights and Seller's obligations under Section 2.8(b) with respect to the refund due to an Ineligible Product Determination shall survive the Early Termination Date for an additional thirty-six (36) months and are not subject to the timing set forth in this Section 5.4.

5.5 Disputes with Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Refund Amount, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute.

5.6 Rights and Remedies are Cumulative. The rights and remedies of a Party pursuant to this Article 5 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE SIX: CONDITIONS PRECEDENT

6.1 Conditions Precedent.

Subject to Section 2.1, the Term shall not commence until the occurrence of all of the following:

(a) This Agreement has been duly executed by the authorized representatives of each of Liberty and Seller; and

(b) CPUC Approval has been obtained; and

(c) the terms and conditions of the CPUC Approval are acceptable to Liberty in its sole discretion.

6.2 Failure to Meet All Conditions Precedent.

If the Conditions Precedent are not satisfied or waived in writing by Liberty on or before two hundred forty (240) days from the date on which Liberty files this Agreement for CPUC Approval, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

ARTICLE SEVEN: GOVERNING LAW; JURY TRIAL WAIVER

Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. **[STC 17, Applicable Law, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009].** Without limiting the foregoing, to the fullest extent permitted by law, each of the Parties waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

ARTICLE EIGHT: MISCELLANEOUS

8.1 Assignment. Except as expressly provided in this Section, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party. Either Party may, without the need for consent from the other Party (but with notice to the other Party, including the names of the assignees), (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds therefrom in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate of such Party; or (c) transfer or assign this Agreement to any party succeeding to all or substantially all of the assets or generating assets of such Party (and, with respect to Seller, Seller shall be required to transfer or assign this Agreement to any party succeeding to all or substantially all of the assets of Seller). Except with respect to collateral assignments for financing purposes and also except as otherwise provided above in the immediately preceding sentence, in every assignment hereof, the assignee must (x) agree in writing to be bound by the terms and conditions hereof, (y) possess the same or similar experience, and possess the same or better creditworthiness, as the assignor, and (z) the assignor shall remain liable for its obligations hereunder. Liberty may assign this Agreement in whole or in part without the consent of Seller to any person or entity in the event that Liberty ceases to be a load-serving entity, in which event Liberty shall be released from liability hereunder if its assignee meets the requirements of clauses (x) and (y) in the immediately preceding sentence and the requirement of clause (z) in the immediately preceding sentence shall not apply to such assignment. The Party seeking to assign or transfer this Agreement shall be solely responsible for paying all costs of assignment.

8.2 Notices. All notices (including notices of termination), requests, statements or payments shall be made to the addresses set out below. Notices required to be in writing shall

be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been given when received or hand delivered. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt. The Parties may change any of the persons to whom notices are addressed, or their addresses, by providing written notice in accordance with this Section.

To Seller: Biomass One, LP
2350 Ave. G
White City, OR 97503
Attn: Gregory Blair
Facsimile:

To Liberty: Liberty Utilities (CalPeco Electric) LLC
P.O. Box 107
701 National Ave.
Tahoe Vista, California 96148
Attn: President
Facsimile: (530)646-1715

with a copy to: Algonquin Power & Utilities Corp.
354 Davis Road
Oakville, Ontario L6J 2X1
Attn: Chief Legal Counsel

with an additional copy to: Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, California 94111
Attn: Steven F. Greenwald
Facsimile: (415) 276-6599

8.3 General.

(a) No amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing and delivering an original document. This Agreement shall be binding on each Party's successors and permitted assigns.

(b) Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

(c) Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart.

8.4 Confidentiality. Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (a) to the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (b) to the CPUC under seal for purposes of review, (c) for disclosure of terms specified in and pursuant to Section 8.5; (d) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"); or (e) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the FERC. In connection with requests made pursuant to clause (d) of this Section 8.4 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (x) prohibited from complying with a Disclosure Order or (y) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

8.5 RPS Confidentiality.

(a) Notwithstanding Section 8.4 of this Agreement, at any time on or after the date on which Liberty makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, Delivery Term, Project location, anticipated Initial Delivery Date, and anticipated quantity of Product.

(b) Seller acknowledges and agrees that pursuant to the confidentiality rules set forth in CPUC Decisions D.06-06-066 and D.16-08-024, as such decisions may be modified from time to time, this Agreement may be publicly available three (3) years from the Initial Delivery Date stated herein. Seller further acknowledges that the CPUC's rules regarding confidential treatment of this Agreement is subject to change and therefore the timing and extent of disclosure is subject to amendment per CPUC order, rule or regulation.

8.6 Liberty Regulatory Compliance. The Parties acknowledge that Liberty is required by law or regulation to report certain information that could embody Confidential Business Information from time to time. Such reports include models, filings, reports of Liberty's net power costs, general rate case filings, power cost adjustment mechanisms, FERC-required reporting such as those made on FERC Form 1, Form 12, or Form 714, market power and market monitoring reports, annual state reports that include resources and loads, integrated resource planning reports, reports to entities such as NERC, WECC, Pacific Northwest Utility Coordinating Committee, WREGIS, or similar or successor organizations, forms, filings, or reports, the specific names of which may vary by jurisdiction, along with supporting documentation. Additionally, in regulatory proceedings in all state and federal jurisdictions in which it does business, Liberty will from time to time be required to produce Confidential

Business Information. Liberty may use its business judgment in its compliance with all of the foregoing and the appropriate level of confidentiality it seeks for such disclosures. Liberty may submit Confidential Business Information in regulatory proceedings without notice to Seller if Liberty has obtained in such proceedings a protective order covering such Confidential Business Information.

8.7 Entire Agreement. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter hereof.

ARTICLE NINE: DISPUTE RESOLUTION

9.1 Intent of the Parties. The sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Article 9.

9.2 Management Negotiations.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Authorized Representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting, to be held in person or telephonically, to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within fifteen (15) Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies ("Executive"), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(b) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date to meet, which date shall not be greater than thirty (30) days from the Referral Date. After the initial meeting date, the Executives shall meet, as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute.

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and subject to the confidentiality provisions of this Agreement. All such communication and writing shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent binding adjudicatory process between the Parties, whether with respect to this dispute or any other.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 9.2 (a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 9.2(a) above, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 9.3.

9.3 Mediation. If the dispute cannot be resolved by negotiation as set forth in Section 9.2 above, then either Party may initiate mediation, which JAMS shall administer. As the first step, the Parties agree to mediate any controversy before a commercial mediator from the JAMS panel, pursuant to JAMS's then-applicable commercial mediation rules, in San Francisco, California. Either Party may initiate such a mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, or as extended by mutual agreement of the Parties, the mediation does not result in resolution of the dispute, then the Parties shall resolve such controversy through Arbitration by one retired judge or justice from the JAMS panel, which Arbitration shall take place in San Francisco, California, and which the arbitrator shall administer by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the Arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an Arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator and arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

9.4 Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(c) The arbitrator's award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. Any court having jurisdiction may enter

judgment upon any award rendered by the arbitrator. The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

(d) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him or her.

(e) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

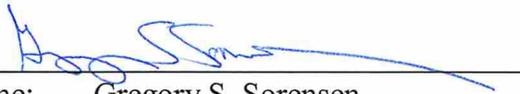
This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the date first above written.

BIOMASS ONE, L.P.

By: _____
Name: _____
Title: _____

LIBERTY UTILITIES (CALPECO ELECTRIC) LLC

By:  _____
Name: Gregory S. Sorensen
Title: President

judgment upon any award rendered by the arbitrator. The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

(d) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him or her.

(e) Except as may be required by Law, neither a Party nor an arbitrator may disclose the existence, content, or results of any Arbitration hereunder without the prior written consent of both Parties.

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the date first above written.

BIOMASS ONE, L.P.

By: *Gregory R. Blair*
Name: *Gregory R. Blair*
Title: *President, National Public Energy, Inc., its Managing General Partner*

LIBERTY UTILITIES (CALPECO ELECTRIC) LLC

By: _____
Name: _____
Title: _____

ATTACHMENT B

LIBERTY CALPECO REQUEST FOR PROPOSAL



Liberty UtilitiesSM

Liberty Utilities

Request for Proposal for to Provide California Renewable Portfolio Standard Compliant Category 3 Renewable Energy Certificates

RFP Posting Date: October 7, 2016

Response Deadline: October 21 2016 by 4:00 p.m. PT

Liberty Utilities (CalPeco Electric) LLC (“Liberty”) is hereby soliciting competitive proposals from qualified firms for the delivery of a total of 5,000 Category 3 California Renewable Portfolio Standard (CA-RPS) compliant renewable energy credits (“RECs”) over a 10 year period (i.e. 500 RECs per year for 10 years).

Background

Affiliates of Liberty acquired the California portion of the Sierra Pacific Power Company regulated electric utility service territory and assets January 1, 2011. Originally, the California distribution utility operated under the name California Pacific Electric Company (“CalPeco”). In July 2013, the name “CalPeco” was changed to Liberty Utilities (CalPeco Electric) LLC. Liberty provides retail electric service to the Lake Tahoe region in California for approximately 49,000 customers. Liberty is a California utility and as such is subject to the regulatory jurisdiction of the California Public Utilities Commission (“Commission”) and the requirements of the California Renewable Portfolio Standards (RPS).

RFP Scope of Services

The purpose of this Request for Proposals is to obtain responses setting forth terms and conditions on which a qualifying firm would be able to provide the requested quantity of CA-RPS compliant RECs and to enable Liberty to evaluate such offers. It is the intention of Liberty to select a firm to provide the RECs as requested and to negotiate an agreement with respect to such purchase.

1. The respondents should propose and offer to sell RECs beginning January 1, 2017:

- Provide a total of 5,000 Category 3 RECs over a minimum 10 year period.
- Contracted quantity of RECs must meet the California Renewable Portfolio Standard (RPS).
- No energy will be purchased in association with purchase of the RECs.

- The respondent shall be responsible for the generation and tracking of RECs through the Western Renewable Energy Generation Information System (WREGIS).
- Provide proposed modifications to the Liberty REC purchase agreement.
- Pricing shall be offered as a cost per REC (\$/REC) delivered to Liberty's account in WREGIS.

2. Assumptions:

- Respondent must be legally authorized to sell CA-RPS compliant RECs and deliver such RECs using WREGIS.
- All Environmental Attributes of the RECs procured for Liberty shall be ultimately retained by Liberty.
- Respondent shall work with Liberty to assure compliance with existing and potential future changes to applicable Commission and Regulatory agency guidelines and standards throughout the Term of the agreement.

Proposal Submission Required Elements

1. **Transmittal Letter:** A brief statement of the respondent's understanding of the offer including any reference to any proposed contractual terms and conditions required by the respondent. An officer authorized to bind must sign the proposal on behalf of the respondent and must include the following declarations on the Transmittal Letter:

“This proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named; the respondent has not directly or indirectly induced or solicited any other respondent to put in a sham bid, or any other person, firm or corporation to refrain from submitting a proposal; and the respondent has not in any manner sought by collusion to secure for themselves an advantage over any other respondent.”

2. **Applicant Information:** Provide legal name of the company, physical street address, e-mail address, telephone, name and title of individuals authorized to represent the Respondent.
3. **Term:** Minimum of 10 years.
4. **Proposal:** Provide a description of the proposed offer, how it meets each of the objectives of this request for proposals, a detailed description of any tasks, task elements and/or functions that are not part of the proposal. Provide proposed modifications to the Liberty REC purchase agreement. Please note the Liberty REC purchase agreement includes certain non-modifiable standard terms and conditions required by the Commission. Such terms and conditions are clearly marked in the Liberty REC purchase agreement.
5. **Renewable Energy Delivery:** Liberty is a California utility and as such is subject to the requirements of the California Renewable Portfolio Standards (RPS).
6. **Experience:** In addition to providing technical responses to the specific objectives of this request for proposals described above, Respondent will separately provide information on each of the following:
 - a) State the full name and address of your organization and, if applicable, any branch office that will perform work on this project.

- b) Describe your company's plan for managing this particular transaction and clearly identify participants and the members of your management team that would be responsible for providing the RECs to Liberty.
- c) Provide a brief overview of your company, including organizational structure, number of employees, number of years the company has been in business, and a list of representative clients.
- d) Describe your firm's experience as may be applicable to this request for proposals, including management qualifications, years and descriptions of experience in selling RECs, and other contract-related qualifications.
- e) Describe your firm's experience, if any, with assisting or providing services to clients in California, Nevada, or other western states.
- f) Respondent shall indicate any and all pending litigation that could affect the viability of respondent's proposal, continuance of existing contracts, operation or financial stability.
- g) Identify whether any key employees have ever been disciplined, suspended, cited, disbarred, censured, or subject to an investigation by any court or regulatory body responsible for oversight of the key employee in connection with the renewable energy industry.
- h) Provide the name, address and telephone number of three or more current clients that can serve as a reference.
- i) Briefly describe your company's financial position and financial and other resources available in connection with the sale of RECs.
- j) Describe whether the respondent has, within the last five years, rendered any service to Liberty either as a contractor or subcontractor, either under the current respondent's name or any other name or organization. If so, please provide details (status as prime or subcontractor, brief description of the contract, contract start and end dates, the contract administrator name, and total actual contract expenditures).

Proposal Submission Delivery Requirements

There will be no respondent's conference associated with this request for proposal. Clarification questions may be addressed to LibertyCARPSRFP@libertyutilities.com.

One electronic copy of your proposal is to be e-mailed to LibertyCARPSRFP@libertyutilities.com.

No contact should be made with the Board of Directors, committees or working group representatives, concerning this request for proposals.

Proposal Terms and Conditions

1. Liberty reserves the right to cancel this RFP at any time, reject any and all proposals and to waive irregularities.

2. Liberty shall determine at its sole discretion the value of any and/or all proposals including price and non-price attributes.
3. Liberty shall perform an initial screening evaluation to identify and eliminate any proposals that are not responsive to the request for qualifications, do not meet the minimum requirements set forth in the request for qualifications, are clearly not economically competitive with other proposals, or are submitted by respondents that lack appropriate creditworthiness, sufficient financial resources, or qualifications to provide dependable and reliable services.
4. Liberty reserves the right to submit follow up questions or inquiries to request clarification of information submitted and to request additional information from any one or more of the respondents.
5. Liberty reserves the right, without qualification and in its sole discretion, to accept or reject any or all proposals for any reason without explanation to the respondent, or to make the award to that respondent, who, in the sole opinion of Liberty, is in the best interests of Liberty and will provide the most value to Liberty and its customers.
6. Liberty may decline to enter into any potential agreement or contract with any respondent, terminate negotiations with any respondent, or to abandon the request for qualification process in its entirety.
7. Liberty reserves the right to make an award, irrespective of price or technical ability, if Liberty determines that to do so is in the best interests of Liberty and will provide the most value to Liberty and its customers.
8. Those respondents who submit proposals agree to do so without legal recourse against Liberty, their directors, officers, employees and agents for rejection of their proposal(s) or for failure to execute or act on their proposal for any reason.
9. Liberty shall not be liable to any respondent or party in law or equity for any reason whatsoever for any acts or omissions arising out of or in connection with this request for proposals.
10. Liberty shall not be liable for any costs incurred by any respondents in preparing any information for submission in connection with this RFP process or any and all costs resulting from responding to this RFP. Any and all such costs whatsoever shall remain the sole responsibility of the respondent
11. Liberty is not responsible or liable for individual interactions with the respondent which are not entirely conducted through Liberty or at Liberty's option or election to engage the respondent as defined within the purchase agreement herein.
12. Submission of a Proposal constitutes acknowledgement that the respondent has read and agrees to be bound by the terms and specifications of this RFP and any addenda subsequently issued prior to the due date for a Proposal.
13. Information in this RFP is accurate to the best of Liberty's knowledge but is not guaranteed to be correct. respondents are expected to complete all of their due diligence

activities prior to entering into any final contract negotiations with Liberty.

14. Liberty reserves the right to reject any Proposal for any reason without cause. Liberty reserves the right to choose not to proceed with any respondent, and can choose to suspend this RFP or to issue a new RFP that would supersede and replace this one.

Additional Requirements for Proposal

1. **Consideration of Responses:** Submitted proposals should be prepared simply and economically, without the inclusion of unnecessary promotional materials. Proposals should be submitted electronically.
2. **Insurance, Licensing, or other Certification:** If selected, the respondent will be required to maintain sufficient insurance, licenses, or other required certifications for the term of the agreement. Liberty may require specific insurance coverage to be established and maintained during the term of the agreement and as a condition of award or continuation of contract.
3. **Non-Discrimination/Equal Employment Practices/Affirmative Action Plan:** If selected, the respondent and each of its known subcontractors may be required to complete and file an acceptable Affirmative Action Plan.
4. **Contractor-Furnished Property:** Upon completion of all work under any Agreement entered with Liberty, ownership and title to reports, documents, drawings, specifications, estimates, and any other document produced as a result of the Agreement shall automatically be vested to Liberty and no further agreement will be necessary for the transfer of ownership to Liberty. Liberty has the sole right to distribute, reproduce, publish, license, or grant permission use all or portion of the deliverable documentation or presentations.

Schedule

Liberty RFP for Purchase of CA Category 3 RECs Selection Process	
Schedule of Requirements	Date(s)
Issue RFP	October 7, 2016
Responses due with proposed contract modifications	October 21, 2016 @ 4:00 PM PST
Review of Responses	October 21, 2016 – October 28, 2016
Selection of Respondent	By COB October 28, 2016
Execution of Purchase Agreement	November 11, 2016

ATTACHMENT C

LIBERTY CALPECO DISTRIBUTION LIST

CONFIDENTIAL