

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Public Utilities Commission of the State of California	)	
v.	)	
Sellers of Long Term Contracts to the California Department of Water Resources	)	Docket Nos. EL02-60-000, <i>et al.</i>
_____	)	
	)	
California Electricity Oversight Board	)	Docket Nos. EL02-62-000, <i>et al.</i>
v.	)	(Consolidated)
Sellers of Long Term Contracts to the California Department of Water Resources	)	

*JOINT OFFER OF SETTLEMENT*

This Joint Offer of Settlement is being submitted by Dynegy Power Marketing, Inc. (now known as Dynegy Power Marketing, LLC, “DPMI”), Cabrillo Power I LLC (“Cabrillo Power”), El Segundo Power, LLC (“El Segundo Power”), and Long Beach Generation LLC (“Long Beach Generation”) (each a “Dynegy Party,” and collectively, the “Dynegy Parties”), and the California Public Utilities Commission (“CPUC”) (together, the “Parties”) pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”). 18 C.F.R. § 385.602 (2011). The Parties respectfully request that the Commission approve this Joint Offer of Settlement and the Long-Term Contract Settlement and Release of Claims Agreement being submitted herewith (“Long-Term Contract Settlement Agreement” or “Agreement”).

The Agreement resolves all claims in the above-captioned consolidated proceeding (“EL02-60/62 Proceeding”) that are related to the March 2, 2001 System Contingent Capacity Purchase and Sales Agreement (“Dynegy Long-Term Contract”) between the California Department of Water Resources (acting under the authority and powers created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in Sections 80000 through 80270 of

the California Water Code, “CDWR”), and DPMI (acting as agent for Cabrillo Power, El Segundo Power, and Long Beach Generation).<sup>1</sup>

### *JOINT OFFER OF SETTLEMENT*

In accordance with Rule 602 of the Commission’s Rules, 18 C.F.R. § 385.602(c)(1) (2011), the following documents are attached hereto:

- Joint Explanatory Statement (Attachment A); and
- Long-Term Contract Settlement Agreement (Attachment B).

Because a presiding officer has not yet been appointed in the EL02-60/62 Proceeding since it was remanded to the Commission from the United States Court of Appeals for the Ninth Circuit, *Pub. Utils. Comm’n of Cal. v. FERC*, 550 F.3d 767 (9th Cir. 2008), the Commission’s Rules provide that the Secretary shall transmit this Joint Offer of Settlement directly to the Commission. 18 C.F.R. § 385.602(b)(2)(ii) (2011).

### *GENERAL OVERVIEW*

This proceeding was initiated in February 2002, when the CPUC and the California Electricity Oversight Board (“CEOB”) filed nearly identical complaints (the CPUC complaint initiating Docket No. EL02-62-000 and the CPUC complaint initiating Docket No. EL02-60-000), and the Commission consolidated the proceedings. *Pub. Utils. Comm’n of Cal. v. Sellers of Long Term Contracts*, 99 FERC ¶ 61,087 (2002). The complaints alleged that the rates, terms and conditions of certain long-term contracts entered into by CDWR, including the Dynegy Long-Term Contract, were unjust and unreasonable within the meaning of the Federal Power Act,

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<sup>1</sup> Except as otherwise defined in this Joint Offer of Settlement, the capitalized terms used herein have the meaning set forth in the Long-Term Contract Settlement Agreement. This Joint Offer of Settlement is not intended to, and does not, alter any of the provisions of the Long-Term Contract Settlement Agreement. In the event of an inconsistency between this Joint Offer of Settlement and the Long-Term Contract Settlement Agreement, the Agreement shall control.

and requested abrogation or modification of those contracts. After a two-week trial in 2003, and a Commission order rejecting the complaints, *id.*, various appeals ensued. The EL02-60/62 Proceeding is currently pending before the Commission following remand from the Ninth Circuit.

Both the Commission and the United States Court of Appeals for the Ninth Circuit have actively encouraged settlements of claims related to transactions in the western energy markets during the crisis period in 2000 and 2001. *See, e.g., id.* at 61,384 (“[W]e want to strongly encourage all parties involved in disputes arising from the California crisis to seriously negotiate settlements.”). Because the Parties wished to settle all claims and disputes between them in this matter, they entered into settlement discussions. The Commission’s Alternative Dispute Resolution Service staff facilitated the Parties’ discussions and have been helpful throughout the process of negotiating the settlement that is reflected in the Parties’ Long-Term Contract Settlement Agreement.

The Agreement provides for the settlement and release of claims against the Dynegy Parties in the EL02-60/62 Proceeding, related to the Dynegy Long-Term Contract. The releases provided for in the Agreement extend to certain Dynegy Released Affiliated Entities, including NRG Energy, Inc. (“NRG”).<sup>2</sup> In addition, as a result of certain contractual commitments between NRG and its affiliates, on the one hand, and DPMI and its affiliates, on the other hand, it is NRG and its affiliates that will be performing the Dynegy Parties’ obligations under the Agreement.<sup>3</sup> The Agreement also provides for a guaranty to be provided by NRG to the CPUC

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<sup>2</sup> At the time the Dynegy Long-Term Contract was entered into, and during the period of performance thereunder, Dynegy Inc. and NRG each owned a 50% share in West Coast Power, which, in turn, owned 100% of the membership interests of Cabrillo Power, El Segundo Power and Long Beach Generation.

<sup>3</sup> Nevertheless, the Parties acknowledge and agree that NRG was neither the party that entered into the Dynegy Long-Term Contract nor the market participant in any of the alleged improper market activities underlying the claims upon which the EL02-60/62 Proceeding are premised.

(the form of which is attached as Exhibit C to the Agreement), guaranteeing the timely performance of all of the Dynege Parties' obligations under the Agreement, including payment obligations.

Pursuant to the Long Term Contract Settlement Agreement, and after the occurrence of the Settlement Effective Date (which requires, among other things, this Commission's approval of the Agreement, without modification or condition, in a Final Order not subject to rehearing):

- The Dynege Parties agree to cause NRG to make a cash payment of twenty million dollars (\$20,000,000) to the CPUC (the "Cash Consideration"), to be paid within thirty (30) days after the Settlement Effective Date.
- The Dynege Parties also agree to cause NRG (either directly or through its affiliates) to undertake certain investments in electric vehicle charging infrastructure and pilot programs in the State of California, thereby helping to create job opportunities for California's diverse minority communities and ensuring electric vehicle charging infrastructure is available to Californians of all income levels (the "EV Charging Station Project"). More specifically, the EV Charging Station Project provides for: (i) the installation of two-hundred fast charging stations that will be available for use by the general public; (ii) the installation of infrastructure to support ten-thousand privately-owned chargers at a total of one-thousand multi-family, workplace and public interest sites (e.g., public university); and (iii) the development, funding and implementation of electric vehicle related technology pilot programs and electric vehicle car sharing pilot programs. Under the terms of the Agreement, the fast charging stations will be available to the public on a non-discriminatory basis for a five (5) year term. The Agreement promotes public use of the stations with

provisions requiring access to subscribers and non-subscribers, credit card swiping capability, and reasonable rates. The total amount of NRG's investment in the EV Charging Station Project shall be, in the aggregate, one-hundred two million five-hundred thousand dollars (\$102,500,000).

- The CPUC, on the one hand, and each Dynegy Party on the other hand, agree to release the other Party or Parties from any and all claims in, arising from or relating to the EL02-60/62 Proceeding or related to the Dynegy Long-Term Contract. As noted above, the CPUC's release of claims includes the release of certain Dynegy Released Affiliated Entities, including NRG. In addition, the Parties agree to the dismissal of the EL02-60/62 Proceeding as it relates to the Dynegy Parties or the Dynegy Long-Term Contract. The Parties also waive all rights to rehearing or appeal with respect to the Released Claims, and agree to withdraw pending rehearing requests or appeals associated therewith.

With respect to the dismissal of the EL02-60/62 Proceeding, we note that CEOB has been inactive since 2008 and is no longer in existence; therefore, it is not a party to the Long-Term Contract Settlement Agreement. Nevertheless, dismissal of the entire consolidated proceeding as it relates to the Dynegy Parties or the Dynegy Long-Term Contract (i.e., both Docket No. EL02-60-000 and Docket No. EL02-62-000) is appropriate in view of the nearly identical complaints that initiated each docket, the consolidated nature of the proceeding, the fact that the CEOB is no longer in existence, and the fact that the CPUC is a party to the Long-Term Contract Settlement Agreement. Accordingly, the Agreement provides that, in order to fully effectuate the releases contemplated therein, the Commission's approval of the Agreement shall constitute Commission dismissal of both Docket No. EL02-60-000 and Docket No. EL02-62-000 as they relate to the

Dynegy Parties and the Dynegy Long-Term Contract. In view of the CEOB's inactive status, the Commission approved this same approach with respect to the settlement of another respondent in this proceeding. See *Pub. Utils. Comm'n of Cal. v. Sellers of Long Term Contracts*, 133 FERC ¶ 61,245 (2010) (order approving Sempra settlement agreement).

### *I. REQUEST FOR APPROVAL OF SETTLEMENT*

As noted above, both the Commission and the United States Court of Appeals for the Ninth Circuit have actively encouraged settlements of claims related to transactions in the western energy markets during the crisis period in 2000 and 2001. The Long-Term Contract Settlement Agreement benefits California ratepayers by resolving claims related to the Dynegy Long-Term Contract. In addition, approval of the Agreement will provide California with monetary consideration of twenty million dollars (\$20,000,000), as well as one hundred two million five hundred thousand dollars (\$102,500,000) in benefits associated with NRG's investments in the EV Charging Station Project. It will also avoid further litigation, eliminate regulatory uncertainty, and enhance financial certainty. Finally, the Long-Term Contract Settlement Agreement reaches a fair and reasonable resolution of issues raised in the EL02-60/62 Proceeding as it relates to the Dynegy Parties and the Dynegy Long-Term Contract.

For all of these reasons, the Dynegy Parties and the CPUC respectfully request that the Commission approve this Joint Offer of Settlement and the Long-Term Contract Settlement Agreement, without modification or condition.

### *II. COMMENTS*

The Parties hereby provide notice, in accordance with Rules 602(d)(2) and 602(f), that comments on this Joint Offer of Settlement or the Long-Term Contract Settlement Agreement should be filed in the above-captioned proceeding. 18 C.F.R. §§ 385.602(d)(2) and 602(f) (2011). Initial comments may be filed not later than twenty days after the filing of this Joint

Offer of Settlement (i.e., May 17, 2012) and reply comments may be filed not later than thirty days after the filing of this Joint Offer of Settlement (i.e., May 29, 2012).

Respectfully submitted,

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*CERTIFICATE OF SERVICE*

I hereby certify that I have this day served an electronic copy of the foregoing document upon each person designated on the official service lists established in Docket Nos. EL02-60-000, and EL02-62-000. I have served a paper copy via first class mail upon each person designated on the official service lists established in Docket Nos. EL02-60-000, and EL02-62-000 who is not otherwise served an electronic copy.

Dated at Washington, D.C. this 27th day of April, 2012.

/s/ Jorgen M. Lervick



## Joint Explanatory Statement

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Public Utilities Commission of the State of California	)	
v.	)	
Sellers of Long Term Contracts to the California Department of Water Resources	)	Docket Nos. EL02-60-000, <i>et al.</i>
_____	)	
	)	
California Electricity Oversight Board	)	Docket Nos. EL02-62-000, <i>et al.</i>
v.	)	(Consolidated)
Sellers of Long Term Contracts to the California Department of Water Resources	)	

*JOINT EXPLANATORY STATEMENT*

This Joint Explanatory Statement is being submitted by Dynegy Power Marketing, Inc. (now known as Dynegy Power Marketing, LLC, “DPMI”), Cabrillo Power I LLC (“Cabrillo Power”), El Segundo Power, LLC (“El Segundo Power”), and Long Beach Generation LLC (“Long Beach Generation”) (each a “Dynegy Party,” and collectively, the “Dynegy Parties”), and the California Public Utilities Commission (“CPUC”) (together, the “Parties”) pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.602 (2011), and as part of the Parties’ Joint Offer of Settlement, requesting that the Commission approve their Long-Term Contract Settlement and Release of Claims Agreement (“Long-Term Contract Settlement Agreement” or “Agreement”).<sup>1</sup>

The Long-Term Contract Settlement Agreement resolves all claims in the above-captioned consolidated proceeding (“EL02-60/62 Proceeding”) that arise from the March 2, 2001

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<sup>1</sup> This Explanatory Statement is provided solely to comply with Rule 602(c)(1)(ii) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.602(c)(1)(ii) (2011). Except as otherwise defined in this Joint Offer of Settlement, the capitalized terms used herein have the meaning set forth in the Long-Term Contract Settlement Agreement. This Joint Offer of Settlement is not intended to, and does not, alter any of the provisions of the Long-Term Contract Settlement Agreement. In the event of an inconsistency between this Joint Offer of Settlement and the Long-Term Contract Settlement Agreement, the Long-Term Contract Settlement Agreement shall control.

System Contingent Capacity Purchase and Sales Agreement (“Dynergy Long-Term Contract”) between the California Department of Water Resources (acting under the authority and powers created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in Sections 80000 through 80270 of the California Water Code, “CDWR”), and DPMI (acting as agent for Cabrillo Power, El Segundo Power, and Long Beach Generation).<sup>2</sup>

*I. OVERVIEW OF LONG-TERM CONTRACT SETTLEMENT AGREEMENT*

The Long-Term Contract Settlement Agreement provides for the settlement and release of claims against the Dynergy Parties in the EL02-60/62 Proceeding, related to the Dynergy Long-Term Contract. The releases provided for in the Agreement extend to certain Dynergy Released Affiliated Entities, including NRG Energy, Inc. (“NRG”).<sup>3</sup> In addition, as a result of certain contractual commitments between NRG and its affiliates, on the one hand, and DPMI and its affiliates, on the other hand, it is NRG and its affiliates that will be performing the Dynergy Parties’ obligations under the Agreement.<sup>4</sup> The Agreement also provides for a guaranty to be provided by NRG to the CPUC (the form of which is attached as Exhibit A to the Agreement), guaranteeing the timely performance of all of the Dynergy Parties’ obligations under the Agreement, including payment obligations.

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<sup>2</sup> The Long-Term Contract Settlement Agreement is Attachment B to the Joint Offer of Settlement.

<sup>3</sup> At the time the Dynergy Long-Term Contract was entered into, and during the period of performance thereunder, Dynergy Inc. and NRG each owned a 50% share in West Coast Power, which, in turn, owned 100% of the membership interests of Cabrillo Power, El Segundo Power and Long Beach Generation.

<sup>4</sup> Nevertheless, the Parties acknowledge and agree that NRG was neither the party that entered into the Dynergy Long-Term Contract nor the market participant in any of the alleged improper market activities underlying the claims upon which the EL02-60/62 Proceeding are premised.

Pursuant to the Long Term Contract Settlement Agreement, and after the occurrence of the Settlement Effective Date (which requires, among other things, this Commission's approval of the Agreement, without modification or condition, in a Final Order not subject to rehearing):

- The Dynege Parties agree to cause NRG to make a cash payment of twenty million dollars (\$20,000,000) to the CPUC (the "Cash Consideration"), to be paid within thirty days after the Settlement Effective Date.
- The Dynege Parties also agree to cause NRG (either directly or through its affiliates) to undertake certain investments in electric vehicle charging infrastructure and pilot programs in the State of California, thereby helping to create job opportunities for California's diverse minority communities and ensuring electric vehicle charging infrastructure is available to Californians of all income levels (the "EV Charging Station Project"). More specifically, the EV Charging Station Project provides for: (i) the installation of two-hundred fast charging stations that will be available for use by the general public; (ii) the installation of infrastructure to support ten-thousand privately-owned chargers at a total of one-thousand multi-family, workplace and public interest sites (e.g., public university); and (iii) the development, funding and implementation of electric vehicle related technology pilot programs and electric vehicle car sharing pilot programs. The total amount of NRG's investment in the EV Charging Station Project shall be, in the aggregate, one hundred two million five-hundred thousand dollars (\$102,500,000).
- The CPUC, on the one hand, and each Dynege Party on the other hand, agree to release the other Party or Parties from any and all claims in, arising from or relating to the EL02-60/62 Proceeding or related to the Dynege Long-Term Contract. As

noted above, the CPUC's release of claims includes the release of certain Dynegy Released Affiliated Entities, including NRG. In addition, the Parties agree to the dismissal of the EL02-60/62 Proceeding as it relates to the Dynegy Parties or the Dynegy Long-Term Contract. The Parties also waive all rights to rehearing or appeal with respect to the Released Claims, and agree to withdraw pending rehearing requests or appeals associated therewith.

With respect to the dismissal of the EL02-60/62 Proceeding, we note that the Commission consolidated this proceeding after nearly identical complaints were filed by the California Electricity Oversight Board ("CEOB") (initiating Docket No. EL02-62-000) and the CPUC (initiating Docket No. EL02-60-000). *Pub. Utils. Comm'n of Cal. v. Sellers of Long Term Contracts*, 99 FERC ¶ 61,087 (2002). CEOB has been inactive since 2008 and is no longer in existence; therefore, it is not a party to the Long-Term Contract Settlement Agreement. Nevertheless, dismissal of the entire consolidated proceeding as it relates to the Dynegy Parties or the Dynegy Long-Term Contract (i.e., both Docket No. EL02-60-000 and Docket No. EL02-62-000) is appropriate in view of the nearly identical complaints that initiated each docket, the consolidated nature of the proceeding, the fact that the CEOB is no longer in existence, and the fact that the CPUC is a party to the Long-Term Contract Settlement Agreement. Accordingly, the Agreement provides that, in order to fully effectuate the releases contemplated therein, the Commission's approval of the Agreement shall constitute Commission dismissal of both Docket No. EL02-60-000 and Docket No. EL02-62-000 as they relate to the Dynegy Parties and the Dynegy Long-Term Contract. In view of the CEOB's inactive status, the Commission approved this same approach with respect to the settlement of another respondent in this proceeding. *See*

*Pub. Utils. Comm'n of Cal. v. Sellers of Long Term Contracts*, 133 FERC ¶ 61,245 (2010) (order approving Sempra settlement agreement).

## II. DESCRIPTION OF CONSOLIDATED PROCEEDINGS

On February 25, 2002, the CPUC filed a complaint against the Dynegy Parties and certain other defendants before the Commission in *Public Utilities Commission of the State of California v. Sellers of Long-Term Contracts to the California Department of Water Resources*, Docket Nos. EL02-60-000, et al., alleging that the rates, terms and conditions of certain long-term contracts entered into by CDWR, were unjust and unreasonable within the meaning of the Federal Power Act, and seeking abrogation or modification of such contracts, including the Dynegy Long-Term Contract.

On February 25, 2002, the CEOB filed a complaint against Dynegy and certain other defendants before FERC in *California Electricity Oversight Board v. Sellers of Energy and Capacity Under Long-Term Contracts with the California Department of Water Resources*, Docket Nos. EL02-62-000, et al., alleging that the rates, terms and conditions of certain long-term contracts entered into by CDWR, were unjust and unreasonable within the meaning of the Federal Power Act, and seeking abrogation or modification of such contracts, including the Dynegy Long-Term Contract.

On April 25, 2002, the Commission issued an order consolidating these proceedings. *Pub. Utils. Comm'n of Cal. v. Sellers of Long Term Contracts*, 99 FERC ¶ 61,087.

After a two-week trial in 2003 and a Commission order rejecting the complaints, *id.*, various appeals ensued. See *Pub. Utils. Comm'n of Cal. v. FERC*, 474 F.3d 587 (9th Cir. 2006) (reversing FERC's order with respect to *Mobile-Sierra* issue and remanding); *Sempra Generation v. Pub. Utils. Comm'n of Cal.*, 128 S. Ct. 2993 (2008) (vacating the Ninth Circuit's order and remanding); *Pub. Utils. Comm'n of Cal. v. FERC*, 550 F.3d 767 (9th Cir. 2008)

(remanding to FERC in light of Supreme Court decisions in this and companion cases). The EL02-60/62 Proceeding is currently pending before the Commission following remand from the Ninth Circuit.

### *III. SUMMARY OF LONG-TERM CONTRACT SETTLEMENT AGREEMENT TERMS*

Because the Parties wished to settle all claims and disputes among them rather than continue to litigate them, they entered into the Long-Term Contract Settlement Agreement on April 27, 2012. Key terms of the Long-Term Contract Settlement Agreement are briefly described below, with reference to sections of the Long-Term Contract Settlement Agreement in which they are addressed.

#### *A. Effective Date*

The Parties have executed the Long-Term Contract Settlement Agreement and it became binding pursuant to its terms as of the Execution Date, which was April 27, 2012. Some of the operative provisions, however, only become effective as of, or in relation to, the Settlement Effective Date. Pursuant to the terms of the Agreement, the Settlement Effective Date is the date on which the Commission has issued an order approving the Agreement (without material change or condition unacceptable to any adversely affected party) and such order has become a Final Order and no longer subject to rehearing. The Agreement further provides that the Settlement Effective Date shall be stayed in the event that there is a challenge to the Agreement (or any Party's authority to enter into it) pending in a forum other than FERC (including but not limited to an appeal from a FERC order approving the Agreement). *See Sections 2(b) and 6(c).*

#### *B. Termination*

The Long-Term Contract Settlement Agreement shall terminate on the date of a Final Order rejecting it in whole or in material part, or approving it with conditions or modifications deemed unacceptable to any Party adversely affected by such conditions or modifications, or on

the date that a federal appellate court vacates a FERC order approving the agreement without further proceedings. *See Section 2(c)*.

*C. Monetary Consideration*

The Dynegy Parties agree to cause NRG to make a cash payment of twenty million dollars (\$20,000,000) to the CPUC (the “Cash Consideration”). The Cash Consideration shall be paid by NRG within thirty days after the Settlement Effective Date by wire transfer into an account to be specified by the CPUC. *See Section 3(a)(ii)*.

*D. EV Charging Station Project*

The Dynegy Parties agree to cause NRG (acting directly or through its affiliates) to make certain investments in the EV Charging Station Project, thereby helping to create job opportunities for California’s diverse minority communities and ensuring electric vehicle charging infrastructure is available to Californians of all income levels. As described in greater detail in Section 4 of the Agreement, the EV Charging Station Project provides for: (i) the installation of two-hundred fast charging stations that will be available for use by the general public; (ii) the installation of infrastructure to support ten-thousand privately-owned chargers at a total of one-thousand multi-family, workplace and public interest sites (e.g., public university); and (iii) the development, funding and implementation of electric vehicle related technology pilot programs and electric vehicle car sharing pilot programs. The total amount of NRG’s investment in the EV Charging Station Project shall be, in the aggregate, one-hundred two million five-hundred thousand dollars (\$102,500,000). *See Sections 3(a)(i) and 4*.

*E. Guaranty*

Upon the occurrence of the Settlement Effective Date, NRG shall deliver to the CPUC a guaranty of the Dynegy Parties’ performance and payment obligations under the Agreement. A



form of the Guaranty Agreement is attached to the Long Term Contract Settlement Agreement as Exhibit C. *See Section 4(m) and Exhibit A.*

*F. Releases and Waivers*

The CPUC, on the one hand, and each Dynegy Party on the other hand, release and discharge the other Party or Parties, including any affiliated entities (with respect to the Dynegy Parties, expressly including the Dynegy Released Affiliated Entities), from any and all claims, whether actually pled or raised, existing from the beginning of time related in any way to the EL02-60/62 Proceeding or the Dynegy Long-Term Contract, including any claim asserted in, arising from or relating to the EL02-60/62 Proceeding, all claims that were or could have been brought in the EL02-60/62 Proceeding, and all acts or omissions, occurrences, transactions, events or communications related to the Dynegy Long-Term Contract. In addition, the Parties waive all rights to rehearing or appeal with respect to the Released Claims, and agree to withdraw pending rehearing requests or appeals. *See Section 5.*

*G. Dismissal of EL02-60/62 Proceeding*

The Parties agree to the dismissal of the EL02-60-000 proceeding initiated by the CPUC with respect to the Dynegy Parties and as it relates to the Dynegy Long-Term Contract. In recognition of the fact that the CEOB, the complainant in the EL02-62-000 Proceeding, has been inactive since 2008 and is no longer in existence, and in order to fully effectuate the releases contemplated in the Long-Term Contract Settlement Agreement, the Parties agree that the EL02-62-000 Proceeding as it relates to the Dynegy Parties and the Dynegy Long-Term Contract also should be dismissed. Accordingly, the Commission's approval of the Long-Term Contract Settlement Agreement shall constitute the Commission's dismissal of the entire consolidated EL02-60/62 Proceeding, as it relates to Dynegy and the Dynegy Long-Term Contract. *See Sections 5(d) and (e).*

## Long-Term Contract Settlement Agreement

**LONG-TERM CONTRACT  
SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT**

by and among

California Public Utilities Commission,

and

Dynegy Power Marketing, LLC,  
Cabrillo Power I LLC, El Segundo Power, LLC and  
Long Beach Generation LLC

dated April 27, 2012

## Table of Contents

	<u>Page</u>
1. DEFINITIONS .....	2
2. SETTLED PROCEEDINGS; CONDITIONS TO EFFECTIVENESS; TERMINATION .....	10
(a) Settled Proceedings .....	10
(b) Effectiveness .....	11
(c) Termination; Effect .....	11
3. SETTLEMENT CONSIDERATION .....	12
(a) Dynegy Parties Consideration .....	12
(b) CPUC Consideration .....	12
4. ELECTRIC VEHICLE CHARGING STATION PROJECT .....	13
(a) Installation of Public Electric Vehicle Charging Stations (Freedom Stations) .....	13
(b) Utilization and Access of the Public Charging Ecosystem (Single-Use Charging Services) .....	20
(c) Installation of Make-Ready Stubs and Make-Readies Array .....	22
(d) Demonstration Programs .....	30
(e) Data and Accounting .....	33
(f) Regulatory Status Under California Law .....	38
(g) Performance .....	39
(h) Change in Law .....	46
(i) Consultation .....	47
(j) Contractors .....	47
(k) General Order 156 .....	48
(l) Use of Grants .....	48
(m) Guaranty .....	49
5. SCOPE OF SETTLEMENT AND RELEASES .....	49
(a) Scope of Settlement .....	49
(b) Releases .....	49
(c) Effectiveness of Releases; Waiver of Claims .....	50
(d) Dismissal of EL02-60 Proceeding .....	51
(e) Dismissal of EL02-62 Proceeding .....	51
(f) Waivers of Appeals and Requests for Rehearing .....	51
(g) Other Proceedings .....	52
(h) No Admission .....	53
(i) Withdrawal .....	53
(j) Acknowledgement and Compromise .....	53
(k) Effect on Refund Settlement Agreement .....	53
6. REQUIRED APPROVAL .....	54
(a) FERC .....	54
(b) Filings .....	54
(c) Settlement Effective Date .....	54
7. REPRESENTATIONS .....	54
(a) Organizational Status .....	54

	(b)	Power and Authority .....	54
	(c)	Binding Obligation.....	54
	(d)	Authority to Settle Claims .....	54
8.		MISCELLANEOUS .....	55
	(a)	Notices.....	55
	(b)	Parties' Addresses .....	55
	(c)	Governing Law .....	56
	(d)	Counterparts.....	57
	(e)	Successors and Assigns .....	57
	(f)	Assignments.....	57
	(g)	No Third-Party Beneficiaries.....	57
	(h)	Cooperation/Public Statements.....	57
	(i)	Dispute Resolution.....	57
	(j)	Interpretation .....	59
	(k)	No Joint and Several Liability .....	60
	(l)	Further Assurances.....	60

Exhibit

Exhibit A - Form of NRG Guaranty Agreement

**LONG-TERM CONTRACT  
SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT**

This Long-Term Contract Settlement and Release of Claims Agreement (“Agreement”) is made and entered into this 27 day of April, 2012, by and among the California Public Utilities Commission (“CPUC”) and Dynegy Power Marketing, LLC (“DPMI”), Cabrillo Power I LLC (“Cabrillo Power”), El Segundo Power, LLC (“El Segundo Power”), and Long Beach Generation LLC (“Long Beach Generation”) (each of DPMI, Cabrillo Power, El Segundo Power and Long Beach Generation a “Dynegy Party,” and collectively, the “Dynegy Parties”).

**RECITALS**

A. *Whereas*, DPMI, acting as agent for Cabrillo Power, El Segundo Power, and Long Beach Generation, and the State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Resources Development System (“CDWR”), entered into that Certain System Contingent Capacity Purchase and Sales Agreement dated as of March 2, 2001 (the “Dynegy Long-Term Contract”), for the purchase by CDWR of energy and capacity from DPMI;

B. *Whereas*, on February 25, 2002, the CPUC filed a complaint against DPMI and certain other defendants before the Federal Energy Regulatory Commission (“FERC”) in *Public Utilities Commission of the State of California v. Sellers of Long-Term Contracts to the California Department of Water Resources*, Docket Nos. EL02-60-000, *et al.*, alleging that the rates, terms and conditions of certain long-term contracts entered into by CDWR, including the Dynegy Long-Term Contract, are unjust and unreasonable within the meaning of the Federal Power Act (“FPA”), and seeking abrogation or modification of such contracts (the “EL02-60 Proceeding”);

C. *Whereas*, on February 25, 2002, the California Electricity Oversight Board (“CEOB”) filed a complaint against DPMI and certain other defendants before FERC in *California Electricity Oversight Board v. Sellers of Long-Term Contracts to the California Department of Water Resources*, Docket Nos. EL02-62-000, *et al.*, alleging that the rates, terms and conditions of certain long-term contracts entered into by CDWR, including the Dynegy Long-Term Contract, are unjust and unreasonable within the meaning of the FPA, and seeking abrogation or modification of such contracts (the “EL02-62 Proceeding”) (the EL02-60 Proceeding and the EL02-62 Proceeding as consolidated by FERC, collectively the “EL02-60/62 Proceeding”);

D. *Whereas*, the claims made by the CPUC and CEOB in the EL02-60 Proceeding and the EL02-62 Proceeding, respectively, are virtually identical complaints concerning the same long-term contracts, including the Dynegy Long-Term Contract;

E. *Whereas*, the Parties wish to settle all claims and disputes among them raised, or that could have been raised, in the EL02-60/62 Proceeding and regarding the Dynegy Long-Term Contract rather than to continue to litigate such claims and disputes;

F. *Whereas*, the contemplated settlement terms provided for herein represent a total value to the citizens of the State of California of one-hundred twenty-two million five-hundred thousand dollars (\$122,500,000);

G. *Whereas*, West Coast Power, LLC (“West Coast Power”) owns 100% of the membership interests of Cabrillo Power, El Segundo Power and Long Beach Generation and, at the time the Dynegy Long-Term Contract was entered into, and during the period of performance thereunder, West Coast Power was owned 50/50 by subsidiaries of Dynegy Inc. and NRG Energy, Inc. (“NRG”);

H. *Whereas*, as the result of a transaction consummated on March 31, 2006, West Coast Power and its subsidiaries, Cabrillo Power, El Segundo Power and Long Beach Generation, the sellers under the Dynegy Long-Term Contract, each became a wholly owned indirect subsidiary of NRG;

I. *Whereas*, as a result of certain contractual commitments between NRG and its affiliates, on the one-hand, and DPMI and its affiliates, on the other-hand, it is NRG and its affiliates, including NRG EV Services LLC (“NRG EV Services”), that will be performing the Dynegy Parties’ obligations under this Agreement and the Parties acknowledge and agree that NRG was neither the party that entered into the Dynegy Long-Term Contract nor the market participant in any of the alleged improper market activities underlying the claims upon which the EL02-60/62 Proceeding are premised;

J. *Whereas*, the CPUC considers the development of electric vehicle charging infrastructure in the State of California an important policy goal and is committed to supporting to the extent reasonably possible electric vehicle charging infrastructure developers’ implementation efforts;

K. *Whereas*, the CPUC is committed to ensuring that the electric vehicle charging infrastructure that is the subject of this Agreement creates job opportunities for California’s diverse minority communities and is available to Californians of all income levels; and

L. *Whereas*, the Parties acknowledge and agree that the settlement of the EL02-60/62 Proceeding pursuant to the terms of this Agreement will resolve the last remaining disputes and/or claims among the Parties arising from facts and circumstances giving rise to the “California energy crisis” and workings of the California energy markets in 2000-2001, including any and all disputes or claims concerning the Dynegy Long-Term Contract.

## **AGREEMENT**

Now, therefore, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

### *1. DEFINITIONS*

The following capitalized terms when used herein shall have the meanings specified below:

- (a) “AAA” has the meaning set forth in Section 8(i)(ii).
- (b) “Agreement” has the meaning set forth in the Preamble.
- (c) “Annual Status Report” has the meaning set forth in Section 4(e)(ii)(2).

- (d) “Business Day” has the same meaning as provided in California Civil Code Section 9.
- (e) “Cabrillo Power” has the meaning set forth in the Preamble.
- (f) “California AG” means the People of the State of California, ex rel. Bill Lockyer, Attorney General.
- (g) “Capitalized Development Costs” means all capitalized development costs incurred by NRG or its affiliates with respect to the installation of the Public Charging Ecosystem or Make-Readies Arrays, as applicable, including, Personnel Costs.
- (h) “CAPRA” means the California Public Records Act (codified at Cal. Gov’t §§ 6250-6270).
- (i) “Cash Consideration” has the meaning set forth in Section 3(a)(ii).
- (j) “CDWR” has the meaning set forth in Recital A.
- (k) “CEOB” has the meaning set forth in Recital C.
- (l) “CERS” means the California Energy Resources Scheduling division of the California Department of Water Resources acting through its Electric Power Fund, separate and apart from its powers and responsibilities with respect to the State Water Resources Development System.
- (m) “CHAdEMo” means the CHAdEMo Association, a trade association promoting a quick charging method and standard for electric vehicle charging stations.
- (n) “CHAdEMo+SAE DC Charger” means a DC Fast Charger that is both compatible with the CHAdEMo Standard and with the SAE Standard.
- (o) “CHAdEMo Standard” means the prevailing CHAdEMo standard, if any, for DC Fast Chargers in effect at the time of a charging station’s installation.
- (p) “Change in Law” has the meaning set forth in Section 4(h).
- (q) “Charging Station Fixture” means a mounting fixture that affixes one or more EVSEs to the wall, post, ceiling, floor or equivalent of the property, together with any supporting concrete pad and protective bollards.
- (r) “Charging Station Junction Box” means an electrical junction box or similar electrical equipment or device from which electrical conduit and wiring may be threaded from the Charging Station Service Panel(s) to the Charging Station Fixtures.



- (s) “Charging Station Service Panel” means a dedicated 240 VAC or 208 VAC electrical service panel or similar electrical equipment or devices necessary to support some or all of the Make-Ready Stubs at a Make-Readies Array; *provided* that the voltage capacity of the Charging Station Service Panel(s) installed at a Make-Readies Array shall not be such that such Make-Readies Array, if used to its full capacity when combined with other Make-Readies Arrays constituting a Make-Readies Site, would cause such Make-Readies Site to exceed the maximum limits specified in Section 4(c)(ii)(2)(C).
- (t) “CPUC” has the meaning set forth in the Preamble.
- (u) “DC Fast Charger” means a minimum 200-450V DC electric vehicle charging equipment with a rated current not less than 30A and not greater than 200A and rated power not less than 50kW.
- (v) “Dispute” has the meaning set forth in Section 8(i).
- (w) “DPMI” has the meaning set forth in the Preamble.
- (x) “Dynegy Long-Term Contract” has the meaning set forth in Recital A.
- (y) “Dynegy Part(ies)” has the meaning set forth in the Preamble.
- (z) “Dynegy Released Affiliated Entities” has the meaning set forth in Section 5(b).
- (aa) “EL02-60 Proceeding” has the meaning set forth in Recital B.
- (bb) “EL02-62 Proceeding” has the meaning set forth in Recital C.
- (cc) “EL02-60/62 Proceeding” has the meaning set forth in Recital C.
- (dd) “Electric Service Infrastructure” means one or more Charging Station Service Panels and Charging Station Junction Boxes, together with the electrical conduit and electrical wiring (capable of supporting at least one 208-240V, 30A capacity circuit to each designated parking space) from the Charging Station Service Panel(s) to the Charging Station Junction Boxes.
- (ee) “Eligible Reviewer” means any individual or entity, otherwise authorized by the Parties to be eligible for access to confidential information under this Agreement, in each case that is designated as an eligible reviewer by a Party and *provided* that both the designating Party and the “Eligible Reviewer” have executed a protective order in the FERC proceeding approving this Agreement and the settlement of the EL02-60/62 Proceeding.
- (ff) “El Segundo Power” has the meaning set forth in the Preamble.
- (gg) “EVSE” means generally a Level 1 Charger or a Level 2 Charger.

- (hh) “EV Car Sharing Project” has the meaning set forth in Section 4(d)(ii)(2).
- (ii) “EV Charging Project Element” means each of the Dynegy Parties’ (1) obligations to install the Freedom Stations pursuant to Section 4(a), (2) obligations to provide Single-Use Charging Services pursuant to Section 4(b), (3) obligations to install the Make-Ready Stubs and Make-Readies Arrays pursuant to Section 4(c), and (4) obligations to implement the Technology Demonstration Program and the EV Opportunity Program pursuant to Section 4(d)(i) and Section 4(d)(ii), respectively.
- (jj) “EV Charging Station Project” has the meaning set forth in Section 3(a)(i).
- (kk) “EV Job Training Program” has the meaning set forth in Section 4(d)(ii)(3)(B).
- (ll) “EV Opportunity Program” has the meaning set forth in Section 4(d)(ii)(1).
- (mm) “EV Opportunity Program Amount” has the meaning set forth in Section 4(d)(ii)(1).
- (nn) “Executive” means a vice president or higher level executive.
- (oo) “FERC” has the meaning set forth in Recital B.
- (pp) “FERC Dispute” has the meaning set forth in Section 8(i)(i).
- (qq) “Final Order” means a FERC order that is no longer subject to rehearing before FERC or not subject to further rehearing before FERC, regardless of whether such order is subject to appeal pursuant to Section 313(b) of the FPA (16 U.S.C. § 8251(b)), *provided* that such order has not been stayed pending appeal. For purposes of this Agreement, the “date” of a Final Order shall be the date upon which such order becomes no longer subject to rehearing at FERC.
- (rr) “FOIA” means the federal Freedom of Information Act (codified at 5 U.S.C. § 552).
- (ss) “FPA” has the meaning set forth in Recital B.
- (tt) “Freedom Station” means the equipment specified in Section 4(a)(vi).
- (uu) “Freedom Station Amount” has the meaning set forth in Section 4(a)(i).
- (vv) “Freedom Station Costs” means Public Charging Ecosystem costs incurred by NRG or its affiliates that are eligible to count against the expenditure of the full Freedom Station Amount and shall include all “out-of pocket costs” to install and implement the Public Charging Ecosystem (e.g., (A) actual costs to procure, install, and connect the Freedom Stations comprising the Public Charging Ecosystem (as further described in Section 4(a)(vi) below), (B) all related intellectual property costs, (C) the costs to identify, evaluate, negotiate and reach

agreement with host locations (including all permitting costs (including signage permitting costs), location and site assessment costs, costs to obtain landlord and/or tenant consents, and any costs related to filings or litigation related to the protection of NRG's or its affiliates' legal rights at the host locations *but* excluding (1) any incentive or bonus payments made to a host to obtain access or consent and (2) any litigation costs incurred as a result of NRG's or its affiliates' negligence in the installation or operation of the Public Charging Ecosystem), (D) lease, rent or similar payments incurred by NRG during the NRG Fixed Operating Cost Period (excluding, for the avoidance of doubt, costs associated with the acquisition of real property rights, including easements) and (E) all related Capitalized Development Costs *but* excluding any costs related to the initial acquisition of real property rights needed to install a Freedom Station at a given location). For the avoidance of doubt, all costs associated with the installation, operation and maintenance of Freedom Stations and incurred with respect to compliance with the reporting, consultation, bidding, contracting and employee hiring requirements of this Agreement, including those requirements set forth in Section 4(a)(vi)(3), Section 4(e), Section 4(g) and Sections 4(h) through (k) below, shall in each case be eligible Freedom Station Costs.

- (ww) “Freedom Station Fixed Operating Cost Amount” has the meaning set forth in Section 4(b)(i)(1).
- (xx) “Freedom Station Savings Event” has the meaning set forth in Section 4(a)(iv)(1).
- (yy) “Freedom Station Stub” means the structural and electrical infrastructure to support the future installation of one (1) additional DC Fast Charger at a Freedom Station.
- (zz) “FS Viability Criteria” has the meaning set forth in Section 4(g)(i)(2)(A).
- (aaa) “General Order 156” means that CPUC General Order 156, *Rules Governing the Development of Programs to Increase Participation of Women, Minority, and Disabled Veteran Business Enterprises in the Procurement of Contracts From Utilities as Required by Public Utilities Code Section 8281-8286*, adopted April 27, 1988, and made effective May 30, 1988 (Decision 88-04-057 in R.87-02-086).
- (bbb) “Governmental Authority” means any federal, state, municipal, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, arbitrating body, or other governmental authority; *provided* such entity possesses valid jurisdictional authority to regulate the Parties and the terms and conditions of this Agreement.
- (ccc) “Incomplete Freedom Stations” has the meaning set forth in Section 4(g)(i)(2)(B).
- (ddd) “Incomplete Make-Ready Stubs” has the meaning set forth in Section 4(g)(ii)(2)(B).

- (eee) “Installation Period” has the meaning set forth in Section 4(a)(ii).
- (fff) “LA Basin” means the area comprising the counties of Ventura, Los Angeles, Orange, Riverside and San Bernardino.
- (ggg) “Level 1 Charger” means 120V AC electric vehicle service equipment with a rated current up to 16A.
- (hhh) “Level 2 Charger” means a minimum 208-240V AC electric vehicle service equipment with a rated current not less than 30A.
- (iii) “Level 2 Stub” means the structural and electrical infrastructure to support the future installation of one (1) additional Level 2 Charger at a Freedom Station.
- (jjj) “Long Beach Generation” has the meaning set forth in the Preamble.
- (kkk) “Make-Readies Amount” has the meaning set forth in Section 4(c)(i).
- (lll) “Make-Readies Array” means a group of connected Make-Ready Stubs, together with the Electric Service Infrastructure necessary to support each Make-Ready Stub in such group.
- (mmm) “Make-Readies Costs” means Make-Ready Stub and Make-Readies Array costs incurred by NRG or its affiliates that are eligible to count against the expenditure of the Make-Readies Amount and shall include all “out-of-pocket costs” to install the Make-Ready Stubs and Make-Readies Arrays (e.g., (A) actual costs to procure, install, and connect the Make-Ready Stubs and Electric Service Infrastructure comprising the Make-Readies Arrays, (B) all related intellectual property costs, (C) the costs to identify, evaluate, negotiate and reach agreement with host locations (including all permitting costs (including signage permitting costs), location and site assessment costs, costs to obtain landlord and/or tenant consents, and any costs related to filings or litigation related to the protection of NRG’s or its affiliates’ legal rights at the host locations *but* excluding (1) any incentive or bonus payments made to a host to obtain access or consent and (2) any litigation costs incurred as a result of NRG’s or its affiliates’ negligence in the installation or operation of the Make-Readies Arrays), and (D) all related Capitalized Development Costs *but* excluding any costs related to the initial acquisition of real property rights needed to install a Make-Readies Array at a given host location). For the avoidance of doubt the costs associated with the development and maintenance of the Make-Readies Array website described in Section 4(c)(vi)(1)(B) below, and all costs associated with the installation, operation and maintenance of Make-Readies Arrays and incurred with respect to compliance with the reporting, consultation, bidding, contracting and employee hiring requirements of this Agreement, including those requirements set forth in Section 4(a)(vi)(3), Section 4(e), Section 4(g) and Sections 4(h) through (k) below, shall in each case be eligible Make-Readies Costs.
- (nnn) “Make-Readies Savings Event” has the meaning set forth in Section 4(c)(iv)(1).

- (ooo) “Make-Readies Site” means a Multi-Family Housing Site, Public Interest Site or Workplace Site.
- (ppp) “Make-Ready Stub” means collectively, (A) a Charging Station Fixture, (B) electrical conduit and electrical wiring (capable of supporting at least one 208-240V, 30A capacity circuit to each designated parking space where the EVSE will be installed) from the Charging Station Junction Box to the Charging Station Fixture and (C) signage indicating that the parking spaces where the Make-Ready Stubs are installed as “Ready for EV.” Each Make-Ready Stub shall accommodate either a Level 1 Charger or a Level 2 Charger. For the avoidance of doubt, a Charging Station Fixture that is capable of serving multiple EVSEs and the same number of multiple separate parking spaces simultaneously shall be considered the same multiple number of separate Make-Ready Stubs.
- (qqq) “Minimum Freedom Station Count” has the meaning set forth in Section 4(a)(ii).
- (rrr) “Minimum Make-Readies Arrays Count” has the meaning set forth in Section 4(c)(ii)(1).
- (sss) “Minimum Make-Ready Stubs Count” has the meaning set forth in Section 4(c)(ii)(1).
- (ttt) “MR Viability Criteria” has the meaning set forth in Section 4(g)(ii)(2)(A).
- (uuu) “Multi-Family Housing Site” means a housing campus, complex or facility consisting of at least ten (10) separate dwellings; *provided* that, for the avoidance of doubt, the presence of retail or commercial business in or contiguous with such campus, complex or facility shall not affect the Multi-Family Housing Site status of such campus, complex or facility.
- (vvv) “NRG” has the meaning set forth in the Recital G.
- (www) “NRG EV Services” has the meaning set forth in the Recital I.
- (xxx) “NRG Fixed Operating Cost Period” has the meaning set forth in Section 4(b)(i)(1).
- (yyy) “Off-Peak” has the meaning set forth in the applicable SCE, SDG&E or PG&E tariff.
- (zzz) “OMOI” means FERC’s Office of Market Oversight and Investigations.
- (aaaa) “On-Peak” has the meaning set forth in the applicable SCE, SDG&E or PG&E tariff.
- (bbbb) “Party” means each of the Dynegy Parties and the CPUC.

- (cccc) “Personnel Costs” means assigned time/costs of NRG’s and its affiliates’ personnel, including base salaries, benefits, reasonable and customary incentive payments and other compensation *but* shall not include any bonus or incentive component attributable to compensation made to an Executive of NRG or its affiliates, including NRG EV Services, in any Settlement Year.
- (dddd) “PG&E” means the Pacific Gas and Electric Company, a California corporation.
- (eeee) “Public Charging Ecosystem” has the meaning set forth in Section 4(a)(ii).
- (ffff) “Public Interest Site” means community colleges, public and nonprofit hospitals, and California State University campuses; *provided* that publicly owned and nonprofit owned campuses, complexes and facilities not classifiable as Public Interest Sites may otherwise qualify as a Make-Readies Site to the extent each such campus, complex or facility otherwise meets the definition of Multi-Family Housing Site and/or Workplace Site, as applicable.
- (gggg) “Public Use Microdata Area” means a statistical geographic area defined by the United States Census Bureau for the tabulation of decennial census and “American Community Survey Public Use Microdata Sample data.” For purposes of this Agreement, reference to a Public Use Microdata Area shall be to such area established pursuant to the 2010 census data.
- (hhhh) “Quarterly Status Report” has the meaning set forth in Section 4(e)(ii)(1).
- (iiii) “Refund Settlement Agreement” means that certain Settlement and Release of Claims Agreement entered into on June 28, 2004, by and among each of Dynegy Inc., NRG, DPMI, West Coast Power, OMOI, PG&E, SCE, SDG&E, California AG, CERS, CPUC and CEOB.
- (jjjj) “Released Claims” has the meaning set forth in Section 5(b).
- (kkkk) “Required Approval” has the meaning set forth in Section 6(a).
- (llll) “Research Partner” has the meaning set forth in Section 4(d)(i)(4).
- (mmmm) “RFO Process” has the meaning set forth in Section 4(a)(vi)(3)(A).
- (nnnn) “Rules” has the meaning set forth in Section 8(i)(ii).
- (oooo) “SAE” means the Society of Automotive Engineers.
- (pppp) “SAE Standard” means with respect to the applicable type of electric vehicle charging station (e.g., Level 1 Charger, Level 2 Charger and DC Fast Charger) the prevailing SAE standard, if any, in effect at the time of such charging station installation.

- (qqqq) “San Joaquin Valley” means the area comprising the counties of Fresno, San Joaquin, Kern, Stanislaus, Tulare, Merced, King and Madera.
- (rrrr) “SCE” means the Southern California Edison Company, a California corporation.
- (ssss) “SDG&E” means the San Diego Gas & Electric Company, a California corporation.
- (tttt) “Settlement Effective Date” has the meaning set forth in Section 6(c).
- (uuuu) “Settlement Year” has the meaning set forth in Section 4(a)(iii).
- (vvvv) “SF Bay Area” means the area comprising the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma.
- (wwww) “Shared Statistical Usage Data” has the meaning set forth in Section 4(e)(i).
- (xxxx) “Single-Use Charging Services” has the meaning set forth in Section 4(b)(ii)(2).
- (yyyy) “Start-Up Period” has the meaning set forth in Section 4(c)(v)(2).
- (zzzz) “Technology Demonstration Program” has the meaning set forth in Section 4(d)(i)(1).
- (aaaaa) “Technology Demonstration Project” has the meaning set forth in Section 4(d)(i)(2).
- (bbbbb) “Technology Demonstration Program Amount” has the meaning set forth in Section 4(d)(i)(1).
- (ccccc) “West Coast Power” has the meaning set forth in the Recital G.
- (dddd) “Workplace Site” means an office, business, factory or industrial campus, complex or facility; *provided* that a campus, complex or facility whose primary business is retail focused (e.g., a retail mall) or hospitality focused (e.g., a hotel complex) is not classifiable as a Workplace Site.

## 2. SETTLED PROCEEDINGS; CONDITIONS TO EFFECTIVENESS; TERMINATION

- (a) Settled Proceedings.
- (i) EL02-60/62 Proceeding. Upon the occurrence of the Settlement Effective Date, this Agreement will fully resolve any and all claims brought by the CPUC and CEOB, and disputes between the Parties related to, the EL02-60/62 Proceeding and the Dynegy Long-Term Contract.

- (ii) Status of CEOB. Each of the Parties acknowledges and agrees that the CEOB, the complainant in the EL02-62 Proceeding, is no longer in existence; therefore, as provided in Section 5(e) the Parties agree that the EL02-62 Proceeding, as it relates to any of the Dynegy Parties and/or the Dynegy Long-Term Contract, should be dismissed and that FERC's approval of this Agreement shall constitute such FERC dismissal.
  
- (b) Effectiveness.
  - (i) Conditions Precedent. Receipt of the Required Approval and the occurrence of the Settlement Effective Date shall be conditions precedent to:
    - (1) the Dynegy Parties' obligations hereunder to implement the EV Charging Station Project, *provided, however*, nothing herein shall limit the discretion of the Dynegy Parties to make any expenditures with respect to the EV Charging Station Project prior to the Settlement Effective Date;
    - (2) the payment of the Cash Consideration; and
    - (3) the obligations to make, and the effectiveness of, all releases and the withdrawals of claims and defenses specified hereunder.
  - (ii) Binding Obligations. Except as provided in Section 2(b)(i), this Agreement shall be a binding obligation of each Party immediately upon its execution by all of the Parties.
  
- (c) Termination; Effect.
  - (i) Termination. This Agreement shall terminate on the date:
    - (1) of a Final Order rejecting this Agreement in whole or in material part;
    - (2) of a Final Order approving this Agreement with conditions or modifications deemed unacceptable by any Party adversely affected by such conditions or modifications; or
    - (3) on the date that a federal appellate court vacates a FERC order approving this Agreement without further proceedings.

*Provided*, that in the event of the issuance of a FERC order approving this Agreement subject to conditions or modifications, no later than five (5) Business Days from the date of such order, each Party that may be adversely affected by such conditions or modifications shall communicate in writing to each other Party its consent, or lack of consent, to such conditions or modifications. *Provided, further*, that the failure of a Party to provide notice to the other Parties as provided



in the preceding sentence shall constitute acceptance by such Party of such conditions or modifications. *Provided, however,* that (A) the Parties may, in the sole discretion of each Party, agree to enter into negotiations to attempt to modify this Agreement in a manner that would resolve the grounds for which the Required Approval was either (I) denied or (II) approved subject to conditions or modifications deemed adverse by a Party and (B) pending cessation of such negotiations or receipt of any subsequent Required Approval approving the modifications negotiated and agreed to by each of the Parties, this Agreement shall remain binding on the Parties as provided in Section 2(b)(ii).

- (ii) Appeals. Nothing herein shall be construed as obligating any Party to appeal an order from FERC that fails to approve this Agreement or that approves this Agreement subject to conditions or modifications that adversely affects a Party.
- (iii) Effect. In the event that this Agreement is terminated pursuant to this Section 2(c), then this Agreement shall be null and void and of no further effect, with all the rights, duties and obligations of the Parties thereafter restored as if this Agreement had never been executed.

### 3. SETTLEMENT CONSIDERATION

- (a) Dynegy Parties Consideration. In consideration of the respective covenants specified in this Agreement, the Dynegy Parties shall:
  - (i) cause NRG acting directly or through its affiliates to undertake to install and make available to the public Freedom Stations and Make-Ready Stubs in certain areas of California, together with the Technology Demonstration Program and EV Car Sharing Project, at a cost equal in the aggregate to one-hundred two million five-hundred thousand dollars (\$102,500,000) and pursuant to the scope, assumptions and terms set forth in Section 4 (the “EV Charging Station Project”); and
  - (ii) cause NRG to make a cash payment of twenty million dollars (\$20,000,000) to the CPUC (the “Cash Consideration”). The Cash Consideration shall be paid by NRG within thirty (30) days after the Settlement Effective Date by wire transfer into an account to be specified by the CPUC.

For the avoidance of doubt, the Cash Consideration plus the obligations to expend a minimum of one-hundred two million five-hundred thousand dollars (\$102,500,000) to implement the EV Charging Station Project shall constitute the entire amount of consideration due from the Dynegy Parties and such amount shall include claims for interest, if any, that may be claimed to be due from the Dynegy Parties with respect to the Dynegy Long-Term Contract.

- (b) CPUC Consideration. In consideration of the respective covenants specified this Agreement, the CPUC shall agree, without limitation, to (i) the settlement and

releases set forth in Section 5, and (ii) the remaining terms and conditions of this Agreement.

#### 4. *ELECTRIC VEHICLE CHARGING STATION PROJECT*

The Dynegy Parties shall cause NRG acting directly or through its affiliates, including NRG EV Services, to undertake to implement the EV Charging Station Project as follows:

- (a) Installation of Public Electric Vehicle Charging Stations (Freedom Stations).
  - (i) Freedom Station NRG Contribution. Subject to the audit provisions of Section 4(e)(iii), NRG shall expend an amount equal to fifty million five-hundred thousand dollars (\$50,500,000) for the installation of the Public Charging Ecosystem (the “Freedom Station Amount”).
  - (ii) Freedom Station Installation Period; Amount; Locations. Over a four (4) year time period starting from the Settlement Effective Date (the “Installation Period”), NRG will install, and thereafter own and operate in the State of California a minimum of two-hundred (200) Freedom Stations (the “Minimum Freedom Station Count”) (as it may be expanded or modified pursuant to Section 4(a)(iv)(1) as a result of the occurrence of a Freedom Station Savings Event, the “Public Charging Ecosystem”) as follows:
    - (1) one-hundred ten (110) to be located in the LA Basin;
    - (2) fifty-five (55) to be located in the SF Bay Area;
    - (3) fifteen (15) in the San Joaquin Valley; and
    - (4) twenty (20) in San Diego County.

*Provided*, that in each of the regions specified above, NRG shall install twenty-percent (20%) of the Minimum Freedom Station Count in Public Use Microdata Areas in which the median incomes for such Public Use Microdata Areas are in the lowest one-third (1/3) among all of the Public Use Microdata Areas in a given region; *provided, however*, that such installations shall be geographically dispersed within such Public Use Microdata Areas so as to ensure that such Freedom Stations are available and convenient for low- and moderate-income communities as well as higher income communities.

*Provided, further*, that the status of NRG’s efforts in identifying, evaluating, pursuing and installing twenty-percent (20%) of the Minimum Freedom Station Count in Public Use Microdata Areas within each region identified above in which the median incomes for such Public Use Microdata Areas are in the lowest one-third (1/3) among all of the Public Use Microdata Areas in a given region shall be included in the Quarterly

Status Reports and Annual Status Reports required to be submitted by NRG pursuant to Section 4(e)(ii) below.

- (iii) Freedom Station Implementation Schedule. During the Installation Period, NRG will exercise reasonable efforts to install the Minimum Freedom Station Count pursuant to the following implementation schedule measured in years from the beginning of the Settlement Effective Date (each, a “Settlement Year”):
- (1) First Settlement Year. Twenty (20) percent for a total of forty (40) Freedom Stations.
  - (2) Second Settlement Year. Thirty (30) percent for a total of sixty (60) Freedom Stations.
  - (3) Third Settlement Year. Thirty (30) percent for a total of sixty (60) Freedom Stations.
  - (4) Fourth Settlement Year. Twenty (20) percent for a total of forty (40) Freedom Stations.

*Provided*, that in the event that NRG is unable to complete the Public Charging Ecosystem by the end of the Installation Period despite the exercise of reasonable efforts by NRG, then Section 4(g)(i) shall govern.

*Provided, further*, that, for the avoidance of doubt, the inability on the part of NRG to meet the preceding implementation schedule with respect to any given Settlement Year does not in and of itself constitute a failure to exercise reasonable efforts on the part of NRG.

- (iv) Freedom Stations Cost Savings.
- (1) Installation of Charging Infrastructure; Allocation. To the extent that the Freedom Station Costs for the Minimum Freedom Station Count are less than the Freedom Station Amount (a “Freedom Station Savings Event”), NRG shall expand and/or modify the Public Charging Ecosystem to:
    - (A) increase the number of Freedom Station installations to be included in the Public Charging Ecosystem in order to utilize the full Freedom Station Amount; or
    - (B) increase the base-level capacity of certain installed Freedom Stations included in the Public Charging Ecosystem to serve additional drivers (e.g., by installing additional DC Fast Chargers or Level 2 Chargers, together with the electrical capacity and other equipment necessary to support such additional charging equipment at such

Freedom Stations) in order to utilize the full Freedom Station Amount *provided* that there shall be no more than two (2) DC Fast Chargers or two (2) Level 2 Chargers at any given Freedom Station included within the Public Charging Ecosystem; or

- (C) subject to the remaining provisions of this Section 4(a)(iv)(1), employ a combination, after taking into consideration the commercial needs of electric vehicle drivers in the State of California (as reasonably determined by NRG), of either Section 4(a)(iv)(1)(A) and Section 4(a)(iv)(1)(B) above, in order to utilize the full Freedom Station Amount.

*Provided*, NRG must expend the first fifty-percent (50%) of such savings on increasing the number of Freedom Stations as provided in Section 4(a)(iv)(1)(A) above prior to expending any amount of such savings on increasing the base-level capacity of installed Freedom Stations as provided in Section 4(a)(iv)(1)(B) above.

*Provided, further*, that in the event that NRG elects pursuant to this Section 4(a)(iv)(1) to expand the scope of the Public Charging Ecosystem to include more than the Minimum Freedom Station Count, those Freedom Stations in excess of the Minimum Freedom Station Count are to be installed, at NRG's discretion, in any of the same geographic areas specified in Section 4(a)(ii).

- (2) Installation Period Extension. Upon the occurrence of a Freedom Station Savings Event, the Installation Period shall be extended for, and NRG shall have, an additional one (1) year to utilize any unspent funds that result from cost reductions achieved by NRG during the course of installing the minimum number of Freedom Stations.
- (v) Freedom Station Ownership. For the avoidance of doubt, it is the intent of the Parties that NRG will retain ownership of the Public Charging Ecosystem both during and after the NRG Fixed Operating Cost Period, *provided* that nothing herein is intended to obligate NRG to retain ownership rights in, or continue to operate, the Public Charging Ecosystem after the NRG Fixed Operating Cost Period has passed; *provided, further*, that, for the avoidance of doubt, nothing herein is intended to, nor shall, vest ownership of, or liability for, a Freedom Station in the CPUC.
- (vi) Freedom Station Scope.
  - (1) Equipment. Each Freedom Station shall consist of at least:

- (A) one (1) DC Fast Charger;
- (B) one (1) Level 2 Charger (*provided* that NRG may at its discretion install two (2) DC Fast Chargers in lieu of one (1) DC Fast Charger and one (1) Level 2 Charger; *provided further* that such decision shall not affect such Freedom Station's status as a Freedom Station that counts towards meeting the Minimum Freedom Station Count);
- (C) one (1) customer service interface that includes a communications device for Single-Use Charging Services and/or assistance;
- (D) at NRG's option, in addition to the equipment specified in Section 4(a)(vi)(1)(A) and Section 4(a)(vi)(1)(B) above NRG may also install either (I) a Freedom Station Stub or (II) a Level 2 Stub (*provided* that in the event that NRG subsequently installs a DC Fast Charger in a Freedom Station Stub, or a Level 2 Charger in a Level 2 Stub, as applicable, such charging station will not affect such Freedom Station's status as a Freedom Station that continues to count toward meeting the Minimum Freedom Station Count);
- (E) to the extent not already present at a location, adequate ambient lighting and other security elements;
- (F) way-finding and branding signage;
- (G) the electrical equipment necessary to fully service all the included equipment;
- (H) each Freedom Station shall be compatible with the CHAdeMo Standard and SAE Standard as provided in Section 4(a)(vi)(4) below; and
- (I) in the event that a CHAdeMo+SAE DC Charger becomes available, NRG may replace or initially install one (1) CHAdeMo+SAE DC Charger in lieu of the equipment specified in 4(a)(vi)(1)(A), Section 4(a)(vi)(1)(B) and Section 4(a)(vi)(1)(D) above and such installation shall constitute a Freedom Station (*provided* that with respect to the Minimum Freedom Station Count (A) such an installation may only be made in lieu of the equipment specified in 4(a)(vi)(1)(A), Section 4(a)(vi)(1)(B) and Section 4(a)(vi)(1)(D) above, if such installation reduces the cost of installing a Freedom Station at such location by twenty percent (20%) or more, (B) such installations may

not exceed fifteen percent (15%) of the Minimum Freedom Station Count and (C) the positive value, if any, of equipment replaced in connection with such installations shall be credited against NRG's Freedom Station Costs).

*Provided*, that in order to better provide for the safety and security of electric vehicle drivers and to assure a reliable and convenient solution for electric vehicle charging, each Freedom Station may also include network upgrades as well as additional like equipment or improved technology equipment for charging electric vehicles.

*Provided, further*, that, for the avoidance of doubt, Freedom Station Costs shall not include any costs for discretionary service items or additional equipment for consumer services not directly related to electric vehicles, including equipment such as wi-fi or vending machines.

(2) Installation. The installation of each Freedom Station shall include: the hiring and coordination of all vendors and contractors; the installation of electrical equipment, utility lines, hardware, and software; location and site preparation, trenching, repaving, and landscaping (in each case to the extent such activities are directly related to the installation of a Freedom Station or the restoration of a host location following such installation); installation of all signage; and obtaining from applicable Governmental Authorities all licenses, permits, or other approvals required to install the Freedom Stations. For the avoidance of doubt, all costs incurred by NRG with respect to the installation of Freedom Stations pursuant to this Section 4(a) shall be eligible Freedom Station Costs.

(3) Bids; Contracting Practices; Employment Practices.

(A) Bids. Except with respect to contracts involving the procurement of services or equipment with a value less than (x) five thousand dollars (\$5,000) individually and (y) one-hundred thousand dollars (\$100,000) in the aggregate, in each case to the extent NRG EV Services uses third parties to provide services or equipment in connection with its installation of the Public Charging Ecosystem, NRG EV Services shall establish a process and procedure for soliciting, evaluating and awarding competitive bids for the provision of such third-party services and equipment (an "RFO Process"). Criteria to be used by NRG EV Services in evaluating bids received pursuant to such an RFO Process shall include:

- (I) the degree in which the proposal meets or exceeds the requirements of the solicitation;
  - (II) ability to perform the work, including expertise, prior and current experience and service commitment;
  - (III) cost, including financial incentives, discount provisions and other pricing considerations;
  - (IV) the “best value contracting” practices specified in Section 4(a)(vi)(3)(B) below; and
  - (V) other factors that may be relevant as determined by NRG.
- (B) Contracting Practices. In soliciting, evaluating and awarding contracts for work on the Public Charging Ecosystem, NRG EV Service’s RFO Process shall provide preferences for contractors that:
- (I) are able to demonstrate a track record of hiring graduates of pre-apprenticeship training programs applicable to the trade or trades to be performed under the contract;
  - (II) are able to demonstrate a track record of recognizing the value of quality training for employees by participating in registered apprenticeship programs and other similar credential-granting programs applicable to the trade or trades to be performed under the contract;
  - (III) are able to demonstrate a track record of hiring a substantial number of its employees from the communities surrounding the locations where the work is to be performed under the contract;
  - (IV) provide health insurance for their employees;
  - (V) are able to demonstrate a track record of successfully hiring and retaining employees from historically disadvantaged or underrepresented classes, including women, minorities and disabled veterans; *provided* that newer contractors without such a track record may be able to receive such a preference by providing a detailed plan setting forth how such contractor will hire and retain such

employees during the performance of the contract and thereafter; and

- (VI) are able to demonstrate a track record of striving to provide employment opportunities to formerly incarcerated individuals who are seeking lawful self-sufficient career opportunities.

(C) Employment Practices. With respect to its employees working on the Public Charging Ecosystem who have been hired to perform trade work in lieu of NRG EV Services contracting for such work from a third-party contractor, NRG EV Services shall:

- (I) provide preferences for employees that are graduates of pre-apprenticeship training programs applicable to the trade or trades to be performed;
- (II) participate in registered apprenticeship programs and other similar credential-granting programs, if any, applicable to the trade or trades to be performed;
- (III) provide preferences for hiring such employees from the communities surrounding the locations where the work is to be performed under the contract;
- (IV) provide preferences for hiring and retaining such employees from the historically disadvantaged or underrepresented classes, including women, minorities, and disabled veterans; and
- (V) provide preferences for hiring formerly incarcerated individuals who are seeking lawful self-sufficient career opportunities.

(4) Charging Standards. Initially all Freedom Stations shall have one (1) or more DC Fast Chargers compatible with the CHAdeMo Standard and one (1) Level 2 Charger compatible with the SAE Standard. Upon the occurrence of (A) approval by SAE for a charger standard for DC Fast Chargers and (B) the commercial availability from at least two (2) unaffiliated manufacturers of one or more DC Fast Chargers that are SAE Standard compatible or equipment capable of making the Freedom Stations' DC Fast Chargers compatible with both the SAE Standard and the CHAdeMo Standard (and in each case that are approved by the Nationally Recognized Testing Laboratories), then NRG shall have six (6) months to complete the modification of all installed



Freedom Stations to include at least one (1) SAE Standard compatible DC Fast Charger and one (1) CHAdeMo Standard compatible DC Fast Charger *or* one (1) CHAdeMo+SAE DC Charger. Thereafter, all newly installed Freedom Stations will have at least one (1) DC Fast Charger that is SAE Standard compatible.

Notwithstanding anything else to the contrary herein, if at any time during the Installation Period the CHAdeMo Standard and/or the SAE Standard become abandoned or superceded such that no electric vehicles utilizing the CHAdeMo Standard or SAE Standard (as applicable) are available for purchase in the California market, then NRG shall not be required to continue to install CHAdeMo Standard compatible or SAE Standard compatible (as applicable) DC Fast Chargers as part of the Freedom Stations; *provided* that in the event of such an occurrence NRG and the CPUC shall meet and confer to identify and mutually agree upon the new commercially prevailing standard.

- (vii) Freedom Station Operation and Maintenance. NRG EV Services will maintain and operate the Freedom Stations throughout the NRG Fixed Operating Cost Period, including, making all necessary repairs, arranging for appropriate remote monitoring, and obtaining and installing appropriate software and hardware upgrades. During the NRG Fixed Operating Cost Period, with respect to the Public Charging Ecosystem, NRG EV Services or the host shall take electrical service as a retail customer under the prevailing tariff rate for such electric vehicle charging services.
  
- (b) Utilization and Access of the Public Charging Ecosystem (Single-Use Charging Services).
  - (i) Freedom Station Fixed Operating Cost NRG Contribution.
    - (1) Freedom Station Fixed Operating Cost Amount. Subject to the audit provisions of Section 4(e)(iii), over a five (5) year time period from the Settlement Effective Date (the “*NRG Fixed Operating Cost Period*”), NRG shall expend an amount equal to three-million dollars (\$3,000,000) with respect to the fixed operating costs of the Public Charging Ecosystem (the “*Freedom Station Fixed Operating Cost Amount*”).
    - (2) Freedom Station Fixed Operating Cost Amount. Eligible fixed operating costs of the Public Charging Ecosystem that may count against the expenditure of the full Freedom Station Fixed Operating Cost Amount shall include all of NRG’s costs related to the Public Charging Ecosystem for (A) electricity demand charges,

(B) meter charges, (C) security and communication charges, (D) periodic site visits to assure Freedom Station security, quality and operation (including related travel expenses and assigned time/cost of NRG's or its affiliates' personnel or contractors performing such visits) and (E) maintenance, including preventive maintenance and repairs. For the avoidance of doubt, all costs associated with the operation and maintenance of Freedom Stations pursuant to this Section 4(b) and incurred with respect to compliance with the reporting, consultation, bidding, contracting and employee hiring requirements of this Agreement, including those requirements set forth in Section 4(a)(vi)(3), Section 4(e), Section 4(g) and Sections 4(h) through (k) below, shall in each case be eligible Freedom Station Fixed Operating Costs.

(ii) Single-Use Scope of Access. During the NRG Fixed Operating Cost Period:

- (1) Each Freedom Station in the Public Charging Ecosystem shall be physically accessible on a non-discriminatory basis to both NRG EV Services' subscribers and non-subscribers, in each case for the purpose of charging their electric vehicles.
- (2) NRG shall make the Public Charging Ecosystem available on an "open" or "a la carte" charging basis (the "Single-Use Charging Services"). During the NRG Fixed Operating Cost Period, NRG shall provide the Single-Use Charging Services to non-subscriber customers on a fee-for-single-service basis; *provided* that nothing herein shall limit NRG's ability to offer subscription services or any other pricing models; *provided, further*, that consistent with the decision of the CPUC in Decision 10-07-044, *Decision in Phase 1 on whether a Corporation or Person that Sells Electric Vehicle Charging Services to the Public is a Public Utility*, dated July 29, 2010, prices charged by NRG for the Single-Use Charging Services shall not be subject to review, or regulated, by the CPUC.

(iii) Payment of Customer Charges During NRG Fixed Operating Cost Period.

- (1) Subscribers. NRG subscribers shall pay for charging services received through the Public Charging Ecosystem pursuant to the terms of their applicable subscription agreement.
- (2) Single-Use Customers; Charges. During the NRG Fixed Operating Cost Period, customers that are not NRG subscribers who access the Public Charging Ecosystem and receive Single-Use Charging Services will be able to pay for such Single-Use Charging Services using a remote credit card swipe reader mechanism; *provided, further*, that the amount charged by NRG per single use shall be no

less than seven dollars (\$7) and no more than (A) fifteen dollars (\$15) during On-Peak hours or (B) ten dollars (\$10) during Off-Peak hours; *provided, however*, that after the first thirty (30) months of the NRG Fixed Operating Cost Period, at NRG's discretion, there may be a one time escalation in the foregoing prices based on the change since the Settlement Effective Date in the aggregate system average electricity tariff rates for PG&E, SCE and SDG&E.

- (3) Extension. In the event that the Installation Period is otherwise extended pursuant to the terms of this Agreement beyond Settlement Year 5, the NRG Fixed Operating Cost Period shall also be extended beyond Settlement Year 5 and shall terminate at such time as the termination of such extended Installation Period.

(c) Installation of Make-Ready Stubs and Make-Readies Array.

- (i) Make-Readies NRG Contribution. Subject to the audit provisions of Section 4(e)(iii), NRG shall expend an amount equal to forty million dollars (\$40,000,000) for the installation of the Make-Ready Stubs and Make-Readies Arrays (the "Make-Readies Amount"). The Make-Readies Stubs and Make-Readies Arrays installed as part of the EV Charging Station Project hereunder, are intended for the provision of dedicated charging services to a subscriber on a one-subscriber per Make-Ready Stub basis and, unlike the Public Charging Ecosystem, are not intended to be available for use by the general public.

(ii) Make-Readies Installation Period; Amount; Distribution.

- (1) Installation; Amount. Over the Installation Period, NRG will install in the State of California a minimum of ten-thousand (10,000) Make-Ready Stubs (the "Minimum Make-Ready Stubs Count") at a minimum of one-thousand (1,000) Make-Readies Arrays (the "Minimum Make-Readies Array Count"). Each Make-Readies Array shall not exceed ten (10) Make-Ready Stubs per Make-Readies Array; *provided* that, for the avoidance of doubt and subject to Section 4(c)(ii)(2)(C) below, NRG may install noncontiguous Make-Ready Stubs at a single Make-Readies Array.
- (2) Distribution. The Minimum Make-Ready Stub Count shall be distributed by region and type of Make-Readies Site as follows:
  - (A) By Region. Sixty (60) percent of the Minimum Make-Ready Stub Count shall be distributed following the same regional distribution by percentage as the Freedom Stations comprising the Public Charging Ecosystem are distributed. The remaining forty (40) percent of the Minimum Make-

Ready Stub Count will be installed in the State of California at geographic locations reasonably determined by NRG based upon electric vehicle ownership and subscriber demand and potential property host interest. In each case such Make-Ready Stubs shall be installed in regions that are located within the franchise service territories of SCE, SDG&E and PG&E.

(B) By Type of Make-Readies Site. The Minimum Make-Ready Stub Count shall be distributed by type of Make-Readies Site as set forth below:

(I) Multi-Family Housing Sites: a minimum of thirty-five percent (35%) of the Minimum Make-Ready Stub Count shall be installed at Multi-Family Housing Sites;

(II) Workplace Sites: a minimum of fifteen percent (15%) of the Minimum Make-Ready Stub Count shall be installed at Workplace Sites;

(III) Public Interest Sites: a minimum of ten percent (10%) of the Minimum Make-Ready Stub Count shall be installed at Public Interest Sites; and

(IV) the remaining forty percent (40%) of the Minimum Make-Ready Stub Count shall be installed, in any proportion at NRG's discretion, at Multi-Family Housing Sites, Workplace Sites or Public Interest Sites.

*Provided*, that Make-Ready Stubs located at monthly rental parking spaces at a "mixed-use" Make-Readies Site that falls within the definition of both a Multi-Family Housing Site and Workplace Site may be counted towards satisfying either (but not both) the minimum number of Make-Ready Stub installations required under Section 4(c)(ii)(2)(B)(I) or Section 4(c)(ii)(2)(B)(II).

(C) Make-Readies Site Maximum. The Minimum Make-Ready Stub Count shall be distributed such that at each Make-Readies Site there is a maximum of forty (40) Make-Ready Stubs at a maximum of four (4) Make-Ready Arrays; *provided* that in order to qualify for the placement of more than one (1) Make-Readies Array, a Make-Readies Site

must have more than four (4) buildings and parking lots and/or parking garages, and each such parking lot and/or garage must have more than ten (10) parking spaces.

*Provided*, that in furtherance of the CPUC's goals of ensuring that the installation of the Make-Ready Arrays as part of the EV Charging Station Project creates job opportunities for California's diverse minority communities and that the Make-Ready Arrays are available to Californians of all income levels, NRG shall consult with state and local government agencies as provided in Section 4(i)(i) with respect to the identification of Make-Readies Sites and shall use best and commercially reasonable efforts to ensure that potential Multi-Family Housing Sites specifically designated as mixed-income housing according to local inclusionary housing or zoning codes are identified, evaluated and pursued.

*Provided, further*, that the status of NRG's efforts in identifying, evaluating, pursuing and installing Make-Ready Stubs and Make-Readies Arrays at such Multi-Family Housing Sites shall be included in the Quarterly Status Reports and Annual Status Reports required to be submitted by NRG pursuant to Section 4(e)(ii) below.

(iii) Make-Readies Implementation Schedule. During the Installation Period, NRG will use reasonable efforts to install the Minimum Make-Ready Stub Count pursuant to the following implementation schedule beginning with the Settlement Effective Date:

- (1) First Settlement Year. Ten percent (10%) for a total of one-thousand (1,000) Make-Ready Stubs.
- (2) Second Settlement Year. Thirty percent (30%) for a total of three-thousand (3,000) Make-Ready Stubs.
- (3) Third Settlement Year. Thirty percent (30%) for a total of three-thousand (3,000) Make-Ready Stubs.
- (4) Fourth Settlement Year. Thirty percent (30%) for a total of three-thousand (3,000) Make-Ready Stubs.

*Provided*, that in the event that NRG is unable to complete the installation of the Minimum Make-Ready Stubs Count at the Minimum Make-Readies Arrays Count by the end of the Installation Period despite the exercise of reasonable efforts by NRG, then Section 4(g)(ii) shall govern.

*Provided, further*, that, for the avoidance of doubt, the inability on the part of NRG to meet the preceding implementation schedule with respect to

any given year does not in and of itself constitute a failure to exercise reasonable efforts on the part of NRG.

(iv) Make-Readies Costs Savings.

(1) Installation of Additional Make-Ready Stubs. To the extent that the Make-Readies Costs for the Minimum Make-Ready Stubs Count and the Minimum Make-Readies Arrays Count are less than the Make-Readies Amount (a “*Make-Readies Savings Event*”), NRG shall increase the number of Make-Ready Stubs and Make-Readies Arrays installed in order to utilize the full Make-Readies Amount; *provided*, that in the event that a Make-Readies Savings Event occurs, and NRG pursuant to this Section 4(c)(iv)(1) increases the number of Make-Ready Stubs and Make-Readies Arrays above the Minimum Make-Ready Stubs Count and Minimum Make-Readies Arrays Count, those Make-Ready Stubs and Make-Readies Arrays in excess of the Minimum Make-Ready Stubs Count and Minimum Make-Readies Arrays Count must be installed by NRG at new Make-Readies Sites as otherwise provided in Section 4(c)(ii)(2) above, *except* the percentage allocations set forth in Section 4(c)(ii)(2)(B) above between regions and types of Make-Readies Site shall not apply to such additional installations.

(2) Installation Period Extension. Upon the occurrence of a Make-Readies Savings Event, the Installation Period shall be extended for, and NRG shall have, an additional one (1) year to utilize any unspent funds that result from cost reductions achieved by NRG during the course of installing the Minimum Make-Ready Stubs Count and Minimum Make-Readies Arrays Count.

(v) Make-Readies Ownership; Start-Up Period.

(1) Ownership. Ownership of the Make-Ready Stubs installed pursuant to this Section 4(c) shall be vested in the owner of the property upon which the applicable Make-Ready Stubs are located.

(2) Start-Up Period. With respect to each Make-Readies Array, NRG shall have an exclusive right to install EVSEs in the Make-Ready Stubs starting from the date of the completion of the first Make-Ready Stub at such Make-Readies Array extending for a period of eighteen (18) months thereafter (the “*Start-Up Period*”).

(vi) Make-Readies Installation; Bids.

(1) Installation.

- (A) Scope. The installation of the Make-Ready Stubs at each Make-Readies Array shall include: the hiring and coordination of all vendors and contractors; the installation of Electric Service Infrastructure, Charging Station Fixtures, and utility lines; location and site preparation, trenching, repaving and landscaping (in each case to the extent such activities are directly related to the installation of a Make-Ready Array or the restoration of a host location following such installation); installation of all signage; and obtaining from applicable Governmental Authorities all licenses, permits, or other approvals required to install the Make-Ready Stubs and/or the Electric Service Infrastructure at each Make-Readies Array.
- (B) Status Website. NRG shall maintain a publicly available website identifying each installed Make-Ready Array's location and Start-Up Period expiration date and such website shall be updated at a minimum on a quarterly basis.
- (C) Notice; Use by Host. Except as otherwise provided in this Section 4(c)(vi)(1)(C), during the Start-Up Period NRG shall not install any EVSE in a Make-Ready Stub in a Make-Readies Array without a subscription for the use of such Make-Ready Stub. Upon installation of a Make-Readies Array *but* only during that period between installation completion and the first subscriber to subscribe for the use of a Make-Ready Stub at such Make-Readies Array, NRG may install and maintain during the Start-Up Period one (1) EVSE and accompanying signage for the purpose of notifying the residents, employees or other occupants that the Make-Readies Array is operational and available for use with a subscription. Such EVSEs shall not be made available by NRG for use by the general public or by non-subscriber occupants or users of the Make-Ready Site; *provided, however*, the owner of the Make-Readies Site, at its discretion, may use or permit the use of such EVSEs, and NRG shall not charge for such use; *provided, further*, that NRG will remove any such EVSE and accompanying signage at the conclusion of the Start-Up Period at such Make-Readies Array.

(2) Bids; Contracting Practices; Employment Practices.

- (A) Bids. Except with respect to contracts involving the procurement of services or equipment with a value less than (x) five thousand dollars (\$5,000) individually and (y) one hundred thousand dollars (\$100,000) in the aggregate,

in each case to the extent NRG EV Services uses third parties to provide services or equipment in connection with its installation of the Make-Readies Arrays, NRG EV Services shall establish an RFO Process. Criteria to be used by NRG EV Services in evaluating bids received pursuant to such an RFO Process shall include:

- (I) the degree in which the proposal meets or exceeds the requirements of the solicitation;
  - (II) ability to perform the work, including expertise, prior and current experience and service commitment;
  - (III) cost, including financial incentives, discount provisions and other pricing considerations;
  - (IV) the “best value contracting” practices specified in Section 4(a)(vi)(2)(B) below; and
  - (V) other factors that may be relevant as determined by NRG.
- (B) Contracting Practices. In soliciting, evaluating and awarding contracts for work on the Make-Readies Arrays, NRG EV Service’s RFO Process shall provide preferences for contractors that:
- (I) are able to demonstrate a track record of hiring graduates of pre-apprenticeship training programs applicable to the trade or trades to be performed under the contract;
  - (II) are able to demonstrate a track record of recognizing the value of quality training for employees by participating in registered apprenticeship programs and other similar credential-granting programs applicable to the trade or trades to be performed under the contract;
  - (III) are able to demonstrate a track record of hiring a substantial number of its employees from the communities surrounding the locations where the work is to be performed under the contract;
  - (IV) provide health insurance for their employees;



(V) are able to demonstrate a track record of successfully hiring and retaining employees from historically disadvantaged or underrepresented classes, including women, minorities and disabled veterans; *provided* that newer contractors without such a track record may be able to receive such a preference by providing a detailed plan setting forth how such contractor will hire and retain such employees during the performance of the contract and thereafter; and

(VI) are able to demonstrate a track record of striving to provide employment opportunities to formerly incarcerated individuals who are seeking lawful self-sufficient career opportunities.

(C) Employment Practices. With respect to its employees working on the Make-Readies Arrays who have been hired to perform trade work in lieu of NRG contracting for such work from a third party contractor, NRG EV Services shall:

(I) provide preferences for employees that are graduates of pre-apprenticeship training programs applicable to the trade or trades to be performed;

(II) participate in registered apprenticeship programs and other similar credential-granting programs, if any, applicable to the trade or trades to be performed;

(III) provide preferences for hiring such employees from the communities surrounding the locations where the work is to be performed under the contract;

(IV) provide preferences for hiring and retaining such employees from the historically disadvantaged or underrepresented classes, including women, minorities, and disabled veterans; and

(V) provide preferences for hiring formerly incarcerated individuals who are seeking lawful self-sufficient career opportunities.

(vii) Make-Readies Arrays Utilization and Access.

(1) To qualify to host a Make-Readies Array, a host must (1) be the owner or operator of a Make-Readies Site, and (2) enter into “Ready for EV” Host Charging Station Agreement with NRG EV

Services (such agreement shall have a term extending to the end of the Start-Up Period for such Make-Readies Array) and shall contain no contractual terms or conditions that contain any preferential rights to use the Make-Readies Array following the Start-Up Period or would otherwise impede access to a Make-Readies Array by a competitor electric vehicle charging services provider following the conclusion of the Start-Up Period.

- (2) NRG EV Services shall construct each Make-Readies Array in such a way as to ensure that the Make-Ready Stubs are reasonably expected to be compatible with Level 2 Chargers that are commercially available as of the date of the Make-Readies Array installation so that at the conclusion of each such Start-Up Period, alternative electric vehicle charging service providers can reasonably be expected to utilize the Make-Ready Stubs with minimal modifications. In addition, during the Start-Up Period, NRG EV Services shall not unduly discriminate against new customers subscribing to use the Make-Readies Array by charging such new customers more than what is being charged to its existing subscription customers within the same metropolitan area; *provided* that nothing in this Section 4(c)(vii) is intended, nor shall, create a right in an existing customer to obtain more favorable pricing subsequently offered to other customers.
- (3) During the Start-Up Period, subscriptions sold by NRG EV Services with respect to a Make-Readies Site shall include the following limitations:
  - (A) The term of a subscription contract for individual residents, employees or other occupants of a Make-Readies Site may not exceed one (1) year.
  - (B) Subscriptions sold to individual residents, employees or other occupants of a Make-Readies Site shall be on a one subscriber per one Make-Ready Stub basis.
  - (C) NRG EV Services shall be required to remove each EVSE installed at a Make-Ready Stub as part of a subscription upon termination of such subscription and restore the Make-Ready Stub to permit use by the host or former subscriber of electric vehicle charging services from an alternative electric vehicle charging service provider.
  - (D) With respect to a subscription contract with the host of the Make-Readies Site, each such subscription:

- (I) must be on comparable economic terms with any subscription provided to a resident, employee or other occupant of such Make-Readies Site; *provided* that, for the avoidance of doubt, comparable economic terms include price differentials based on customer credit quality, tenor of the subscription and the number of Make-Ready Stubs subscribed;
- (II) shall have a term that does not exceed the expiration of the applicable Start-Up Period;
- (III) shall prohibit the host subscriber from reselling subscriptions or making the subscribed Make-Ready Stubs available for use by the general public; and
- (IV) shall prohibit the host subscriber from using, or permitting the use of, the subscribed Make-Ready Stubs to support a commercial fleet of electric vehicles.

(d) Demonstration Programs.

(i) Technology Demonstration Program.

- (1) Technology Demonstration Program NRG Contribution. Subject to the audit provisions of Section 4(e)(iii), NRG shall, over the NRG Fixed Operating Cost Period, expend an amount equal to five million dollars (\$5,000,000) (the “Technology Demonstration Program Amount”) for the deployment, demonstration and testing of electric vehicle charging technologies in the State of California (the “Technology Demonstration Program”). For the avoidance of doubt, all costs incurred by NRG in complying with the approval, consulting and reporting obligations of this Section 4(d)(i), shall be eligible costs and count towards NRG’s compliance with respect to its obligations hereunder to expend the entire Technology Demonstration Program Amount.
- (2) Technology Demonstration Program Scope. The scope of technology demonstration projects to be funded by the Technology Demonstration Program Amount may include (each a “Technology Demonstration Project”):
  - (A) stationary battery storage systems that support Freedom Stations to reduce peak electricity demand;
  - (B) “Extreme Freedom Stations” that include level 3 DC public charging equipment (exceeding 80kW);

- (C) smart charging technology; or
  - (D) a vehicle-to-grid demonstration project.
- (3) Proposal Process. NRG will develop proposals for the Technology Demonstration Projects in consultation with the California Independent System Operator Corporation, state energy agencies, utilities, electric vehicle service providers, automakers and researchers in the field of electric vehicle and related technologies. Prior to implementing a Technology Demonstration Project to be funded under the Technology Demonstration Program Amount, NRG will submit a written proposal to the Executive Director of the CPUC with a copy to the General Counsel of the CPUC for his/her review and approval in consultation with CPUC staff working on electric vehicle issues, which approval may not be unreasonably withheld, conditioned or delayed.
- (4) Research Partners. NRG shall engage as research partners, researchers from the University of California, California State University and/or other public policy institutions/laboratories, in each case possessing the requisite subject matter expertise (each a “*Research Partner*”). NRG shall collaborate with Research Partners in developing, implementing and evaluating Technology Demonstration Projects. Each Research Partner involved in a Technology Demonstration Project shall have complete and timely access to all data and technical knowledge developed in connection with that Technology Demonstration Project. Except as otherwise set forth in Section 4(d)(i)(5) below, nothing herein shall restrict Research Partners’ ability to publish or otherwise disseminate the results of any Technology Demonstration Projects.
- (5) Reports. NRG will provide written reports to the CPUC communicating the results and potential policy implications of such Technology Demonstration Projects to the CPUC. NRG shall retain all intellectual property rights to all Technology Demonstration Project results and any technology developed by NRG under any Technology Demonstration Project funded by the Technology Demonstration Program Amount. Information developed under, and reports provided pursuant to, this Section 5(d)(i) shall be considered and handled as public information *except* for information and reports containing such information otherwise identified in this Agreement as confidential information and required to be handled as confidential information as provided in Section 4(e)(ii)(4).

- (ii) EV Opportunity Program.
- (1) EV Opportunity Program NRG Contribution. Subject to the audit provisions of Section 4(e)(iii), NRG shall, over the NRG Fixed Operating Cost Period, expend an amount equal to four million dollars (\$4,000,000) (the “EV Opportunity Program Amount”) for projects that enhance appreciation of the social benefits of electric vehicles and create opportunities for residents of under-served communities to benefit from expanded use of electric vehicles in California (the “EV Opportunity Program”). More specifically, the EV Opportunity Program Amount may be used to fund (A) the deployment of electric vehicle charging infrastructure to support electric vehicle car sharing projects, in particular in low-income areas within the State of California, (B) an EV Job Training Program and (C) other projects consistent with the objectives of this Section 4(d)(ii). For the avoidance of doubt, all costs incurred by NRG in complying with the approval, consulting and reporting obligations of this Section 4(d)(ii), shall be eligible costs and count towards NRG’s compliance with respect to its obligations hereunder to expend the entire EV Opportunity Program Amount.
- (2) EV Car Sharing Project Objectives. To the extent that any of the EV Opportunity Program Amount is expended to support electric vehicle car sharing, the objectives of electric vehicle car sharing projects so funded (each a “EV Car Sharing Project”) shall include:
- (A) exposing more drivers to the benefits of electric vehicles;
- (B) increasing economic viability of electric vehicle car sharing so as to ensure greater future electric vehicle usage and the environmental and public health benefits resulting therefrom; or
- (C) increasing low- to moderate-income driver access to electric vehicles.
- (3) EV Job Training Program Objective.
- (A) The objective of the EV Job Training Program is to provide opportunities for Californians from under-served communities to develop the requisite skill to obtain stable and good paying employment relating to the development and maintenance of electric vehicle charging infrastructure.
- (B) NRG, at its discretion, may partner with community colleges or other vocational training programs to develop job training programs for the installation of the Freedom

Stations and the Make-Readies Arrays (an “EV Job Training Program”).

- (4) Proposal Process. NRG shall develop proposals for projects under the EV Opportunity Program through consultation with EV Opportunity Program partners as provided in Section 4(d)(ii)(5) below. Prior to implementing a project under the EV Opportunity Program to be funded under the EV Opportunity Program Amount, NRG will submit a written proposal to the Executive Director of the CPUC with a copy to the General Counsel of the CPUC for his/her review and approval in consultation with CPUC staff working on electric vehicle issues, which approval may not be unreasonably withheld, conditioned or delayed.
  - (5) EV Opportunity Program Partners. In developing and implementing any EV Opportunity Program project, the Parties shall consult with private and public organizations, including car sharing associations, community-based organizations, regional local planning bodies, California community colleges or vocational programs. Further, NRG EV Services shall also consult with the Greenlining Institute and the California Plug-In Electric Vehicle Collaborative in identifying suitable EV Opportunity Program partners.
  - (6) Reports. NRG will provide written reports to the CPUC communicating the results of such EV Opportunity Program projects to the CPUC. Information developed under, and reports provided pursuant to, this Section 4(d)(ii)(6) shall be considered and handled as public information *except* for information and reports containing such information otherwise identified in this Agreement as confidential information and required to be handled as confidential information as provided in Section 4(e)(ii)(4).
- (e) Data and Accounting.
- (i) Sharing of Usage Data. In consultation with the CPUC, California research institutions and appropriate non-governmental agencies, such as the California Independent System Operator Corporation, NRG will compile and make available to such institutions statistical usage data for Freedom Stations comprising the Public Charging Ecosystem and any ESVEs installed by NRG at Make-Readies Arrays. Such statistical usage data shall include at a minimum, as applicable and available, the number of users, usage (in kilowatt-hours), frequency, duration of each charge, charge rate, and impact on peak power demand (“Shared Statistical Usage Data”); *provided* that such data shall not include, and shall explicitly exclude, all customer identifying information or confidential business information. Except as otherwise set forth in Section 4(e)(ii)(4) below,

nothing herein shall restrict such institutions' ability to publish or otherwise disseminate any work product utilizing the Shared Statistical Usage Data.

(ii) Reports.

- (1) Quarterly. Beginning at the completion of the first quarter of Settlement Year 1 and for each quarter thereafter of the NRG Fixed Operating Cost Period, NRG shall provide a high-level short written report to the CPUC within one (1) month of the end of the quarter (as determined from the Settlement Effective Date) summarizing NRG's progress in implementing the EV Charging Station Project in the prior quarter (the "Quarterly Status Report"). Each Quarterly Status Report shall be in a form to be mutually agreed upon by the Parties and shall include at a minimum:
  - (A) The number and geographic location of Freedom Stations installed in such quarter;
  - (B) The number, geographic location and site-type of Make-Readies Sites and number of Make-Ready Stubs installed at each such Make-Readies Site in such quarter;
  - (C) The number of potential Freedom Station locations and Make-Readies Sites identified, under negotiation, under contract and under construction;
  - (D) The number of subscribers at each Make-Readies Array; *provided* that such information shall only be included with respect to a particular Make-Readies Array during its respective Start-Up Period;
  - (E) an appendix that sets forth the original raw data from which the Shared Statistical Usage Data was derived for each Freedom Station and Make-Readies Array; *provided* that such data shall be considered confidential and shall be treated as such in accordance with Section 4(e)(ii)(4) below; and
  - (F) the status of NRG's efforts in identifying, evaluating, pursuing and installing (I) twenty-percent (20%) of the Minimum Freedom Station Count in low-income Public Use Microdata Areas as required by Section 4(a)(ii) above and (II) Make-Ready Stubs and Make-Readies Arrays at mixed-income Multi-Family Housing Sites as required by Section 4(c)(ii)(2)(B) above.

- (2) Annual. Beginning at the completion of Settlement Year 1 and for each year thereafter of the NRG Fixed Operating Cost Period, NRG shall provide a written report to the CPUC within three (3) months of the completion of the Settlement Year detailing NRG's progress in implementing the EV Charging Station Project in the prior Settlement Year (the "Annual Status Report"). Each Annual Status Report shall be in a form to be mutually agreed upon by the Parties and shall include at a minimum:
- (A) the number of installations of Freedom Stations and Make-Readies Arrays, the date that access to each installation's location was obtained, the date applicable permits or approvals for each installation were requested and obtained, addresses of such installations, the completion date of each installation, and for Make-Readies Arrays, the number of Make-Readies Arrays that can accommodate fewer than ten (10) Make-Ready Stubs and that can accommodate greater than ten (10) Make-Ready Stubs;
  - (B) Shared Statistical Usage Data for each installed Freedom Station and Make-Readies Array;
  - (C) information regarding the RFO Processes conducted during the prior Settlement Year, including the number of bids received;
  - (D) corresponding cost information supporting expenditures incurred by NRG in the performance of this Agreement, including cost information broken down by the cost categories with respect to Freedom Station Costs, Freedom Station Fixed Operating Cost Amount, Make-Readies Costs, costs incurred with respect to the Technology Demonstration Program and costs incurred with respect to the EV Opportunity Program;
  - (E) an appendix that sets forth the original raw data from which the Shared Statistical Usage Data was derived for each Freedom Station and Make-Readies Site; *provided* that such data shall be considered confidential and shall be treated as such in accordance with Section 4(e)(ii)(4) below; and
  - (F) the status of NRG's efforts in identifying, evaluating, pursuing and installing (I) twenty-percent (20%) of the Minimum Freedom Station Count in low-income Public Use Microdata Areas as required by Section 4(a)(ii) above and (II) Make-Ready Stubs and Make-Readies Arrays at



mixed-income Multi-Family Housing Sites as required by Section 4(c)(ii)(2)(B) above.

- (3) Meetings. NRG agrees to make appropriate personnel available on a reasonable basis during normal business hours to meet with CPUC staff to discuss and answer questions regarding each Annual Status Report. Such meetings may take place by phone, video conference or in person as may be mutually agreed by NRG and the CPUC.
- (4) Confidential Treatment.
  - (A) Shared Statistical Usage Data. Shared Statistical Usage Data that has been aggregated by Freedom Station or Make-Readies Array, as applicable, shall be handled as public non-confidential information; *provided* that the original raw data from which the Shared Statistical Usage Data was derived shall be handled as confidential information by the Parties and shall be provided to only those parties and their Eligible Reviewers that have executed a protective order in the FERC proceeding approving this Agreement and the settlement of the EL02-60/62 Proceeding.
  - (B) Quarterly Status Reports. All information in the Quarterly Status Report shall be considered and handled as public information by the Parties *except* information included in such report pursuant to Section 4(e)(ii)(1)(C), Section 4(e)(ii)(1)(D) and Section 4(e)(ii)(1)(E). All confidential information included in such report shall be provided to only those parties and their Eligible Reviewers that have executed a protective order in the FERC proceeding approving this Agreement and the settlement of the EL02-60/62 Proceeding. Further, with respect to the confidential information included in such report, NRG shall retain an exclusive, non-public, proprietary right to such information for eighteen (18) months after the date of its submittal to the CPUC, and during such time such information shall not to the extent permitted by law be subject to disclosure under FOIA or CAPRA.
  - (C) Annual Status Reports. All information in the Annual Status Report shall be considered and handled as public information by the Parties *except* information included in such report pursuant to Section 4(e)(ii)(2)(D) and Section 4(e)(ii)(2)(E). All confidential information included in such report shall be provided to only those parties and their

Eligible Reviewers that have executed a protective order in the FERC proceeding approving this Agreement and the settlement of the EL02-60/62 Proceeding. Further, with respect to the confidential information included in such report, NRG shall retain an exclusive, non-public, proprietary right to such information for eighteen (18) months after the date of its submittal to the CPUC, and during such time such information shall not to the extent permitted by law be subject to disclosure under FOIA or CAPRA.

- (D) Other Reports. All information included in any other report that may be required to be provided by NRG to the CPUC hereunder shall be considered and handled as confidential *except* with respect to information included in such other reports that is otherwise to be treated as public information pursuant to this Section 4(e)(ii). All confidential information included in such report shall be provided to only those parties and their Eligible Reviewers that have executed a protective order in the FERC proceeding approving this Agreement and the settlement of the EL02-60/62 Proceeding. Further, with respect to the confidential information included in such report, NRG shall retain an exclusive, non-public, proprietary right to such information for eighteen (18) months after the date of its submittal to the CPUC, and during such time such information shall not to the extent permitted by law be subject to disclosure under FOIA or CAPRA.
- (E) Confidential Information. All information identified as confidential information under this Agreement is “Protected Material” under the protective order in the FERC proceeding approving this Agreement and the settlement of the EL02-60/62 Proceeding.

(iii) Audit.

- (1) Two Year Audit. At the conclusion of Settlement Year 2, the CPUC shall select and engage, and NRG shall pay, an independent third-party auditor to audit and verify NRG’s compliance with its performance obligations under this Agreement. A copy of the audit shall be provided to NRG at the same time as the CPUC. NRG agrees to make appropriate personnel available on a reasonable basis during normal business hours to meet with CPUC staff to discuss and answer questions regarding the audit results. Such meetings may take place by phone, video conference or in person as may be mutually agreed by NRG and the CPUC.

- (2) Final Audit. At such time that NRG believes that it has completed performance of its commitments under this Agreement to implement the EV Charging Station Project and to spend the full amount of the funds committed by NRG under this Agreement but in any event not longer than the expiration of the last to expire extension of time granted to NRG pursuant to Section 4(g) below, the CPUC shall select and engage, and NRG shall pay, an independent third-party auditor to audit and verify its compliance with its commitments. A copy of the audit shall be provided to NRG at the same time as the CPUC. NRG agrees to make appropriate personnel available on a reasonable basis during normal business hours to meet with CPUC staff to discuss and answer questions regarding the audit results. Such meetings may take place by phone, video conference or in person as may be mutually agreed by NRG and the CPUC.
- (3) Effect of Insufficient NRG Expenditures. If the final audit finds that NRG did not spend the full amount of funds required under this Agreement to implement the EV Charging Station Project, then:
- (A) with respect to expenditures related to Freedom Stations, Section 4(g)(i)(5) shall govern;
  - (B) with respect to expenditures related to Make-Ready Stubs and Make-Readies Arrays, Section 4(g)(ii)(5) shall govern; and
  - (C) with respect to the remaining categories of the EV Charging Station Project, the amount of any remaining unspent funds identified in the final audit plus interest calculated in accordance with FERC's regulations accrued on the amount of each such shortfall from the date of FERC's approval of this Agreement to the date of such payment.
- (iv) Costs. For the avoidance of doubt, NRG shall be permitted to allocate all "out-of-pocket" costs incurred by it in connection with its compliance with its obligations under this Section 4(e) on a *pro rata* basis among the EV Charging Project Elements.
- (f) Regulatory Status Under California Law. It is the intention of the Parties that, consistent with the decision of the CPUC in Decision 10-07-044, *Decision in Phase 1 on whether a Corporation or Person that Sells Electric Vehicle Charging Services to the Public is a Public Utility*, dated July 29, 2010, the performance by the Dynegy Parties of its obligations under this Agreement to implement the EV Charging Station Project pursuant to this Agreement shall be conditioned upon

such performance not causing at any time during the period of such performance, on that basis alone, either NRG or any of its affiliates, including NRG EV Services, to be an electric corporation or public utility within the meaning of Sections 216 and 218 of the California Public Utilities Code and thereby subject to regulation as such by the CPUC.

- (g) Performance. For purposes of assessing NRG’s compliance with its commitments to install the Minimum Freedom Station Count and Minimum Make-Ready Stubs Count at the Minimum Make-Readies Arrays Count, in the event that NRG has not completed the requisite number of installations during the Installation Period required under this Agreement (*i.e.*, by the end of Settlement Year 4), then:

(i) Freedom Stations.

- (1) If NRG has installed eighty-percent (80%) or more of the Minimum Freedom Station Count by the end of the initial Installation Period, then:

(A) the Installation Period shall be extended for, and NRG shall have one (1) additional year (Settlement Year 5) to complete the installation of the Minimum Freedom Station Count.

(B) If, at the end of Settlement Year 5, NRG has installed the Minimum Freedom Station Count and a portion of the Freedom Station Amount remains unspent as a result of a Freedom Station Savings Event, then the Installation Period shall be extended for, and NRG shall have one (1) additional year (Settlement Year 6) to utilize the unspent amount, if any, of the Freedom Station Amount to construct and install additional Freedom Stations or enhance charging capabilities at completed Freedom Stations in accordance with Section 4(a)(iv).

- (2) If, at the end of Settlement Year 4, NRG has installed less than eighty-percent (80%) of the Minimum Freedom Station Count, then:

(A) FS Viability Criteria.

With respect to such Freedom Stations for which NRG can demonstrate that it has met the following viability criteria (the “FS Viability Criteria”):

- (I) acquired the requisite contractual and/or property rights to install a Freedom Station at a location;

- (II) contracted for the necessary equipment to install the Freedom Station (*provided* that NRG shall not be required to demonstrate it has contracted for any equipment or material that is typically purchased in the normal course on an as needed basis); and
- (III) timely filed required permit and/or regulatory approval applications and these applications are pending,

then the Installation Period shall be extended for, and NRG shall have one (1) additional year (Settlement Year 5) to complete the installation of the Minimum Freedom Station Count.

(B) Stations That do not Meet the FS Viability Criteria.

For those Freedom Stations that do not meet the FS Viability Criteria (“*Incomplete Freedom Stations*”), the CPUC shall, after consultation with NRG regarding the viability and expected time and costs required to complete such installations, have the option, to be reasonably exercised as soon as reasonably practicable but no later than ninety (90) days after the end of the Settlement Year, to either:

- (I) elect in lieu of performance, a cash payment calculated according to the formula set forth in Section 4(g)(i)(7); or
- (II) establish a revised performance schedule for the installation of the Incomplete Freedom Stations.

*Provided*, that the CPUC in its reasonable discretion may elect a combination of Section 4(g)(i)(2)(B)(I) and Section 4(g)(i)(2)(B)(II) above.

*Provided, further*, that, for the avoidance of doubt, the Minimum Freedom Station Count required to be installed by NRG under this Agreement shall be reduced by the number of Freedom Stations for which the CPUC has elected to receive a cash payment pursuant to Section 4(g)(i)(2)(B)(I).

- (3) If, at the end of Settlement Year 5, NRG has installed the Minimum Freedom Station Count and a portion of the Freedom Station Amount remains unspent as a result of the Freedom Station Savings Event, then the Installation Period shall be extended for,

and NRG shall have, one (1) additional year (Settlement Year 6) to utilize the unspent amount, if any, of the Freedom Station Amount to construct and install additional Freedom Stations or enhance charging capabilities at completed Freedom Stations in accordance with Section 4(a)(iv).

- (4) If, at the end of Settlement Year 5, NRG has installed less than the Minimum Freedom Station Count, then:
- (A) for those Freedom Stations which meet the FS Viability Criteria listed in Section 4(g)(i)(2)(A) above, the Installation Period shall be extended for, and NRG shall have one (1) additional year (Settlement Year 6) to complete the installation of the Freedom Stations; and
  - (B) for those Freedom Stations that are Incomplete Freedom Stations, the CPUC shall, after consultation with NRG regarding the viability and expected time and costs required to complete such installations, have the option, to be reasonably exercised as soon as reasonably practicable but no later than ninety (90) days after the end of the Settlement Year, to either:
    - (I) elect in lieu of performance, a cash payment calculated according to the formula set forth in Section 4(g)(i)(7); or
    - (II) establish a revised performance schedule for the installation of the Incomplete Freedom Stations.

*Provided*, that the CPUC in its reasonable discretion may elect a combination of Section 4(g)(i)(4)(B)(I) and Section 4(g)(i)(4)(B)(II) above.

*Provided, further*, that, for the avoidance of doubt, the Minimum Freedom Station Count required to be installed by NRG under this Agreement shall be reduced by the number of Freedom Stations for which the CPUC has elected to receive a cash payment pursuant to Section 4(g)(i)(2)(B)(I) and Section 4(g)(i)(4)(B)(I).

- (5) If, at the end of Settlement Year 6, NRG has installed the Minimum Freedom Station Count and a portion of the Freedom Station Amount remains unspent as a result of a Freedom Station Savings Event, then the CPUC shall either require a cash payment calculated according to the formula in Section 4(g)(i)(7) below or allow NRG to utilize the unspent amount, if any, of the Freedom Station Amount to construct and install additional Freedom

Stations or enhance charging capabilities at completed Freedom Stations in accordance with Section 4(a)(iv).

- (6) If, at the end of Settlement Year 6, NRG has installed fewer than the Minimum Freedom Station Count, then the CPUC shall either require a cash payment calculated according to the formula in Section 4(g)(i)(7) below, or, after consultation with NRG regarding the viability and expected time and costs required to complete such installations, establish a revised performance schedule to complete installation of the Incomplete Freedom Stations, *provided*, that if the CPUC elects to establish such revised schedule, if no amount of the Freedom Station Amount remains unspent, then NRG will complete installation of the Minimum Freedom Station Count at an amount in excess of the Freedom Station Amount at NRG's own expense.

(7) Cash-out Formula.

The cash-out amount at the end of Settlement Year 4, Settlement Year 5 or Settlement Year 6, as applicable, shall be equal to the greater of:

- (A) the difference between the total amount of expenditures required to be made by NRG to install the Minimum Freedom Station Count (or with respect to cash-out payments calculated with respect to Settlement Year 4 and Settlement Year 5, the Minimum Freedom Station Count less the number of Freedom Stations to be installed as a result of either satisfying the FS Viability Criteria pursuant to Section 4(g)(i)(2)(A) or the CPUC's election pursuant to Section 4(g)(i)(4)(B)(I)) and the actual amount NRG expended to install the Freedom Stations, *plus* interest from the date of FERC's approval of this Agreement to the date of payment; or
- (B) an amount equal to fifty-thousand dollars (\$50,000) multiplied by the number of Incomplete Freedom Stations. For purposes of this Section 4(g)(i)(7), Incomplete Freedom Stations equals the Minimum Freedom Station Count, *minus* the number of (I) completed Freedom Stations, (II) Freedom Stations which meet the FS Viability Criteria and (III) Incomplete Freedom Stations for which the CPUC has already elected to receive and been paid a cash-out payment.

(ii) Make-Ready Stubs.

(1) If NRG has installed eighty-percent (80%) or more of the Minimum Make-Ready Stubs Count and at eighty-percent (80%) or more of the Minimum Make-Ready Arrays Count by the end of the initial Installation Period, then:

(A) The Installation Period shall be extended for, and NRG shall have, one (1) additional year (Settlement Year 5) to complete the installation of the Minimum Make-Ready Stubs Count and the Minimum Make-Ready Arrays Count.

(B) If, at the end of Settlement Year 5, NRG has installed the Minimum Make-Ready Stubs Count and the Minimum Make-Ready Arrays Count and a portion of the Make-Ready Amount remains unspent as a result of a Make-Ready Savings Event, then at the end of Settlement Year 5, the Installation Period shall be extended for, and NRG shall have, one (1) additional year (Settlement Year 6) to utilize the unspent amount, if any, of the Make-Ready Amount to construct and install additional Make-Ready Stubs and Make-Ready Arrays in accordance with Section 4(c)(iv).

(2) If, at the end of Settlement Year 4, NRG has installed less than eighty percent (80%) of the Minimum Make-Ready Stubs Count, then:

(A) MR Viability Criteria.

With respect to the Make-Ready Stubs for which NRG can demonstrate that it has met the following viability criteria (the "MR Viability Criteria"):

(I) acquired the requisite contractual and/or property rights for Make-Ready Stubs;

(II) contracted for the necessary equipment to install the Make-Ready Stubs (*provided* that NRG shall not be required to demonstrate it has contracted for any equipment or material that is typically purchased in the normal course on an as needed basis); and

(III) timely filed required permit and/or regulatory approval applications and these applications are pending,



then the Installation Period shall be extended for, and NRG shall have, one (1) additional year (Settlement Year 5) to complete the installation of the Minimum Make-Ready Stubs Count.

(B) Make-Ready Stubs That do not Meet the MR Viability Criteria.

For those Make-Ready Stubs that do not meet the MR Viability Criteria (“*Incomplete Make-Ready Stubs*”), the CPUC shall, after consultation with NRG regarding the viability and expected time and costs required to complete such installations, have the option, to be reasonably exercised as soon as reasonably practicable but no later than ninety (90) days after the end of the Settlement Year, to either:

- (I) elect in lieu of performance, a cash payment calculated in accordance with Section 4(g)(ii)(7); or
- (II) establish a revised performance schedule for the installation of the Incomplete Make-Ready Stubs.

*Provided*, that the CPUC in its reasonable discretion may elect a combination of Sections 4(g)(ii)(2)(B)(I) and Sections 4(g)(ii)(2)(B)(II) above.

*Provided, further*, that, for the avoidance of doubt, the Minimum Make-Ready Stubs Count required to be installed by NRG under this Agreement shall be reduced by the number of Make-Ready Stubs for which the CPUC has elected to receive a cash payment pursuant to Section 4(g)(ii)(2)(B)(I).

- (3) If, at the end of Settlement Year 5, NRG has installed the Minimum Make-Ready Stubs Count and the Minimum Make-Readies Arrays Count and a portion of the Make-Readies Amount remains unspent as a result of a Make-Readies Savings Event, then the Installation Period shall be extended for, and NRG shall have, one (1) additional year (Settlement Year 6) to utilize the unspent amount, if any, of the Make-Readies Amount to construct and install additional Make-Ready Stubs and Make-Readies Arrays in accordance with Section 4(c)(iv).
- (4) If, at the end of Settlement Year 5, NRG has installed less than the Minimum Make-Ready Stubs Count, then:

- (A) for those Make-Ready Stubs that meet the MR Viability Criteria listed in Section 4(g)(ii)(2)(A) above, the Installation Period shall be extended for, and NRG shall have, one (1) additional year (Settlement Year 6) to complete the installation of the Minimum Make-Ready Stubs Count and the Minimum Make-Readies Arrays Count.
- (B) for those Make-Ready Stubs that are Incomplete Make-Ready Stubs, the CPUC shall, after consultation with NRG regarding the viability and expected time and costs required to complete such installations, have the option, to be reasonably exercised, to either:
  - (I) elect in lieu of performance, a cash payment calculated according to the formula set forth in Section 4(g)(ii)(7); or
  - (II) establish a revised performance schedule for the installation of the Incomplete Make-Ready Stubs.

*Provided*, that the CPUC in its reasonable discretion may elect a combination of Section 4(g)(ii)(4)(B)(I) and Section 4(g)(ii)(4)(B)(II) above.

*Provided, further*, that, for the avoidance of doubt, the Minimum Make-Ready Stubs Count required to be installed by NRG under this Agreement shall be reduced by the number of Make-Ready Stubs for which the CPUC has elected to receive a cash payment pursuant to Section 4(g)(ii)(2)(B)(I) and Section 4(g)(ii)(4)(B)(I).

- (5) If, at the end of Settlement Year 6, NRG has installed the Minimum Make-Ready Stubs Count and the Minimum Make-Readies Arrays Count and a portion of the Make-Readies Amount remains unspent as a result of a Make-Readies Savings Event, then the CPUC shall either require a cash payment calculated according to the formula in Section 4(g)(ii)(7) below, or allow NRG to utilize the unspent amount, if any, of the Make-Readies Amount to construct and install additional Make-Ready Stubs and Make-Readies Arrays in accordance with Section 4(c)(iv).
- (6) If, at the end of Settlement Year 6, NRG has installed fewer than the Minimum Make-Ready Stubs Count or completed Make-Ready Stubs at fewer than the Minimum Make-Readies Arrays Count, then the CPUC shall either require a cash payment calculated according to the formula in Section 4(g)(ii)(7) below, or, after consultation with NRG regarding the viability and expected time

and costs required to complete such installations, establish a revised performance schedule to complete installation of the Minimum Make-Ready Stubs Count at the Minimum Make-Readies Arrays Count *provided* that if the CPUC elects to establish such revised schedule, if no amount of the Make-Readies Amount remains unspent, then NRG will complete installation of the Minimum Make-Ready Stubs Count at the Minimum Make-Readies Arrays Count at NRG's own expense.

(7) Cash-out Formula.

The cash-out amount at the end of Settlement Year 4, Settlement Year 5 or Settlement Year 6, as applicable, shall be equal to the greater of:

- (A) the difference between the total amount of expenditures required to be made by NRG to install the Minimum Make-Ready Stubs Count and the Minimum Make-Readies Arrays Count (or with respect to cash-out payments calculated with respect to Settlement Year 4 and Settlement Year 5, the Minimum Make-Ready Stubs Count and the Minimum Make-Readies Arrays Count less the number of the Make-Ready Stubs Count and the Make-Readies Arrays to be installed as a result of either satisfying the MR Viability Criteria pursuant to Section 4(g)(ii)(2)(A) or the CPUC's election pursuant to Section 4(g)(ii)(4)(B)(I) and the actual amount NRG expended to install the Make-Ready Stubs and Make-Readies Arrays *plus* interest from the date of FERC's approval of this Agreement to the date of payment; or
  - (B) an amount equal to one-thousand dollars (\$1,000) multiplied by the number of Incomplete Make-Ready Stubs. For purposes of this Section 4(g)(ii)(7)(B), Incomplete Make-Ready Stubs means the Minimum Make Ready Stubs Count, *minus* the number of (I) completed Make-Ready Stubs, (II) Make Readies Arrays that meet the MR Viability Criteria and (III) Incomplete Make-Ready Stubs for which the CPUC has already elected to receive and been paid a cash-out payment.
- (h) Change in Law. If any Governmental Authority enacts, revises, amends, interprets or implements any rule, directive, order, ordinance, decision or law (including those that establish new, or otherwise modify existing laws, rules, regulations or orders) (a "*Change in Law*") that directly or indirectly prevents or frustrates NRG's ability to perform its obligations, then the Parties shall meet and confer to amend this Agreement to comply with the Change in Law and to give

effect to the original intent of the Parties under this Agreement. Pending the execution of any such amendment, NRG's performance of any of its obligations shall be suspended to the extent made necessary by such Change in Law without being in violation of its obligations under this Agreement.

(i) Consultation.

(i) State Agencies. NRG EV Services acknowledges and agrees that it shall use reasonable efforts to consult with state agencies, including the California state air quality management districts, regarding the identification and selection of desirable locations to site Freedom Stations and Make-Readies Sites; *provided*, that nothing in this Section 4(g)(i)(i) shall be interpreted as adding to, augmenting or superseding the requirements (A) of Section 4(a)(ii) regarding the distribution of Freedom Stations by geographic location, or (B) of Section 4(c)(ii)(2) regarding the distribution of Make-Ready Stubs by geographic location and type of site; *provided, further*, notwithstanding such obligation to consult, each Party acknowledges and agrees that, subject to its compliance with Section 4(a)(ii) and Section 4(c)(ii)(2), the ultimate decision on siting rests in the reasonable discretion of NRG EV Services.

(ii) Interest Groups. NRG EV Services acknowledges and agrees that it shall use reasonable efforts to consult with, and review data provided by, electric vehicle public advocacy and interest groups regarding the implementation of the EV Charging Station Project; *provided*, that nothing in this Section 4(g)(i)(ii) shall be interpreted as adding to, augmenting or superseding the any other requirement, term or condition of this Agreement; *provided, further*, notwithstanding such obligation to consult and review data, each Party acknowledges and agrees that, subject to its compliance with the other terms and conditions of this Agreement, the ultimate decisions regarding implementation of the EV Charging Station Project rests in the reasonable discretion of NRG EV Services.

(j) Contractors. NRG EV Services acknowledges and agrees that it shall make commercially reasonable efforts to: (i) ensure that all contractors performing work on the EV Charging Station Project are, to the extent required, licensed to perform such work in the State of California; and (ii) engage contractors and hire labor from the communities surrounding a particular Freedom Station or Make-Readies Array in the construction of the Public Charging Ecosystem pursuant to Section 4(a) and of the Make-Readies Sites pursuant to Section 4(c). Further NRG EV Services acknowledges and agrees that it shall require contractors to abide by generally applicable practices and standards applicable to its business (e.g., construction, electrical trades, etc.), including proper permitting, design and code compliance, use of properly licensed tradesman, and compliance with applicable laws, including the Occupational Safety and Health Act, worker's compensation acts and other employment and employee safety laws.

- (k) General Order 156. In implementing the EV Charging Station Project, NRG recognizes the diverse rate-payer population of California affected by events leading to this Agreement. Accordingly, NRG EV Services shall make best and commercially reasonable efforts to comply with General Order 156 during the Installation Period; *provided* that nothing in this Section 4(k) shall be interpreted as, nor is, NRG or its affiliates, including NRG EV Services, submitting to the jurisdiction of the CPUC, including General Order 156. For the avoidance of doubt, NRG EV Services may include any annual reporting obligations under General Order 156 in the Annual Status Report.
- (l) Use of Grants. During the Installation Period, neither NRG nor any of its affiliates, including NRG EV Services, shall be the recipient of a grant or cash equivalent from any Governmental Authority to the extent that such grant or cash equivalent is directly related to the Dynegy Parties' specific performance obligations under this Agreement to implement the EV Charging Station Project *unless*:
- (i) Such grant or cash equivalent is made pursuant to a program generally available to similarly situated parties as of the date such grant or cash equivalent is received and such grant or cash equivalent pertains to the EV Charging Station Project; *provided* that the amount of such grant or cash equivalent shall be added to increase the amount NRG is required to expend with respect to each EV Charging Project Element to which the grant or cash equivalent is directly related; *provided, further*, that in the event that such grant or cash equivalent directly relates to multiple EV Charging Project Elements, such increase shall be applied *pro rata* across such EV Charging Project Elements.
  - (ii) Such grant or cash equivalent is competitively awarded and pertains to projects or activities conducted outside the scope of the EV Charging Station Project.
  - (iii) Such grant or cash equivalent is competitively awarded and pertains to the EV Charging Station Project, *if*:
    - (1) The two (2) year audit performed pursuant to Section 4(e)(iii) confirms that the number of Freedom Stations, Make-Ready Stubs and Make-Readies Arrays scheduled to be installed during the first two (2) years of the Installation Period pursuant to Section 4(a)(iii) and Section 4(c)(iii), respectively, were installed during such period; *provided* that the application for such grant or cash contribution is made after completion of the two (2) year audit.
    - (2) At the completion of Settlement Year 3, the annual report for such year submitted pursuant to Section 4(e)(ii)(2) confirms that the number of Freedom Stations, Make-Ready Stubs and Make-Readies Arrays scheduled to be installed during the first three (3)

years of the Installation Period pursuant to Section 4(a)(iii) and Section 4(c)(iii), respectively, were installed during such period; *provided* that the application for such grant or cash contribution is made after submittal of such annual report.

- (3) At the completion of Settlement Year 4, the annual report for such year submitted pursuant to Section 4(e)(ii)(2) confirms that the number of Freedom Stations, Make-Ready Stubs and Make-Readies Arrays scheduled to be installed during the first four (4) years of the Installation Period pursuant to Section 4(a)(iii) and Section 4(c)(iii), respectively were installed during such period; *provided* that the application for such grant or cash contribution is made after submittal of such annual report.

*Provided*, that, for the avoidance of doubt, once a grant or cash equivalent is awarded in accordance with this Section 4(l)(iii), any subsequent failure to satisfy the requirements of this Section 4(l)(iii) in subsequent Settlement Years to make new applications for new grants or cash equivalents shall not affect NRG's or any of its affiliates ability under this Agreement to continue to benefit from, and make use of, such previously awarded grants or cash equivalents.

- (m) Guaranty. Upon the occurrence of the Settlement Effective Date, the Dynegy Parties shall cause NRG to deliver to the CPUC a guaranty of the performance and payment obligations hereunder of Cabrillo Power, El Segundo Power and Long Beach Generation in the form of the Guaranty Agreement attached hereto as Exhibit A.

## 5. SCOPE OF SETTLEMENT AND RELEASES

- (a) Scope of Settlement. In return for the Cash Consideration and the obligations that constitute the EV Charging Station Project set forth in Section 4 and for other good and valuable consideration specified elsewhere in this Agreement, and subject to the obtaining the Required Approval and the occurrence of the Settlement Effective Date, any and all claims brought by the CPUC and CEOB for refunds, disgorgements of profits, contract rescission or modification, or other monetary or non-monetary relief in, and any and all disputes between the Parties related to, the EL02-60/62 Proceeding and the Dynegy Long-Term Contract, shall be deemed settled; *provided* that the EL02-60/62 Proceeding shall not be deemed settled as to non-settling parties. Notwithstanding anything to the contrary in this Agreement, the Dynegy Parties shall be deemed to retain any and all claims and defenses each may have against non-settling parties to this settlement that decline to accept the benefits of this settlement or that elect to contest its provisions.
- (b) Releases. In consideration of the good and valuable consideration provided hereunder the receipt and sufficiency of which are hereby acknowledged, the CPUC, on the one hand, and each Dynegy Party on the other hand, in each case

on behalf of themselves and any affiliated entities, agents, representatives, successors, predecessors, assigns, directors, officers or employees, do, as of the Settlement Effective Date, hereby release and discharge, forever and for all purposes, and in all respects the other Party or Parties, as the case may be, including any affiliated entities, parents, subsidiaries, agents, representatives, successors, predecessors, assigns, directors, officers or employees (including, with respect to the Dynegy Parties, NRG and its affiliates, the “Dynegy Released Affiliated Entities”), from any and all claims, demands, actions, causes of action, suits, allegations, defenses, costs, damages, liabilities, attorney’s fees, and any other obligations of any kind or nature, known or unknown, foreseen or unforeseen, accrued or un-accrued, anticipated or unanticipated, whether actually pled or raised, whether at law, equity, administrative, statutory or otherwise, and whether for legal or equitable relief, or compensatory, punitive or any other kind of damages, existing from the beginning of time related in any way to the EL02-60/62 Proceeding or the Dynegy Long-Term Contract, including the following (collectively the “Released Claims”):

- (i) Any claim asserted in, arising from or relating to the EL02-60/62 Proceeding.
  - (ii) All claims that were or could have been brought in the EL02-60/62 Proceeding.
  - (iii) All acts or omissions, occurrences, transactions, events or communications related to, or with respect to the negotiation of, the Dynegy Long-Term Contract.
- (c) Effectiveness of Releases; Waiver of Claims. The Parties acknowledge and agree that it is their intention that the releases granted pursuant to this Section 5 shall be effective as a bar to all causes of action and demands for monetary relief, including costs, expenses, attorneys’ fees, damages, losses and liabilities of every kind, known or unknown, suspected or unsuspected, hereinabove specified in this Section 5. In furtherance of this intention, the Dynegy Parties on the one hand and the CPUC on the other hand, with respect to the specific matters to be released herein, each knowingly, voluntarily, intentionally and expressly waive, as against each other and each of the Dynegy Released Affiliated Entities, any and all rights and benefits conferred by California Civil Code Section 1542 and any law of any state or territory of the United States or principle of common law that is similar to Section 1542. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

In connection with such waiver and relinquishment, the Parties each acknowledge that they are aware that they may hereafter discover facts in addition to or different from those which they know or believe to be true and with respect to the subject matter of this Agreement, but that it is their intention hereby to fully, finally and forever settle and release all matters, disputes, differences, known or unknown, suspected or unsuspected, that are set forth in this Section 5. This Agreement is intended to include in its effect, without limitation, all claims encompassed within the settlement and releases to be set forth this Section 5, including those which the Parties may not know or suspect to exist at the time of execution of this Agreement, and this Agreement contemplates the extinguishment of all such claims. The releases set forth in this Agreement as specified in this Section 5 shall be, and remain in effect as, full and complete releases, notwithstanding the discovery or existence of any such additional or different facts relating to the subject matter of the EL02-60/62 Proceeding or the Dynegy Long-Term Contract. Notwithstanding the waiver of California Civil Code Section 1542, the Parties acknowledge that the releases provided for in this Agreement are specific to the matters to be set forth in this Section 5 and are not intended to create general releases as to all claims, or potential claims, between the Parties.

- (d) Dismissal of EL02-60 Proceeding. The Parties agree that upon the occurrence of the Settlement Effective Date:
  - (i) the EL02-60 Proceeding as it relates to the Dynegy Parties and/or the Dynegy Long-Term Contract is dismissed; and
  - (ii) FERC's approval of this Agreement constitutes FERC's dismissal of the EL02-60 Proceeding as it relates to the Dynegy Parties and/or the Dynegy Long-Term Contract.
  
- (e) Dismissal of EL02-62 Proceeding. In recognition of the fact that the CEOB is no longer in existence and is no longer able to effectuate the releases contemplated herein, the Parties agree that upon the occurrence of the Settlement Effective Date:
  - (i) the EL02-62 Proceeding as it relates to the Dynegy Parties and/or the Dynegy Long-Term Contract is dismissed; and
  - (ii) FERC's approval of this Agreement constitutes FERC's dismissal of the EL02-62 Proceeding as it relates to the Dynegy Parties and/or the Dynegy Long-Term Contract.
  
- (f) Waivers of Appeals and Requests for Rehearing.
  - (i) EL02-60/62 Proceeding. Each of the Parties acknowledges and agrees that with respect to the EL02-60/62 Proceeding:



- (1) it shall forego any rights to seek rehearing, or appeal, of any and all of the Released Claims covered, settled and released by, or for, that Party pursuant to this Agreement;
- (2) it shall take appropriate steps to withdraw any pending requests for rehearing or appeals (including interventions on appeals) relating to the Released Claims covered, settled and released by, or for, that Party pursuant to this Agreement; and
- (3) nothing in this Agreement affects any Party's right to maintain rehearing and appeals in the EL02-60/62 Proceeding with respect to parties other than the Dynegy Parties on the one hand, and the CPUC on the other hand, in each case with respect to claims not otherwise covered, settled and released by, or for, that Party pursuant to this Agreement.

(ii) Other Rehearings or Appellate Proceedings. Each of the Parties acknowledges and agrees that nothing in this Agreement shall preclude any of the Parties from fully participating in any request for rehearing or appellate proceeding against suppliers to the western markets other than the Dynegy Parties to the extent that those rehearings or appellate proceedings do not relate to the Released Claims; *provided* that Parties acknowledge and agree that no Party during the course of such participation shall be permitted under this Agreement to:

- (1) make an allegation or claim on behalf of itself or others in another forum or proceeding (administrative, judicial or otherwise),
- (2) subsidize or assist the litigation, discovery, investigation or analysis of any other party or market participant,
- (3) be permitted to seek monetary, equitable or other relief,
- (4) or otherwise use;

in each case, involving or with respect to the Released Claims, allegations pertaining to the subject matter of the Released Claims (including the underlying factual allegations), or the fact that such claims and allegations were made against any other Party.

(g) Other Proceedings. Each of the Parties acknowledges and agrees that each Party remains free, on the same or similar grounds as the EL02-60/62 Proceeding, to initiate or participate in existing or future proceedings at FERC or in other forums that may determine the rights or obligations of parties other than the Parties and the Dynegy Released Affiliated Entities and to cooperate with all state and federal investigations; *provided* that the Parties acknowledge and agree that during the course of such participation or cooperation no Party shall be permitted under this Agreement to:

- (i) make an allegation or claim on behalf of itself or others in another forum or proceeding (administrative, judicial or otherwise),
- (ii) subsidize or assist the litigation, discovery, investigation or analysis of any other party or market participant,
- (iii) be permitted to seek monetary, equitable or other relief,
- (iv) or otherwise use;

in each case, involving or with respect to the Released Claims, allegations pertaining to the subject matter of the Released Claims (including the underlying factual allegations), or the fact that such claims and allegations were made against any other Party.

- (h) No Admission. Each of the Parties acknowledges and agrees that the negotiation, execution and performance of its obligations under this Agreement, including the provision of consideration provided for herein, shall not be deemed or construed as an admission, concession or evidence of any wrong doing, violation of law or liability on the part of any Party, and that any monetary consideration contemplated to be paid under this Agreement does not, and will not, constitute the payment of any refund, penalty or fine. Each Party expressly denies any wrongdoing, violation of law or liability relating to the Dynegy Long-Term Contract or the EL02-60/62 Proceeding, and further denies that any allegations against it of wrongdoing, violation of law or liability relating to the Dynegy Long-Term Contract or in the EL02-60/62 Proceeding, in each case made by any other Party in the EL02-60/62 Proceeding, has any merit.
- (i) Withdrawal. Each of the Parties acknowledges and agrees that upon the occurrence of the Settlement Effective Date, each of the Dynegy Parties on the one hand, and the CPUC on the other hand, shall withdraw from and not prosecute any litigation, administrative proceedings or investigations with respect to the Dynegy Parties or the Dynegy Released Affiliated Entities on the one hand, and the CPUC on the other hand, in each case insofar as such prosecution would be inconsistent with the terms and conditions of, and releases set forth in, this Agreement. If any Party fails to effectuate such withdrawal and/or dismissal, any other Party shall be entitled to specifically enforce this obligation.
- (j) Acknowledgement and Compromise. Each of the Parties acknowledges and agrees that the consideration provided for in this Agreement, along with the covenants and obligations set forth in this Agreement, settle and compromise the Parties' claims as set forth in the releases contained within this Agreement.
- (k) Effect on Refund Settlement Agreement. Nothing in this Agreement shall affect the rights or responsibilities of any party under the Refund Settlement Agreement, including, for the avoidance of doubt, any party thereto that is also a Party hereunder.

## 6. *REQUIRED APPROVAL*

- (a) FERC. Each of the Parties acknowledges and agrees that this Agreement shall be subject to approval of FERC, without material change or condition unacceptable to any adversely affected Party (the “*Required Approval*”).
- (b) Filings. Application to FERC for the approval of this Agreement shall be submitted to FERC within thirty (30) days of the execution of this Agreement. The application or other submissions to FERC related to the application shall be prepared jointly by the Parties. Each of the Parties agrees to cooperate in good faith and use its best efforts to encourage and facilitate non-settling parties, including but not limited to other participants and intervenors in the EL02-60/62 Proceeding to support and/or not oppose the terms of the settlement to be proposed to FERC pursuant to this Agreement; *provided* that neither Party should be required to expend material sums of money, agree to make admissions or otherwise agree to changes in the terms of the proposed settlement as set forth in this Agreement.
- (c) Settlement Effective Date. After execution and subject to Section 2(b), this Agreement shall be fully effective as of the date that a FERC order constituting the Required Approval becomes a Final Order issued by FERC approving the settlement in its entirety without material change or condition unacceptable to any adversely affected Party (the “*Settlement Effective Date*”); *provided* that the occurrence of the Settlement Effective Date shall be stayed in the event that as of the date it might otherwise occur pursuant to the terms of this Agreement, there exists pending litigation before a Governmental Authority other than FERC, including appeals therefrom, challenging the settlement or a Party’s authority to enter into this Agreement, in each case which if decided in favor of the third party may adversely affect the structure of this Agreement, including the implementation of the EV Charging Station Project, or the rights and obligations of any Party under this Agreement.

## 7. *REPRESENTATIONS*

Each Party makes the following representations and warranties:

- (a) Organizational Status. Except for the CPUC, each Party is a corporation or limited liability company duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation.
- (b) Power and Authority. Each Party possesses all necessary power and authority to execute, deliver, and perform its obligations under this Agreement.
- (c) Binding Obligation. This Agreement constitutes a legal, valid, and binding obligation, enforceable against each Party in accordance with its terms.
- (d) Authority to Settle Claims. Each Party has now, and shall have as of the Settlement Effective Date, complete and sole authority to settle and release the

Released Claims; *provided* that no Party makes any representation under this Section 7(d) with respect to its authority to settle and release any of the Released Claims to the extent such Released Claims are claims of the CEOB.

8. *MISCELLANEOUS*

(a) Notices. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given: (i) when personally delivered; (ii) upon actual receipt (as established by confirmation of receipt or otherwise) during normal business hours, otherwise on the first Business Day thereafter, if transmitted by facsimile or telecopier with confirmation of receipt; (iii) on the date of receipt when mailed by certified mail, return receipt requested, postage prepaid; or (iv) on the first Business Day thereafter when sent by overnight courier; in each case, to the addresses set forth in Section 8(b), or to such other addresses as a Party may from time to time specify by notice to the other Parties given pursuant hereto.

(b) Parties' Addresses. Notices required under this Agreement shall be delivered to:

(i) Dynegy Parties.

(1) Cabrillo Power:

Cabrillo Power I LLC  
5750 Fleet Street, Suite 200  
Carlsbad, CA 92084  
Attn: President – West Region

*With a Copy to:*

NRG Energy, Inc.  
211 Carnegie Center  
Princeton, NJ 08540  
Attn: Executive Vice President & General Counsel

(2) El Segundo Power:

El Segundo Power, LLC  
5750 Fleet Street, Suite 200  
Carlsbad, CA 92084  
Attn: President – West Region

*With a Copy to:*

NRG Energy, Inc.  
211 Carnegie Center  
Princeton, NJ 08540  
Attn: Executive Vice President & General Counsel

(3) Long Beach Generation:

Long Beach Generation LLC  
5750 Fleet Street, Suite 200  
Carlsbad, CA 92084  
Attn: President – West Region

*With a Copy to:*

NRG Energy, Inc.  
211 Carnegie Center  
Princeton, NJ 08540  
Attn: Executive Vice President & General Counsel

(4) DPMI:

Dynegy Power Marketing, LLC  
601 Travis Street, Suite 1400  
Houston, TX 77002  
Attn: President

*With a Copy to:*

Dynegy Power Marketing, LLC  
601 Travis Street, Suite 1400  
Houston, TX 77002  
Attn: Executive Vice President & General Counsel

(ii) CPUC.

Paul Clanon  
Executive Director  
Public Utilities Commission  
505 Van Ness Avenue, Room 5223  
San Francisco, CA 94102-3298

*With a Copy to:*

Frank R. Lindh  
General Counsel  
Public Utilities Commission  
505 Van Ness Avenue, Room 5138  
San Francisco, CA 94102-3298

- (c) Governing Law. To the extent not governed by federal law, this Agreement and the rights and duties of the Parties hereunder will be governed by and construed, and enforced and performed, in each case in accordance with the law of the State

of California, without giving effect to principles of conflicts of laws that would require the application of laws of another jurisdiction.

- (d) Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This Agreement may be executed by signature via facsimile transmission, which shall be deemed the same as an original signature.
- (e) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns. Notwithstanding anything to the contrary herein, nothing in this Agreement shall create or place any obligation or liability upon NRG or any of its affiliates except the Dynegy Parties that are Parties hereto.
- (f) Assignments. No Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Parties which consent shall not be unreasonably withheld, conditioned or delayed; *provided, however*, that any Party may, without the consent of the other Parties (and without relieving itself from liability hereunder), transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party, including any and all of the Released Claims, in which case the assignee shall agree in writing to be bound by the terms and conditions hereof.
- (g) No Third-Party Beneficiaries. Other than the releases, waivers and withdrawals benefiting Dynegy Released Affiliated Entities, this Agreement is not intended to confer, upon any person or entity not a Party, any rights or remedies hereunder, and no one, other than a Party is entitled to rely on any representation, warranty, covenant, release, waiver or agreement contained herein. Moreover, nothing herein shall constitute any admission or concession of liability or wrongdoing on the part of any Party.
- (h) Cooperation/Public Statements. Subject to applicable law (including the Dynegy Parties' and NRG's and its affiliates' obligations to make certain public disclosures under applicable securities disclosure laws, rules and regulations), the Parties and NRG (i) shall cooperate in the development and filing of any settlement application at FERC related to this Agreement within the time frames prescribed in Section 6 and (ii) agree that no Party nor NRG or any of its affiliates shall issue a press release or otherwise make public statements regarding the substance of this Agreement or any settlement application filed with FERC with respect thereto, in each case without the prior written consent, as applicable, of the other Parties, NRG or its affiliates, in each case such consent not to be unreasonably withheld, conditioned or delayed.
- (i) Dispute Resolution. Any dispute or disagreement arising under or in connection with this Agreement or any matters contemplated hereby (a "*Dispute*") shall be resolved in a good faith manner through discussions initially between the general counsels, and if not resolved thereby, through their chief executive officer or

equivalent, of the respective Parties. If the Dispute is unable to be resolved within thirty (30) calendar days from the date on which written notice of the Dispute was delivered on the respective Parties, then such Dispute shall be settled in accordance with Section 8(i)(i) and Section 8(i)(ii) below, as applicable.

- (i) FERC Dispute. If the Dispute involves matters exclusively within the jurisdiction of FERC (“*FERC Dispute*”), the Dispute will be submitted to FERC for resolution in accordance with its procedures.
- (ii) Arbitration. If the Dispute is not a FERC Dispute as set out in Section 8(i)(i) above, then such Dispute shall be settled by binding arbitration. Any Party or Parties may commence arbitration by filing a “Demand for Arbitration” with the American Arbitration Association (“AAA”) and simultaneously serving a copy of the “Demand for Arbitration” on each respondent and on NRG.

The arbitration shall be administered by the AAA under its Commercial Arbitration Rules (the “Rules”) then in effect (or if no such Rules be in effect, then under the most closely analogous AAA rules in effect at the time), as modified herein. The place of arbitration shall be San Francisco. Unless the parties to the arbitration mutually agree upon the use of a single arbitrator, arbitration shall be conducted by a panel of three arbitrators, with the decision of any two arbitrators constituting the binding decision of the panel. If CPUC is a party to the arbitration, one arbitrator shall be appointed by CPUC, and one arbitrator shall be appointed by NRG, which has been designated by the Dynegy Parties to appoint an arbitrator on their behalf. If CPUC is not a party to the arbitration, unless the parties to the arbitration unanimously agree on a method for the appointment of the two party-appointed arbitrators, all three arbitrators shall be appointed by the AAA. The two party-appointed arbitrators shall be appointed within fourteen (14) calendar days from the commencement of the arbitration. The third arbitrator, who shall chair the panel, shall be appointed by the party-appointed arbitrators within fourteen (14) days of the appointment of the second arbitrator. At the request of any party to the arbitration, any arbitrator not timely appointed shall be appointed by the AAA, in accordance with the procedures in the Rules, as soon as practicable after receipt by the AAA of the request. Any arbitrator appointed by the AAA shall be an attorney (or retired judge) admitted to practice for at least fifteen (15) years and with significant experience as an arbitrator of large, complex, commercial cases.

Documentary discovery, if any, shall be limited to non-privileged documents directly related to the issues in dispute. There shall be no depositions. The hearing on the merits shall be held within six (6) months of the appointment of the sole arbitrator or the appointment of the chair if there are three arbitrators. Except as may be required by law, neither a party nor its representatives nor a witness nor any arbitrator may disclose

the existence, content, or results of any arbitration hereunder without the prior written consent of all parties to the arbitration.

The award shall be issued within thirty (30) days after the close of the hearing on the merits, shall be in writing, and shall briefly state the findings of fact and conclusions of law on which it is based. The arbitrator(s) shall have the authority to award any remedy in accordance with the terms of this Agreement and applicable law, except that the arbitrator(s) shall not have the power to award incidental, consequential, punitive, multiple or exemplary damages, and the Parties hereby waive any right to such damages. The award shall be final and binding upon the Parties and shall be the sole and exclusive remedy between the Parties regarding any claims, counterclaims or issues presented to the arbitrator(s). Judgment on the award of the arbitrator(s) may be entered and enforced by any court of competent jurisdiction.

It is the intent of the Parties to have any arbitration under this Agreement proceed in an expeditious manner, *however*, any deadline or time period contained herein may be extended or modified by agreement of the Parties or by the arbitrator(s) for good cause shown, and the Parties agree that the failure of the arbitrators or the AAA to strictly conform to any deadline or time period contained herein shall not be a basis for challenging any award.

(iii) Disclaimer. Nothing in this Section 8(i) shall be construed to limit or exclude in any way the jurisdiction of FERC.

(j) Interpretation.

(i) Singular; Plural. Defined terms used in this Agreement (including defined terms incorporated by reference) shall include in the singular number the plural and in the plural number the singular.

(ii) Self Reference; Incorporation by Reference; Cross Reference. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement (including terms and provisions incorporated by reference) shall, unless otherwise expressly specified, refer to this Agreement as a whole and not to any particular provision of this Agreement, and all references to Articles, Sections, Exhibits or Schedules shall be references to Articles, Sections, Exhibits or Schedules of this Agreement unless otherwise expressly specified. Exhibits and Schedules to this Agreement shall be deemed incorporated by reference in this Agreement.

(iii) Inclusive of Permitted Successors. Unless otherwise stated, any reference in this Agreement to any person shall include its permitted successors and assigns and, in the case of any Governmental Authority, any entity succeeding to its functions and capacities.



- (iv) Gender. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.
- (v) Inclusive References. The words “include”, “includes” and “including” shall not be limiting, and shall be deemed in all instances to be followed by the phrase “without limitation.”
- (vi) Days; Time of Day. References to “days” shall mean calendar days, unless otherwise indicated and references to the time of day shall mean such time in Sacramento, California, unless otherwise expressly specified.
- (vii) Ambiguities Neutrally Construed. This Agreement is the result of negotiations among, and has been reviewed by each Party and its respective counsel. Accordingly, this Agreement shall be deemed to be the product of each Party, and no ambiguity shall be construed in favor of or against any Party.
- (viii) Grammatical Forms. Other grammatical forms of defined words or phrases have corresponding meanings.
- (ix) Scope of Writing References. Reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.
- (x) Consents; Acceptance; etc. Unless otherwise expressly provided herein any consent, acceptance, satisfaction, cooperation or approval required of a Party under this Agreement shall not be unreasonably withheld or delayed.
- (xi) Headings. The headings or section titles contained in this Agreement are inserted solely for convenience and do not constitute a part of this Agreement, nor should they be used to aid in any manner in the construction of this Agreement.
- (k) No Joint and Several Liability. Except as may be expressly provided for herein, nothing in this Agreement shall be deemed to create any joint and several liability among the Parties.
- (l) Further Assurances. Each of the Parties hereto agrees to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information that may be reasonably requested in order to effectuate the transactions contemplated hereby. To the extent reasonably possible and without any obligation to incur any cost, each of the Parties agrees to cooperate and assist each other Party to prevent frustration of the essential purposes of this Agreement.

**[SIGNATURES APPEAR ON NEXT PAGE]**

*IN WITNESS WHEREOF*, the Parties have caused this Long-Term Contract Settlement and Release of Claims Agreement to be entered into as of the date first written above.

**Dynegy Power Marketing, LLC**

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

Name: Jason A. Buchman

Title: Chief Compliance Officer and  
Vice President, Group General Counsel

**Cabrillo Power I LLC**

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

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

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

**El Segundo Power, LLC**

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

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

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

**Long Beach Generation LLC**

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

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

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

**California Public Utilities Commission**

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

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

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

IN WITNESS WHEREOF, the Parties have caused this Long-Term Contract Settlement and Release of Claims Agreement to be entered into as of the date first written above.

**Dynegy Power Marketing, LLC**

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

Name:

Title:

**Cabrillo Power I LLC**

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

Name: *Tom Doyle*

Title: *President*

**El Segundo Power, LLC**

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

Name: *Tom Doyle*

Title: *President*

**Long Beach Generation LLC**

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

Name: *Tom Doyle*

Title: *President*

**California Public Utilities Commission**

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

Name:

Title:

*IN WITNESS WHEREOF*, the Parties have caused this Long-Term Contract Settlement and Release of Claims Agreement to be entered into as of the date first written above.

**Dynegy Power Marketing, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**Cabrillo Power I LLC**

By: \_\_\_\_\_  
Name:  
Title:

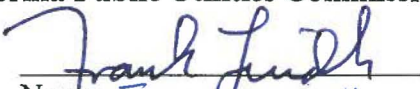
**El Segundo Power, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**Long Beach Generation LLC**

By: \_\_\_\_\_  
Name:  
Title:

**California Public Utilities Commission**

By:   
Name: Frank Lindh  
Title: General Counsel

**EXHIBIT A**

**FORM OF NRG GUARANTY AGREEMENT**

**FORM OF  
GUARANTY AGREEMENT**

Granted By	<b>NRG Energy, Inc.</b> (“Guarantor”) on behalf of Cabrillo Power I LLC, El Segundo Power, LLC, and Long Beach Generation LLC (the “Companies”)
Granted To	California Public Utilities Commission (the “CPUC” or “Grantee”)
Regarding	Long-Term Contract Settlement and Release of Claims Agreement dated as of April ____, 2012, by and between the CPUC and Dynegy Power Marketing, LLC and the Companies (the “Contract”).
Effective Date	_____ [The Settlement Effective Date as defined in the Contract]
Amount	US \$122,500,000.00 (one-hundred twenty-two million five-hundred thousand dollars)
<b><i>Subject to the following terms and conditions:</i></b>	

1. **Parties.** This Guaranty Agreement (“Guaranty”), effective as of \_\_\_\_\_, 2012 (the “Effective Date”), is made and entered into by NRG Energy, Inc., a Delaware corporation (“Guarantor”), on behalf of Cabrillo Power I LLC, El Segundo, Power LLC, and Long Beach Generation LLC (the “Companies”) in favor of the California Public Utilities Commission (the “CPUC”), an independent agency of the State of California, its successors and permitted assigns (“Counterparty”).

2. **Contracts Guaranteed.** This Guaranty is given in consideration of Counterparty having entered into or entering into that certain Long-Term Contract Settlement and Release of Claims Agreement dated as of April 27, 2012, by and between the CPUC and Dynegy Power Marketing, LLC and the Companies, that among other things requires the Companies to make certain cash payments and to design, install, construct, own and operate electric vehicle charging infrastructure in the State of California (the “Contract”).

3. **Guaranty.** Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guarantees to Counterparty the timely performance of all obligations of Companies under the Contract including the timely payment of all amounts due and payable by Companies to Counterparty under the Contract (collectively, the “Obligations”). Guarantor shall pay to the Counterparty (i) interest at a per annum rate of 3% on any amounts owed by the Guarantor under this Guaranty which are not paid within five (5) Business Days following written demand for such payment, and (ii) all reasonable out-of-pocket expenses incurred in enforcing this Guaranty, which expenses are incurred more than five (5) Business Days following written demand for payment under this Guaranty. (The term “Business Day” as used herein shall mean any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.) This Guaranty shall constitute a continuing guarantee of payment and not of collection. The liability of Guarantor under this Guaranty is subject to the following:

3.01 In no event shall Guarantor be liable for consequential, exemplary, special, equitable, lost profits, punitive, tort, indirect, incidental or any other similar damages, unless such damages are recoverable under the Contract.

3.02 Notwithstanding anything to the contrary, the liability of Guarantor under this Guaranty and Counterparty's right of recovery is limited to sum of the following: (i) an aggregate of up to one-hundred twenty-two million five-hundred thousand dollars (\$122,500,000.00) (the "Guaranty Amount") for claims against the Companies under the Contract, (ii) interest on the Guarantor's obligations, as provided above, and (iii) reasonable out-of-pocket expenses (including reasonable attorney's fees) enforcing this Guaranty, as provided above (the aggregate of (i), (ii) and (iii) being the "Guaranty Cap").

3.03 The Guaranty Amount shall automatically reduce at two points during the Contract as follows:

- (i) upon payment of twenty million dollars (\$20,000,000) to the CPUC pursuant to Section 3(a)(ii) of the Contract, the Guaranty Amount shall be reduced by twenty million dollars (\$20,000,000); and
- (ii) upon completion of the Two Year Audit pursuant to 4(e)(iii)(1) of the Contract, the Guaranty Amount shall be reduced by the amount of expenditures that the independent auditor determines have been made in furtherance of the obligations of the Contract.

3.04 Except as otherwise provided herein, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which the Companies are or may be entitled to arising from or in connection with the Contract, Obligations, the nature of Counterparty's claim or otherwise.

3.05 Notwithstanding anything in this Guaranty to the contrary, this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time, either before or after the Termination hereof, payment of the Obligations guaranteed pursuant to this Guaranty, or any part thereof is rescinded or must otherwise be returned by Counterparty upon the insolvency, bankruptcy or reorganization of Companies, all as though such payment had not been made.

4. **Demands and Notices.** As a condition to any claim under this Guaranty, Counterparty shall make a demand for payment or performance in writing, stating that Counterparty is calling upon Guarantor to pay or perform under this Guaranty and stating in reasonable detail what obligations the Companies have failed to pay or perform under the Contract. A single written demand shall be effective as to any payment default of the Companies under the Contract during the continuance of such default.

5. **Consents and Waivers.**

5.01 Guarantor hereby waives notice of acceptance of this Guaranty, other than demand concerning the liabilities of Guarantor, except as required in Section 4

above.

5.02 Notwithstanding anything to the contrary, if any of the Companies raises any Dispute, as defined by Section 8(i) of the Contract, with respect to any of the Obligations, the Guarantor shall not be required to make any payment or take any other action with respect to such Obligations unless and until such Dispute is finally resolved in accordance with Section 8(i) of the Contract. For the avoidance of doubt, nothing in this Guaranty shall obligate the Guarantor to participate as a party in any arbitration or other dispute resolution process contemplated in Section 8(i) of the Contract.

5.03 Guarantor agrees that its obligations hereunder shall not be affected by the existence, validity, enforceability, perfection, release or extent of any collateral.

5.04 Except as to applicable statutes of limitation, Guarantor hereby agrees that no delay of Counterparty in the exercise of any rights hereunder shall operate as a waiver of such rights or a release of Guarantor from any obligations hereunder.

5.05 Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment or terms of the Obligations, or changes or modifications to the terms of the Contract as agreed to by Companies, provided that in no event shall Guarantor's liability under this Guaranty be increased above the Guaranty Cap as a result of such changes.

5.06 The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings which affect the Companies, or any allegation of invalidity or contest of the validity of this Guarantee in any such proceeding, shall not affect the liability of the Guarantor hereunder.

6. **Continuing Guaranty.** Subject to the provisions of Section 9 ("Termination"), this Guaranty is a continuing Guaranty and shall remain in full force and effect until all the Obligations have been satisfied in full.

7. **Subrogation.** Guarantor subordinates and postpones all rights of subrogation which might arise under the Guaranty until all Obligations owed to the Counterparty have been indefeasibly paid in full. Upon payment in full of the Obligations, Guarantor shall be subrogated to the corresponding rights of Counterparty and Counterparty shall take, at Guarantor's expense, all such steps as the Guarantor may reasonably request to implement such subrogation.

8. **Assignment.** Counterparty may assign this Guaranty to any agency of the State of California that succeeds its interest under the Contract without the consent of



Guarantor. Guarantor may assign its obligations under this Guaranty with the consent of the Grantee, which shall not unreasonably withheld.

9. **Termination.** This Guaranty will terminate upon the performance in full of all the obligations of the Companies under the Contract. To the extent not terminated earlier, this Guaranty will terminate thirty (30) days after the making of a payment pursuant to 4(e)(iii)(3) of the Contract unless the Grantee serves notice upon the Grantor pursuant to Section 10 that the Grantee contests the amount of the payment pursuant to 4(e)(iii)(3) of the Contract.

10. **Notice.** Any demand, notice, request, instruction, correspondence or other document to be given by any party to another hereunder shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, by overnight mail, or delivered by telegram, telecopy or facsimile as follows:

**To Guarantor/Companies:**

NRG Energy, Inc.  
Risk Management  
211 Carnegie Center Blvd.  
Princeton, NJ 08540  
Attn.: Chief Risk Officer  
Fax No.: 609-524-4605

With a copy to:

NRG Energy, Inc.  
Legal Department  
211 Carnegie Center Blvd.  
Princeton, NJ 08540  
Attn.: General Counsel  
Fax No.: 609-524-4589

**To Guarantee:**

Paul Clanon  
Executive Director  
Public Utilities Commission  
505 Van Ness Avenue, Room 5223  
San Francisco, CA 94102-3298  
Phone: 415-703-3808

With a copy to:

Frank R. Lindh  
General Counsel  
Public Utilities Commission  
505 Van Ness Avenue, Room 5138  
San Francisco, CA 94102-3298  
Phone: 415-703-2015

Notice given by personal delivery or any form of registered or overnight mail shall be effective upon actual receipt. Notice given by facsimile shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if not received during the recipient's normal business hours.

11. **Representations and Warranties.** Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of Delaware and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty, when executed and delivered, will constitute a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any laws affecting creditors' rights generally and by general principles of equity.

12. **Severability.** If one or more provisions of this Guaranty shall for any reason or to any extent be determined invalid or unenforceable, all other provisions shall nevertheless remain in full force and effect.

13. **Governing Law.** This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of California, without regard to principles of conflicts of laws.

**IN WITNESS WHEREOF**, the Guarantor has executed this Guaranty on the effective date first written above.

**NRG Energy, Inc.**

By: \_\_\_\_\_  
Name: Christopher Sotos  
Title: Senior Vice President and Treasurer

**ACCEPTED BY**, the Counterparty acknowledges and accepts the above Guaranty.

**California Public Utilities Commission**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_