

AGENDA ITEM CONTINUATION
MEMO

MEETING DATE: MAY 21, 2013

DEPARTMENT: DEPARTMENT OF WASTE MANAGEMENT
AND RECYCLING

TITLE: AUTHORIZATION TO PROCURE A NEW
POWER PURCHASE AGREEMENT FOR
THE KIEFER LANDFILL GENERATING
PLANT 1

BOARD ACTION: CONTINUE TO JUNE 4, 2013 FOR
ADOPTION

MATERIAL FORWARDED

COUNTY OF SACRAMENTO
CALIFORNIA

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For the Agenda of:
May 21, 2013

To: Board of Supervisors

From: Department of Waste Management and Recycling

Subject: Authorization To Procure A New Power Purchase Agreement For The Kiefer Landfill Generating Plant I

Supervisorial
District: Nottoli

Contact: Tim Israel, Senior Civil Engineer, 876-9431

Overview

The Department of Waste Management and Recycling (DWMR) owns and operates the Kiefer Landfill. Compliant operation of the landfill requires collection and destruction of gases that are generated as waste decomposes within the landfill. Most of the landfill gas is utilized as a fuel source for generating electrical power at two plants - the Kiefer Landfill Generator I (KLG I) plant, owned by the County, and the Kiefer Landfill Generator II (KLG II) plant which is privately owned. The current KLG I Power Purchase Agreement (PPA) expires in December 2014. The agreements for sale of gas to KLG II expire in 2025. DWMR seeks authorization to procure a new PPA for KLG I and to enter into an agreement with the Western Electricity Coordinating Council (WECC) to track renewable electricity production from KLG I in the Western Renewable Energy Generation Information System (WREGIS).

Recommendations

1. Adopt Resolution authorizing the Director of the DWMR to seek proposals for and to respond to requests for proposals for purchase of renewable power generated at the KLG I facility; and
2. Approve Agreement with WECC for a WREGIS account to track renewable electricity production; and
3. Authorize the Director of DWMR, on behalf of the County, to execute the Agreement with WECC.

Measures/Evaluation

Not applicable.

Fiscal Impact

This action and subsequent new PPA is anticipated to result in a significant increase in revenue from the KLG I operation beginning January 2015. The WREGIS agreement only affects the Solid Waste Enterprise Fund. The estimated annual cost related to the WREGIS account is \$850. Sufficient funds are included in the Solid Waste Enterprise Fiscal Year 2012-13

BACKGROUND

During the mid to late 1990's, the County entered into a series of agreements related to the construction and operation of a landfill gas (LFG) collection and control system and energy generation plant at the Kiefer Landfill. Included in those agreements is a PPA with the Sacramento Municipal Utility District (SMUD). The SMUD PPA has a 15-year term from the date of initial electrical sales and is set to expire in December 2014.

DWMMR contracted with a renewable energy consultant specializing in LFG to conduct a feasibility study of potential future utilization of LFG generated by Kiefer Landfill. The feasibility study included a review of KLG I, modeling of future LFG generation, and technical and financial analysis of a variety of LFG utilization technologies. The feasibility study concluded that continued operation of KLG I clearly would be the most beneficial option for DWMMR and its customers.

During the past year, DWMMR staff met several times with SMUD to explore the possibility of extending the current PPA. The result of those meetings was that DWMMR and SMUD concurred that a competitive procurement is in the County's best interest.

DISCUSSION

The DWMMR requests authorization to seek proposals and additionally to respond to requests for proposals, for the purchase of renewable power generated at the KLG I facility. The market for renewable energy has changed significantly since the original KLG I PPA was executed. Since that time, not only has the price of electricity increased, the value of the renewable attributes has matured. DWMMR estimates that gross revenue from KLG I could increase from the current level of approximately \$2,500,000 to approximately \$5,000,000 per year with the execution of a new PPA.

The procurement for a new PPA may take up to 18 months to complete. The DWMMR plans to advertise the procurement with the issuance of a request for letters of interest. The request for letters of interest will require submittal of qualifications, financial information, preliminary pricing, and a commitment to submit a proposal, if selected, to receive a request for proposals (RFP). The letters of interest will be evaluated and a list of recipients established for an RFP. It is anticipated the RFP will be issued during the spring of this year. Final proposals will be evaluated and a preferred purchaser may be selected for final negotiations. Additionally, DWMMR may respond to solicitations issued by power purchasers. DWMMR plans to bring a finalized PPA to this Board prior to the end of 2013.

Renewable energy credits in the western United States are tracked in the WREGIS. This is a standard requirement for most renewable electricity PPAs established within the past decade. In preparation for a new PPA, DWMMR will establish an account with WREGIS for the purpose of tracking renewable energy produced at the KLG I facility. A copy of the WREGIS Account Holder Registration Agreement is attached.

FINANCIAL ANALYSIS

Approval of this request and subsequent approval of a new PPA will likely result in a significant increase in revenue from the KLG I operation. The DWMR estimates that net revenues could increase approximately \$2,500,000 annually with the execution of a new PPA.

The annual cost of tracking renewable electricity production in the WREGIS is \$850.

71-J ANALYSIS

This agreement is for establishing an account to track renewable energy production, which the County labor force does not perform; therefore, Section 71-J is not applicable.

LEGAL ISSUES

County Counsel will review the procurement documents and proposed agreements related to the purchase of renewable power from KLG I. County Counsel has reviewed and approved the agreement with WECC.

Respectfully submitted,

APPROVED:
BRADLEY J. HUDSON
County Executive

PAUL PHILLEO, Director
Department of Waste Management
and Recycling

By: _____
ROBERT B. LEONARD
Chief Deputy County Executive

Attachment: Resolution
WREGIS Account Holder Registration Agreement

RESOLUTION NO. _____

**AUTHORIZATION TO PROCURE A NEW POWER PURCHASE AGREEMENT FOR
THE KIEFER LANDFILL GENERATING PLANT I**

WHEREAS, the County has a current Power Purchase Agreement (PPA) for the Kiefer Landfill Generating Plant I (KLG I) that expires on December 31, 2014, and:

WHEREAS, a County-commissioned feasibility report concluded the continued operation of KLG I is the most beneficial option for the County and its customers, and;

WHEREAS, a competitive procurement of a new PPA is in the best interest of the County and its customers, and;

WHEREAS, in the western United States, renewable energy credits (RECs) are tracked using the Western Renewable Energy Generation Information System (WREGIS), and;

WHEREAS, tracking of RECs in the WREGIS is a standard term within renewable electricity PPAs:

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Director of the Department of Waste Management is hereby authorized to seek proposals and to respond to requests for proposals for purchase of renewable power generated at the KLG I facility and to enter into an agreement with the Western Electricity Coordinating Council to track renewable electricity production at the KLG I facility in the WREGIS.

Authorization To Procure A New Power Purchase Agreement For The Kiefer Landfill
Generating Plant I

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ON A MOTION by Supervisor _____, and seconded by Supervisor
_____, the foregoing resolution was passed and adopted by the Board of
Supervisors of the County of Sacramento, State of California, this 21st day of May, 2013, by the
following vote, to wit:

AYES: Supervisors,

NOES: Supervisors,

ABSENT: Supervisors,

ABSTAIN: Supervisors,

Chair of the Board of Supervisors
of Sacramento County, California

(S E A L)

ATTEST:


Clerk, Board of Supervisors



Document name	WREGIS Account Holder Registration Agreement
Category	<input type="checkbox"/> Regional reliability standard <input type="checkbox"/> Regional criteria <input type="checkbox"/> Policy <input type="checkbox"/> Guideline <input checked="" type="checkbox"/> Report or other <input type="checkbox"/> Charter
Document date	June 22, 2007
Adopted/approved by	
Date adopted/approved	August 6, 2008
Custodian(entity responsible for maintenance and upkeep)	WREGIS
Stored/filed	Physical location: Web URL:
Previous name/number	
Status	<input type="checkbox"/> in effect <input type="checkbox"/> usable, minor formatting/editing required <input type="checkbox"/> modification needed <input type="checkbox"/> superseded by _____ <input checked="" type="checkbox"/> other –updates for review/approval _____ <input type="checkbox"/> obsolete/archived)



**Western Renewable Energy Generation Information
System**

WREGIS

**Account Holder Registration Agreement
(Also referred to as the “TERMS OF USE”)**

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WESTERN ELECTRICITY COORDINATING COUNCIL •

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ACCOUNT HOLDER REGISTRATION AGREEMENT OR TERMS OF USE

This Account Holder Registration Agreement (Agreement) is entered into on this date _____ by and between (enter the legal name of the Account Holder) _____ having its principal place of business at (address, city, state and zip) _____

(Account Holder) and the Western Electricity Coordinating Council (WECC), having its principal place of business at 155 North 400 West, Suite 200, Salt Lake City, UT 84103. The Account Holder Registration Agreement is abbreviated throughout as "Terms of Use" or "Agreement." Capitalized terms used throughout the document have the meanings given when introduced or in Attachment 1 - Definitions.

Recitals

WHEREAS:

1. The Western Renewable Energy Generation Information System (WREGIS) is an independent and automated web-based renewable energy registry and tracking system that receives Data on renewable energy generation, creates merchantable renewable energy certificates ("RECs" or "Certificates"), registers the transfer of Certificates within and without the WREGIS system, and allows reporting on such transfers. When used herein, "WREGIS" is meant to encompass all hardware, software, and interfaces that are used in the operation of and/or that comprise the system and are made available to Account Holders by WECC under this Agreement. A Certificate is created in increments of one megawatt hour (MWh) of reported renewable energy generation.
2. WREGIS covers the same geographic region as the Western Interconnection and WECC. WREGIS will issue Certificates for registered renewable energy Generating Units located within the Western Interconnection and for registered renewable energy Generating Units located in states and provinces within WECC.
3. WREGIS is not a trading system for either RECs or energy but instead emulates a banking system. WREGIS Certificates are the currency of the banking system and may be used to verify compliance with state and provincial policy mandates, and to protect the integrity of voluntary green power markets.
4. WREGIS was a joint effort of the Western Governors' Association, the Western Regional Air Partnership and the California Energy Resources Conservation and Development Commission (Energy Commission),

collectively known as the Founding Sponsors. WECC agreed to be the institutional home of WREGIS. In March 2012, when the Founding Sponsors' sponsorship of ended, WECC became the sponsor of WREGIS and continued its operations within WECC. WREGIS is intended to be financially self-supporting through fees paid by Account Holders.

5. A goal of WREGIS is to provide accurate and reliable Certificates reflecting actual renewable energy generation. WREGIS is intended to be policy neutral and will not determine whether Certificates are eligible for particular regulatory programs or voluntary markets.
6. Another goal of WREGIS is to protect against double or multiple counting of the same renewable energy.
7. WREGIS is not intended to establish legal title to Certificates but instead to accurately track who is registered as possessing Certificates. Persons must address any issues regarding ownership or security interests in the Certificates outside of WREGIS.
8. Any person who wishes to use WREGIS must register as an Account Holder and establish an account within WREGIS.
9. All Account Holders must enter into this Agreement with WECC before using WREGIS. Only Account Holders may create or register Certificates.
10. WECC administers WREGIS consistent with WECC's Bylaws, the WREGIS Committee charter and WECC's reliability mission.
11. The WREGIS Committee is a committee of the WECC Board of Directors. WECC operates WREGIS with the advice, guidance, and assistance of the WREGIS Committee as detailed in the WREGIS Committee Charter. The WREGIS Committee represents both industry and governmental interests.
12. The WREGIS Director oversees the day-to-day operations of WREGIS. WECC has contracted with APX, Inc. to provide the software, including maintenance.
13. WREGIS accounts can be accessed only by using the secure WREGIS Website. An Account Holder must be approved by the WREGIS Director, must agree to this Agreement, must abide by the Operating Rules, must follow applicable Interface Control Documents, and must pay the fees required by this Agreement. An Account Holder will be able to access its WREGIS accounts and Data on the WREGIS Website by logging into WREGIS using its username and password.

14. Some Generator Owners or their duly authorized agents may agree with their Balancing Authority for the Balancing Authority to act as their Qualified Reporting Entity in order to report their respective Output to WREGIS. A Balancing Authority Account Holder may report Output on behalf of Generator Owners or their duly authorized agents that have designated the Balancing Authority Account Holder as their Qualified Reporting Entity.
15. This Agreement states the terms and conditions for registering renewable energy Generating Units and establishing an account with WREGIS.

NOW, THEREFORE, acknowledging that the success of WREGIS will depend on the truth, accuracy and completeness of the declarations made below and on these terms and conditions, the undersigned agree and represent that:

(1) *Parties*

This is a binding contract between the Account Holder and WECC. Account Holder and WECC are individually referred to herein as "Party" and collectively as "Parties."

(2) *Acceptance of Terms*

- a. Account Holder's use of WREGIS (including the secure WREGIS Website located online at www.wregis.org) is subject to the following Agreement (and as it may be modified from time to time).
- b. Subject to the provisions of Section 2(e), by accessing its account through the secure WREGIS Website, Account Holder accepts and agrees to be bound by this Agreement. Account Holder's use of WREGIS is governed by the version of the Agreement in effect on the date the WREGIS Website is accessed by Account Holder. Account Holder agrees to comply with the requirements of this Agreement and, in the event of a failure to comply, agrees to be subject to the default and termination provisions of this Agreement. WECC will maintain a copy of the current version of this Agreement on the WREGIS Website.
- c. Subject to the provisions of Section 2(e), by signing this Agreement, Account Holder is also subject to the WREGIS Operating Rules in effect on the date the secure WREGIS Website is accessed by Account Holder. Account Holder agrees to comply with the requirements of the Operating Rules and, in the event of a failure to comply, agrees to be subject to the default and termination provisions of this Agreement. Each and all of the

provisions of the Operating Rules are hereby incorporated by reference into this Agreement as though set forth fully herein. WECC will maintain a copy of the current version of the Operating Rules on the WREGIS Website.

- d. Subject to the provisions of Section 2(e), by using WREGIS, Account Holder is also subject to the protocols of the Interface Control Documents in effect on the date the secure WREGIS Website is accessed by Account Holder. Account Holder agrees to comply with the requirements of the applicable Interface Control Document and, in the event of a failure to comply, agrees to be subject to the default and termination provisions of this Agreement. Each and all of the provisions of the Interface Control Documents are hereby incorporated by reference into this Agreement as though set forth fully herein. WECC will maintain a current copy of the Interface Control Documents on the WREGIS Website.
- e. WECC or its successors in interest, if any, may modify or amend this Agreement, Operating Rules, or Interface Control Documents at any time, upon providing (1) a minimum of 15 days prior written notice to the Account Holder if such modification or amendment is a technical change necessary for the continued operation of WREGIS and, (2) a minimum of 60 days prior written notice to the Account Holder for any other proposed modification or amendment. Such notices shall contain the terms of the proposed modification or amendment. If practicable, such process shall (a) provide for at least a 30-day period for consideration of the proposed amendment prior to its adoption and, (b) afford each Account Holder with a reasonable opportunity to participate in such proceedings. Account Holder agrees that by accessing its account through the secure WREGIS website—after having received appropriate written notice of the modification of the Agreement, Operating Rules, or Interface Control Documents in accordance with this Section 2—Account Holder signifies agreement to be bound by the modified Agreement, Operating Rules, and Interface Control Documents.

- f. If at any time Account Holder no longer agrees to this Agreement, the Operating Rules, and the Interface Control Documents—as each is currently written or as they may be modified in the future—Account Holder shall provide written notice to WECC, in accordance with Section 10(c), of its termination of this Agreement and shall cease to access or otherwise use WREGIS and the secure WREGIS Website, but shall be entitled to a final statement of the Account Holder’s account and other information reasonably requested by the Account Holder, including an accounting of the number of Certificates attributable to the Account Holder.

(3) Service Description

- a. WREGIS is an independent, automated, web-based, renewable energy registry and tracking system that receives Data on renewable energy generation, logs generation Data, allows for the review and/or dispute of Output, uses the Output for issuing WREGIS Certificates and tracks, via Certificates, renewable energy transactions occurring within the Western Interconnection.
- b. WREGIS allows for differentiated roles and permissions for various types of authorized Account Holders of the system as to management of accounts, Data access and reporting as more fully specified in the Operating Rules.
- c. WREGIS will produce electronic Certificates based on Output. A WREGIS Certificate represents all of the attributes from one MWh of electricity generation from a renewable Generating Unit registered with the WREGIS tracking system. One Certificate will be created for each whole MWh of renewable energy that is produced.
- d. Each account will have sub-accounts established to allow the Account Holder to transfer Certificates. The rules on sub-accounts are specified in the Operating Rules.
- e. Account Holder agrees that WREGIS does not establish legal title to Certificates in any form. Any issues that might arise regarding the ownership or security interest in Certificates, or whether the transferred Certificate is considered a ‘forward contract’ under the laws of a state or the laws of the United States, will be addressed by the Account Holder outside of WREGIS. WECC will not address any such ownership issues or have liability with respect to any such ownership issues.

(4) Output Reporting

- a. WREGIS issues Certificates only for Output. It is the responsibility of the Generator Owner and/or its agent to supply Output in accordance with the timelines incorporated in the WREGIS Operating Rules. If the Qualified Reporting Entity, designated reporting entity (using protocols described in an Interface Control Document), a Self-Reporting Interface, or Account Holder or its Agents or assigns fails to supply all required Output on registered Generating Units to WECC according to the dates specified in the Operating Rules, the Account Holder and Generator Owner will automatically be notified of the missing Output. The WREGIS Director may request submission of reasonable and consistent supplemental or additional Data from the Account Holder responsible for the Generating Unit in order to secure the missing Output.
- b. If the WREGIS Director determines that Data from an Account Holder is required for the determination of compliance by another Account Holder with this Agreement, Operating Rules, or Interface Control Documents; the WREGIS Director shall so notify the Account Holder and the Account Holder shall have 30 days from such notice, or a mutually agreeable extension thereof, to provide the requested Data to the WREGIS Director. An Account Holder may also request the WREGIS Director to request from another Account Holder, Output or Data required for the requesting Account Holder's compliance; however, such a request shall not relieve the Account Holder of any obligations to provide requested Output.
- c. If any Data is requested of Account Holders that is not listed in Section 13(b) or Section 13(c), such request will first be submitted to the WREGIS Committee for review and action. The WREGIS Committee will notice and hold a public WREGIS Committee meeting to discuss the request and will make a determination of the confidentiality status of any new Data being requested. If approved, the request is subject to the WREGIS change control procedure as detailed in the Operating Rules.

(5) Authorized Users

- a. An Account Holder can be any Person with the capacity to sue or be sued under the law of a state or a federal government. An Account Holder may include one or more of the following types of organizations or entities: Generating Unit owner or representative, Generator Unit aggregator, community choice aggregator, small utility aggregator, investor-owned utility (IOU), municipal utility, rural electric cooperative, irrigation district, electricity service provider, joint power authority, retail marketer, broker, tribal organization, customer-owned utility, public interest organization,

federal marketer/power administration, wholesale marketer, state program director, provincial program director, qualified independent party, Balancing Authority, other load serving entity, or other legal entity.

- b. An Account Holder who has account Registration and permissions for an account may designate a Person outside of the Account Holder's organization to serve as an Agent or other authorized user on the account. This is accomplished by the Account Holder submitting a Notice of Agent Designation. The Agent shall have only those WREGIS permissions and privileges as expressly granted by the Account Holder in the Notice of Agent Designation. The Notice of Agent Designation shall not be effective until acknowledgement is issued by WECC. Such Notice of Agent Designation must be revoked by written notification from the Account Holder in the Notice of Agency Termination. In such event, the Account Holder will provide such written notification to WECC and such termination of the Notice of Agent Designation will not be effective until acknowledgement is issued by WECC. Such acknowledgement will be made to the Account Holder by WECC Staff within five business days of WECC's receipt of written notification of revocation of the Notice of Agent Designation.
- c. The rights granted herein are granted only to Account Holders and their Agents. In the case of an Agent, the terms of the Notice of Agent Designation specify who is to pay WREGIS fees to WECC. In the case of an assignment of Registration permissions by a Generating Owner, the Notice of Assignment of Registration Rights specifies that the Assigned Account Holder (the one registering the Generating Unit) is to pay to the WECC registration fees, if applicable. If an Affiliate wishes to use WREGIS, it must apply for its own Registration, agree to this Agreement, abide by the Operating Rules, follow the applicable Interface Control Document, and pay the required fees.
- d. The rights and obligations of this Agreement shall run to the named Parties and their Agents for those WREGIS permissions and privileges expressly granted to the Account Holder.
- e. The Account Holder agrees that any of its employees or Agents to whom the Account Holder has provided access to WREGIS will fully comply with this Agreement, Operating Rules and the applicable Interface Control Documents, and further agrees to make such compliance a condition of any agreement that Account Holder may create for this purpose.

(6) Grant

- a. WECC grants to Account Holder, and its authorized agents, a non-exclusive non-transferable license to use WREGIS software at the WREGIS Website subject to this Agreement, Operating Rules and Interface Control Documents in force. Before granting Account Holder access, Account Holder shall (1) complete and submit this Agreement to the WREGIS Director, (2) complete and submit Account Holder Registration Data (on-line after obtaining temporary status to use WREGIS as a Registrant) to the WREGIS Director, and (3) pay the applicable fees due under this Agreement and Operating Rules.
- b. Account Holder's use under the license shall be subject to the following limitations:
 - (i) Account Holder shall not (a) loan, share, publish, republish, disclose, transmit, display, sell, license, lease or distribute any portion of WREGIS software to any third party, (b) disassemble, decode, decompile or otherwise reverse engineer, copy, reproduce WREGIS software, or (c) loan, share, publish, republish, disclose, transmit, display, sell, license, lease, distribute, disassemble, decode, decompile, reverse engineer, copy, reproduce, or use WREGIS as a basis for a directory or database prepared for commercial sale or distribution. Account Holder shall not modify the format of any WREGIS generated report, but such restriction does not include the information contained therein.
 - (ii) Account Holder shall not remove any copyright, trademark, or other proprietary notices contained in WREGIS.
 - (iii) Account Holder shall not knowingly infringe or misappropriate WREGIS software.
 - (iv) WECC represents and warrants that it has received from software provider, all necessary rights to allow Account Holder to use WREGIS in accordance with this Agreement.
- c. WECC reserves all rights in WREGIS not expressly granted to Account Holder in this Agreement. Account Holder acknowledges that the WREGIS software does not belong to Account Holder. Except as provided in this Agreement, Account Holders shall not obtain, have, or retain any right, title, or interest in or to WREGIS or the WREGIS software or any part thereof pursuant to this Agreement.

- d. In using the WREGIS Website, Account Holder agrees:
- (i) Not to disrupt or interfere with the security of, or otherwise abuse, WREGIS or any services, system resources, accounts, servers, or networks connected to or accessible through the WREGIS Website or affiliated or linked sites;
 - (ii) Not to disrupt or interfere with any other user's use and enjoyment of the WREGIS Website or affiliated or linked websites;
 - (iii) Not knowingly to upload, post, or otherwise transmit through or on the WREGIS Website any viruses or other harmful, disruptive, or destructive files;
 - (iv) Not to copy, use, frame, or utilize framing techniques to enclose any WREGIS or WECC trademark, logo, or other proprietary information (including the images found at the WREGIS Website, the content of any text or the layout/design of any page or form contained on a page and expressly excluding information contained in reports) without WECC's express prior written consent;
 - (v) Not to use meta tags, cookies, or any other "hidden text" created by Account Holder utilizing the WREGIS or the WECC name, trademark or product name without WECC's express prior written consent;
 - (vi) Not to "deeplink" to the WREGIS Website without WECC's express prior written consent;
 - (vii) Not to create or use a false identity on the WREGIS Website;
 - (viii) Not to attempt to obtain unauthorized access to the WREGIS Website or portions of the WREGIS Website that are restricted from general access or portions of the WREGIS Website that are assigned specific Account Holder access permissions outside of the Account Holder's own access permissions;
 - (ix) Not to post any material that is knowingly false or defamatory, inaccurate, abusive, vulgar, hateful, harassing, obscene, profane, sexually oriented, threatening, invasive of a person's privacy, or otherwise in violation of any law;
 - (x) Not to post any copyrighted material unless the copyright is owned or lawfully licensed by Account Holder or by WECC; and

- (xi) In addition, Account Holder agrees to comply with all applicable local, state, national, and international laws and regulations, including but not limited to United States export restrictions, that relate to use of or activities on the WREGIS Website.

(7) Fees

Account Holder agrees to pay all applicable Fees, including Annual Fees and Volumetric Fees, collectively referred to herein as the “Fees”, that WECC charges for using WREGIS. All Volumetric Fees will be calculated monthly. Fees may change from time to time. WECC may, at its sole discretion, increase or decrease the Fees at any time, upon providing 60 days’ prior notice to the Account Holder. WECC shall notify Account Holder of any WECC process to change the Fees by first publishing the notice on the WREGIS Website. If practicable, such process shall (a) provide for at least a 30 day period for consideration of the proposed change prior to its adoption; and (b) afford each Account Holder with a reasonable opportunity to participate in such proceedings. Any changes in the fee structure will be publicly noticed and discussed at a public WREGIS Committee meeting and approved by the WREGIS Committee prior to being implemented. In no event shall any portion of the Fees paid to WECC be prorated or refunded to Account Holder upon termination of the Agreement. Likewise, Account Holder’s obligation to pay any and all Fees due to WECC shall survive the termination of such use or access.

- a. A schedule of Fees to be charged each type of Account Holder will be posted on the publicly accessible WREGIS Website. Initially, WECC will charge most Account Holders both an Annual Fee and a Volumetric Fee. The fee matrix on the WREGIS Website details which fees each type of Account Holder will be charged.
- b. Annual Fees will be calculated in the anniversary month that the account was approved. The full payment of the Annual Fee will be required prior to the WREGIS Director’s approval of the New Account Registration.
- c. No Annual Fee will be charged to: (1) non-transacting state, provincial, or federal regulators; (2) Qualified Reporting Entities whose sole purpose is to report generation output on behalf of a Generating Unit that is not owned by the reporting entity (e.g., the California Independent System Operator Corporation); and (3) voluntary program directors, such as; Green-e, Low-Impact Hydro, or Ecologo.
- d. **Certificate Issuance Volumetric Fee.** WECC shall assess Account Holder a Volumetric Fee for the issuance of a Certificate. Account Holder shall pay a fee per MWh of issued WREGIS Certificates. The Certificate Issuance Fee shall be calculated monthly based on the number of Certificates issued.

- e. **Certificate Transfer Volumetric Fee.** WECC shall assess Account Holder a Volumetric Fee for the transfer of a Certificate from one Account Holder to another. The Account Holder initiating the transfer shall pay the Fee on each Certificate transferred to another Account Holder, whether the transfer is scheduled (Standing Order Transfer or Forward Certificate Transfer) or non-scheduled (ad hoc). The Certificate Transfer Fee shall be calculated monthly based on the number of Certificates of which the transfer was initiated by the Account Holder and accepted by the intended recipient.
- f. **Certificate Retirement, Reserve, or Exported Volumetric Fee.** WECC shall assess a Volumetric Fee for retiring, reserving, or exporting a Certificate. All Account Holders that retire, reserve, or export Certificates shall pay the Volumetric Fee on each Certificate retired, reserved, or exported. The Certificate Retirement, Reserve, or Export Fee shall be calculated monthly based on the number of Certificates retired, reserved, or exported.

(8) *Payments and Taxes*

The Fees shall be non-refundable and are due and payable within 30 days from the date of WECC's invoice. Account Holder will pay all applicable sales, use, value added taxes, and other taxes levied in connection with Account Holder's use of WREGIS, other than taxes based on the income of WECC.

(9) *Late Fees*

Account Holder acknowledges that late payment of any Fees owed to WECC may cause WECC to incur extra administrative and other costs and expenses. If Account Holder fails to pay any amounts or charges that Account Holder is obligated to pay under the terms of the Agreement within fifteen days of the due date, then Account Holder shall be responsible to pay to WECC a late fee equal to one and one-half percent (monthly interest rate) computed on the overdue amount. Account Holder reserves the right to dispute the amount of the Volumetric Fee charges for a period of 90 days following payment by Account Holder. Acceptance of any late fee shall not constitute a waiver of Account Holder's default with respect to such late payment, nor prevent WECC from exercising any other rights or remedies available to WECC under the Agreement or applicable law.

(10) Term and Termination

- a. **Term.** This Agreement becomes operative on the date on which Account Holder has (1) completed and submitted to the WREGIS Director Account Holder Registration Data (on-line after obtaining temporary status to use WREGIS as a Registrant), (2) indicated on the WREGIS Website Account Holder's unqualified acceptance of this Agreement, (3) paid all Fees due under this Agreement and Operating Rules, and (4) submitted to the WREGIS Director a signed copy of this Agreement. This Agreement shall continue in effect until one of the Parties terminates this Agreement pursuant to the terms of this Section 10 (Term and Termination), or the Agreement expires or terminates by operation of law pursuant to the terms of this Section.

- b. **Termination for Default.** If WECC finds Account Holder in default in the performance of any of its obligations under Section 21 (Default; Remedies; Nonwaiver of Default) of this Agreement, WECC may terminate this Agreement, including Account Holder's access to WREGIS, upon giving 15 days written and electronic notice to Account Holder and an opportunity to cure in accordance with Section 21(a) hereof, unless otherwise provided herein.

- c. **Termination for Convenience by Either Party.** Either Party to this Agreement may terminate this Agreement and Account Holder's access to WREGIS, without cause, by providing at least 60 days written notice to the other Party. Account Holder's obligation to pay any and all Fees due to WECC shall survive the termination of such use or access.

- d. **Termination Required by Law.** WECC may terminate access to or Account Holder may cease use of WREGIS if required to do so by any statute, regulation, tariff, order, or ordinance enacted by a governmental authority having jurisdiction over Account Holder or WECC, or by any order or other decision of a court of law or governmental agency, as required by said statute, regulation, tariff, ordinance, order, or decision. At least 60 days written notice of said termination of access or cessation of use of WREGIS shall be given by the Party terminating the access to, or ceasing the use of, WREGIS under this subsection, unless a shorter notice period is required or permitted by the applicable statute, regulation, ordinance, order, or decision.

- e. **Provisions that Survive Termination.** The following Sections survive termination of this agreement : Sections 7 (Fees), 10 (Term and Termination), 11 (Ownership and Uses of Data), 12 (Intellectual Property),

13 (Confidentiality), 14 (Limited Warranty; Disclaimer of Warranty), 15 (Disclaimer of Responsibility for Message Boards and Links), 16 (Limitation of Liability; Remedies), 19 (No Assignment, Transfer, or Encumbrance by Account Holder), 20 (Force Majeure), 21 (Default; Remedies; Nonwaiver of Default), 22 (Waiver), 23 (Governing Law), 24 (Dispute Resolution), 25 (Audit; Continuing Duty to Report Errors; Audit Standard), 27 (Severability), and Attachment 1 (Definitions), and any other provisions which reasonably should or must survive termination or expiration of this Agreement, or which it is reasonable to conclude that the Parties intended to survive termination or expiration of this Agreement, shall survive termination of the Agreement.

- f. **Reinstatement.** WECC, at its sole discretion, may reinstate an Account Holder's access to WREGIS after the account has been terminated for Account Holder's Default, upon a determination that the problem that led to the Account Holder's termination has been satisfactorily resolved. There is no limit on the amount of time that WECC may place an Account on inactive status. If the Account Holder passed the date for his/her annual registration update while in termination, the Account Holder must update registration data before the WREGIS Director will reinstate any permission to access or use WREGIS. A new account may instead be created for this Account Holder and approved by the WREGIS Director for the Account Holder to have any permission to access or use WREGIS, at which time all forms must be resubmitted and the annual Account Holder fee must be paid.

- g. **Termination due to Intellectual Property Infringement Claim.** Either Party may immediately terminate the Agreement at any time after receiving notice from a third-party alleging infringement of the third-party's intellectual property rights. Termination will be effective upon delivery by one Party of written notice to the other Party. Account Holder information that WECC has control over shall be delivered to the Account Holder as promptly as feasible.

(11) Ownership and Uses of Data

- a. The Parties agree that Account Holder may directly, or through others on its behalf, report Data to WREGIS. The Parties also agree that the Account Holder will continue to own the Confidential Information reported to WREGIS by or on behalf of Account Holder. Once Data is received by WREGIS, it will be collected, stored, manipulated, and displayed in a manner unique to WREGIS. "Data" includes Static Data and Dynamic Data. "Data" does not include WREGIS software.

- b. The Parties agree that WECC has the right to use and allow others to use Data reported to WREGIS as WECC reasonably deems appropriate, provided however, that Confidential Information can only be used and disclosed pursuant to the terms of this Agreement.
- c. Data in WREGIS will be maintained to provide an accurate tracking database and to protect against double or multiple counting of the same Certificates. WECC has the right to retain Account Holder's Confidential Information in WREGIS even if Account Holder's account is terminated. If an Account Holder's account is terminated, WREGIS will continue to treat Account Holder's Confidential Information according to the provisions of Section 13.

(12) Intellectual Property

Copyright and/or other intellectual property laws may protect WREGIS, and any and all content of WREGIS, and any unauthorized use of the WREGIS software may violate such laws related to their protection. Except as expressly provided herein, WECC does not grant any express or implied right or license of any kind to Account Holder under any patents, copyrights, trademarks, or trade secret information with respect to WREGIS. Account Holder acknowledges that Account Holder does not acquire any ownership rights by downloading copyrighted material from WREGIS.

(13) Confidentiality

- a. WECC agrees not to use or disclose Confidential Information contained in WREGIS except as authorized by this Agreement.
- b. The following is deemed Confidential Information:
 - Gross generation (MWhs) of each electricity Generating Unit;
 - Net generation (MWhs) of each electricity Generating Unit;
 - Electricity (MWhs) consumed on site by the Generating Unit owner, other than for Generating Unit use (monthly);
 - Street address of the Generating Unit;
 - If aggregate metering of Generating Units, number and names of Generating Units on the meter;
 - Capacity factor of each electricity Generating Unit;
 - Total number of Certificates in Account Holder's Account and each Subaccount; and

- Those portions of communications between Account Holder and WECC regarding WREGIS that contain any of the aforementioned information that would be treated as Confidential Information.
 - The amount and timing of Certificate transfers, including transfers from one Account Holder to another and transfers among the subaccounts of an Account Holder will be treated as confidential (except with respect to a third party to whom the Account Holder has granted access).
- c. The following Data reported to WREGIS is considered public information and will not be treated as Confidential Information:
- Account Holder company name, address, and all contact information;
 - Agent's company name, address, and all other contact information;
 - Generating Unit Name;
 - Facility owner name, address, and all other contact information (other than the Generating Unit street address);
 - Nameplate capacity of the Generating Unit;
 - Generating Unit type of prime mover;
 - Energy source, and/or fuel type(s) used at Generating Units;
 - For multi-fueled Generating Units, the fuels consumed each month as a percentage of the total fuel used each month for electricity production;
 - Other eligibility characteristics;
 - Date when Generating Unit went into first commercial operation;
 - Name of facility operator, address, and contact information (other than the Generating Unit street address);
 - Meter serial or identification number;
 - Revenue meter by county, province, state, country;
 - Statement of fact that Generating Unit is or is not within WECC's region;
 - Name of Balancing Authority for the Generating Unit;
 - Name of utility to which Generating Unit is physically interconnected to;
 - Statement of fact that the Generating Unit is or is not a Qualifying Facility;
 - Facility Ownership type (a range of options);
 - Statement of fact that the Generating Unit has or has not received California Supplemental Energy Payments;
 - Statement of fact that the Facility has or has not received State/Provincial public benefits funds or support;
 - Statement of fact that the Facility has or has not received Federal Tax Credits;
 - FERC Hydro licensing information including license identifier, date of last license or application pending information;
 - Statement of fact that the Generating Unit has or has not been Repowered and date if it has been Repowered;
 - State/provincial program eligibility/certifications;

- State/provincial RPS eligibilities information as may be required for one or more states/provinces;
 - Statement of fact, whether the Facility is outside of United States-Defined Protected Areas indicator;
 - Certified "Low-impact" information for eligibility; and
 - Information on Certification or Eligibility for Voluntary or other Mandatory Programs such as Greene-e, Ecologo, and similar programs.
- d. The WECC shall protect Account Holder's Confidential Information from inadvertent disclosure and from disclosure to any third party except as authorized by Account Holder or this Agreement. WECC, its employees, members, agents, and assigns will protect and maintain Confidential Information provided by Account Holder to WECC pursuant to the provisions of this Section 13, and WECC shall obtain from all its employees, members, agents, and assigns to whom such Confidential Information is provided their agreement to comply with this Agreement.
- e. Confidential Information may be aggregated with other information in WREGIS and included in Public Reports as described more fully in the WREGIS Operating Rules, so long as it is sufficiently aggregated such that a third-party reviewer could not determine the actual generation produced by a Generating Unit registered with WREGIS over any specified period of time or attribute any Confidential Information to a particular Account Holder. Information in WREGIS that is considered Confidential Information that cannot be sufficiently aggregated or masked (such as Generating Unit/Facility street addresses) such that a third-party reviewer could determine the actual Generating Unit registered with WREGIS, or attribute any Confidential Information to a particular Account Holder cannot be included in public reports.
- f. If WECC is requested or required, by subpoena, oral deposition, interrogatory, request for production of documents, administrative order, or other legal or regulatory process, to disclose any Confidential Information of Account Holder, the WREGIS Director shall notify the Account Holder in writing as promptly as feasible using commercially reasonable efforts so that Account Holder may, if it so chooses and at its own expense, challenge the disclosure or seek an appropriate protective order. WECC shall reasonably cooperate with Account Holder in resolving the dispute. To the extent that the WREGIS Director and WECC have complied with the preceding provisions of this Section 13, WECC shall not be deemed to have violated its confidentiality obligations under this Agreement as a result of disclosing Account Holder's Confidential Information to a third party pursuant to a subpoena, oral deposition, interrogatory, request for production of documents, administrative order, or other legal or regulatory process.

- g. In addition to the confidentiality requirements as specified in this Agreement, WECC will require adherence by the WREGIS Director, the WREGIS Committee, the WECC Staff and any persons with access to such Confidential Information, to applicable confidentiality protocols designated by WECC. These documents will be available for review on WECC's website, <http://www.wecc.biz/>.
- h. For purposes of this Agreement, no arbitrator engaged pursuant to Section 24 of this Agreement shall be deemed a third-party so long as such person has agreed in writing to be bound by the confidentiality obligations applicable to WECC under this Agreement and the applicable rules of the American Arbitration Association (AAA).
- i. The obligations of confidentiality in this Agreement shall survive its termination without limitation in duration for so long as information continues to meet the definition of Confidential Information.

(14) *Limited Warranty; Disclaimer of Warranty*

- a. **NEITHER PARTY, EXCEPT AS OTHERWISE PROVIDED IN SECTION 25 (b), WARRANTS THAT THE DATA IN WREGIS IS ACCURATE, CORRECT, COMPLETE, OR CURRENT.**
- b. **SOFTWARE PROGRAMS USED FOR WREGIS AND THE WREGIS WEBSITE ARE PROVIDED "AS IS" TO THE ACCOUNT HOLDER. WECC MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT OR TO THE ADEQUACY OR PERFORMANCE OF SOFTWARE PROGRAMS USED FOR WREGIS AND THE WREGIS WEBSITE; AND, EXCEPT AS SPECIFICALLY WARRANTED IN SECTION 6(b)(iv), WECC HEREBY DISCLAIMS ANY SUCH WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WECC DOES NOT WARRANT THAT THE SOFTWARE PROGRAMS IN WREGIS WILL BE ERROR FREE OR BUG FREE. However, WECC will use commercially reasonable efforts to maintain the accuracy, correctness, completeness, and currentness of the WREGIS software, in accordance with updates and other information provided by the WREGIS software vendor.**

- c. WECC is not responsible for the acts or omissions of parties other than WECC who input Data into WREGIS or from whom Data is obtained for inclusion into WREGIS.
- d. Account Holder is solely responsible for the protection, security, and management of usage and security of its computer network. WECC will not compensate Account Holder for damages incurred to the extent due to security violations of the security of Account Holder's computer network, nor shall Account Holder make deductions or set offs of any kind for Fees due to WECC resulting from security violations of Account Holder's computer network.
- e. WECC will have no liability for any claims for intellectual property infringement, except for claims due to its own actions, but will flow down any rights it may have to indemnity that it receives by virtue of its contract with APX, Inc .

(15) *Disclaimer of Responsibility for Message Boards and Links*

- a. WREGIS will have the capability to host message boards (Boards) on the area of the WREGIS Website open to the public. **WECC IS NOT RESPONSIBLE FOR ANY MATERIAL POSTED BY ANY PARTY OTHER THAN WECC IN ANY MESSAGE BOARD, BULLETIN BOARD, CHAT ROOM OR IN ANY OTHER FORUM AT WREGIS (TOGETHER, THE "BOARDS")**. WREGIS is merely providing access to the Boards for informational purposes. The Boards are not to be used for commercial transactions. Account Holders agree that all commercial transactions involving Certificates will take place outside of WREGIS.
- b. In using the Boards, the Account Holder will not post, upload, transmit, distribute, or otherwise publish on the Boards any material that is: libelous, defamatory, obscene, abusive, pornographic, threatening, or an invasion of privacy; or an infringement of intellectual property rights, including, but not limited to, copyrights and trademarks, of any person or entity; or material that is illegal in any way or advocates illegal activity; or a message posted by a user impersonating another; or personal information such as messages which identify social security numbers, account numbers, addresses, or employer references; or chain letters of any kind; or any advertisement or solicitation of funds, goods, or services. Account Holder agrees to limit the subject matter posted, uploaded, etc. to information directly related to WREGIS Certificates. WECC reserves the right to monitor and delete any postings deemed inconsistent with its policies, this Agreement or the Operating Rules. WECC also reserves the right, at its discretion, to terminate access by any user of the Boards who

violates any of the Agreement or Operating Rules. Although WECC will make reasonable efforts to monitor materials in Boards, in no event does it assume any particular obligation to do so or assume liability for failing either to monitor the Boards or to remove specific material.

- c. WECC makes no claim or representation regarding, and accepts no responsibility for, the quality, content, nature, or reliability of sites accessible by hyperlink from the WREGIS Website, or sites linking to the WREGIS Website. The linked sites are not under the control of WECC and WECC is not responsible for the content of any linked site or any link contained in a linked site, or any review, changes, or updates to such sites. The inclusion of any link does not imply affiliation, endorsement, or adoption by WECC or WREGIS of any information contained therein. When leaving the WREGIS Website, Account Holder understands that WREGIS' terms and policies do not govern the accessed website, and Account Holder will review the applicable terms and policies, including privacy and data-gathering practices, of that website.

(16) Limitation of Liability; Remedies

- a. **NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR DIRECT, GENERAL, SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, OR OTHER INDIRECT DAMAGES REGARDLESS OF CAUSE.**
- b. **EACH PARTY SHALL BE ENTITLED TO SEEK SPECIFIC PERFORMANCE OF THIS AGREEMENT.**

(17) Passwords

Account Holder agrees to assume sole responsibility for the security of any passwords issued by WREGIS to Account Holder for accessing WREGIS. Account Holder shall restrict and control the use, copying, and security of its username and password to WREGIS among Account Holder's employees and agents and, to the extent reasonably within its control, prevent access to WREGIS except by those permitted to have access according to this Agreement. Each Party agrees to immediately notify the other Party of any suspected unauthorized use of Account Holder's password(s), account, or any other suspected breach of security.

(18) Viruses

WECC shall take reasonable efforts to protect WREGIS from being infected by viruses, including supplying virus protection software. However, WECC assumes no responsibility, and shall not be liable for viruses that may infect Account Holder's equipment or other property on account of Account Holder's access to use of any information or the use of WREGIS.

(19) No Assignment, Transfer, or Encumbrance by Account Holder

Neither this Agreement nor any rights under this Agreement may be assigned, sublicensed, encumbered, pledged, mortgaged, or otherwise transferred by Account Holder, in whole or in part, whether voluntary, or by operation of law, without the express prior written consent of WECC, which consent shall not be unreasonably withheld.

(20) Force Majeure

Neither Party shall be deemed to have breached any provision of this Agreement, Operating Rules, Interface Control Documents, or other applicable agreements or protocols related to WREGIS as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, terrorism, fires, floods, riots, embargoes, transportation contingencies, fuel shortages, interruptions in third-party telecommunications, or Internet equipment or service, other catastrophes, or any other occurrences which are beyond the claiming Party's reasonable control and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided.

(21) Default; Remedies; Nonwaiver of Default

- a. **Default.** The occurrence of any of the following shall be considered a "Default":
 - (i) Account Holder has failed or refused to abide by the Operating Rules or the Interface Control Documents or failed or refused to perform any of its material duties or obligations under this Agreement, other than those set forth below in Sections 21(a)(ii), (a)(iii), (a)(iv), (a)(v), and (a)(vi), which default is not substantially cured within 15 days after written notice is given to Account Holder specifying such default; provided however that if the nature of Account Holder's default is such that more than 15 days are

reasonably required to cure, then such default shall be deemed to have been cured if Account Holder commences such performance within said 15 day period and thereafter diligently completes the required action within a reasonable time thereafter.

- (ii) Account Holder fails to pay any of the Fees or other charges due to WREGIS within 90 days of their due date.
 - (iii) Account Holder, its employees, agents, or contractors alter, tamper with, intentionally damage, or destroy (1) WREGIS, the WREGIS Website, or WREGIS Software or any portion thereof, or (2) the Data, Output, or other Confidential Information of other users of WREGIS.
 - (iv) Account Holder uses WREGIS in any manner that, directly or indirectly, violates any law, rule, code, or regulation or aids any unlawful act or undertaking.
 - (v) All or substantially all of Account Holder's assets are attached or levied under execution (and Account Holder does not discharge the same within 60 days thereafter); a petition in bankruptcy, insolvency, or for reorganization or arrangement is filed by or against Account Holder (and Account Holder fails to secure a stay or discharge thereof within 60 days thereafter); Account Holder is insolvent and unable to pay its debts as they become due; Account Holder makes a general assignment for the benefit of creditors; Account Holder takes the benefit of any insolvency action or law; the appointment of a receiver or trustee in bankruptcy for Account Holder or its assets if such receivership has not been vacated or set aside within 30 days thereafter; or, dissolution or termination of existence of Account Holder if Account Holder is not a natural person.
 - (vi) Knowingly, intentionally, or with willful ignorance, falsifying or misrepresenting any Output or Data input into WREGIS by Account Holder as required in Section 3(c).
- b. In addition to the defaults described above, the Parties agree that if Account Holder receives written notice of a violation of the performance of any particular material term or condition of this Agreement three or more times during any 12-month period, regardless of whether such violations are ultimately cured, then such conduct shall, at WECC's option, represent a separate Default.
- c. **Remedies.** Upon the occurrence of any Default, the Parties shall have the following rights and remedies, in addition to those stated elsewhere in

this Agreement and those allowed by law or in equity, any one or more of which may be exercised without further notice to Defaulting Party:

- (i) If any of the items enumerated in section (a) occurs, Account Holder is in default and WECC may suspend Account Holder's access to WREGIS, upon giving 15 days written and/or electronic notice to Account Holder. If there is a dispute regarding the occurrence of a default, the Parties shall follow the provisions of Section 24 (Dispute Resolution) to settle the matter. WECC, in its sole discretion, may reinstate an Account Holder's access to WREGIS after the account has been suspended for Account Holder's Default, upon a determination that the problem that led to the Account Holder's suspension has been satisfactorily resolved and payment made for all fees and late charges (sanctions) due and owing. There is no limit on the amount of time that WECC may suspend an Account. If the Account Holder passed the date for his/her Annual Registration Update while in suspension, the Account Holder must update Registration Data before all permissions will be reinstated by the WREGIS Director.
 - (ii) If a Party is in Default, the Party not in Default may terminate this Agreement as provided in Section 10 (Term and Termination).
 - (iii) Upon termination of the use of WREGIS, Account Holder shall be obligated to pay to WECC all monies due to WECC, which shall include any interest and late fees due hereunder.
- d. **Nonwaiver of Default by accepting partial payment.** WECC's receipt of less than the full amount of Fees due shall not be construed to be a waiver of default but shall be construed as a payment on account then due, nor shall any statement on Account Holder's check or any letter accompanying Account Holder's check be deemed an accord and satisfaction or a waiver of default.

(22) Waiver

No waiver of any provision, condition, requirement, Default, or breach of this Agreement will be effective unless set forth in a written instrument executed by the Party granting the waiver. Any such waiver will be effective only in the specific instance and for the specific purpose for which it is given and will not be deemed a waiver of any other provision or of the same Default or breach upon any recurrence. No failure to exercise and no delay in exercising any right (including without limitation any remedy available to a Party) under this Agreement will operate as a waiver of such right, nor will any single or partial

exercise of any right preclude any other or further exercise of that right or any other right.

(23) Governing Law

Except for any state agency or governmental entity, Account Holders that are prohibited from using any other state's laws than their own (in which case their state law without regard to its rules on conflicts of laws shall be used), or in the case of a federal government Account Holder federal law shall apply, this Agreement shall be governed by the laws of the State of Utah without regard to its rules on conflicts of laws. Unless expressly preempted by the laws of the United States of America, the Parties expressly agree that the Uniform Computer Information Transactions Act shall not apply to this Agreement.

(24) Dispute Resolution

In the event of a dispute, controversy, or claim raised or asserted by the Account Holder, the Parties shall follow the following dispute resolution procedures.

- a. **FIRST STEP.** Account Holder and the WREGIS Director shall first attempt in good faith to resolve the dispute by informal oral and/or written discussion(s). The Account Holder shall identify the issues and the relief sought.
- b. **SECOND STEP.** If the Parties cannot resolve the dispute at the First Step and the Account Holder wishes to further pursue the matter, then Account Holder shall set forth the dispute in a writing entitled "Notice of Dispute" and send it, together with any supporting evidence, to the WREGIS Director. The Notice of Dispute shall in good faith describe the issue(s) in the dispute, the legal authority or other basis for the Account Holder's position, the evidence that supports the Party's position, and the remedy sought. The WREGIS Director (or designee) shall review the written dispute and confer with the appropriate Account Holder, and WECC to review and consider the dispute in good faith. The WREGIS Director (or designee) shall issue to the Parties a good faith written recommended resolution of the dispute within 15 business days after receipt of the Account Holder's Notice of Dispute. If the issues or evidence are complex, the WREGIS Director may for good cause extend the time for issuance of a recommended resolution by a reasonable amount of time not to exceed 20 calendar days. If the WREGIS Director invokes such an extension, the reason for the extension shall be stated in writing and immediately provided to Account Holder. The written recommendation of the WREGIS Director (or designee) shall include a recommended

resolution of the dispute together with a good faith informal explanation of the reasons for the recommended resolution. Neither Party shall be formally bound by the recommended resolution nor by any written submissions they may make to the WREGIS Director, although such submissions may be entered into evidence at a later dispute resolution process, if any, including arbitration or litigation.

- c. **THIRD STEP.** Should the Account Holder disagree with the WREGIS Director's recommended resolution of the dispute, Account Holder may appeal the matter in writing to the WREGIS Committee by forwarding a written "Notice of Appeal" along with the written materials previously submitted to the WREGIS Director and a copy of the WREGIS Director's written recommended resolution of the dispute. The WREGIS Committee shall consider and decide the dispute as soon as possible at the next committee meeting and issue a written decision thereon to the Account Holder.
- d. **FOURTH STEP.** Except for any state agency or governmental entity Account Holder's for which binding arbitration of disputes is not permitted by law, should the Account Holder disagree with the WREGIS Committee's decision and wish to further pursue the dispute, Account Holder may proceed to arbitration on the terms and conditions set forth below by sending the WREGIS Committee and the WREGIS Director a written Notice of Intent to Arbitrate, as described below, specifying the dispute and the relief sought. The dispute and any related controversy or claim arising out of or relating to these Terms of Use, or the breach thereof, or any other claim or controversy between the Parties, shall then be decided by binding arbitration administered by the AAA under its Commercial Arbitration Rules and Supplementary Procedures for Online Arbitration then in effect. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The Parties shall mutually select one arbitrator with legal expertise in intellectual property, web-based tracking systems, and/or any one area of legal expertise that is substantially involved in the dispute, within 30 days of instituting the arbitration; otherwise the AAA shall select the arbitrator. Any hearings will be held in Salt Lake City, Utah, the Parties hereby waiving any claim or defense that such venue is not convenient or proper. Neither Party may dispute the validity of this Agreement, the Operating Rules, the Interface Control Documents, and/or protocols related to WREGIS. Any request for emergency or injunctive relief may be submitted under the AAA's Optional Rules for Emergency Measures of Protection. The arbitrator shall have no authority to award punitive damages or any other damages other than specific performance, and may not in any event make any ruling, finding or award that does not conform to the terms and conditions of these Terms of Use. Unless required by law or mutually agreed in writing by the Parties, neither Party nor the

arbitrator may disclose the existence or results of any arbitration hereunder.

- e. Prior to initiating arbitration or any other form of legal or equitable proceeding hereunder, the Party seeking to arbitrate or resolve an issue (Demanding Party) shall give the other Party at least 30 days written Notice of Intent to Arbitrate describing the claim with particularity and the amount of the claim as to which it intends to initiate the action together with all supporting documentation available to the Demanding Party.
- f. Each Party shall be responsible for the payment of all of its defense costs associated with the resolution of said dispute whether in arbitration or before a court of law, including but not limited to any filing fees, arbitrator fees, attorney fees, and other costs incurred in such proceeding.
- g. For (i) State agency or governmental entity Account Holders for which binding arbitration of dispute is not permitted by law; or (ii) Account Holders (x) who are Balancing Authorities and are Qualified Reporting Entities acting solely in the capacity of reporting Output on behalf of a Generating Unit that is not owned by the Qualified Reporting Entity (e.g. an independent system operator) and (y) whose tariffs specify a dispute resolution process which governs the dispute; the Account Holder shall send the WREGIS Committee and the WREGIS Director a written Notice of Intent for Resolution, specifying the dispute, the relief sought, and a planned alternative course of action to resolve the dispute other than the binding arbitration process specified in this Agreement.
- h. The Parties agree that neither may bring a claim nor assert a cause of action against the other, in any forum or manner, more than one year after the cause of action accrued, except where the Party could not have reasonably discovered the facts giving rise to the claim within one year.

(25) *Audit; Continuing Duty to Report Errors; Audit Standard*

- a. WECC reserves the right to audit Account Holder's relevant records to verify any information submitted by Account Holder to WECC under this Agreement. This right shall survive for a period of three years after the expiration or termination of this Agreement and Account Holder shall maintain its records in accurate, complete, and readable form for at least that period of time after expiration or termination of this Agreement.
- b. The accuracy of all information provided by Account Holder to WREGIS is of the essence in this Agreement. Account Holder hereby agrees, represents, and warrants that it will use reasonable efforts to ensure that all the information it, its Agents, or its employees provides to WREGIS shall to its knowledge be true, complete, and accurate at the time the information is provided to WREGIS. Should Account Holder discover that

any information provided or that was previously provided to WREGIS is untrue, incomplete, or inaccurate, Account Holder shall immediately notify the WREGIS Director in writing of the particular untrue, incomplete, or inaccurate information and shall provide a true, accurate, and complete update of said information to the best of its ability, as soon as is practical. This shall be an ongoing obligation of Account Holder during the term of this Agreement.

(26) Order of Precedence

Any inconsistency in this Agreement, its attachments, the Operating Rules, the Interface Control Documents, and each of their respective most current effective versions, shall be resolved by giving precedence in the following order:

1. This Agreement;
2. Attachment(s) to this Agreement;
3. Operating Rules; and
4. Interface Control Documents.

(27) Severability

- a. If any provisions of this Agreement, including any provision of this Agreement and its Attachments, Operating Rules, and the Interface Control Documents, is held to be unenforceable, illegal, or in violation of a tariff or legal order of a governmental agency by a court of law or governmental agency with jurisdiction over the matter, then if the essential terms and conditions of the Agreement remain valid, legal and enforceable, such provision shall be deemed severed and shall not affect the validity of the other provisions of this Agreement, including the other provisions of the Attachments, Operating Rules, and the Interface Control Documents which will at all times remain in full force and effect.
- b. (i) Further, notwithstanding any other provision of this Agreement, no provision of this Agreement (including any provision of any Attachment or other agreement incorporated into this Agreement) shall operate to obligate an Account Holder which is:
 - (A) a Balancing Authority, and also

- (B) a Qualified Reporting Entity acting solely in the capacity of reporting Output on behalf of a Generating Unit that is not owned by the Qualified Reporting Entity

to undertake any action which the Account Holder determines to be in violation of the Account Holder's tariff, or of orders imposed upon such Account Holder by the Federal Energy Regulatory Commission ("FERC") or other governing agency/entity with jurisdiction over Balancing Authority-Account Holder.

- (ii) If such Account Holder reasonably believes that any portion of this Agreement might cause or is causing a violation of its tariff or orders imposed by FERC or other governing entity, then Account Holder shall deliver to the WREGIS Director written notice, signed by a senior executive (vice president, president, or person of equivalent capacity), of Account Holder's determination. This notice shall cite the relevant provisions of the Agreement and of the tariff or orders forming the basis of the notice. Upon receipt of this notice, the terms of the Agreement specified in the notice shall be immediately and temporarily suspended as they apply to this Account Holder.
- (iii) If this Agreement's essential terms and conditions are thereby affected and impaired, the Parties shall meet and confer, within three business days of such notice, or as otherwise mutually agreed. At this meeting, which may be by telephone, the Parties shall make good faith efforts to identify a mutually acceptable plan to resolve the issue, so long as its essential terms and conditions may be carried out. The Parties may, for example, develop amendments to the Agreement (and/or incorporated document), or agree to a waiver of the provision (subject to Section 22 [*Waiver*] of the Agreement), explore potential amendments to the tariff, or undertake any other actions to resolve the conflict identified by the Account Holder.
- (iv) In the event that the Parties are unable to reach a resolution or agree on a written plan to include action and timelines, within five business days after the date of the notice, then either Party may terminate this Agreement for convenience pursuant to Section 10 (c) [*Termination for Convenience by Either Party*] herein, except that the terminating Party may, at its option, set the termination date to be effective immediately or for any other time up to 60 days from the date of the notice of termination; and provided further that any provision suspended by the Account Holder's notice will remain suspended through to such termination.
- (v) If the Parties have agreed upon a mutually acceptable written plan pursuant to (iii) above, but one Party reasonably believes that actions

specified in the plan are not being carried out as agreed, then that Party may provide written notice to the other Party. That other Party will have 15 days following the date of the notice within which to demonstrate to the reasonable satisfaction of the first Party that the plan will be carried out as agreed. If the Party serving notice (i.e. the first Party) is not reasonably satisfied within the 15 day period, then either Party may, at its option, terminate the Agreement as provided in the preceding subsection.

(28) Notices

All notices required to be in writing under this Agreement, unless otherwise provided for herein, shall be delivered in person or by first class, registered, or certified mail (postage prepaid), or by overnight courier service to the address of the Party as either Party may specify in writing. Service shall be effective on the earlier of actual receipt or the second business day after the day of mailing (via first class mail). For service of electronic notice, it shall be deemed received on the first business day after said notice was sent to the other Party's e-mail address as designated in writing by such other Party.

(29) Capitalized Terms

Any capitalized terms contained herein that are not otherwise defined herein shall have the meanings as such terms are defined in the WREGIS Operating Rules.

(30) Entire Agreement

This Agreement, including any and all exhibits attached hereto, and the Operating Rules constitute the entire agreement of the Parties and supersede any preprinted or conflicting terms in any other prior or contemporaneous oral or written agreements and any and all other communication.

IN WITNESS WHEREOF, WECC and the Account Holder have each caused this Agreement to be executed by their respective duly authorized representatives as of the date first above written.

WESTERN ELECTRICITY COORDINATING COUNCIL

By: _____ (signature)

Name: _____

Title: _____

(ACCOUNT HOLDER)

By: _____ (signature)

Name: _____

Title: _____

ATTACHMENT 1: Definitions

- a. **Account Holder:** A WREGIS Account Holder is a party that has registered with WREGIS and has established an Account within WREGIS.
- b. **Active Certificates:** An active WREGIS certificate is a certificate that is held in a WREGIS Active Sub-account. Such certificates may be traded, transferred, exported, retired, or reserved at the discretion of the holder of the Active Sub-account or their agent.
- c. **Active Sub-account:** The Active Sub-account is the holding place for all active WREGIS certificates. If the Account Holder has Generating Units associated with the account, or is the designated representative of a Generating Unit owner, its Active Sub-account will be the first point of deposit for any WREGIS certificates created that are associated with the Generating Unit ID number, unless the certificate is subject to a Forward Certificate Transfer. An Active Sub-account may be associated with one or more Generating Units.
- d. **Affiliate:** An Affiliate of an entity is any entity that: (1) is (a) a subsidiary of such entity or (b) any partnership, limited liability company or joint venture or other form of entity which acts commercially in which such entity or any subsidiary thereof is directly or indirectly a partner, member, or venturer; or (2) directly or indirectly controls, is controlled by, or is under common control with such entity, including any limited partnership of which such other entity or any Affiliate thereof is the general partner. For purposes of this Agreement, a ten percent or greater ownership interest shall be deemed to constitute a rebuttable presumption of "control." An entity controlled by or operating as a unit, agency, or subdivision of a local, state, or provincial government or the federal government shall not be considered an Affiliate of any other entity controlled by or operating as a unit, agency, or subdivision of the local, state, or provincial government, or a federal government.
- e. **Agent:** An entity outside of the Account Holder's organization that has been authorized by the Account Holder to act on its behalf within WREGIS.
- f. **Assignment of Registration Rights:** The process by which the owner of a Generating Unit can assign the right to register that Generating Unit in WREGIS to another entity.
- g. **Balancing Authority:** The area operator that is responsible for matching generation and load, for maintaining scheduled interchange with other balancing authority areas, and for maintaining the frequency, in real-time, of

the electric power systems.

- h. Certificate:** The term "Certificate," as used in this document, refers to a WREGIS Certificate. A WREGIS Certificate represents all of the renewable and environmental attributes from one MWh of electricity generation from a renewable energy Generating Unit registered with the WREGIS tracking system or a certificate imported from a Compatible Certificate Tracking System that has been converted to a WREGIS Certificate. WREGIS will create exactly one Certificate per MWh of generation that occurs from a Registered Generating Unit or that is imported from a Compatible Certificate Tracking System. Disaggregation of Certificates is not currently allowed within WREGIS.
- i. Compatible Certificate Tracking System (Compatible Registry and Tracking System):** A Compatible Certificate Tracking System is a generation tracking system that has an operating agreement with WREGIS regarding the Conversion and transfer of certificates between tracking systems pursuant to a protocol developed between the WREGIS Director and the Director of the other tracking system for converting certificates from another tracking system into WREGIS certificates.
- j. Confidential Information.** Information treated as Confidential Information is listed in Section 13. B. Confidential Information does not include information which can be established by written documentation (1) to have been publicly known prior to submittal to WECC; (2) to have become publicly known, without the fault of WECC, subsequent to submittal to WECC; (3) to have been received by WECC at any time from a source other than Account Holder, so long as with respect to information submitted by a third party WECC has no reason to believe that the third party (a) is not lawfully in possession of the information or (b) is in violation of any contractual, legal, or fiduciary obligation to Account Holder with respect to the information; (4) to have been independently developed by employees or agents of WECC without access to or use of such information disclosed by Account Holder or their agents to WECC; (5) is common technical information; and (6) to have been submitted to WECC by the Account Holder for purposes other than those relating to this Agreement and not otherwise protected by a confidentiality obligation.
- k. Conversion:** A process by which certificates from a Compatible Certificate Tracking System are made available for import into WREGIS. The process involves designating the certificate as exported from the Compatible Certificate Tracking System according to the protocol agreed upon jointly by the Director of the Compatible Certificate Tracking System and the WREGIS Director. After such designation is made, the WREGIS Director will issue a corresponding WREGIS Certificate that can be used within WREGIS.

- i. Customer-Sited Distributed Generation:** Distributed generation is a parallel or stand-alone electric Generating Unit generally located in or close to a load center or customer's site (near the point of consumption) and on the customer's side of the meter. The generation produced by the distributed generation Generating Unit is used to provide electricity to the customer for a portion of its load. For WREGIS purposes, these are typically smaller installations such as those located on residential premises.
- m. Data:** Data means all recorded information, including Output and Confidential Information, regardless of form or the media on which it may be recorded that is submitted to WECC and WREGIS pursuant to this Agreement.
- n. Dynamic Data:** Dynamic Data is variable information that is associated with a specific MWh from a registered Generating Unit, such as Certificate serial number or date of generation.
- o. Export Sub-account:** The Export Sub-account is the Account Holder's designated sub-account for Certificates that have been exported out of WREGIS to a Compatible Certificate Tracking System. WREGIS Account Holders may have multiple Export Sub-accounts corresponding to the various compatible tracking systems to which exports are made.
- p. Forward Certificate Transfer:** Normally, the first point of deposit for WREGIS Certificates is the account to which a Generating Unit is associated. With a Forward Certificate Transfer, the Account Holder to which the Generating Unit is registered requests that the Certificates be directly deposited into one of their own Export, Retirement, or Reserve Subaccounts or into another WREGIS Account Holder's Active Subaccount when the Certificates are created. As a result, the first point of deposit for Certificates subject to a Forward Certificate Transfer is their other specified sub-account or the specified Active Sub-account of another Account Holder. After this initial deposit, Certificates subject to Forward Certificate Transfers shall be treated like any other Certificate for all purposes.
- q. Generating Unit:** Any combination of physically connected generators, reactors, boilers, combustion turbines, and other prime movers operated together to produce electric power. When a single facility is electrically interconnected to the utility utilizing a single meter, but represents multiple Generating Units of the same renewable generating technology and fuel type, such facility may be registered and reported as a single Generating Unit within WREGIS.
- r. Generator Owner:** The persons or legal entity that owns Generating Unit(s).

- s. **Interface Control Document (ICD):** An Interface Control Document contains the protocol for collecting and transferring data from other computer systems to the WREGIS application for the purposes of integrating data between the two systems in question. The Interface Control Document identifies the data formats, guidelines and processes that must be met in order for the data to be effectively transferred and accepted. Examples of Interface Control Documents that will be used in WREGIS are the Qualified Reporting Entity ICD (found in Appendix D of the Operating Rules), State, Provincial and Voluntary Program ICD (found in Appendix C of the Operating Rules) and the WECC Billing System ICD.
- t. **Output.** Output shall mean reported renewable generation data from a Registered Generating Unit contained in standardized data files delivered to WREGIS by Qualified Reporting Entities, or by Account Holders, or by designated reporting entities using protocols described in an Interface Control Document, or a Self-Reporting Interface.
- u. **Person:** A person includes any natural person, firm, association, organization, partnership, corporation, limited liability company, district, province, county, city and state, and any of the agencies and political subdivisions thereof.
- v. **Qualified Reporting Entity:** An organization providing renewable Output on a unit-specific basis for the purpose of creating WREGIS Certificates that has met the Qualified Reporting Entity Guidelines established in the WREGIS Operating Rules and agreed to in the ICD.
- w. **Registered Generating Unit:** A Generating Unit that has registered its facility with the WREGIS Director
- x. **Registration:** The act of filling out the forms, providing required documents and paying Fees necessary to establish an Account or register a Generating Unit in WREGIS. Such forms may be obtained from the WREGIS Director.
- y. **Renewables Portfolio Standard (RPS):** Generally, a Renewables Portfolio Standard is a legislative or administrative requirement on electrical utilities, wholesale markets, or load-serving entities in a jurisdiction to include a designated percentage of renewable electricity in their generation/retail portfolio.
- z. **Retirement Sub-account:** A Retirement Sub-account is used as a repository for WREGIS Certificates that the Account Holder wants to designate as retired and remove from circulation. Once a Certificate has been transferred into a WREGIS Retirement Sub-account, it cannot be transferred again to any other account or Subaccount.

- aa. Retirement of Certificates:** Retirement of Certificates is an action taken to remove a Certificate from circulation within WREGIS. The WREGIS Account Holder may initiate retirement for Certificates in its own account(s) or the WREGIS Director can forcibly retire any Active Certificates for cause. Retirement is effectuated by transferring Certificates into a Retirement Sub-account.
- bb. Self-Reporting Interface:** A Generating Unit Self-Reporting input screen within the WREGIS application which allows Self-Reporting Generating Units to manually enter their Generating Unit output. The protocol for entering data via Self-Reporting Interface will be documented in the Interface Control Document for Reporting Entities (Appendix D of the Operating Rules).
- cc. Standing Order Transfer:** A recurring, automatic transfer of WREGIS certificates from an Account Holder's Active Sub-account to one of their other sub-accounts, or to an Active Sub-account held by a different Account Holder.
- dd. Static Data:** Static data is distinct from Dynamic Data and describes the attributes of the Generating Unit that do not change based on actual operation. Static information is entered at Registration and generally includes information related to the characteristics of the generation facility such as technology type, ownership or location. See Appendix B-1 and B-2 of the Operating Rules for a list of WREGIS Static Data Fields.
- ee. WECC:** The Western Electricity Coordinating Council (WECC) is a regional forum for coordinating and promoting regional electric service reliability in Western Canada and the Western United States. Its service territory extends from Canada to Mexico including the provinces of Alberta and British Columbia, the northern portion of Baja California, Mexico, and all or portions of the 14 western states in between. The States that are fully included in WECC are: Washington, Oregon, California, Nevada, Idaho, Utah, New Mexico, Arizona, Colorado, Wyoming, and Montana. Texas, South Dakota, and Nebraska are partially included within WECC. A map of WECC can be found at http://www.wecc.biz/documents/constant/nerc_int.pdf. All references in the Agreement to WECC as a "Party" to this Agreement shall also be deemed to apply to any duly-selected successor in interest to WECC, if any.
- ff. WECC Staff:** The WECC Staff means those employees of WECC, including personnel hired by WECC or on behalf of WREGIS on a contractual basis, designated as responsible for the administration of WREGIS.

- gg. Western Interconnection:** The interconnected electrical systems that encompass the region of the Western Electricity Coordinating Council of the North American Electric Reliability Council. The region extends from Canada to Mexico. It includes the provinces of Alberta and British Columbia, the northern portion of Baja California (Mexico), and all or portions of the 14 western states in between.
- hh. WREGIS Director:** The WREGIS Director is the individual hired by WECC with the authority to oversee the administration and implementation of WREGIS, and its Operating Rules and Interface Control Document on behalf of WECC.
- ii. WREGIS Software:** Certain software comprising part of WREGIS, including related source code, interface, and software applications but not hardware.
- jj. WREGIS Website:** The related collection of web pages and interfaces associated with WREGIS that is accessible via the Internet.

From: Carvalho. Elisa
Sent: Monday, May 20, 2013 4:30 PM
To: Board of Supervisors-Members
Cc: Hudson. Bradley; Whisenhunt. John; Lee. Cyndi; Gill. Nav; Ferguson. Britt; Leonard. Robert; Philleo. Paul; Zazzi. Karen; Israel. Timothy
Subject: Item 29 - May 21st Board Agenda

One of the Supervisors asked if any information was left out of the Fiscal Impact section of the Board Letter.

The last sentence of the paragraph in the Fiscal Impact section should read:
Sufficient funds are included in the Solid Waste Enterprise Fiscal Year 2012-13 Adopted Budget, and will be included in subsequent budget years.

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