

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 Energy and Capacity Under Long Term Contracts to the California Department of Water Resources	)	

*JOINT OFFER OF SETTLEMENT  
TO AMEND  
THE 2012 DYNEGY-CPUC SETTLEMENT AGREEMENT*

This Joint Offer of Settlement to Amend the 2012 Dynegy-CPUC Settlement Agreement (“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 Commission’s Rules of Practice and Procedure.<sup>1</sup> The Parties respectfully request that the Commission (“FERC” or “Commission”) approve this Joint Offer of Settlement and the First Amendment to the Long-Term Contract Settlement and Release of Claims Agreement being submitted herewith (“First Amendment”).

The Long-Term Contract Settlement and Release of Claims Agreement (“Long-Term Contract Settlement Agreement”) resolved all claims in the above-captioned consolidated

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<sup>1</sup> 18 C.F.R. § 385.602.

proceeding (“EL02-60/62 Proceeding”) that are related to the March 2, 2001 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> The Long-Term Settlement Agreement was approved by the Commission on November 5, 2012, and became effective on December 5, 2012.<sup>3</sup>

#### *JOINT OFFER OF SETTLEMENT*

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

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

#### *GENERAL OVERVIEW*

The Long-Term Contract Settlement Agreement resolved all claims EL02-60/62 Proceeding related to Dynergy Long-Term Contract. 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. EL02-60-000 and the CEOB complaint initiating Docket No. EL02-62-000), and the Commission consolidated the

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<sup>2</sup> Except as otherwise defined in this Joint Offer of Settlement, the capitalized terms used herein have the meaning set forth in the First Amendment. This Joint Offer of Settlement is not intended to, and does not, alter any of the provisions of the First Amendment. In the event of an inconsistency between this Joint Offer of Settlement and the First Amendment, the First Amendment shall control.

<sup>3</sup> *Pub. Utils. Comm’n of Cal. v. Sellers of Long Term Contracts to the Cal. Dep’t of Water Res.*, 141 FERC ¶ 61,092 (2012) (the “Settlement Approval Order”).

proceedings.<sup>4</sup> 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, and requested abrogation or modification of those contracts. After a two-week trial in 2003, and a Commission order rejecting the complaints,<sup>5</sup> various appeals ensued. The Commission approved the Long-Term Contract Settlement Agreement on November 5, 2012.<sup>6</sup>

Under the Long-Term Settlement Agreement, in connection with the settlement and release of claims in the EL02-60/62 Proceeding related to the Dynegy Long-Term Contract by the CPUC, the Dynegy Parties agreed among other things to cause NRG Energy, Inc. (“NRG”)<sup>7</sup> (either directly or through affiliates) to undertake over a four- to six-year period certain investments in electric vehicle charging infrastructure (the “EV Charging Station Project”).<sup>8</sup> Further, the settlement requires NRG’s aggregate investment in the EV Charging Station Project to be one-hundred two million, five-hundred thousand dollars (\$102,500,000) (the “Aggregate Investment Amount”) (not including an additional \$20 million payment that was completed in

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<sup>4</sup> *Pub. Utils. Comm’n of Cal. v. Sellers of Long Term Contracts to the Cal. Dep’t of Water Res*, 99 FERC ¶ 61,087 (2002) (“Hearing Order”). The CEOB has been inactive since 2008 and was no longer in existence as of the date of the filing of the original Joint Offer of Settlement submitted by Dynegy Parties and CPUC on April 27, 2012 (the “Original Joint Offer”). In view of the CEOB’s inactive status and the fact that the CPUC is a party to the Long-Term Contract Settlement Agreement, the Commission’s approval of the Long-Term Contract Settlement Agreement constituted Commission dismissal of both Docket No. EL02-60-000 and Docket No. EL02-62-000 as they relate to the Dynegy Long-Term Contract. *See* Settlement Approval Order, 141 FERC ¶ 61,092 at P 13.

<sup>5</sup> *See* Hearing Order, 99 FERC ¶ 61,087.

<sup>6</sup> *See supra* note 3 (citing Settlement Approval Order).

<sup>7</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. 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.

<sup>8</sup> *See, e.g.*, Original Joint Offer at pp 4-5.

2013). Finally, under the Long-Term Contract Settlement Agreement, NRG agreed to guaranty the Dynegy Parties' timely performance of their obligations under the Long-Term Contract Settlement Agreement (the "NRG Guaranty").<sup>9</sup>

Implementation of the EV Charging Station Project began following receipt of the Settlement Approval Order and is currently in the fourth quarter of the Third Settlement Year. In the First Amendment the Parties are proposing to make certain technical amendments and supplemental refinements to the EV Charging Station Project for the purpose of increasing the public benefits of the Long-Term Contract Settlement Agreement, preserving market balance for all electric vehicle charging market participants, and removing impediments to the implementation of the EV Charging Station Project identified by the Parties during the first two and one-half years of its implementation. These technical amendments and refinements include: (i) expanding the geographical areas in which NRG has discretion to install additional Freedom Stations above the Minimum Freedom Station Amount if there is a Freedom Station Savings Event (*i.e.*, actual costs are less than that allocated for such installation under the Long-Term Contract Settlement Agreement); (ii) eliminating the requirement that subscriptions be on a one subscriber per one Make-Ready Stub basis, thereby increasing the rights of subscribers to share the use of Make-Ready Stubs installed by NRG under the EV Charging Station Project; (iii) providing a limited exception to the request for proposal process when the host of a Make-Readies Site requests a particular contractor or vendor for installations at its site(s); (iv) clarifying the conditions under which NRG may accept contributions from hosts towards installation of Make-Ready Stubs and Make-Readies Arrays; (v) eliminating NRG's exclusive right to install EVSEs in the Make-Ready Stubs during the initial eighteen (18) month period,

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<sup>9</sup> *See id.* at 3-4.

and instead requiring that Host be permitted to terminate its relationship with NRG and any charging station subscription without penalty upon no more than thirty (30) days prior written notice; (vi) clarifying that NRG shall not be required as part of its annual and quarterly reporting obligations to report the number of subscribers for Make-Readies Arrays or usage data associated with chargers at any Make-Ready Stubs; (vii) expanding the definition of “Public Interest Site” to include all sites owned or controlled by governmental entities; and (viii) permitting the Parties to make further changes to the Long-Term Contract Settlement Agreement without the need for further approval from the Commission provided that such changes do not materially reduce NRG’s aggregate investment in the Electric Charging Station Project below the Aggregate Investment Amount.

The First Amendment makes no changes to the financial consideration, waivers, or releases supporting the Long-Term Contract Settlement Agreement and does not otherwise enlarge any obligation or duty, create any new obligation or duty for, or affect in any way any release received by or waiver or benefit in favor of, any of the Parties to the Long-Term Contract Settlement Agreement. The First Amendment makes no changes to, and has no effect on, NRG’s obligation to invest the Aggregate Investment Amount or its obligation to provide the NRG Guaranty.

*I. REQUEST FOR APPROVAL OF SETTLEMENT*

The First Amendment has been agreed to by the Parties for the purpose of increasing the public benefits of the Long-Term Contract Settlement Agreement, preserving market balance for all electric vehicle charging market participants, and removing impediments to the implementation of the EV Charging Station Project identified by the Parties during the first two and one-half years of its implementation. The First Amendment makes no changes to and has no

effect on, (i) the financial consideration, waivers, or releases supporting the Long-Term Contract Settlement Agreement, and (ii) NRG's obligation to invest the Aggregate Investment Amount or its obligation to provide the NRG Guaranty. Further, the First Amendment does not enlarge any obligation or duty, create any new obligation or duty for, or affect in any way any release received by or waiver or benefit in favor of, any of the Parties to the Long-Term Contract Settlement Agreement.

For all of these reasons, the Dynegy Parties and the CPUC respectfully request that the Commission approve this Joint Offer of Settlement and the First Amendment, 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.<sup>10</sup> Initial comments may be filed not later than twenty days after the filing of this Joint Offer of Settlement (*i.e.*, November 22, 2015) and reply comments may be filed not later than thirty days after the filing of this Joint Offer of Settlement (*i.e.*, December 2, 2015).

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<sup>10</sup> 18 C.F.R. §§ 385.602(d)(2), (f).

Respectfully submitted,

/s/  
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Dated: November 2, 2015

/s/  
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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 2nd day of November 2015.

/s/ Cynthia A. Lewis

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## 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 Energy and Capacity Under 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 Commission’s Rules of Practice and Procedure,<sup>1</sup> and as part of the Parties’ Joint Offer of Settlement, requesting that the Commission (“FERC” or “Commission”) approve their First Amendment (“First Amendment”) to the Long-Term Contract Settlement and Release of Claims Agreement (“Long-Term Contract Settlement Agreement”).<sup>2</sup>

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<sup>1</sup> See 18 C.F.R. § 385.602.

<sup>2</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). Except as otherwise defined in the Joint Offer of Settlement, the capitalized terms used herein have the meaning set forth in the First Amendment. This Explanatory Statement is not intended to, and does not, alter any of the provisions of the First Amendment. In the event of an inconsistency between this Explanatory Statement and the First Amendment, the First Amendment shall control.

## I. GENERAL OVERVIEW OF THE FIRST AMENDMENT

The Long-Term Contract Settlement Agreement resolved 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 (“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). The Long-Term Contract Settlement Agreement was approved by the Commission on November 5, 2012, and became effective on December 5, 2012.<sup>3</sup>

Under the Long-Term Contract Settlement Agreement, in connection with the settlement and release of claims in the EL02-60/62 Proceeding related to the Dynergy Long-Term Contract by the CPUC,<sup>4</sup> the Dynergy Parties agreed among other things to cause NRG Energy, Inc. (“NRG”)<sup>5</sup> (either directly or through affiliates) to undertake over a four- to six-year period certain investments in electric vehicle charging infrastructure (the “EV Charging Station

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<sup>3</sup> *Pub. Utils. Comm’n of Cal. v. Sellers of Long Term Contracts to the Cal. Dep’t of Water Res.*, 141 FERC ¶ 61,092 (2012) (the “Settlement Approval Order”).

<sup>4</sup> The CEOB has been inactive since 2008 and was no longer in existence as of the date of the filing of the original Joint Offer of Settlement submitted by Dynergy Parties and CPUC on April 27, 2012 (the “Original Joint Offer”). In view of the CEOB’s inactive status and the fact that the CPUC is a party to the Long-Term Contract Settlement Agreement, the Commission’s approval of the Long-Term Contract Settlement Agreement constituted Commission dismissal of both Docket No. EL02-60-000 and Docket No. EL02-62-000 as they relate to the Dynergy Long-Term Contract. *See* Settlement Approval Order, 141 FERC ¶ 61,092 at P 13.

<sup>5</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. 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.

Project”).<sup>6</sup> Further, the settlement requires NRG’s aggregate investment in the EV Charging Station Project to be one-hundred two million, five-hundred thousand dollars (\$102,500,000) (the “Aggregate Investment Amount”) (not including an additional \$20 million payment that was completed in 2013). Finally, under the Long-Term Contract Settlement Agreement NRG agreed to guaranty the Dynegy Parties’ timely performance of their obligations under the Long-Term Contract Settlement Agreement (the “NRG Guaranty”).<sup>7</sup>

Implementation of the EV Charging Station Project began following receipt of the Settlement Approval Order and is currently in the fourth quarter of the Third Settlement Year. In the First Amendment the Parties are proposing to make certain technical amendments and supplemental refinements to the EV Charging Station Project for the purpose of increasing the public benefits of the Long-Term Contract Settlement Agreement, preserving market balance for all electric vehicle charging market participants, and removing impediments to the implementation of the EV Charging Station Project identified by the Parties during the first two and one-half years of its implementation. These technical amendments and refinements include: (i) expanding the geographical areas in which NRG has discretion to install additional Freedom Stations above the Minimum Freedom Station Amount if there is a Freedom Station Savings Event (*i.e.*, actual costs are less than that allocated for such installation under the Long-Term Contract Settlement Agreement); (ii) eliminating the requirement that subscriptions be on a one subscriber per one Make-Ready Stub basis, thereby increasing the rights of subscribers to share the use of Make-Ready Stubs installed by NRG under the EV Charging Station Project; (iii)

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<sup>6</sup> See, *e.g.*, Joint Offer of Settlement submitted by Dynegy Parties and CPUC on April 27, 2012 (the “Original Joint Offer”) at pp. 4-5.

<sup>7</sup> See *id.* at 3-4.

providing a limited exception to the request for proposal process when the host of a Make-Readies Site requests a particular contractor or vendor for installations at its site(s); (iv) clarifying the conditions under which NRG may accept contributions from hosts towards installation of Make-Ready Stubs and Make-Readies Arrays; (v) eliminating NRG's exclusive right to install EVSEs in the Make-Ready Stubs during the initial eighteen (18) month period, and instead requiring that Host be permitted to terminate its relationship with NRG and any charging station subscription without penalty upon no more than thirty (30) days prior written notice; (vi) clarifying that NRG shall not be required as part of its annual and quarterly reporting obligations to report the number of subscribers for Make-Readies Arrays or usage data associated with chargers at any Make-Ready Stubs; (vii) expanding the definition of "Public Interest Site" to include all sites owned or controlled by governmental entities; and (viii) permitting the Parties to make further changes to the Long-Term Contract Settlement Agreement without the need for further approval from the Commission provided that such changes do not materially reduce NRG's aggregate investment in the Electric Charging Station Project below the Aggregate Investment Amount.

The First Amendment makes no changes to the financial consideration, waivers, or releases supporting the Long-Term Contract Settlement Agreement and does not otherwise enlarge any obligation or duty, create any new obligation or duty for, or affect in any way any release received by or waiver or benefit in favor of, any of the Parties to the Long-Term Contract Settlement Agreement. The First Amendment makes no changes to, and has no effect on, NRG's obligation to invest the Aggregate Investment Amount or its obligation to provide the NRG Guaranty.

## 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, are 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 California Electricity Oversight Board (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, are 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.<sup>8</sup>

After a two-week trial in 2003 and a Commission order rejecting the complaints, *id.*, various appeals ensued.<sup>9</sup> The Commission approved the Long-Term Contract Settlement Agreement on November 5, 2012.<sup>10</sup>

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<sup>8</sup> *Pub. Utils. Comm’n of Cal. v. Sellers of Long Term Contracts to the Cal. Dept’t of Res.*, 99 FERC ¶ 61,087 (2002).

<sup>9</sup> *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.*, 554 U.S. 931 (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).

<sup>10</sup> *See supra* note 3 (citing Settlement Approval Order).

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

Because the Parties wished to improve the implementation of the EV Charging Project under the Long-Term Contract Settlement Agreement by making certain technical amendments and refinements to the Long-Term Contract Settlement Agreement's specifications for the EV Charging Project, they entered into the First Amendment on October 20, 2015. The principal terms of the First Amendment are briefly described below, with reference to the sections of the First Amendment that contain them.

#### *A. Public Charging Ecosystem (Freedom Stations)<sup>11</sup>*

The First Amendment expands the scope of the geographical areas in which NRG has the discretion to install additional Freedom Stations above the Minimum Freedom Station Count if there is a Freedom Station Savings Event (*i.e.*, actual costs are less than that allocated for installation of the Minimum Freedom Station Amount under the Long-Term Contract Settlement Agreement). However, under the First Amendment the geographical distribution of such excess Freedom Stations must reasonably be expected to benefit Southern California Edison Company, San Diego Gas & Electric Company and Pacific Gas and Electric Company ratepayers and at least twenty percent of any such excess must be installed in low income areas. *See Section (A)(1).*

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<sup>11</sup> The EV Charging Station Project provides for the installation of a Public Charging Ecosystem consisting of at least two-hundred fast charging stations (*i.e.*, Freedom Stations) that will be available for use by the general public. *See* Original Joint Offer at p 4.

*B. Make-Ready Stubs and Make-Readies Arrays<sup>12</sup>*

The First Amendment (i) permits subscribers to share Make-Ready Stubs, (ii) clarifies the conditions under which NRG may accept contributions from host sites, (iii) clarifies the conditions under which NRG may use vendors and contractors requested by the host, (iv) eliminates NRG’s exclusivity period for installing EVSEs in the Make-Ready Stubs and requires that Host may terminate its NRG relationship at any time without penalty; and (v) expands the definition of “Public Interest Site” to include all sites owned or controlled by governmental entities. *See Sections B(1)-(6) and C(3).*

*C. Annual and Quarterly Reports*

The First Amendment provides that NRG shall not be required to report the number of subscribers for Make-Readies Arrays or usage data associated with chargers at any Make-Ready Stubs in either annual or quarterly reports required to be made by it under the Long-Term Contract Settlement Agreement. *See Section B(7).*

*D. Technical Amendments*

The First Amendment provides for the Parties to make further changes to the Long-Term Contract Settlement Agreement without the need for further approval from the Commission provided that such changes do not materially reduce NRG’s aggregate investment in the EV Charging Station Project below the Aggregate Investment Amount. *See Section D(2).*

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<sup>12</sup> The EV Charging Station Project provides for the installation of infrastructure (*i.e.*, Make-Ready Stubs and Make-Readies Arrays) to support the ten-thousand privately-owned electric vehicle chargers at a total of one-thousand multi-family, workplace and public interest sites. *See Original Joint Offer at p 4.* Each Make-Ready Stub supports one electric vehicle charger. A Make-Readies Array is a group of connected Make-Ready Stubs, together with the Electric Service Infrastructure necessary to support the arrays’s Make-Ready Stubs.



First Amendment  
to the  
Long-Term Contract Settlement Agreement

[See attached.]

**FIRST AMENDMENT  
TO  
LONG-TERM CONTRACT SETTLEMENT  
AND RELEASE OF CLAIMS AGREEMENT**

This FIRST AMENDMENT (this "Amendment"), effective as of October 27, 2015, amends that LONG-TERM CONTRACT SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT dated as of April 27, 2012 (as amended from time to time, the "Settlement Agreement") by and among the California Public Utilities Commission ("CPUC"), on the one hand, 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"), on the other hand. All capitalized terms not defined herein shall have the meanings given to them in the Settlement Agreement.

**RECITALS**

A. The Settlement Agreement resolved claims between the CPUC and Dynegy Parties related to the rates, terms and conditions of the March 2, 2001 System Contingent Capacity Purchase and Sales Agreement ("Dynegy Long-Term Contract") between the California Department of Water Resources and Dynegy Power Marketing Inc.

B. Subsequent to the FERC's approval of the Settlement Agreement on November 5, 2012, NRG EV Services LLC began implementing the provisions of the settlement and is currently in the Second Settlement Year, Quarter Four.

C. In order to increase the public benefits of the Settlement Agreement, preserve the balance for market competitors, and remove impediments to implementation of the EV charging infrastructure, the Parties have agreed to amend and supplement the terms of the Settlement Agreement.

D. The parties desire to amend the Settlement Agreement as set forth herein. Except as specifically modified and amended herein, all of the terms and conditions of the Settlement Agreement remain in full force and effect.

**A. *Public Charging Ecosystem (Freedom Stations)***

1. The last paragraph of Section 4(a)(iv)(1) of the Settlement Agreement is hereby amended and restated as follows:

*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 geographic area in the State of California; provided that the following conditions are met: (1) the geographical distribution of such excess Freedom Stations can be reasonably expected to benefit SCE, SDG&E and PG&E ratepayers; and (2) at least twenty percent (20%) of such excess

Freedom Stations are 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 the State of California.

**B. Make-Readies**

1. Section 4(c)(i) of the Settlement Agreement is hereby amended and restated as follows:
  - (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").
2. Section 4(c)(ii)(2)(A) of the Settlement Agreement is hereby amended and restated 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 described in Section 4(a)(ii)(1)-(4). 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.
3. Section 4(c)(ii)(2)(C) of the Settlement Agreement is hereby amended and restated as follows:
  - (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; *provided* that in order to qualify for the placement of more than ten (10) Make-Readies Stubs, a Make-Readies Site must have more than one (1) building and parking lot and/or parking garage; in order to qualify for more than twenty (20) Make-Readies Stubs, a Make-Readies Site must have more than two (2) buildings and parking lots and/or parking garages; in order to qualify for more than thirty (30) Make-Readies Stubs, a Make-Readies Site must have more than three (3) buildings and parking lots and/or parking garages. In each case, the applicable parking lot(s) and/or garage(s) must have more than ten (10) parking spaces.
4. Section 4(c)(v)(2) of the Settlement Agreement is hereby amended and restated as follows:
  - (2) Start-Up Period. The period from the date of the completion of the first Make-Ready Stub at a Make-Readies Array extending for a period of eighteen (18) months thereafter is referred to as the "Start-Up Period".

5. The following paragraph is hereby appended to the end of Section 4(c)(vi)(2)(A) of the Settlement Agreement:

*Provided that*, for up to five percent (5%) of the Make-Readies Amount, if the host of a Make-Readies Site requests the use of its selected contractor or vendor in connection with the installation of the Make-Readies Arrays and/or Make-Ready Stubs, NRG may comply with such request without undergoing the RFO Process, and payments made to such contractor or vendor (whether directly or through the applicable host) for substantiated expenses in connection with such installation shall be eligible Make-Readies Costs. The amount of such expenditures shall be identified as part of the cost information reported annually pursuant to Section 4(e)(ii)(2)(D).

6. Section 4(c)(vii) of the Settlement Agreement is hereby amended and restated as follows:

(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 Charging Station Agreement with NRG EV Services (such agreement may have a term extending to the end of the Start-Up Period for such Make-Readies Array).
- (A) Commencing with the Amendment Effective Date, NRG EV Services shall not seek co-contributions from hosts toward the installation costs of Make-Ready Stubs (that are eligible to be counted towards the minimum Make-Ready Stubs Count) unless the costs exceed \$3,000 per Make-Ready Stub at a Multi-Family Housing Site or a Public Interest Site. No such limitations shall apply for Workplace Sites.
- (B) NRG EV Services may offer subscriptions for charging services, but may not require such a subscription as a condition for entering into the Charging Station Agreement.
- (C) A Charging Station Agreement shall contain no contractual terms or conditions that: (i) prohibit or restrict the Host from terminating the Charging Station Agreement (or any Host subscription for charging stations associated therewith) upon more than thirty (30) days prior written notice, or (ii) impose any early termination fees under such agreement or subscription, or (iii) would otherwise impede access to a Make-Readies Array by a competitor electric vehicle charging services provider following the termination of a Charging Station Agreement. For the avoidance of doubt, nothing herein shall restrict the ability of NRG EV Services or a host to enter into an agreement

on different terms following the expiration 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 following the expiration or termination of a Charging Station Agreement, 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) 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.
  - (C) 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 making the subscribed Make-Ready Stubs available for use by the

general public; *provided that* a host may permit use by visitors and other invitees; 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.

7. Section 4(e) of the Settlement Agreement is hereby amended such that with respect to NRG's quarterly and annual reports, NRG shall not be required to report: (i) the number of subscribers at the Make-Readies Arrays; nor (ii) any usage data (including raw usage data and Shared Statistical Usage Data) associated with EVSEs at any Make-Ready Stubs.

**C. Definitions**

1. "Amendment Effective Date" shall mean the date that this Amendment has been fully executed and final approval has been received from FERC without material change or condition unacceptable to any adversely affected Party; provided that the occurrence of the Amendment Effective Date shall be stayed in the event that as of the date it might otherwise occur pursuant to the terms of this Amendment, there exists pending litigation before a Governmental Authority other than FERC, including appeals therefrom, challenging the Amendment or a Party's authority to enter into this Amendment, in each case which if decided in favor of the third party may adversely affect the structure of this Amendment, or the rights and obligations of any Party under this Amendment.

2. Section 1(u) of the Settlement Agreement is hereby revised as follows:

"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; *provided, however*, that solely with respect to the electric vehicle charging equipment procured during the First and Second Settlement Years through the RFO Process conducted by NRG during the third quarter of 2012, a "DC Fast Charger" shall also mean electric vehicle charging equipment with a rated power not less than 44kW (any such charger, a "44kW DC Fast Charger").

3. Section 1(ffff) of the Settlement Agreement is hereby revised as follows:

"Public Interest Site" means a site owned or controlled by (1) a non-profit hospital; or (2) a governmental entity, including without limitation schools, colleges and universities, hospitals, parks, fairgrounds, museums, and parking facilities; 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.

**D. Miscellaneous**

1. **Grandfathering Provision.** Notwithstanding anything in this Amendment to the contrary, (A) if a host agreement is entered into on or prior to sixty (60) days following the Amendment Effective Date (defined below) or (B) if a host agreement is entered into more than sixty (60) days following the Amendment Effective Date but negotiations with such host were entered into prior to the Amendment Effective Date and the potential host has been presented with the option of modifying such host agreement to be in accordance with Section 4(c)(vii)(1), then in each case, so long as the terms of such host agreement and any subscriptions associated therewith are in compliance with the requirements of the Settlement Agreement prior to being amended by this Amendment, the Make-Ready Stubs installed in accordance with such host agreement shall count towards NRG's obligations under the Settlement Agreement.
  
2. **Technical Changes.** The Parties may jointly agree to make further changes to the Settlement Agreement (as amended) provided that they do not materially reduce the aggregate dollar amount of NRG's commitment to the EV Charging Station Project. Such changes must be made in writing in the form of a Letter Agreement directed to the CPUC General Counsel and Deputy Executive Director, Policy and External Relations, and approved by the CPUC's Executive Director or the Executive Director's designee, and signed by the President of NRG EV Services or the President's designee.

IN WITNESS WHEREOF, this Amendment is executed as of the date first set forth above.

**CPUC:**

**CALIFORNIA PUBLIC UTILITIES  
COMMISSION**

By: Aracles Aguilar  
Name: ARACLES AGUILAR  
Title: General Counsel  
October 14, 2015

**The Dynegy Parties:**

**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:



IN WITNESS WHEREOF, this Amendment is executed as of the date first set forth above.


**CPUC:**

**CALIFORNIA PUBLIC UTILITIES  
COMMISSION**

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

**The Dynegy Parties:**

**DYNEGY POWER MARKETING, LLC**

By:  \_\_\_\_\_  
Name: M. Cleve Lancaster  
Title: Managing Director &  
Corporate Counsel

**CABRILLO POWER I LLC**

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

**EL SEGUNDO POWER, LLC**

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

**LONG BEACH GENERATION LLC**

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

IN WITNESS WHEREOF, this Amendment is executed as of the date first set forth above.

**CPUC:**

**CALIFORNIA PUBLIC UTILITIES  
COMMISSION**

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

**The Dynegy Parties:**

**DYNEGY POWER MARKETING, LLC**

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

**CABRILLO POWER I LLC**

By: *J. Chillemi*  
Name: John Chillemi  
Title: President

**EL SEGUNDO POWER, LLC**

By: *J. Chillemi*  
Name: John Chillemi  
Title: President

**LONG BEACH GENERATION LLC**

By: *J. Chillemi*  
Name: John Chillemi  
Title: President