

CALIFORNIA ENERGY COMMISSION

1516 Ninth Street
Sacramento, California 95814

Main website: www.energy.ca.gov



Implementation of Renewables)	Docket No. 02-REN-1038
Investment Plan Legislation (Public)	Renewable Energy Program
Utilities Code Sections 381, 383.5,)	
and 445 (SB 1038))	NOTICE OF BUSINESS MEETING
)	RE: Funding Award Notices for Facilities
)	Eligible for Funding from the Existing
)	Renewable Facilities Program

Notice of Facilities Eligible for Funding from the Existing Renewable Facilities Program and Possible Funding Awards

The California Energy Commission (Energy Commission) will hold a regularly scheduled business meeting on:

WEDNESDAY, SEPTEMBER 26, 2007

10 a.m.

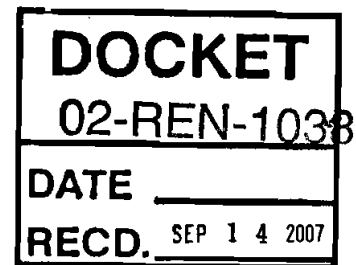
CALIFORNIA ENERGY COMMISSION

1516 Ninth Street

Hearing Room A

Sacramento, California

(Wheelchair Accessible)



Audio from this meeting will be broadcast over the Internet.

For details, please go to:

www.energy.ca.gov/webcast/

Purpose

At this Energy Commission Business Meeting, the Commissioners will consider possible approval of Existing Renewable Facilities Program Funding Award Notices for the 2007 calendar year for the following facilities:

1. Sierra Pacific Industries-Loyalton
2. Sunray Energy- SEGS I and II
3. Chowchilla II
4. El Nido
5. Colmac Energy, Inc.

Background

The Existing Renewable Facilities Program provides funding in the form of production incentives to eligible renewable energy facilities for each kilowatt-hour (kWh) of eligible electricity generated. Facilities eligible for funding are issued a Funding Award Notice by the Energy Commission to provide funding pursuant to the *Energy Commission's Existing Renewable Facilities Program Guidebook*, *Renewables Portfolio Standard Eligibility Guidebook*, and *Overall Program Guidebook*. Funding Award Notices do not specify dollar amounts to be paid to the facilities, rather the Notices identify the following information:

- Pertinent information about the applicant, the facility, and the facility's power purchase agreement.
- The facility-specific target price and production incentive cap for that calendar year.
- The terms and conditions under which the Existing Renewable Facilities Program funding will be provided, including any funding restrictions and prevailing wage requirements.

If approved by the Energy Commission, each Funding Award Notice must be signed by an authorized representative of that facility and an authorized representative of the Energy Commission in order to become effective. In order to receive payment from the Energy Commission, a facility is required to comply with all terms and conditions of its Funding Award Notice, and submit monthly invoices and written third-party verification to the Energy Commission to verify the facility's eligible generation.

Pursuant to California Public Resources Code section 25740 et. seq., the Energy Commission's Renewable Energy Program provides funding to support existing, new and emerging renewable energy resources with the goal of establishing a competitive, self-sustaining renewable energy supply for California while increasing the near-term quantity of renewable energy generated in-state. Funding is provided through various programs under the Renewable Energy Program.

This funding award notice relates to the Existing Renewable Facilities Program funded since 2003 under Senate Bill 1038¹ that authorizes the Energy Commission to continue the expenditure of these funds. SB 1038, in conjunction with the Reliable Electric Service Investments Act,² continues the collection of a non-bypassable system benefit charge initiated in 1998 under Assembly Bill 1890.³

The statutory purpose of the Existing Renewable Facilities Program is to improve the competitiveness and achieve self-sustainability of existing in-state solid-fuel biomass,

¹ Public Utilities Code Sections 383.5 and 445 were amended and recast as Public Resources Code Sections 25740 through 25751 pursuant to SB 183 (Sher, Statutes 2003, Chapter 666).

² Public Utilities Code Sections 399, et seq., as enacted by Assembly Bill 995 (Chapter 1051, Statutes of 2000) and Senate Bill 1194 (Chapter 1050, Statutes of 2000).

³ Assembly Bill 1890 (AB 1890) Chapter 854, Statutes of 1996.

solar thermal electric, and wind facilities. California Public Resources Code section 25740.5 requires that the Energy Commission “optimize public investment and ensure that the most cost-effective and efficient investments in renewable energy resources are vigorously pursued.” The kWh based production incentive rates paid through Existing Renewable Facilities Program funds vary by facility and are based on the lowest of three possible calculations:

- 1) The difference between the facility-specific target price and the facility’s market price as determined by the Energy Commission,
- 2) The facility-specific cents per kWh production incentive cap, or
- 3) The funds-adjusted price for the facility. The funds-adjusted price is calculated as follows:
 - a. Divide the total program funds available in a given month by the total payments that would otherwise be due that month for eligible facilities (as calculated using the minimum of formulas (1) and (2) above) to obtain an Adjustment Fund Multiplier (AFM), and
 - b. Multiply the minimum of formula (1) and (2) by the AFM to determine the funds-adjusted price for each facility.

From 1998 through 2006, Existing Renewable Facilities Program target prices and production incentive caps were assigned collectively for facilities based on technology. Previous editions of the *Existing Renewable Facilities Program Guidebook* specified these target prices and production incentive caps. However, Senate Bill 1250, Chapter 512, Statutes of 2006 amended Public Resources Code section 25742 (e) to require the Energy Commission to evaluate facilities individually based on the required information submitted by each facility. This evaluation includes the following factors:

- The cumulative amount of funds the facility has previously received from the Energy Commission and other state sources.
- The value of any past and current federal or state tax credits.
- The facility’s contract price for energy and capacity.
- The market value of the facility.
- The facility’s estimate of the incentive payment needed (in cents/kWh) above the energy payments the facility will receive during the calendar year the applicant is applying for. Also the facility’s explanation of why this incentive level is needed.
- The facility’s explanation of how the incentive payments from the ERFP will allow the facility to become cost-competitive by the end of the 2011.

The facilities whose Funding Award Notices are being considered for approval at this Business Meeting previously submitted information to the Energy Commission in the Application for Funding Eligibility-Existing Renewable Facilities Program (Form CEC-1250E-1) and in a form entitled “Additional Information Requested from Applicants for Funding Eligibility- Existing Renewable Facilities Program” (Additional Information Form).

Energy Commission staff reviewed and analyzed the information submitted by the facilities in the CEC-1250E-1 and the Additional Information Form in accordance with statutory and program guidelines, and subsequently presented funding award recommendations for each applicant to the Renewables Committee (Commissioner John L. Geesman, Presiding, and Chairman Jackalyne Pfannenstiel, Associate). The Renewables Committee concurs with staff's recommended Target Prices and Production Incentive Caps for each application. The full Commission will consider the issue at the Business Meeting and decide whether to approve the Renewables Committee's recommendation. Copies of Funding Award Notices that are being considered for approval can be found at:
[\[http://www.energy.ca.gov/renewables/index.html\]](http://www.energy.ca.gov/renewables/index.html).

Written Comments

The Energy Commission encourages members of the public to submit written comments on the proposed Funding Award Notices in advance of the business meeting. Please provide an original and 21 copies of comments filed by mail or in person to the Energy Commission's Docket Unit. Alternately, parties may file a single copy electronically with the Docket Unit and follow up with an original copy by mail. The Energy Commission encourages comments to be submitted by e-mail. If you are providing written comments at the Business Meeting, please make an additional 50 copies available at the beginning of the meeting.

Please send or deliver written materials to:

California Energy Commission
Re: Docket No. 02-REN-1038
Docket Unit, MS-4
1516 Ninth Street
Sacramento, CA 95814-5504
E-Mail: docket@energy.state.ca.us

All written materials filed with the Docket Unit will become part of the public record in these proceedings. The Energy Commission strongly encourages parties to file written comments by close of business September 24, 2007, but will accept written comments up to the day of the Business Meeting.

Public Participation

The Energy Commission's Public Adviser's Office provides the public assistance in participating in Energy Commission activities. If you want information on how to participate in this forum, please contact the Public Adviser's Office at (916) 654-4489 or toll free at (800) 822-6228, by FAX at (916) 654-4493, or by e-mail at [\[pao@energy.state.ca.us\]](mailto:pao@energy.state.ca.us). If you have a disability and require assistance to participate, please contact Lou Quiroz at (916) 654-5146 at least five days in advance.

Please direct all news media inquiries to Claudia Chandler, Assistant Executive Director, at (916) 654-4989, or by e-mail at [mediaoffice@energy.state.ca.us]. If you have questions on the technical subject matter of this forum, please call Jason Orta, Existing Renewable Facilities Program Lead at (916) 653-5851 or email at [jorta@energy.state.ca.us].

JOHN L. GEESMAN
Commissioner and Presiding Member
Renewables Committee

JACKALYNE PFANNENSTIEL
Chairman and Associate Member
Renewables Committee

Dated:
Date Mailed:
Mailed to List 5503 Existing

Note: The formal name of the California Energy Commission is the State of California Energy Resources Conservation and Development Commission.

FUNDING AWARD NOTICE
Colmac Energy, Inc.
RPS Certification Number: 60286E

1. **Purpose.** This Funding Award Notice ("Agreement") is entered into between Colmac Energy, Inc. ("Grantee") and the California Energy Commission ("Energy Commission") for the purpose of creating a funding award to provide funding pursuant to the Energy Commission's *Existing Renewable Facilities Program Guidebook, Renewables Portfolio Standard Eligibility Guidebook, and Overall Program Guidebook*, (collectively referred to as "Guidelines"). Grantee has applied to the Energy Commission for Existing Renewable Facilities Program (ERFP) funding for its Colmac Energy, Inc. Facility, as described in the Application for ERFP Funding Eligibility (CEC-1250E-1) and referenced as Exhibit A, and the Energy Commission has determined that Grantee and its facility are eligible for funding as specified in the Guidelines. This Agreement commits funding to pay production incentives to Grantee's Facility subject to the Guidelines and the terms and conditions specified herein. Grantee must comply with the terms and conditions of the Guidelines and this Agreement to remain eligible to receive funding under this Agreement.
2. **Incorporation by Reference.** Neither the Energy Commission's Guidelines nor Grantee's application for ERFP eligibility and funding, dated April 5, 2007, are attached hereto, but are incorporated by reference and made a part of this Agreement.
3. **Funding Award Amount.** The total amount of funding available to Grantee under this Agreement is limited by the funds allocated to the Existing Renewable Facilities Program of the Energy Commission's Energy Program during the 2007 calendar year, the level of ERFP participation during this period, and the Target Price and Production Incentive Caps specified in paragraph 4.
4. **Target Price and Production Incentive Caps**

The target price and production incentive caps for Grantee facility during the 2007 calendar years shall be as follows:

Target Price: 5.87 cents/kWh (Eligible for Time of Use Incentive Payments)

Production Incentive Cap: 1.5 cents/kWh (Eligible for Time of Use Incentive Payments)
5. **Contingent Funding.** Funding for this Agreement is contingent on the availability of adequate funding from the Energy Commission's Renewable Resource Trust Fund.
6. **Term.** The term of this Agreement shall be from January 1, 2007, to December 31, 2007, unless terminated earlier by the Energy Commission pursuant to the Guidelines. Notwithstanding the term of this Agreement, Grantee may submit final invoices for payment of eligible electrical power generated during the term of this Agreement for a period of three months after the term ends.

FUNDING AWARD NOTICE
Colmac Energy, Inc.
RPS Certification Number: 60286E

7. **Non-Transferability of award.** The funding award created by this Agreement is specific to Grantee and the Colmac Energy, Inc. Facility. This award is not transferable or assignable to another facility and may not be assigned to another entity without the Energy Commission's prior written permission.
8. **Assignment.** Grantee shall not assign its rights nor delegate its duties under this Agreement without the Energy Commission's advance written approval.
9. **Indemnification.** Grantee agrees to indemnify, defend, and save harmless the Energy Commission, its officers, agents, and employees from any and all claims and losses accruing and resulting to any and all contractors, subcontractors, material men, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with Grantee's Facility or this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Grantee or Grantee's officers, agents, employees, contractors, subcontractors, material men, laborer, or any other person, firm, or corporation in connection with the performance of work to develop, construct, or operate Grantee's Facility or receive funding under this Agreement.
10. **Review and Disclaimer.** Review by the Energy Commission of the design, operation, or maintenance of Grantee's Facility or related interconnection or generation facilities shall not constitute any representation as to the economic or technical feasibility, operational capacity, or reliability of such facilities. Grantee shall not in any way represent to any third party that the Energy Commission's review of Grantee's Facility is a representation by the Energy Commission as to the Facility's economic or technical feasibility, operational capability, or reliability. Grantee is solely responsible for its Facility's economic and technical feasibility, operational capability, and reliability.
11. **Certification.** Grantee has provided evidence of facility certification as an RPS eligible renewable resource and must maintain that certification as outlined in the Energy Commission's *Renewables Portfolio Standard Eligibility Guidebook*. Failure to do so may result in this Agreement being terminated as specified in the Guidelines.
12. **Funding Termination.** Grantee acknowledges that this Agreement and payments under this Agreement may be terminated for reasonable cause pursuant to the Guidelines by providing 30-day written notice to the Grantee contact specified in paragraph 16. Consistent with the Guidelines, reasonable cause includes the following:

FUNDING AWARD NOTICE
Colmac Energy, Inc.
RPS Certification Number: 60286E

- Grantee's failure to maintain certification as an RPS eligible renewable resource or knowingly providing false or misleading information about itself or the facility, as determined by the Energy Commission, in facility's application for certification.
- The power purchase contract referenced in paragraph 1 of this Agreement is modified or renegotiated such that the total energy price and/or the capacity price payments under the power purchase contract are modified.
- Insufficient funds in the Energy Commission's Renewable Resource Trust Fund to adequately fund this Agreement.

13. Funding Eligibility. Grantee acknowledges that its eligibility to receive ERFP funding under this Agreement shall be contingent upon its satisfaction of all terms and conditions set forth in the Guidelines and this Agreement.

14. Invoicing. Grantee shall invoice for payments under this Agreement in accordance with the procedures specified in the applicable Guidelines.

15. Records Retention. Unless stated otherwise in the applicable Guidelines, Grantee shall:

- Keep all records relating to and verifying the accuracy of information stated in an invoice for payment submitted pursuant to this Agreement for a period not less than three years after the end of the calendar year in which payment for the invoice is made;
- Keep all records relating to and verifying the accuracy of information stated in a report submitted to the Energy Commission pursuant to the Guidelines for a period not less than three years after the end of the calendar year in which the report is submitted; and
- Keep all records relating to and verifying the overall usage, on a total energy input basis, of all fossil fuels and non-fossil fuels used to generate electricity in a given calendar year for a period not less than four years after the end of that calendar year.

16. Grantee Contact. Grantee's contact under this Agreement shall be Graeme Donaldson, Vice President, Colmac Energy, Inc.. Any notice to Grantee under this Agreement shall be forwarded to the Grantee contact at the following address:

Colmac Energy, Inc.
Graeme Donaldson, Vice President
62300 Gene Welmas Dr.
Mecca, CA 92254

FUNDING AWARD NOTICE
Colmac Energy, Inc.
RPS Certification Number: 60286E

- 17. Energy Commission Contact.** The Energy Commission's contact under this Agreement shall be Jason Orta, Account Lead of the Existing Renewable Facilities Program, or his Successor. Any notice to the Energy Commission under this Agreement shall be forwarded to the Energy Commission contact at the following address:

California Energy Commission
1516 Ninth Street, MS-45
Sacramento, California 95814
Attn: Jason Orta

- 18. CEQA Review.** The Energy Commission staff has reviewed the Colmac Energy, Inc. Facility and has determined that the funding award for this facility does not meet the definition of a "project" pursuant to CEQA Guidelines, Title 14, California Code of Regulations, section 15378 (See Exhibit B of this Funding Award Notice).

- 19. Prevailing Wage.** For purposes of this paragraph, "public works" means construction, alteration, demolition, installation, and/or repair work over \$1,000 but does not include maintenance work; and "Contractor" means all contractors and subcontractors that perform public works activities on the Facility.

A. Grantee/General Requirements

a) Pursuant to California Public Utilities Code section 399.12 (h) and applicable law, Grantee shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any public works activities performed on the Facility funded by this Agreement. For purposes of compliance with the prevailing wage law, Grantee is the "awarding body" as defined in California Labor Code section 1722 and shall comply with the provisions applicable to recipients of public funds AND the provisions applicable to an awarding body. As such, Grantee agrees to ensure compliance with the state prevailing wage law, including without limitation:

- 1) Determining work activities and trades subject to the requirement to pay prevailing wage under the prevailing wage law;
- 2) Ascertaining applicable prevailing wage rate for each covered worker performing work activities subject to the prevailing wage law on the Facility;
- 3) Specifying in calls for bids, bid specifications, and construction contracts the applicable prevailing wage;
- 4) Ensuring all contracts for public works activities for the Facility include appropriate flow down provisions;
- 5) Posting the applicable prevailing wage information at each job site of the Facility;
- 6) Ensuring payment of prevailing wage, as applicable;
- 7) Complying with overtime and working hour requirements;
- 8) Complying with apprenticeship obligations;
- 9) Complying with payroll recordkeeping requirements;

FUNDING AWARD NOTICE
Colmac Energy, Inc.
RPS Certification Number: 60286E

- 10) Withholding payments from contractors as necessary to satisfy wage and penalty assessments issued by the Labor Commissioner; and
- 11) Complying with other obligations as required by law.

b) Grantee shall submit to the Energy Commission within 90 days of completing any construction, alteration, demolition, installation, or repair work subject to the state prevailing wage law pursuant to Public Utilities Code section 399.14, subdivision (h), a certification signed by Grantee and all involved contractors performing work activities on the Facility certifying that prevailing wages were paid as required by law. The certification shall be as provided in Exhibit C.

c) Grantee shall submit to the Energy Commission, as part of any payment request or invoice, a certification stating i) that prevailing wages were paid for public works activities performed for the Facility during the period covered by the invoice, and ii) that Grantee and all involved contractors complied with the prevailing wage law.

B. Flow Down Requirements

Grantee shall ensure that all agreements with contractors for public works activities on the Facility contain the following provisions:

a) Contractor shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for all construction, alteration, demolition, installation, or repair work over \$1,000 performed under the contract. Contractor's obligations under prevailing wage laws include without limitation:

- 1) Payment of not less than the applicable prevailing wage for public works activities performed for the Facility;
- 2) Compliance with overtime and working hour requirements;
- 3) Compliance with apprenticeship obligations;
- 4) Compliance with payroll recordkeeping requirements; and
- 5) Compliance with other obligations as required by law.

b) Contractor shall ensure that the above requirements are included in all subcontracts for public works activities for the Facility.

20. **Understanding of Guidelines.** Grantee warrants that it has read and understands the Energy Commission's Guidelines and acknowledges that these Guidelines govern the payment of any funds under this Agreement and authorize the Energy Commission to terminate the Agreement or any payments under the Agreement for reasonable cause, to conduct random audits of Grantee's invoices for ERFP payments, to conduct inspections of Grantee's Facility and books as part of these audits, to initiate enforcement actions to recover any funding payments the Grantee was not otherwise entitled to receive, to initiate investigations of Grantee to verify fraud or misrepresentation in connection with Grantee's application for or receipt of

FUNDING AWARD NOTICE
Colmac Energy, Inc.
RPS Certification Number: 60286E

this Agreement or any payments of ERFP funding, or to take action as authorized by the Guidelines to properly administer the ERFP. Grantee further understands that the Energy Commission Guidelines are subject to change pursuant to Public Resources Code Section 25747 and that any changes made to the Guidelines shall apply to Grantee and the payment of funding under this Agreement.

21. Law Governing. This Agreement shall be interpreted, governed, and construed under the laws of the State of California.

Graeme Donaldson, Vice President
Colmac Energy, Inc.

B.B Blevins, Executive Director
California Energy Commission

FUNDING AWARD NOTICE
Colmac Energy, Inc.
RPS Certification Number: 60286E

EXHIBIT B
CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

Note: The Energy Commission Contract Manual includes detailed instructions on how to complete this section, with examples of contracts that are "Projects" and are not "Projects". When the Project Manager is completing this section, if questions arise as to the appropriate answers to the questions below, please consult with the Energy Commission attorney assigned to review grants for your division.

1. Is funding award considered a "Project" under CEQA?

☐ Yes

☒ No

If yes, skip to Question #2.

If no, please complete the following [Public Resources Code (PRC) 21065 and 14 California Code of Regulations (CCR) 15378]:

Explain why funding award is not considered a "Project"?

Funding award will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment because funding award involves a facility that has been previously reviewed under CEQA. The purpose of providing additional funds to this project is to continue its operations at an equivalent level as in previous years. (Please see Public Resources Code, section 25742.) Thus, there is no possibility that by providing these funds, this project will have the potential for a significant effect on the environment.

2. If funding award is considered a "Project" under CEQA:

☐ Funding Award **IS** exempt.

☐ Statutory Exemption. List PRC and/or CCR section number:

☐ Categorical Exemption. List CCR section number:

☐ Common Sense Exemption. 14 CCR 15061(b)(3)

Explain reason why funding award is exempt under the above section:

☐ Funding award **IS NOT** exempt. The Project Manager needs to consult with the Energy Commission attorney assigned to your division and the Siting Office regarding a possible initial study.

FUNDING AWARD NOTICE
Colmac Energy, Inc.
RPS Certification Number: 60286E

EXHIBIT C
PREVAILING WAGE COMPLIANCE CERTIFICATION

This certificate is to be completed by Grantee, signed by Grantee and all construction contractors and subcontractors, and submitted to Energy Commission within 90 days of completing any construction, alteration, demolition, installation, or repair work subject to the state prevailing wage law pursuant to Public Utilities Code section 399.14, subdivision (h).

Grantee: _____

Energy Commission Renewable Portfolio Standard Certification Number:

Facility: _____

Date Facility Construction Completed: _____

Grantee hereby certifies as follows:

1. All construction contracts and subcontracts to perform work activities subject to the state prevailing wage law for the above referenced Facility contained requirements that the construction contractors and subcontractors comply with prevailing wage law and pay prevailing wages in accordance with the requirements of the California Labor Code.
2. Prevailing wages have been paid as required by law.
3. All construction contractors and subcontractors have maintained labor records as required by the Labor Code and such records shall be made available to the Energy Commission upon request.
4. The undersigned Grantee acknowledges that disbursement of any payments of production incentives under the above noted Agreement by the Energy Commission is expressly made in reliance upon the representations made in this certification.

Grantee:

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

FUNDING AWARD NOTICE
Colmac Energy, Inc.
RPS Certification Number: 60286E

Each contractor and subcontractor performing work activities subject to the prevailing wage law for the above referenced Facility must sign below. Include additional pages if necessary.

Construction Contractor and Subcontractors hereby certifies as follows:

1. The contract with Grantee to perform work activities subject to the prevailing wage law for the above referenced Facility contained requirements that the construction contractor and all its subcontractors comply with prevailing wage law and pay prevailing wages in accordance with the requirements of the Labor Code.
2. Prevailing wages have been paid as required by law.
3. Construction contractor and all its subcontractors have maintained labor records as required by the Labor Code and such records shall be made available to the Energy Commission upon request.
4. The undersigned construction Contractor acknowledges that disbursement of any payments of production incentives under the above noted Agreement by the Energy Commission is expressly made in reliance upon the representations made in this certification.

Construction Contractor

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

Construction Contractor

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

FUNDING AWARD NOTICE
EI Nido
RPS Certification Number: 60473C

1. **Purpose.** This Funding Award Notice ("Agreement") is entered into between Merced Power LLC ("Grantee") and the California Energy Commission ("Energy Commission") for the purpose of creating a funding award to provide funding pursuant to the Energy Commission's *Existing Renewable Facilities Program Guidebook*, *Renewables Portfolio Standard Eligibility Guidebook*, and *Overall Program Guidebook*, (collectively referred to as "Guidelines"). Grantee has applied to the Energy Commission for Existing Renewable Facilities Program (ERFP) funding for its EI Nido Facility, as described in the Application for ERFP Funding Eligibility (CEC-1250E-1) and referenced as Exhibit A, and the Energy Commission has determined that Grantee and its facility are eligible for funding as specified in the Guidelines. This Agreement commits funding to pay production incentives to Grantee's Facility subject to the Guidelines and the terms and conditions specified herein. Grantee must comply with the terms and conditions of the Guidelines and this Agreement to remain eligible to receive funding under this Agreement.
2. **Incorporation by Reference.** Neither the Energy Commission's Guidelines nor Grantee's application for ERFP eligibility and funding, dated May 2, 2007, are attached hereto, but are incorporated by reference and made a part of this Agreement.
3. **Funding Award Amount.** The total amount of funding available to Grantee under this Agreement is limited by the funds allocated to the Existing Renewable Facilities Program of the Energy Commission's Energy Program during the 2007 calendar year, the level of ERFP participation during this period, and the Target Price and Production Incentive Caps specified in paragraph 4.
4. **Target Price and Production Incentive Caps**

The target price and production incentive caps for Grantee facility during the 2007 calendar years shall be as follows:

Target Price: 5.35 cents/kWh

Production Incentive Cap: 1.5 cents/kWh
5. **Contingent Funding.** Funding for this Agreement is contingent on the availability of adequate funding from the Energy Commission's Renewable Resource Trust Fund.
6. **Term.** The term of this Agreement shall be from January 1, 2007, to December 31, 2007, unless terminated earlier by the Energy Commission pursuant to the Guidelines. Notwithstanding the term of this Agreement, Grantee may submit final invoices for payment of eligible electrical power generated during the term of this Agreement for a period of three months after the term ends.

FUNDING AWARD NOTICE

El Nido

RPS Certification Number: 60473C

7. **Non-Transferability of award.** The funding award created by this Agreement is specific to Grantee and the El Nido Facility. This award is not transferable or assignable to another facility and may not be assigned to another entity without the Energy Commission's prior written permission.
8. **Assignment.** Grantee shall not assign its rights nor delegate its duties under this Agreement without the Energy Commission's advance written approval.
9. **Indemnification.** Grantee agrees to indemnify, defend, and save harmless the Energy Commission, its officers, agents, and employees from any and all claims and losses accruing and resulting to any and all contractors, subcontractors, material men, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with Grantee's Facility or this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Grantee or Grantee's officers, agents, employees, contractors, subcontractors, material men, laborer, or any other person, firm, or corporation in connection with the performance of work to develop, construct, or operate Grantee's Facility or receive funding under this Agreement.
10. **Review and Disclaimer.** Review by the Energy Commission of the design, operation, or maintenance of Grantee's Facility or related interconnection or generation facilities shall not constitute any representation as to the economic or technical feasibility, operational capacity, or reliability of such facilities. Grantee shall not in any way represent to any third party that the Energy Commission's review of Grantee's Facility is a representation by the Energy Commission as to the Facility's economic or technical feasibility, operational capability, or reliability. Grantee is solely responsible for its Facility's economic and technical feasibility, operational capability, and reliability.
11. **Certification.** Grantee has provided evidence of facility certification as an RPS eligible renewable resource and must maintain that certification as outlined in the Energy Commission's *Renewables Portfolio Standard Eligibility Guidebook*. Failure to do so may result in this Agreement being terminated as specified in the Guidelines.
12. **Funding Termination.** Grantee acknowledges that this Agreement and payments under this Agreement may be terminated for reasonable cause pursuant to the Guidelines by providing 30-day written notice to the Grantee contact specified in paragraph 16. Consistent with the Guidelines, reasonable cause includes the following:

FUNDING AWARD NOTICE

El Nido

RPS Certification Number: 60473C

- Grantee's failure to maintain certification as an RPS eligible renewable resource or knowingly providing false or misleading information about itself or the facility, as determined by the Energy Commission, in facility's application for certification.
- The power purchase contract referenced in paragraph 1 of this Agreement is modified or renegotiated such that the total energy price and/or the capacity price payments under the power purchase contract are modified.
- Insufficient funds in the Energy Commission's Renewable Resource Trust Fund to adequately fund this Agreement.

13. Funding Eligibility. Grantee acknowledges that its eligibility to receive ERFP funding under this Agreement shall be contingent upon its satisfaction of all terms and conditions set forth in the Guidelines and this Agreement.

14. Invoicing. Grantee shall invoice for payments under this Agreement in accordance with the procedures specified in the applicable Guidelines.

15. Records Retention. Unless stated otherwise in the applicable Guidelines, Grantee shall:

- Keep all records relating to and verifying the accuracy of information stated in an invoice for payment submitted pursuant to this Agreement for a period not less than three years after the end of the calendar year in which payment for the invoice is made;
- Keep all records relating to and verifying the accuracy of information stated in a report submitted to the Energy Commission pursuant to the Guidelines for a period not less than three years after the end of the calendar year in which the report is submitted; and
- Keep all records relating to and verifying the overall usage, on a total energy input basis, of all fossil fuels and non-fossil fuels used to generate electricity in a given calendar year for a period not less than four years after the end of that calendar year.

16. Grantee Contact. Grantee's contact under this Agreement shall be Eric Shumway, Chief Operating Officer, Merced Power LLC. Any notice to Grantee under this Agreement shall be forwarded to the Grantee contact at the following address:

Merced Power LLC
Eric Shumway, Chief Operating Officer
717 Atlantic Avenue, Suite 1A
Boston, MA 02111

FUNDING AWARD NOTICE
El Nido
RPS Certification Number: 60473C

17. **Energy Commission Contact.** The Energy Commission's contact under this Agreement shall be Jason Orta, Account Lead of the Existing Renewable Facilities Program, or his Successor. Any notice to the Energy Commission under this Agreement shall be forwarded to the Energy Commission contact at the following address:

California Energy Commission
1516 Ninth Street, MS-45
Sacramento, California 95814
Attn: Jason Orta

18. **CEQA Review.** The Energy Commission staff has reviewed the El Nido Facility and has determined that the funding award for this facility does not meet the definition of a "project" pursuant to CEQA Guidelines, Title 14, California Code of Regulations, section 15378 (See Exhibit B of this Funding Award Notice).

19. **Prevailing Wage.** For purposes of this paragraph, "public works" means construction, alteration, demolition, installation, and/or repair work over \$1,000 but does not include maintenance work; and "Contractor" means all contractors and subcontractors that perform public works activities on the Facility.

A. Grantee/General Requirements

a) Pursuant to California Public Utilities Code section 399.12 (h) and applicable law, Grantee shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any public works activities performed on the Facility funded by this Agreement. For purposes of compliance with the prevailing wage law, Grantee is the "awarding body" as defined in California Labor Code section 1722 and shall comply with the provisions applicable to recipients of public funds AND the provisions applicable to an awarding body. As such, Grantee agrees to ensure compliance with the state prevailing wage law, including without limitation:

- 1) Determining work activities and trades subject to the requirement to pay prevailing wage under the prevailing wage law;
- 2) Ascertaining applicable prevailing wage rate for each covered worker performing work activities subject to the prevailing wage law on the Facility;
- 3) Specifying in calls for bids, bid specifications, and construction contracts the applicable prevailing wage;
- 4) Ensuring all contracts for public works activities for the Facility include appropriate flow down provisions;
- 5) Posting the applicable prevailing wage information at each job site of the Facility;
- 6) Ensuring payment of prevailing wage, as applicable;
- 7) Complying with overtime and working hour requirements;
- 8) Complying with apprenticeship obligations;
- 9) Complying with payroll recordkeeping requirements;

FUNDING AWARD NOTICE
El Nido
RPS Certification Number: 60473C

- 10) Withholding payments from contractors as necessary to satisfy wage and penalty assessments issued by the Labor Commissioner; and
- 11) Complying with other obligations as required by law.

b) Grantee shall submit to the Energy Commission within 90 days of completing any construction, alteration, demolition, installation, or repair work subject to the state prevailing wage law pursuant to Public Utilities Code section 399.14, subdivision (h), a certification signed by Grantee and all involved contractors performing work activities on the Facility certifying that prevailing wages were paid as required by law. The certification shall be as provided in Exhibit C.

c) Grantee shall submit to the Energy Commission, as part of any payment request or invoice, a certification stating i) that prevailing wages were paid for public works activities performed for the Facility during the period covered by the invoice, and ii) that Grantee and all involved contractors complied with the prevailing wage law.

B. Flow Down Requirements

Grantee shall ensure that all agreements with contractors for public works activities on the Facility contain the following provisions:

a) Contractor shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for all construction, alteration, demolition, installation, or repair work over \$1,000 performed under the contract. Contractor's obligations under prevailing wage laws include without limitation:

- 1) Payment of not less than the applicable prevailing wage for public works activities performed for the Facility;
- 2) Compliance with overtime and working hour requirements;
- 3) Compliance with apprenticeship obligations;
- 4) Compliance with payroll recordkeeping requirements; and
- 5) Compliance with other obligations as required by law.

b) Contractor shall ensure that the above requirements are included in all subcontracts for public works activities for the Facility.

20. **Understanding of Guidelines.** Grantee warrants that it has read and understands the Energy Commission's Guidelines and acknowledges that these Guidelines govern the payment of any funds under this Agreement and authorize the Energy Commission to terminate the Agreement or any payments under the Agreement for reasonable cause, to conduct random audits of Grantee's invoices for ERFP payments, to conduct inspections of Grantee's Facility and books as part of these audits, to initiate enforcement actions to recover any funding payments the Grantee was not otherwise entitled to receive, to initiate investigations of Grantee to verify fraud or misrepresentation in connection with Grantee's application for or receipt of

FUNDING AWARD NOTICE
El Nido
RPS Certification Number: 60473C

this Agreement or any payments of ERFP funding, or to take action as authorized by the Guidelines to properly administer the ERFP. Grantee further understands that the Energy Commission Guidelines are subject to change pursuant to Public Resources Code Section 25747 and that any changes made to the Guidelines shall apply to Grantee and the payment of funding under this Agreement.

21. Law Governing. This Agreement shall be interpreted, governed, and construed under the laws of the State of California.

Eric Shumway, Chief Operating Officer
Merced Power LLC

B.B Blevins, Executive Director
California Energy Commission

FUNDING AWARD NOTICE
El Nido
RPS Certification Number: 60473C

EXHIBIT B
CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

Note: The Energy Commission Contract Manual includes detailed instructions on how to complete this section, with examples of contracts that are "Projects" and are not "Projects". When the Project Manager is completing this section, if questions arise as to the appropriate answers to the questions below, please consult with the Energy Commission attorney assigned to review grants for your division.

1. Is funding award considered a "Project" under CEQA?

☐ Yes

☒ No

If yes, skip to Question #2.

If no, please complete the following [Public Resources Code (PRC) 21065 and 14 California Code of Regulations (CCR) 15378]:

Explain why funding award is not considered a "Project"?

Funding award will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment because funding award involves a facility that has been previously reviewed under CEQA. The purpose of providing additional funds to this project is to continue its operations at an equivalent level as in previous years. (Please see Public Resources Code, section 25742.) Thus, there is no possibility that by providing these funds, this project will have the potential for a significant effect on the environment.

2. If funding award is considered a "Project" under CEQA:

☐ Funding Award **IS** exempt.

☐ Statutory Exemption. List PRC and/or CCR section number:

☐ Categorical Exemption. List CCR section number:

☐ Common Sense Exemption. 14 CCR 15061(b)(3)

Explain reason why funding award is exempt under the above section:

☐ Funding award **IS NOT** exempt. The Project Manager needs to consult with the Energy Commission attorney assigned to your division and the Siting Office regarding a possible initial study.

FUNDING AWARD NOTICE
El Nido
RPS Certification Number: 60473C

EXHIBIT C
PREVAILING WAGE COMPLIANCE CERTIFICATION

This certificate is to be completed by Grantee, signed by Grantee and all construction contractors and subcontractors, and submitted to Energy Commission within 90 days of completing any construction, alteration, demolition, installation, or repair work subject to the state prevailing wage law pursuant to Public Utilities Code section 399.14, subdivision (h).

Grantee: _____

Energy Commission Renewable Portfolio Standard Certification Number:

Facility: _____

Date Facility Construction Completed: _____

Grantee hereby certifies as follows:

1. All construction contracts and subcontracts to perform work activities subject to the state prevailing wage law for the above referenced Facility contained requirements that the construction contractors and subcontractors comply with prevailing wage law and pay prevailing wages in accordance with the requirements of the California Labor Code.
2. Prevailing wages have been paid as required by law.
3. All construction contractors and subcontractors have maintained labor records as required by the Labor Code and such records shall be made available to the Energy Commission upon request.
4. The undersigned Grantee acknowledges that disbursement of any payments of production incentives under the above noted Agreement by the Energy Commission is expressly made in reliance upon the representations made in this certification.

Grantee:

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

FUNDING AWARD NOTICE
El Nido
RPS Certification Number: 60473C

Each contractor and subcontractor performing work activities subject to the prevailing wage law for the above referenced Facility must sign below. Include additional pages if necessary.

Construction Contractor and Subcontractors hereby certifies as follows:

1. The contract with Grantee to perform work activities subject to the prevailing wage law for the above referenced Facility contained requirements that the construction contractor and all its subcontractors comply with prevailing wage law and pay prevailing wages in accordance with the requirements of the Labor Code.
2. Prevailing wages have been paid as required by law.
3. Construction contractor and all its subcontractors have maintained labor records as required by the Labor Code and such records shall be made available to the Energy Commission upon request.
4. The undersigned construction Contractor acknowledges that disbursement of any payments of production incentives under the above noted Agreement by the Energy Commission is expressly made in reliance upon the representations made in this certification.

Construction Contractor

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

Construction Contractor

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

FUNDING AWARD NOTICE
SPI-Loyalton
RPS Certification Number: 60570A

1. **Purpose.** This Funding Award Notice ("Agreement") is entered into between Sierra Pacific Industries ("Grantee") and the California Energy Commission ("Energy Commission") for the purpose of creating a funding award to provide funding pursuant to the Energy Commission's *Existing Renewable Facilities Program Guidebook*, *Renewables Portfolio Standard Eligibility Guidebook*, and *Overall Program Guidebook*, (collectively referred to as "Guidelines"). Grantee has applied to the Energy Commission for Existing Renewable Facilities Program (ERFP) funding for its SPI-Loyalton Facility, as described in the Application for ERFP Funding Eligibility (CEC-1250E-1) and referenced as Exhibit A, and the Energy Commission has determined that Grantee and its facility are eligible for funding as specified in the Guidelines. This Agreement commits funding to pay production incentives to Grantee's Facility subject to the Guidelines and the terms and conditions specified herein. Grantee must comply with the terms and conditions of the Guidelines and this Agreement to remain eligible to receive funding under this Agreement.
2. **Incorporation by Reference.** Neither the Energy Commission's Guidelines nor Grantee's application for ERFP eligibility and funding, dated April 9, 2007, are attached hereto, but are incorporated by reference and made a part of this Agreement.
3. **Funding Award Amount.** The total amount of funding available to Grantee under this Agreement is limited by the funds allocated to the Existing Renewable Facilities Program of the Energy Commission's Energy Program during the 2007 calendar year, the level of ERFP participation during this period, and the Target Price and Production Incentive Caps specified in paragraph 4.

4. **Target Price and Production Incentive Caps**

The target price and production incentive caps for Grantee facility during the 2007 calendar years shall be as follows:

Target Price: 5.87 cents/kWh

Production Incentive Cap: 1.5 cents/kWh

5. **Contingent Funding.** Funding for this Agreement is contingent on the availability of adequate funding from the Energy Commission's Renewable Resource Trust Fund.
6. **Term.** The term of this Agreement shall be from January 1, 2007, to December 31, 2007, unless terminated earlier by the Energy Commission pursuant to the Guidelines. Notwithstanding the term of this Agreement, Grantee may submit final invoices for payment of eligible electrical power generated during the term of this Agreement for a period of three months after the term ends.

FUNDING AWARD NOTICE
SPI-Loyalton
RPS Certification Number: 60570A

7. **Non-Transferability of award.** The funding award created by this Agreement is specific to Grantee and the SPI-Loyalton Facility. This award is not transferable or assignable to another facility and may not be assigned to another entity without the Energy Commission's prior written permission.
8. **Assignment.** Grantee shall not assign its rights nor delegate its duties under this Agreement without the Energy Commission's advance written approval.
9. **Indemnification.** Grantee agrees to indemnify, defend, and save harmless the Energy Commission, its officers, agents, and employees from any and all claims and losses accruing and resulting to any and all contractors, subcontractors, material men, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with Grantee's Facility or this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Grantee or Grantee's officers, agents, employees, contractors, subcontractors, material men, laborer, or any other person, firm, or corporation in connection with the performance of work to develop, construct, or operate Grantee's Facility or receive funding under this Agreement.
10. **Review and Disclaimer.** Review by the Energy Commission of the design, operation, or maintenance of Grantee's Facility or related interconnection or generation facilities shall not constitute any representation as to the economic or technical feasibility, operational capacity, or reliability of such facilities. Grantee shall not in any way represent to any third party that the Energy Commission's review of Grantee's Facility is a representation by the Energy Commission as to the Facility's economic or technical feasibility, operational capability, or reliability. Grantee is solely responsible for its Facility's economic and technical feasibility, operational capability, and reliability.
11. **Certification.** Grantee has provided evidence of facility certification as an RPS eligible renewable resource and must maintain that certification as outlined in the Energy Commission's *Renewables Portfolio Standard Eligibility Guidebook*. Failure to do so may result in this Agreement being terminated as specified in the Guidelines.
12. **Funding Termination.** Grantee acknowledges that this Agreement and payments under this Agreement may be terminated for reasonable cause pursuant to the Guidelines by providing 30-day written notice to the Grantee contact specified in paragraph 16. Consistent with the Guidelines, reasonable cause includes the following:

FUNDING AWARD NOTICE
SPI-Loyalton
RPS Certification Number: 60570A

- Grantee's failure to maintain certification as an RPS eligible renewable resource or knowingly providing false or misleading information about itself or the facility, as determined by the Energy Commission, in facility's application for certification.
 - The power purchase contract referenced in paragraph 1 of this Agreement is modified or renegotiated such that the total energy price and/or the capacity price payments under the power purchase contract are modified.
 - Insufficient funds in the Energy Commission's Renewable Resource Trust Fund to adequately fund this Agreement.
13. **Funding Eligibility.** Grantee acknowledges that its eligibility to receive ERFP funding under this Agreement shall be contingent upon its satisfaction of all terms and conditions set forth in the Guidelines and this Agreement.
14. **Invoicing.** Grantee shall invoice for payments under this Agreement in accordance with the procedures specified in the applicable Guidelines.
15. **Records Retention.** Unless stated otherwise in the applicable Guidelines, Grantee shall:
- Keep all records relating to and verifying the accuracy of information stated in an invoice for payment submitted pursuant to this Agreement for a period not less than three years after the end of the calendar year in which payment for the invoice is made;
 - Keep all records relating to and verifying the accuracy of information stated in a report submitted to the Energy Commission pursuant to the Guidelines for a period not less than three years after the end of the calendar year in which the report is submitted; and
 - Keep all records relating to and verifying the overall usage, on a total energy input basis, of all fossil fuels and non-fossil fuels used to generate electricity in a given calendar year for a period not less than four years after the end of that calendar year.
16. **Grantee Contact.** Grantee's contact under this Agreement shall be Bob Ellery, Director of Energy Resources & Environmental Affairs, Sierra Pacific Industries. Any notice to Grantee under this Agreement shall be forwarded to the Grantee contact at the following address:

Sierra Pacific Industries
Bob Ellery, Director of Energy Resources & Environmental Affairs
PO Box 496028
Redding, CA 96049

FUNDING AWARD NOTICE
SPI-Loyalton
RPS Certification Number: 60570A

- 17. Energy Commission Contact.** The Energy Commission's contact under this Agreement shall be Jason Orta, Account Lead of the Existing Renewable Facilities Program, or his Successor. Any notice to the Energy Commission under this Agreement shall be forwarded to the Energy Commission contact at the following address:

California Energy Commission
1516 Ninth Street, MS-45
Sacramento, California 95814
Attn: Jason Orta

- 18. CEQA Review.** The Energy Commission staff has reviewed the SPI-Loyalton Facility and has determined that the funding award for this facility does not meet the definition of a "project" pursuant to CEQA Guidelines, Title 14, California Code of Regulations, section 15378 (See Exhibit B of this Funding Award Notice).

- 19. Prevailing Wage.** For purposes of this paragraph, "public works" means construction, alteration, demolition, installation, and/or repair work over \$1,000 but does not include maintenance work; and "Contractor" means all contractors and subcontractors that perform public works activities on the Facility.

A. Grantee/General Requirements

a) Pursuant to California Public Utilities Code section 399.12 (h) and applicable law, Grantee shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any public works activities performed on the Facility funded by this Agreement. For purposes of compliance with the prevailing wage law, Grantee is the "awarding body" as defined in California Labor Code section 1722 and shall comply with the provisions applicable to recipients of public funds AND the provisions applicable to an awarding body. As such, Grantee agrees to ensure compliance with the state prevailing wage law, including without limitation:

- 1) Determining work activities and trades subject to the requirement to pay prevailing wage under the prevailing wage law;
- 2) Ascertaining applicable prevailing wage rate for each covered worker performing work activities subject to the prevailing wage law on the Facility;
- 3) Specifying in calls for bids, bid specifications, and construction contracts the applicable prevailing wage;
- 4) Ensuring all contracts for public works activities for the Facility include appropriate flow down provisions;
- 5) Posting the applicable prevailing wage information at each job site of the Facility;
- 6) Ensuring payment of prevailing wage, as applicable;
- 7) Complying with overtime and working hour requirements;
- 8) Complying with apprenticeship obligations;
- 9) Complying with payroll recordkeeping requirements;

FUNDING AWARD NOTICE
SPI-Loyalton
RPS Certification Number: 60570A

- 10) Withholding payments from contractors as necessary to satisfy wage and penalty assessments issued by the Labor Commissioner; and
- 11) Complying with other obligations as required by law.

b) Grantee shall submit to the Energy Commission within 90 days of completing any construction, alteration, demolition, installation, or repair work subject to the state prevailing wage law pursuant to Public Utilities Code section 399.14, subdivision (h), a certification signed by Grantee and all involved contractors performing work activities on the Facility certifying that prevailing wages were paid as required by law. The certification shall be as provided in Exhibit C.

c) Grantee shall submit to the Energy Commission, as part of any payment request or invoice, a certification stating i) that prevailing wages were paid for public works activities performed for the Facility during the period covered by the invoice, and ii) that Grantee and all involved contractors complied with the prevailing wage law.

B. Flow Down Requirements

Grantee shall ensure that all agreements with contractors for public works activities on the Facility contain the following provisions:

a) Contractor shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for all construction, alteration, demolition, installation, or repair work over \$1,000 performed under the contract. Contractor's obligations under prevailing wage laws include without limitation:

- 1) Payment of not less than the applicable prevailing wage for public works activities performed for the Facility;
- 2) Compliance with overtime and working hour requirements;
- 3) Compliance with apprenticeship obligations;
- 4) Compliance with payroll recordkeeping requirements; and
- 5) Compliance with other obligations as required by law.

b) Contractor shall ensure that the above requirements are included in all subcontracts for public works activities for the Facility.

20. **Understanding of Guidelines.** Grantee warrants that it has read and understands the Energy Commission's Guidelines and acknowledges that these Guidelines govern the payment of any funds under this Agreement and authorize the Energy Commission to terminate the Agreement or any payments under the Agreement for reasonable cause, to conduct random audits of Grantee's invoices for ERFP payments, to conduct inspections of Grantee's Facility and books as part of these audits, to initiate enforcement actions to recover any funding payments the Grantee was not otherwise entitled to receive, to initiate investigations of Grantee to verify fraud or misrepresentation in connection with Grantee's application for or receipt of

FUNDING AWARD NOTICE
SPI-Loyalton
RPS Certification Number: 60570A

this Agreement or any payments of ERFP funding, or to take action as authorized by the Guidelines to properly administer the ERFP. Grantee further understands that the Energy Commission Guidelines are subject to change pursuant to Public Resources Code Section 25747 and that any changes made to the Guidelines shall apply to Grantee and the payment of funding under this Agreement.

21. Law Governing. This Agreement shall be interpreted, governed, and construed under the laws of the State of California.

Bob Ellery, Director
Sierra Pacific Industries

B.B Blevins, Executive Director
California Energy Commission

FUNDING AWARD NOTICE
SPI-Loyalton
RPS Certification Number: 60570A

EXHIBIT B
CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

Note: The Energy Commission Contract Manual includes detailed instructions on how to complete this section, with examples of contracts that are "Projects" and are not "Projects". When the Project Manager is completing this section, if questions arise as to the appropriate answers to the questions below, please consult with the Energy Commission attorney assigned to review grants for your division.

1. Is funding award considered a "Project" under CEQA?

☐ Yes ☒ No

If yes, skip to Question #2.

If no, please complete the following [Public Resources Code (PRC) 21065 and 14 California Code of Regulations (CCR) 15378]:

Explain why funding award is not considered a "Project"?

Funding award will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment because funding award involves a facility that has been previously reviewed under CEQA. The purpose of providing additional funds to this project is to continue its operations at an equivalent level as in previous years. (Please see Public Resources Code, section 25742.) Thus, there is no possibility that by providing these funds, this project will have the potential for a significant effect on the environment.

2. If funding award is considered a "Project" under CEQA:

☐ Funding Award **IS** exempt.

☐ Statutory Exemption. List PRC and/or CCR section number:

☐ Categorical Exemption. List CCR section number:

☐ Common Sense Exemption. 14 CCR 15061(b)(3)

Explain reason why funding award is exempt under the above section:

☐ Funding award **IS NOT** exempt. The Project Manager needs to consult with the Energy Commission attorney assigned to your division and the Siting Office regarding a possible initial study.

FUNDING AWARD NOTICE
SPI-Loyalton
RPS Certification Number: 60570A

EXHIBIT C
PREVAILING WAGE COMPLIANCE CERTIFICATION

This certificate is to be completed by Grantee, signed by Grantee and all construction contractors and subcontractors, and submitted to Energy Commission within 90 days of completing any construction, alteration, demolition, installation, or repair work subject to the state prevailing wage law pursuant to Public Utilities Code section 399.14, subdivision (h).

Grantee: _____

Energy Commission Renewable Portfolio Standard Certification Number:

Facility: _____

Date Facility Construction Completed: _____

Grantee hereby certifies as follows:

1. All construction contracts and subcontracts to perform work activities subject to the state prevailing wage law for the above referenced Facility contained requirements that the construction contractors and subcontractors comply with prevailing wage law and pay prevailing wages in accordance with the requirements of the California Labor Code.
2. Prevailing wages have been paid as required by law.
3. All construction contractors and subcontractors have maintained labor records as required by the Labor Code and such records shall be made available to the Energy Commission upon request.
4. The undersigned Grantee acknowledges that disbursement of any payments of production incentives under the above noted Agreement by the Energy Commission is expressly made in reliance upon the representations made in this certification.

Grantee:

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

FUNDING AWARD NOTICE
SPI-Loyalton
RPS Certification Number: 60570A

Each contractor and subcontractor performing work activities subject to the prevailing wage law for the above referenced Facility must sign below. Include additional pages if necessary.

Construction Contractor and Subcontractors hereby certifies as follows:

1. The contract with Grantee to perform work activities subject to the prevailing wage law for the above referenced Facility contained requirements that the construction contractor and all its subcontractors comply with prevailing wage law and pay prevailing wages in accordance with the requirements of the Labor Code.
2. Prevailing wages have been paid as required by law.
3. Construction contractor and all its subcontractors have maintained labor records as required by the Labor Code and such records shall be made available to the Energy Commission upon request.
4. The undersigned construction Contractor acknowledges that disbursement of any payments of production incentives under the above noted Agreement by the Energy Commission is expressly made in reliance upon the representations made in this certification.

Construction Contractor

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

Construction Contractor

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

FUNDING AWARD NOTICE
Sunray Energy- SEGS I and II
RPS Certification Number: 60359E

1. **Purpose.** This Funding Award Notice ("Agreement") is entered into between Sunray Energy, Inc. ("Grantee") and the California Energy Commission ("Energy Commission") for the purpose of creating a funding award to provide funding pursuant to the Energy Commission's *Existing Renewable Facilities Program Guidebook, Renewables Portfolio Standard Eligibility Guidebook, and Overall Program Guidebook*, (collectively referred to as "Guidelines"). Grantee has applied to the Energy Commission for Existing Renewable Facilities Program (ERFP) funding for its Sunray Energy- SEGS I and II Facility, as described in the Application for ERFP Funding Eligibility (CEC-1250E-1) and referenced as Exhibit A, and the Energy Commission has determined that Grantee and its facility are eligible for funding as specified in the Guidelines. This Agreement commits funding to pay production incentives to Grantee's Facility subject to the Guidelines and the terms and conditions specified herein. Grantee must comply with the terms and conditions of the Guidelines and this Agreement to remain eligible to receive funding under this Agreement.
2. **Incorporation by Reference.** Neither the Energy Commission's Guidelines nor Grantee's application for ERFP eligibility and funding, dated March 29, 2007, are attached hereto, but are incorporated by reference and made a part of this Agreement.
3. **Funding Award Amount.** The total amount of funding available to Grantee under this Agreement is limited by the funds allocated to the Existing Renewable Facilities Program of the Energy Commission's Energy Program during the 2007 calendar year, the level of ERFP participation during this period, and the Target Price and Production Incentive Caps specified in paragraph 4.
4. **Target Price and Production Incentive Caps**

The target price and production incentive caps for Grantee facility during the 2007 calendar years shall be as follows:

Target Price: 5.37 cents/kWh

Production Incentive Cap: 1.5 cents/kWh
5. **Contingent Funding.** Funding for this Agreement is contingent on the availability of adequate funding from the Energy Commission's Renewable Resource Trust Fund.
6. **Term.** The term of this Agreement shall be from January 1, 2007, to December 31, 2007, unless terminated earlier by the Energy Commission pursuant to the Guidelines. Notwithstanding the term of this Agreement, Grantee may submit final invoices for payment of eligible electrical power generated during the term of this Agreement for a period of three months after the term ends.

FUNDING AWARD NOTICE
Sunray Energy- SEGS I and II
RPS Certification Number: 60359E

7. **Non-Transferability of award.** The funding award created by this Agreement is specific to Grantee and the Sunray Energy- SEGS I and II Facility. This award is not transferable or assignable to another facility and may not be assigned to another entity without the Energy Commission's prior written permission.
8. **Assignment.** Grantee shall not assign its rights nor delegate its duties under this Agreement without the Energy Commission's advance written approval.
9. **Indemnification.** Grantee agrees to indemnify, defend, and save harmless the Energy Commission, its officers, agents, and employees from any and all claims and losses accruing and resulting to any and all contractors, subcontractors, material men, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with Grantee's Facility or this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Grantee or Grantee's officers, agents, employees, contractors, subcontractors, material men, laborer, or any other person, firm, or corporation in connection with the performance of work to develop, construct, or operate Grantee's Facility or receive funding under this Agreement.
10. **Review and Disclaimer.** Review by the Energy Commission of the design, operation, or maintenance of Grantee's Facility or related interconnection or generation facilities shall not constitute any representation as to the economic or technical feasibility, operational capacity, or reliability of such facilities. Grantee shall not in any way represent to any third party that the Energy Commission's review of Grantee's Facility is a representation by the Energy Commission as to the Facility's economic or technical feasibility, operational capability, or reliability. Grantee is solely responsible for its Facility's economic and technical feasibility, operational capability, and reliability.
11. **Certification.** Grantee has provided evidence of facility certification as an RPS eligible renewable resource and must maintain that certification as outlined in the Energy Commission's *Renewables Portfolio Standard Eligibility Guidebook*. Failure to do so may result in this Agreement being terminated as specified in the Guidelines.
12. **Funding Termination.** Grantee acknowledges that this Agreement and payments under this Agreement may be terminated for reasonable cause pursuant to the Guidelines by providing 30-day written notice to the Grantee contact specified in paragraph 16. Consistent with the Guidelines, reasonable cause includes the following:

FUNDING AWARD NOTICE
Sunray Energy- SEGS I and II
RPS Certification Number: 60359E

- Grantee's failure to maintain certification as an RPS eligible renewable resource or knowingly providing false or misleading information about itself or the facility, as determined by the Energy Commission, in facility's application for certification.
- The power purchase contract referenced in paragraph 1 of this Agreement is modified or renegotiated such that the total energy price and/or the capacity price payments under the power purchase contract are modified.
- Insufficient funds in the Energy Commission's Renewable Resource Trust Fund to adequately fund this Agreement.

13. Funding Eligibility. Grantee acknowledges that its eligibility to receive ERFP funding under this Agreement shall be contingent upon its satisfaction of all terms and conditions set forth in the Guidelines and this Agreement.

14. Invoicing. Grantee shall invoice for payments under this Agreement in accordance with the procedures specified in the applicable Guidelines.

15. Records Retention. Unless stated otherwise in the applicable Guidelines, Grantee shall:

- Keep all records relating to and verifying the accuracy of information stated in an invoice for payment submitted pursuant to this Agreement for a period not less than three years after the end of the calendar year in which payment for the invoice is made;
- Keep all records relating to and verifying the accuracy of information stated in a report submitted to the Energy Commission pursuant to the Guidelines for a period not less than three years after the end of the calendar year in which the report is submitted; and
- Keep all records relating to and verifying the overall usage, on a total energy input basis, of all fossil fuels and non-fossil fuels used to generate electricity in a given calendar year for a period not less than four years after the end of that calendar year.

16. Grantee Contact. Grantee's contact under this Agreement shall be Eric Wills, President, Sunray Energy, Inc.. Any notice to Grantee under this Agreement shall be forwarded to the Grantee contact at the following address:

Sunray Energy, Inc.
Eric Wills, President
35100 Santa Fee Street PO Box 338
Daggett, CA 92327

FUNDING AWARD NOTICE
Sunray Energy- SEGS I and II
RPS Certification Number: 60359E

- 17. Energy Commission Contact.** The Energy Commission's contact under this Agreement shall be Jason Orta, Account Lead of the Existing Renewable Facilities Program, or his Successor. Any notice to the Energy Commission under this Agreement shall be forwarded to the Energy Commission contact at the following address:

California Energy Commission
1516 Ninth Street, MS-45
Sacramento, California 95814
Attn: Jason Orta

- 18. CEQA Review.** The Energy Commission staff has reviewed the Sunray Energy- SEGS I and II Facility and has determined that the funding award for this facility does not meet the definition of a "project" pursuant to CEQA Guidelines, Title 14, California Code of Regulations, section 15378 (See Exhibit B of this Funding Award Notice).

- 19. Prevailing Wage.** For purposes of this paragraph, "public works" means construction, alteration, demolition, installation, and/or repair work over \$1,000 but does not include maintenance work; and "Contractor" means all contractors and subcontractors that perform public works activities on the Facility.

A. Grantee/General Requirements

a) Pursuant to California Public Utilities Code section 399.12 (h) and applicable law, Grantee shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any public works activities performed on the Facility funded by this Agreement. For purposes of compliance with the prevailing wage law, Grantee is the "awarding body" as defined in California Labor Code section 1722 and shall comply with the provisions applicable to recipients of public funds AND the provisions applicable to an awarding body. As such, Grantee agrees to ensure compliance with the state prevailing wage law, including without limitation:

- 1) Determining work activities and trades subject to the requirement to pay prevailing wage under the prevailing wage law;
- 2) Ascertaining applicable prevailing wage rate for each covered worker performing work activities subject to the prevailing wage law on the Facility;
- 3) Specifying in calls for bids, bid specifications, and construction contracts the applicable prevailing wage;
- 4) Ensuring all contracts for public works activities for the Facility include appropriate flow down provisions;
- 5) Posting the applicable prevailing wage information at each job site of the Facility;
- 6) Ensuring payment of prevailing wage, as applicable;
- 7) Complying with overtime and working hour requirements;
- 8) Complying with apprenticeship obligations;

FUNDING AWARD NOTICE
Sunray Energy- SEGS I and II
RPS Certification Number: 60359E

- 9) Complying with payroll recordkeeping requirements;
- 10) Withholding payments from contractors as necessary to satisfy wage and penalty assessments issued by the Labor Commissioner; and
- 11) Complying with other obligations as required by law.

b) Grantee shall submit to the Energy Commission within 90 days of completing any construction, alteration, demolition, installation, or repair work subject to the state prevailing wage law pursuant to Public Utilities Code section 399.14, subdivision (h), a certification signed by Grantee and all involved contractors performing work activities on the Facility certifying that prevailing wages were paid as required by law. The certification shall be as provided in Exhibit C.

c) Grantee shall submit to the Energy Commission, as part of any payment request or invoice, a certification stating i) that prevailing wages were paid for public works activities performed for the Facility during the period covered by the invoice, and ii) that Grantee and all involved contractors complied with the prevailing wage law.

B. Flow Down Requirements

Grantee shall ensure that all agreements with contractors for public works activities on the Facility contain the following provisions:

a) Contractor shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for all construction, alteration, demolition, installation, or repair work over \$1,000 performed under the contract. Contractor's obligations under prevailing wage laws include without limitation:

- 1) Payment of not less than the applicable prevailing wage for public works activities performed for the Facility;
- 2) Compliance with overtime and working hour requirements;
- 3) Compliance with apprenticeship obligations;
- 4) Compliance with payroll recordkeeping requirements; and
- 5) Compliance with other obligations as required by law.

b) Contractor shall ensure that the above requirements are included in all subcontracts for public works activities for the Facility.

20. Understanding of Guidelines. Grantee warrants that it has read and understands the Energy Commission's Guidelines and acknowledges that these Guidelines govern the payment of any funds under this Agreement and authorize the Energy Commission to terminate the Agreement or any payments under the Agreement for reasonable cause, to conduct random audits of Grantee's invoices for ERFP payments, to conduct inspections of Grantee's Facility and books as part of these audits, to initiate enforcement actions to recover any funding payments the Grantee was not otherwise entitled to receive, to initiate investigations of Grantee to verify

FUNDING AWARD NOTICE
Sunray Energy- SEGS I and II
RPS Certification Number: 60359E

fraud or misrepresentation in connection with Grantee's application for or receipt of

this Agreement or any payments of ERFP funding, or to take action as authorized by the Guidelines to properly administer the ERFP. Grantee further understands that the Energy Commission Guidelines are subject to change pursuant to Public Resources Code Section 25747 and that any changes made to the Guidelines shall apply to Grantee and the payment of funding under this Agreement.

21. Law Governing. This Agreement shall be interpreted, governed, and construed under the laws of the State of California.

Eric Wills, President
Sunray Energy, Inc.

B.B Blevins, Executive Director
California Energy Commission

FUNDING AWARD NOTICE
Sunray Energy- SEGS I and II
RPS Certification Number: 60359E

EXHIBIT B
CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE

Note: The Energy Commission Contract Manual includes detailed instructions on how to complete this section, with examples of contracts that are "Projects" and are not "Projects". When the Project Manager is completing this section, if questions arise as to the appropriate answers to the questions below, please consult with the Energy Commission attorney assigned to review grants for your division.

1. Is funding award considered a "Project" under CEQA?

☐ Yes

☒ No

If yes, skip to Question #2.

If no, please complete the following [Public Resources Code (PRC) 21065 and 14 California Code of Regulations (CCR) 15378]:

Explain why funding award is not considered a "Project"?

Funding award will not cause a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment because funding award involves a facility that has been previously reviewed under CEQA. The purpose of providing additional funds to this project is to continue its operations at an equivalent level as in previous years. (Please see Public Resources Code, section 25742.) Thus, there is no possibility that by providing these funds, this project will have the potential for a significant effect on the environment.

2. If funding award is considered a "Project" under CEQA:

☐ Funding Award **IS** exempt.

☐ Statutory Exemption. List PRC and/or CCR section number:

☐ Categorical Exemption. List CCR section number:

☐ Common Sense Exemption. 14 CCR 15061(b)(3)

Explain reason why funding award is exempt under the above section:

☐ Funding award **IS NOT** exempt. The Project Manager needs to consult with the Energy Commission attorney assigned to your division and the Siting Office regarding a possible initial study.

FUNDING AWARD NOTICE
Sunray Energy- SEGS I and II
RPS Certification Number: 60359E

EXHIBIT C
PREVAILING WAGE COMPLIANCE CERTIFICATION

This certificate is to be completed by Grantee, signed by Grantee and all construction contractors and subcontractors, and submitted to Energy Commission within 90 days of completing any construction, alteration, demolition, installation, or repair work subject to the state prevailing wage law pursuant to Public Utilities Code section 399.14, subdivision (h).

Grantee: _____

Energy Commission Renewable Portfolio Standard Certification Number:

Facility: _____

Date Facility Construction Completed: _____

Grantee hereby certifies as follows:

1. All construction contracts and subcontracts to perform work activities subject to the state prevailing wage law for the above referenced Facility contained requirements that the construction contractors and subcontractors comply with prevailing wage law and pay prevailing wages in accordance with the requirements of the California Labor Code.
2. Prevailing wages have been paid as required by law.
3. All construction contractors and subcontractors have maintained labor records as required by the Labor Code and such records shall be made available to the Energy Commission upon request.
4. The undersigned Grantee acknowledges that disbursement of any payments of production incentives under the above noted Agreement by the Energy Commission is expressly made in reliance upon the representations made in this certification.

Grantee:

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

FUNDING AWARD NOTICE
Sunray Energy- SEGS I and II
RPS Certification Number: 60359E

Each contractor and subcontractor performing work activities subject to the prevailing wage law for the above referenced Facility must sign below. Include additional pages if necessary.

Construction Contractor and Subcontractors hereby certifies as follows:

1. The contract with Grantee to perform work activities subject to the prevailing wage law for the above referenced Facility contained requirements that the construction contractor and all its subcontractors comply with prevailing wage law and pay prevailing wages in accordance with the requirements of the Labor Code.
2. Prevailing wages have been paid as required by law.
3. Construction contractor and all its subcontractors have maintained labor records as required by the Labor Code and such records shall be made available to the Energy Commission upon request.
4. The undersigned construction Contractor acknowledges that disbursement of any payments of production incentives under the above noted Agreement by the Energy Commission is expressly made in reliance upon the representations made in this certification.

Construction Contractor

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____

Construction Contractor

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____