

1 services in California.

2 Curtailment: When SoCalGas and/or LBGO (jointly or separately referred
3 hereafter in this definition as "Utility") or other operator of any other transmission pipeline
4 used by LBGO, initiates suspension of gas service, Utility may temporarily reduce the
5 daily quantity of gas it will transport or deliver or terminate service entirely for certain
6 service categories as needed for operational and/or contractual requirements.
7 Curtailment is implemented when, in the Utility's judgment, there exists a restriction or
8 limitation on Utility transmission or distribution pipelines necessary for the acceptance,
9 transportation or subsequent redelivery of gas resulting in Utility being unable to meet its
10 operational, contractual or gas customers' requirements or when the Utility has a deficiency
11 of gas supply available to meet its operational, contractual or sales customers'
12 requirements.

13 Force Majeure: Shall mean, without limitation, the following events: (i)
14 physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or
15 storm warnings, such as hurricanes, which result in evacuation of the affected area, floods,
16 washouts, explosions, breakage or accident or necessity of repairs to machinery or
17 equipment or lines of pipe; (ii) weather related events affecting an entire geographic region,
18 such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii)
19 interruption and/or curtailment of transportation and/or storage by transporters; (iv) acts of
20 others such as strikes, lockouts or other industrial disturbances, riots, sabotage,
21 insurrections or wars; and (v) governmental actions such as necessity for compliance with
22 any court order, law statute, ordinance, regulation or policy having the effect of law
23 promulgated by a governmental authority having jurisdiction.

24 Gas: Shall mean natural gas.

25 Imputed Value of the Commodity: For purposes of this Agreement, LBGO
26 and Customer intend that the imputed value equals LBGO's Noncore Commodity Charge.

27 LBGO's Noncore Commodity Charge: Shall mean an amount equal to
28 LBGO's weighted average cost per therm of gas supply purchased, necessary to meet the

1 forecasted Core and Non-Core demand for the month. In addition, the cost of gas shall
2 include the cost to administer the transportation, purchasing, remarketing, balancing, etc.,
3 of LBGO's natural gas requirements, as well as the cost for any financial transactions
4 implemented to reduce market exposure for the cost of gas.

5 Overnomination Event: In the event that SoCalGas determines that the
6 transportation nominations received for a specific date of gas flow ("flow date") exceeds its
7 expected system capacity (including storage) on such flow date, SoCalGas shall apply
8 Buy-Back service separately for each flow date that is overnominated as contained in Rule
9 No. 30.

10 Rate Schedule 5: Shall mean the rate described in Schedule No. 5 of the
11 LBGO Gas Rate Schedule, as the same may be amended or replaced.

12 Rate Schedule 7: Shall mean the rate described in Schedule No. 7 of the
13 LBGO Gas Rate Schedule, as the same may be amended or replaced.

14 Rate Schedule 9: Shall mean the rate described in Schedule No. 9 of the
15 LBGO Gas Rate Schedule, as the same may be amended or replaced.

16 Rule No. 30: Shall mean Rule No. 30 of the SoCalGas Tariff Book, as the
17 same may be amended or replaced.

18 SoCalGas: Shall mean Southern California Gas Company, a public utility
19 regulated by the CPUC.

20 Standby Customer: Shall have the meaning given in Section 3(F).

21 Standby Event: Any gas transportation customer who bypasses LBGO's
22 service, in whole or in part, by connection to and service from an alternate gas
23 transportation service provider while connected to LBGO's system, shall be subject to a
24 monthly Standby charge as a Standby Customer, in addition to the charges due under Rate
25 Schedules 5, 7 and 9.

26 Therm: 100,000 British Thermal Units (BTU).

27 Undernomination Event: SoCalGas requires LBGO to deliver specific
28 minimum daily volumes, depending upon the SoCalGas storage inventory level, during the

1 period from November through March. In the event that LBGO does not meet the minimum
2 required delivery volume, SoCalGas shall apply the Daily Balancing Standby Rates for
3 each flow date as contained in Rule No. 30.

4 3. SCOPE.

5 A. Transportation/Service Program: LBGO shall transport
6 Customer-owned gas from the point of receipt into the SoCalGas transmission
7 system to the LBGO distribution system where the gas shall then be transported
8 and delivered to Customer by LBGO on a daily basis. LBGO or Agent/Contracted
9 Marketer shall have the right to accept or reject Customer's nominations into the
10 LBGO system. Any occurrence of Force Majeure shall relieve both parties of their
11 obligation to perform, including payment.

12 B. Nomination Procedures: The following nomination procedures
13 shall apply to gas transported and delivered to Customer by LBGO:

14 i. Gas nominations for flow on the first day of the month,
15 as well as daily gas nominations, must be received in writing via electronic
16 mail or facsimile by LBGO and Agent/Contracted Marketer no later than 9:00
17 a.m. Pacific Clock Time, a minimum of one (1) business day prior to the date
18 of flow.

19 ii. Nomination data must be received by LBGO and
20 Agent/Contracted Marketer in writing to include pertinent information on
21 transportation contracts, receipt points, suppliers and any other information
22 LBGO deems reasonably necessary as set forth in the attached Addendum
23 A, or revisions and amendments thereto.

24 iii. All determinations by LBGO or Agent/Contracted
25 Marketer as to allocation points and/or maximum daily quantities related
26 thereto or as to the procedures utilized for any allocation process, when made
27 by LBGO, shall be final.

28 iv. In the event of an Overnomination Event declared by

1 SoCalGas, any Customer (i) which is unable or unwilling to reduce its
2 transportation nomination within the two (2) hour window allotted by
3 SoCalGas, (ii) whose nominations exceed one hundred ten percent (110%)
4 of its gas usage, as specified in Rule No. 30, and (iii) whose transported
5 border volumes were credited to Customer and made whole by LBGO, shall
6 be billed by LBGO the difference between LBGO's highest priced gas
7 purchased in said month and the assessed Buy-Back charge credited to
8 LBGO by SoCalGas.

9 v. In the event of a declared Undernomination Event, as
10 defined herein, by SoCalGas, any Customer unable or unwilling to nominate
11 and deliver volumes meeting the minimum requirement, as specified in Rule
12 No. 30, shall be assessed a charge based on the rate per therm billed to
13 LBGO by SoCalGas.

14 C. Curtailment: In the event of curtailment, any Customer unable
15 or unwilling to curtail shall be assessed a penalty based on the charges per therm
16 billed to LBGO by SoCalGas for volumes used by Customer in violation of
17 curtailment.

18 D. Minimum Average Volume: All Rate Schedule 5 and 9
19 customers shall maintain a minimum annual average volume requirement of
20 250,000 therms of gas to qualify for this Transportation/Service Program. Average
21 volume shall be calculated on a monthly basis and based on a rolling twelve (12)
22 month period.

23 E. Under/Over Monthly Deliveries: If Customer's gas purchase
24 deliveries from third parties are over or under Customer's actual consumption in any
25 month, the under/over-delivery shall be resolved as follows:

26 i. Over-Deliveries- If Customer had over deliveries in any
27 month, Customer will be subject to the following restrictions: LBGO shall
28 permit Customer to carry- over to the following month over-delivery volumes

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of up to ten percent (10%) of Customer's consumption for the month in which the over-delivery occurred. Any of Customer's volumes carried over will be applied first to the following month's consumption. Any volumes of over-deliveries in excess of ten percent (10%) of Customer's consumption may be purchased by LBGO, at its sole discretion, by crediting to Customer an amount that is equal to seventy-five percent (75%) of the lowest cost of gas purchased by LBGO during the month in which the excess imbalance was incurred.

ii. Under-Deliveries - If Customer's deliveries were not sufficient to satisfy Customer's actual gas consumption in any month, Customer shall be subject to the following restrictions: LBGO shall permit Customer to carry-over to the following month under-delivery volumes of up to five percent (5%) of Customer's consumption for the month in which the under-delivery occurred. Any volumes of under-deliveries up to five percent (5%) of Customer's consumption shall be applied to the following month's consumption. Any volumes of under-deliveries in excess of five percent (5%) of Customer's consumption shall be charged to Customer at one hundred twenty-five percent (125%) of the highest cost of gas purchased by LBGO during the month the imbalance was incurred, and the applicable transmission charge per therm.

iii. Reconciliation- The under/over deliveries reconciliation will occur at the end of each month and be incorporated into the Customer's invoice for that monthly period.

iv. Balancing- Should SoCalGas impose additional stricter balancing provisions upon LBGO, the stricter provisions will be adopted and implemented by LBGO, as required by SoCalGas, and thereafter apply to Customer. Customer shall be subject to changed balancing requirements at the time such balancing is imposed by SoCalGas upon LBGO, irrespective

1 of prior written notice to Customer; however, LBGO will attempt to provide
2 advance written notice to Customer. Customer is advised that SoCalGas is
3 considering daily and/or weekly balancing under certain conditions, which
4 conditions are undetermined at present.

5 F. Standby Customer Status: In the case of a Standby Event,
6 Customer will be considered to have "Standby Customer" status and Customer shall
7 be subject to a Minimum Monthly Bill Component charge in addition to all other
8 rates, charges, or penalties provided under this Agreement.

9 i. The Minimum Monthly Bill Component shall be
10 determined by multiplying the total monthly gas volume utilized by Customer
11 during the same calendar month of the Base Period by the current Rate
12 Schedule 5, 7 or 9 rate, as applicable. If Customer's current monthly billing
13 period gas consumption volume multiplied by the current Rate Schedule 5, 7
14 or 9 rate is equal to or greater than the Minimum Monthly Bill Component,
15 then Customer will be excused from the Minimum Monthly Bill Component
16 for that specific month and the resulting Standby charge shall be zero.

17 ii. If Customer's actual gas consumption volume for a given
18 month, multiplied by the current Rate Schedule 5, 7 or 9 rate, as applicable,
19 is less than the Minimum Monthly Bill Component, then Customer's bill will
20 include a Standby charge equal to the difference between the Minimum
21 Monthly Bill Component and the current billing period gas consumption
22 volume multiplied by Customer's current Rate Schedule 5, 7 or 9 rate, as
23 applicable.

24 iii. The Standby charge will remain in place until the
25 Standby Customer notifies LBGO that the alternate gas transportation
26 service provider's interconnection has been physically and permanently
27 removed and LBGO inspects and verifies such removal. The Base Period
28 remains the same as long as the Standby charge remains in place.

1 iv. For the purpose of bypass, Customer shall notify LBGO
2 in writing within twenty-four (24) hours of either: (a) executing a contract with
3 an alternate gas transportation service provider or (b) installing a gas pipeline
4 interconnection with an alternate gas transportation service provider. Both
5 parties acknowledge that time is of the essence because SoCalGas requires
6 LBGO to deliver certain daily volumes into its system.

7 v. Upon written request by LBGO, Customer shall within
8 forty-eight (48) hours of receipt of such notice, provide LBGO access to its
9 facility(ies) in order to physically inspect and/or verify the existence or
10 removal of any non-LBGO operated gas pipeline interconnections.

11 vi. If Customer attains "Standby Customer" status on any
12 day other than the first day of the month, the standby charge due under this
13 Section 3(F) will nevertheless be charged as though Customer was a
14 "Standby Customer" for the entire calendar month.

15 G. Liability: Customer shall be liable for any damages, obligations
16 to third parties, fees, charges, surcharges, taxes or costs incurred by LBGO as a
17 result of transportation service under this Agreement, except claims arising out of
18 gross negligence by LBGO. All production, severance, excise, ad valorem and any
19 other similar taxes imposed or levied by city, state or any governmental agency on
20 the gas transported for Customer shall be paid by Customer. Customer shall
21 indemnify, defend and hold LBGO harmless from any liability against all taxes,
22 damages, claims of third parties, fees or charges, or any and all other claims except
23 as stated above.

24 H. Commodity Procurement Option: In the alternative to
25 paragraphs A, B and E of Section 3, Customer may, at any time during the term of
26 this Agreement, elect to purchase gas from LBGO for all of its gas requirements
27 under the applicable LBGO Rate Schedules by providing advance written
28 notification to LBGO of its election. If Customer makes such an election, Customer

1 must purchase all of its gas commodity from LBGO for a minimum of one (1) year
2 from the date it purchases gas from LBGO. The price will be established by
3 reference to the current applicable LBGO Rate Schedule. Customer shall be
4 responsible for payment of all taxes, surcharges and/or penalties.

5 4. FINANCIAL OBLIGATION.

6 A. Customer Billing Account: Each month on or before the
7 twentieth (20th) day of the month, LBGO shall send Customer an invoice for the net
8 charges payable hereunder for the preceding month. Such charges shall be based
9 upon this Agreement and the appropriate prevailing LBGO Rate Schedule and
10 current LBGO Fees and Charges Schedule in effect at the time of billing. All net
11 charges for gas delivered to Customer shall be billed to Customer at the address
12 designated in Section 9.

13 B. Payment: Customer payments must be received no later than
14 15 days from the statement date on the invoice. Failure to timely pay may result in
15 immediate termination of gas service to Customer. Customer shall be charged a late
16 charge on any delinquent or unpaid balance according to the then-current applicable
17 Long Beach Municipal Code, ordinances and/or resolutions.

18 C. Gas Users Tax: Customer shall pay the tax imposed under the
19 Long Beach Municipal Code Section 3.68.040, as amended, based upon the total
20 cost, which includes but is not limited to, the Imputed Value of the Commodity,
21 transportation services, surcharges, tariffs, under/over-delivery charges, Standby
22 charges and all other charges and penalties. This tax shall be billed and paid with
23 the monthly invoice in Section 4(A).

24 D. Adjustments: All gas quantities transported and/or delivered to
25 LBGO under this Agreement shall be billed based on the best information available
26 from SoCalGas at the time of billing as determined by LBGO, but shall be subject to
27 adjustment based on subsequent adjustments, imbalances, under/over-deliveries,
28 CPUC regulatory decisions or other reconciliations of differences as incurred by

1 LBGO on behalf of the Customer.

2 E. Deposits: At the beginning or at any time during the term of this
3 Agreement or any extension thereof, LBGO may require Customer, as a condition
4 of continued gas service, to pay a deposit equivalent to two (2) times Customer's
5 estimated average monthly billing as a transport customer. The deposit shall be paid
6 in advance of delivery of gas service under this Agreement and as condition
7 precedent to the effectiveness of this Agreement, unless otherwise agreed in writing
8 by LBGO. The deposit may be paid in cash, by a certificate of deposit or a letter of
9 credit from a bank acceptable to LBGO.

10 F. Electronic Meter-Reading: Customer shall pay for the cost of
11 electronic meter-reading equipment and the installation of and monthly service
12 charges associated with such equipment installed on Customer's premises as a
13 condition of service under this Agreement. If electronic meter-reading equipment
14 exists on Customer's premises as of the date of Customer's execution of this
15 Agreement, then Customer shall pay for the monthly service charges and other
16 costs associated with such equipment.

17 G. Technical Support Fee: Customer shall pay for each service
18 visit made by LBGO software support technicians pursuant to the current LBGO
19 Fees and Charges Schedule. Notwithstanding the foregoing, Customer shall not be
20 obligated to pay any fees in connection with the initial software installation and
21 training visit.

22 5. RELATED OBLIGATIONS.

23 A. Title/Indemnity: Customer warrants title to all gas delivered to
24 LBGO on behalf of Customer, except gas purchased pursuant to Section 3(H).
25 Customer shall indemnify and hold harmless LBGO and SoCalGas from and against
26 any and all claims, actions, liabilities, taxes, royalties, liens, charges, damages or
27 costs (including reasonable attorneys' fees for in-house or outside counsel) related
28 to gas delivered or failed to be delivered to the allocation points which have been

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nominated and confirmed with LBGO and SoCalGas hereunder, except for claims arising out of the gross negligence of LBGO or SoCalGas. The foregoing sentence does not apply to gas purchased by Customer pursuant to Section 3(H) except as it relates to payment for the commodity, taxes, charges and related services, and the payment of attorneys' fees for collection actions.

B. Replacement of Gas: LBGO shall have no obligation to notify Customer or to replace or substitute for Customer any quantities of gas not delivered to SoCalGas or accepted by SoCalGas in connection with this Agreement, except gas purchased pursuant to Section 3(H).

C. Assignment of Rights and Obligations: The rights and obligations under this Agreement shall not be assigned by either party without the prior written consent of the other party, which consent may be withheld at the sole discretion of LBGO.

D. Failure of Third Parties: Customer shall pay any costs incurred by LBGO because of any failure by third parties, acting as agents for Customer, to perform their obligations related to this Agreement (including reasonable attorneys' fees whether for in-house or outside counsel).

E. Third Party Penalties, Taxes and Fees: Any and all penalties, taxes or other related or similar charges or fees incurred by LBGO or SoCalGas under an interstate or intrastate supplier contract as a result of this Agreement and accommodating transportation service shall be paid by the Customer.

F. Regulatory Action: This Agreement, rates and conditions are subject to revision and modification as a result of legislative or regulatory action, including CPUC and/or Federal Energy Regulatory Commission (FERC) proceedings and orders, including without limitation the proposed Firm Receipt Point Rights and Off-System Delivery Service.

G. Indemnity: Customer agrees to indemnify, defend and hold harmless LBGO, its officers, agents and employees against any loss, damage,

1 injury, liability and expense arising out of any loss, damage, injury, claim, action,
2 cause of action or suit brought by any person, association or entity arising out of or
3 on account of this Agreement, except claims arising from the gross negligence of
4 LBGO.

5 H. Third Party Charges: Under no circumstances shall LBGO be
6 liable to any third-party producer, marketer, broker or other supplier of gas under
7 this Agreement for any portion of the purchase price, including but not limited to the
8 gas commodity, transportation, tariffs, taxes, fees and surcharges. The Customer
9 shall be solely responsible for payments to the such third parties, except as provided
10 in Section 3(H).

11 6. DAMAGES. Except as provided herein, neither party shall be
12 assessed any special, punitive, consequential, incidental or indirect damages, whether in
13 contract or tort, for any actions or inactions related to this Agreement or the delivery or non-
14 delivery of gas, curtailment or transportation thereof.

15 7. AGENT. Customer desires a third party to act on its behalf as
16 Customer's agent ("Agent"), on and after the date hereof, until revoked by written notice
17 from Customer received by LBGO. Agent shall have full authority to act for and bind
18 Customer fully under this Agreement, and LBGO shall be authorized to rely thereon at all
19 times in dealing with the following Agent:

20
21 Agent's Name: BP Energy Company

22 Address: 201 Helos Way

23 Houston TX 77079

24
25 Telephone: 949-251-8696 Extension: 130
ext. 130

26 Fax No.: _____

27 E-mail Address: Jonathan.Wilson@bp.com

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1 8. PERSON TO CONTACT AT CUSTOMER'S METER LOCATION
2 REGARDING OPERATION. SERVICE OR TRANSPORTATION. Customer desires the
3 following named person to be contacted for inquiries from LBGO regarding service and
4 transportation of gas or other operational matters (not related to Notice or Billing):

5 Meter Address: 7480 Carson St., Long Beach CA 90808

6 City Account No. (if known): _____

7 Person's Name: Valerie Lear

8 Title: Manager

9 Address: 1299 Orleans Dr.

10 Sunnyvale, CA 94089

11
12 Telephone: 408 543 1264 Extension: _____

13 Fax No.: _____

14 E-mail Address: valerie.lear@bloomenergy.com

15 Customers having more than one City gas transport account must complete
16 the attached Exhibit "B" listing all other gas transport accounts (meters). For billing
17 purposes, the account listed above shall be considered the "balancing" account.

18 9. NOTICE. Any notice, request, demand or statement provided for in
19 this Agreement shall be in writing and shall be sent to the parties hereto at the following
20 addresses, and shall be effective upon receipt:

21 Notice, correspondence and statements:

22 Customer:	LBGO
23 <u>Bloom Energy 2009 Project Company</u>	City of Long Beach
24 <u>1299 Orleans Dr.</u>	Gas & Oil Department
25 <u>Sunnyvale CA 94089</u>	2400 E. Spring Street
26 _____	Long Beach, CA 90806-2285
27 Attn: <u>Valerie Lear</u>	Attn: Energy Service
28 Telephone: <u>408 543 1264</u>	Telephone: (562) 570-2063

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Fax No.: _____ E-Mail Address: _____	Fax No.: (562) 499-1088 Email: Renee.Williams@longbeach.gov
Billing (if different from above, state if "same") Customer: <u>SAME AS ABOVE</u> _____ _____ _____ Attn: _____ Telephone: _____ Fax No.: _____ E-Mail Address: _____	LBGO City of Long Beach Gas & Oil Department 2400 E. Spring Street Long Beach, CA 90806-2285 Attn: Energy Service Telephone: (562) 570-2063 Fax No.: (562) 499-1088 Email: Renee.Williams@longbeach.gov
Operations and Nominations Contact: Customer: <u>BP Energy</u> <u>18101 Von Karman Suite 920</u> <u>Irvine CA 92612</u> _____ Attn: <u>Johnny Wilson</u> Telephone: <u>949 251 8696 #130</u> Fax No.: _____ E-Mail Address: <u>Jonathan.Wilson@bp.com</u>	LBGO City of Long Beach Gas & Oil Department 2400 E. Spring Street Long Beach, CA 90806-2285 Attn: Energy Service Telephone: (562) 570-2063 Fax No.: (562) 499-1088 Email: Dennis.Burke@longbeach.gov
Mailing address for correspondence (if different from above): <u>SAME</u> _____ _____ _____ Attn: _____	

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

BLOOM ENERGY 2009 PPA PROJECT COMPANY, LLC, a Delaware limited liability company

June 26, 2017

By Valerie
Name Valerie Hear
Title General Manager

8/15/17, 2017

By PL
Name Patrick West
Title City Manager

"Customer"

8/16, 2017

CITY OF LONG BEACH, a municipal corporation

By PL
City Manager

"City"

This Agreement is approved as to form on August 1, 2017.

CHARLES PARKIN, City Attorney

By [Signature]
Deputy