

32394

CUSTOMER NATURAL GAS TRANSPORTATION/SERVICE AGREEMENT

This Agreement is entered into this 12 day of July, 2011, by and between the City of Long Beach (Gas & Oil Department), hereafter referred to as "City" or "LBGO," and Bloom Energy 2009 PPA Project Company, hereafter referred to as "Customer", under the authority given by the City Council of the City of Long Beach in Chapter 15.36 of the Long Beach Municipal Code and Resolution Number 07-0098 approved July 10, 2007, or as amended, for transportation and service of gas within the City of Long Beach for Rate Schedule 7 and 9 Customers.

NOW THEREFORE, in consideration of the mutual undertakings set forth below, the parties agree as follows:

SECTION 1 - TERM

This Agreement shall be effective on December 1, 2011 and terminate at midnight on July 31, 2012, and shall be subject to prior termination pursuant to (or consistent with) any final order of a federal, state or local government entity (including a court or the CPUC) having jurisdiction over the subject matter of this Agreement or the parties hereto. Such termination shall not relieve either party of the obligation to discharge any financial obligations arising hereunder prior to or as a result of termination or to correct any then-existing gas imbalance between deliveries and receipts arising during the term hereof (to the extent not prohibited by such final order).

SECTION 2 - DEFINITIONS

Agent/Contracted Marketer: Shall mean Coral Energy Resources, L.P., or any replacement therefor designated in writing by LBGO.

Base Period: Shall mean the twelve month period of time immediately prior to Customer obtaining Standby Customer status.

Business Day: Shall mean a day in which the City is open for business. A Business Day shall open at 7:30 a.m. and close at 4:30 p.m., Pacific Clock Time.

CPUC: Shall mean the California Public Utilities Commission or its successor agency with regulatory jurisdiction over intrastate pipelines, tariff and gas services in California.

Curtailement: When SoCalGas and/or LBGO (jointly or separately referred hereafter in this definition as "Utility") or other operator of any other transmission pipeline used by LBGO, initiates suspension of gas service, Utility may temporarily reduce the daily quantity of gas it will transport or deliver or terminate service entirely for certain service categories as needed for operational and/or contractual requirements. Curtailement is implemented when, in the Utility's judgment, there exists a restriction or limitation on Utility transmission or distribution pipelines necessary for the acceptance, transportation

or subsequent redelivery of gas resulting in Utility being unable to meet its operational, contractual or gas customers' requirements or when the Utility has a deficiency of gas supply available to meet its operational, contractual or sales customers' requirements.

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

gas: shall mean natural gas.

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

LBGO's Noncore WACOG: Shall mean an amount equal to LBGO's weighted average cost per therm of the gas supply necessary to meet the forecasted noncore demand for any given month, less any transmission-related charges.

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

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

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

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

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

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

Standby Event: Any gas transportation customer who bypasses LBGO's service, in whole or in part, by connection to and service from an alternate gas transportation service provider while connected to LBGO's system, shall be subject to a monthly

Standby charge as a Standby Customer, in addition to the charges due under Rate Schedules 7 and 9.

Undernomination Event: SoCalGas requires LBGO to deliver specific minimum daily volumes, depending upon the SoCalGas storage inventory level, during the period from November through March. In the event that LBGO does not meet the minimum required delivery volume, SoCalGas shall apply the Daily Balancing Standby Rates for each flow date as contained in Rule No. 30.

SECTION 3 - SCOPE

A. Transportation/Service Program - LBGO shall transport Customer-owned gas from the point of receipt into the SoCalGas transmission system to the LBGO distribution system where the gas shall then be transported and delivered to Customer by LBGO on a daily basis. LBGO or Agent/Contracted Marketer shall have the right to accept or reject Customer's nominations into the LBGO system.

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

- (1) Gas nominations for flow on the first day of the month, as well as daily gas nominations, must be received in writing via electronic mail or facsimile by LBGO and Agent/Contracted Marketer no later than 9:00 a.m. Pacific Clock Time, a minimum of one (1) business day prior to the date of flow.
- (2) Nomination data must be received by LBGO and Agent/Contracted Marketer in writing to include pertinent information on transportation contracts, receipt points, suppliers and any other information LBGO deems reasonably necessary as set forth in the attached Addendum A, or revisions and amendments thereto.
- (3) All determinations by LBGO or Agent/Contracted Marketer as to allocation points and/or maximum daily quantities related thereto or as to the procedures utilized for any allocation process, when made by LBGO, shall be final.
- (4) In the event of an Overnomination Event declared by SoCalGas, any Customer (i) which is unable or unwilling to reduce its transportation nomination within the two (2) hour window allotted by SoCalGas, (ii) whose nominations exceed 110% of its gas usage, as specified in Rule No. 30, and (iii) whose transported border volumes were credited to Customer and made whole by LBGO, shall be billed by LBGO the difference between LBGO's highest priced gas purchased in said month and the assessed Buy-Back charge credited to LBGO by SoCalGas.
- (5) In the event of a declared Undernomination Event, as defined herein, by SoCalGas, any Customer unable or unwilling to nominate and deliver volumes meeting the minimum requirement, as specified in Rule No. 30, shall be assessed a charge based on the rate per therm billed to LBGO by SoCalGas.

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

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

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

(1) Over-Deliveries - If Customer had over deliveries in any month, Customer will be subject to the following restrictions: LBGO shall permit Customer to carry-over to the following month over-delivery volumes of up to 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 10% of Customer's consumption may be purchased by LBGO, at its sole discretion, by crediting to Customer an amount that is equal to 75% of the lowest cost of gas purchased by LBGO during the month in which the excess imbalance was incurred.

(2) Under-Deliveries - If Customer's deliveries from third parties 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 5% of Customer's consumption for the month in which the under-delivery occurred. Any volumes of under-deliveries up to 5% of Customer's consumption shall be applied to the following month's consumption. Any volumes of under-deliveries in excess of 5% of Customer's consumption shall be charged to Customer at 125% of the highest cost of gas purchased by LBGO during the month the imbalance was incurred, and the applicable transmission charge per therm.

(3) 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.

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

present.

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

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

(2) If Customer's actual gas consumption volume for a given month, multiplied by the current Rate Schedule 7 or 9 rate, as applicable, is less than the Minimum Monthly Bill Component, then Customer's bill will include a Standby charge equal to the difference between the Minimum Monthly Bill Component and the current billing period gas consumption volume multiplied by Customer's current Rate Schedule 7 or 9 rate, as applicable.

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

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

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

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

G. Liability - Customer shall be liable for any damages, obligations to third parties, fees, charges, surcharges, taxes or costs incurred by LBGO as a result of

transportation service under this Agreement, except claims rising out of gross negligence by LBGO. All production, severance, excise, ad valorem and any other similar taxes imposed or levied by city, state or any governmental agency on the gas transported for Customer shall be paid by Customer. Customer shall indemnify, defend and hold LBGO harmless from any liability against all taxes, damages, claims of third parties, fees or charges, or any and all other claims except as stated above.

H. Commodity Procurement Option - In the alternative to paragraphs A, B and E of Section 3, Customer may, at any time during the term of this Agreement, elect to purchase gas from LBGO for all of its gas requirements under the applicable LBGO Rate Schedules by providing advance written notification to LBGO of its election. If Customer makes such an election, Customer must purchase all of its gas commodity from LBGO for a minimum of one (1) year from the date it purchases gas from LBGO. The price will be established by reference to the current applicable LBGO Rate Schedule. Customer shall be responsible for payment of all taxes, surcharges and/or penalties.

SECTION 4 - FINANCIAL OBLIGATION

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

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

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

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

E. Deposits - At the beginning or at anytime during the term of this Agreement or any extension thereof, LBGO may require Customer, as a condition of continued gas service, to pay a deposit equivalent to two (2) times Customer's estimated average

monthly billing as a transport customer. The deposit shall be paid in advance of delivery of gas service under this Agreement and as condition precedent to the effectiveness of this Agreement, unless otherwise agreed in writing by LBGO. The deposit may be paid in cash, by a certificate of deposit or a letter of credit from a bank acceptable to LBGO.

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

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

SECTION 5 - RELATED OBLIGATIONS

A. Title/Indemnity - Customer warrants title to all gas delivered to LBGO on behalf of Customer, except gas purchased pursuant to Section 3(H). Customer shall indemnify and hold harmless LBGO and SoCalGas from and against any and all claims, actions, liabilities, taxes, royalties, liens, charges, damages or costs (including reasonable attorneys' fees for in-house or outside counsel) related to gas delivered or failed to be delivered to the allocation points which have been 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, injury, liability and expense arising out of any loss, damage, injury, claim, action, cause of action or suit brought by any person, association or entity arising out of or on account of this Agreement, except claims arising from the gross negligence of LBGO.

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

SECTION 6 - DAMAGES

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

SECTION 7 - AGENT

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

Agent's Name: BP ENERGY Company /d MONICA SINCLAIR
Address: 201 HELIUS WAY
HOUSTON TX 77079
Telephone: (713) 323-6847 Extension: _____
Fax No.: (713) 323-7469
E-mail Address: MONICA.SINCLAIR@bp.com

SECTION 8 - PERSON TO CONTACT AT CUSTOMER'S METER LOCATION REGARDING OPERATION, SERVICE OR TRANSPORTATION

Customer desires the following named person to be contacted for inquiries from LBGO regarding service and transportation of gas or other operational matters (not related to Notice or Billing):

Meter Address: SAM'S CLUB 7480 CARSON ST. LONG BEACH CA 90808
City Account No. (if known): _____
Person's Name: Bill Brockenborough
Title: General manager
Address: 1299 ORLEANS DR
SUNNYVALE CA 94089
Telephone: (408) 543-1500 Extension: _____
Fax No.: (408) 543-1501
E-mail Address: bbrockenborough@bloomenergy.com

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

SECTION 9 - NOTICE

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

Notice, correspondence and statements:

Customer:

BLOOM ENERGY 2009 PPA PROJECT CO.
1299 ORLEANS DR
SUNNYVALE CA 94089
Attn: Accts. Payable
Telephone: (408) 543-1500
Fax No.: (408) 543-1501
E-Mail Address: Sendil.Atraya@bloomenergy.com

LBGO:

City of Long Beach
Gas & Oil Department
2400 E. Spring Street
Long Beach, CA 90806-2285
Attn: Energy Services
Telephone: (562) 570-2063
Fax No.: (562) 499-1088
E-mail Address:
Renee.Williams@longbeach.gov

Billing (if different from above, state if "same"):

Customer:

Same as above

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 Services
Telephone: (562) 570-2063
Fax No.: (562) 499-1088
E-Mail Address:
Renee.Williams@longbeach.gov

Operations and Nominations Contact:

Customer:

BP ENERGY CO
201 HELIOS WAY
HOUSTON TX 77079

Attn: MONICA SINCLAIR
Telephone: (713) 323-6847
Fax No.: (713) 323-7469
E-Mail Address: MONICA.SINCLAIR@BP.COM

LBGO:

City of Long Beach
Gas & Oil Department
2400 E. Spring Street
Long Beach, CA 90806-2285
Attn: Energy Services
Telephone: (562) 570-2066
Fax No.: (562) 499-1087
E-mail Address:
Dennis.Burke@longbeach.gov

Mailing address for correspondence (if different from above):

Same

Attn: _____

SECTION 10 - JURISDICTION

This Agreement shall be governed and construed in accordance with the laws of the State of California.

SECTION 11 - CAPTIONS AND ORGANIZATION

The various headings and numbers herein and the groupings of the provisions of this Agreement are for the purpose of convenience only and shall not be considered a part hereof, and shall have no effect on the construction or interpretation of any part of this Agreement.

SECTION 12 - NON-DISCRIMINATION CLAUSE

In the performance of this Agreement, Customer shall not discriminate against any person on the basis of race, color, religion, national origin, gender, sexual orientation, AIDS, AIDS-related condition, age, marital status, disability or handicap. Customer shall be in compliance with all applicable provisions of the Americans with Disabilities Act of 1990 (ADA). Compliance with the ADA shall be the sole and complete responsibility of Customer and Customer shall defend and hold LBGO harmless from any expense or liability arising from Customer's non-compliance therewith.

SECTION 13 - ENTIRE AGREEMENT

This Agreement sets forth the entire understanding of the parties and supersedes any prior understandings or discussions (whether written or oral) and incorporated herein by reference all Long Beach Municipal Codes, ordinances and resolutions existing or as amended from time to time. This Agreement shall only be amended by an instrument in writing properly executed by both parties or as superseded by changes in the City of Long Beach Municipal Code, resolutions, ordinances or other applicable rules and regulations.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this agreement in duplicate originals.

CUSTOMER: BLOOM ENERGY 2009 PPA PROJECT COMPANY
(Print Name of Company)

By: [Signature] By: _____

Title: General Manager Title: _____

[Attach notarial acknowledgment with signatures of two officers having authority to bind the Customer]

CITY OF LONG BEACH, a municipal corporation

Date: 7.12.11

By: [Signature] Assistant City Manager
City Manager

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Agreement is approved as to form on June 23, 2011.

ROBERT E. SHANNON, City Attorney

By: [Signature]
Deputy