

AGENDA

ORANGE COUNTY POWER AUTHORITY MEETING OF THE BOARD OF DIRECTORS

Tuesday, April 13, 2021

10:00 a.m.

Due to the public health orders and guidelines in California and in accordance with the Governor's Executive Orders N-25-20 and N-29-20, there will be no location for in-person attendance. The Orange County Power Authority is providing alternatives to in-person attendance for viewing and participating in the meeting. Further details are below.

Note: Any member of the public may provide comments to the Orange County Power Authority Board of Directors on any agenda item or on a matter not appearing on the agenda, but within the jurisdiction of the Board. Please indicate whether your comment is on a specific agenda item or a non-agenda item when requesting to speak. When providing comments to the Board, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Board as a whole through the Chair. Comments may be provided in the following manner:

Requests to Speak. In-person public attendance will not be provided. Members of the public who have requested to speak will be recognized at the appropriate time during the Zoom meeting and may speak through Zoom or telephonically. To allow the Chair to call on you, please provide the following minimum information with your request to speak: your name (if attending by videoconference) or telephone number (if attending by phone).

Comments shall be limited to three minutes when speaking. If you have anything that you wish to be distributed to the Board, please provide it via comments@ocpower.org, who will distribute the information to the Members.

The public may participate using the following remote options:

ZOOM MEETING

You are invited to a Zoom webinar.

Please click the link below to join the webinar:

<https://zoom.us/j/94369598232?pwd=YmNsa013TjB5YUc5WkhaSFBNTWdDUT09>

Passcode: 885463

Dial-in: 1-669-900-6833

Webinar ID: 943 6959 8232

Passcode: 885463

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **CONSENT CALENDAR**

All items listed under the Consent Calendar are considered to be routine and may be enacted by one motion. Prior to the motion to consider any action by the Board of Directors, any public comments on any of the Consent Items will be heard. There will be no separate action unless members of the Board of Directors request specific items be removed from the Consent Calendar.

A. MINUTES FOR THE REGULAR BOARD MEETING OF FEBRUARY 23, 2021 AND THE SPECIAL BOARD MEETING OF MARCH 9, 2021

Recommendation:

Approve as submitted.

B. ADOPTION OF RECORDS RETENTION POLICY

Recommendation:

Adopt Administrative Policy Number 007: Records Management and Retention Policy and Schedule.

C. ADOPTION OF COMPUTER USE AND EMAIL MANAGEMENT POLICY

Recommendation:

Adopt Administrative Policy Number 008: Computer Use and Email Management Policy

5. **REGULAR CALENDAR**

The following items call for discussion or action by the Board of Directors. The Board may discuss and/or take action on any item listed below if the Board is so inclined.

A. CITIZEN'S ADVISORY COMMITTEE UPDATE AND NEXT STEPS

Recommendation:

Discuss and provide direction.

B. AGREEMENT FOR PORTFOLIO MANAGEMENT AND POWER PROCUREMENT SERVICES WITH THE ALLIANCE FOR COOPERATIVE ENERGY SERVICES POWER MARKETING LLC

Recommendations:

1. Select Alliance for Cooperative Energy Services Power Marketing, LLC (ACES) to provide power supply portfolio management services.
2. Authorize the Chief Executive Officer to negotiate and execute a Professional Services Agreement with ACES in substantially similar form with review and approval by the General Counsel.

C. AUTHORIZATION FOR LETTER OF CREDIT FOR FINANCIAL SECURITY REQUIREMENT

Recommendation:

Authorize the Chief Executive Officer to secure a Letter of Credit, in substantially similar form with review and approval by the General Counsel, from the Authority's financial institution in the amount of \$147,000 to meet the Financial Security Requirement of the California Public Utilities Commission Decision 05-12-041.

6. PUBLIC COMMENTS

Opportunity for members of the public to address the Board on any items not on the agenda but within the jurisdiction of the Board.

7. DIRECTOR COMMENTS

Board Members may briefly provide information to other members of the Board and the public, ask questions of staff, request an item to be placed on a future agenda, or report on conferences, events, or activities related to Authority business. There is to be no discussion or action taken on comments made by Board Members unless authorized by law.

8. REPORT BY CHIEF EXECUTIVE OFFICER

Chief Executive Officer may briefly provide information to the Board and the public. The Board may engage in discussion if the specific subject matter of the report is identified, but the Board may not take any action other than to place the matter on a future agenda. Otherwise, there is to be no discussion or action taken unless authorized by law.

9. REPORT BY GENERAL COUNSEL

General Counsel may briefly provide information to the Board and the public. The Board may engage in discussion if the specific subject matter of the report is identified, but the Board may not take any action other than to place the matter on a future agenda. Otherwise, there is to be no discussion or action taken unless authorized by law.

10. ADJOURNMENT

Compliance with the Americans with Disabilities Act

Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact 949-263-2612. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Board Documents

Copies of the agenda and agenda packet are available at www.ocpower.org. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Board prior to or during the Board meeting are available for public review as required by law. Late-arriving documents received during the meeting are available for review by making a verbal request to the Board Secretary in the Zoom meeting room.

**ORANGE COUNTY POWER AUTHORITY
MEETING OF THE BOARD OF DIRECTORS**

MINUTES

February 23, 2020

This meeting was conducted utilizing teleconference and electronic means consistent with public health orders and guidelines in California and in accordance with the Governor's Executive Orders N-25-20 and N-29-20. There was no location for in-person attendance. Due to the nature of the teleconference, all votes were cast via roll call.

The Board Minutes are prepared and ordered to correspond to the Board Agenda. Agenda Items can and may be taken out of order during the meeting.

The Agenda Items were considered in the order presented.

1. CALL TO ORDER

Chair Carroll called the meeting to order at 10:02 a.m.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Vice Chair Jung.

3. ROLL CALL

Present: 5 Members

Director Khan (Irvine)

Director Posey (Huntington Beach)

In the absence of Director Posey, Alternate Director Kalmick

Director Sonne (Buena Park)

Vice Chair Jung (Fullerton)

Chair Carroll (Irvine)

Also present: CEO Brian Probolsky

COO Antonia Castro-Graham

Ryan Baron, General Counsel (Best Best and Krieger, LLP)

4. CONSENT CALENDAR

All items listed under the Consent Calendar were considered to be routine and enacted by one motion. Prior to the motion to consider any action by the Board of Directors, any public comments on any of the Consent Items was heard. There was no separate action and no members of the Board of Directors requested specific items be removed from the Consent Calendar.

MOTION: Motioned by Vice Chair Jung, second by Alternate Director Kalmick, to approve the Consent Calendar as submitted.

MOTION CARRIED BY THE FOLLOWING VOTE:

Ayes: Alternate Director Kalmick, Director Khan, Director Sonne, Vice Chair Jung,
Chair Carroll

Noes: None

Abstained: None

Absent: None

A. MINUTES FOR FEBRUARY 9, 2021 BOARD OF DIRECTORS' MEETING

Action: Approve as submitted.

5. REGULAR CALENDAR

The following items call for discussion or action by the Board of Directors. The Board may discuss and/or take action on any item listed below if the Board is so inclined.

A. CITIZEN'S ADVISORY COMMITTEE UPDATE

Chief Operating Officer Castro-Graham ("COO") presented the report, noting a Citizens Advisory Committee ("CAC") was permitted under the terms of the Authority's Joint Powers Agreement. She stated advisory in nature, the parameters of the Committee may be set by the Board. Ms. Castro-Graham reviewed the role of a Citizens Advisory Committee.

Board discussion ensued, with Director Khan and Vice Chair Jung stating the importance of having advocates in the community and the need to recruit members that support the mission of the Authority. Vice Chair Jung stated Directors should be allowed to make direct appointments.

Responding to Board questions, COO Castro-Graham stated she agreed that Directors know their communities the best, and that direct appointees, supplemented with applicants from a diverse group of stakeholders, such as the business, education, and home owner association communities make for strong CACs.

Further responding to Board questions, Ms. Castro-Graham recommended the Board conduct its strategic planning session, and discuss projects for the CAC to work on. She also recommended having the CAC members participate in an Energy 101 workshop, that the CAC meetings included guest speakers, interesting topics, and exciting projects to keep the members engaged.

The following members of the public provided comment:

Jose Castaneda, Fullerton, supported the idea of direct appointments by the Board Members, plus business and other stakeholders. He also requested that CAC members be empowered and encouraged to provide education about the Authority in their communities.

Ayn Cracium, Irvine, Clean Energy Advocate with the Climate Action Campaign, supported the CAC.

Board discussion continued with Alternate Director Kalmick supporting direct appointments and maintaining the virtual (Zoom) option for attendance. Director Sonne expressed support for both direct appointments and applicants from stakeholder groups.

Responding to Board inquiry, CEO Brian Probolsky stated the Authority's current leased offices could support up to 15 people for in person meetings with COVID social distancing measures. COO Castro-Graham stated her belief the CAC could be in place by late April.

Chair Carroll inquired about Sustain SoCal, and whether it was reasonable to include a representative on the CAC. For disclosure purposes General Counsel Baron reported he serves as the Chair of Sustain SoCal. Mr. Baron noted having a representative from the organization, and perhaps someone from the building community, serve on the CAC could be helpful.

CEO Probolsky noted the agenda item was a receive and file, with no Board action required. He summarized the direction provided and stated staff would review the information before returning the item to the agenda in March for a final discussion on policy and action by the Board.

Action: The Board received and filed the item.

B. ENERGY 101 WORKSHOP UPDATE

CEO Probolsky presented the report, stating the benefit of providing the workshop training as soon after the Authority's start up as possible. He stated the workshop would last approximately three hours and may include outside speakers. He provided the dates of March 9th and March 23rd for the Board's consideration.

Responding to Board inquiry, General Counsel Baron stated the workshop would be a high level overview of Community Choice Aggregation ("CCA"), the energy community, the California Public Utilities Commission, what is the role of the Authority, and the key differences between CCA and investor-owned utilities. Mr. Baron further responded that the workshop would be a Brown Act regulated meeting of the Board, and as such would be open to the public, with attendees having an opportunity to provide public comment.

The following members of the public provided comment:

Andrea Alexander, Lake Forest, stated her disappointment that the City of Lake Forest had withdrew from the Authority, and inquired as to whether the workshop would be open to residents from non-member cities. Mr. Baron replied yes.

Senait Forthal, Irvine, welcomed COO Castro-Graham to the staff, and suggested Board Members reach out to the cities and Council Members that might be struggling with understanding CCA.

MOTION: Motioned by Chair Carroll, second by Vice Chair Jung, to schedule the Energy 101 Workshop on March 9th.

MOTION CARRIED BY THE FOLLOWING VOTE:

Ayes: Alternate Director Kalmick, Director Khan, Director Sonne, Vice Chair Jung,
Chair Carroll

Noes: None

Abstained: None

Absent: None

6. PUBLIC COMMENTS

The following members of the public offered comment:

Ayn Cracium, Irvine, thanked Lake Forest Mayor Scott Voigts for his leadership in CCA and expressed hope that the City of Lake Forest would return to the Authority.

Jose Castaneda, Fullerton, spoke regarding an upcoming Stanton City Council study session on CCA and suggested someone from the Authority attend and participate.

7. DIRECTOR COMMENTS

Director Sonne noted the Authority was moving quickly in an exciting direction, and she looked forward to what can be accomplished in the next few months. She referenced the recent tragedy in Texas due to inclement weather, and requested staff be prepared to dispel any claims that clean energy models were responsible.

8. REPORT BY CHIEF EXECUTIVE OFFICER

CEO Probolsky reported on procurement efforts, stating the results of recent RFPs will be coming to the board soon. He reported entering into a six month lease for office and meeting space in Irvine, however noted they will be maintaining the PO Box for all official correspondence. Mr. Probolsky stated that Ms. Castro-Graham's official first day will be March 8th. He concluded by stating staff is conducting a lot of outreach with cities and he anticipates growing the Authority's membership as a result.

9. REPORT BY GENERAL COUNSEL

General Counsel Baron presented no formal report, however he noted for the record that there is zero correlation between CCA, renewable energy, and the Texas energy failure during the recent weather crisis. He cited Texas' deregulated energy market as a key contributing factor.

10. ADJOURNMENT

On a motion by Vice Chair Jung, second by Director Khan, Chair Carroll adjourned the meeting at 11:06 a.m.

**ORANGE COUNTY POWER AUTHORITY
SPECIAL MEETING OF THE BOARD OF DIRECTORS
MINUTES**

Tuesday, March 9, 2021

1. CALL TO ORDER

Chair Carroll called the meeting to order at 9:05 a.m.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Director Posey.

3. ROLL CALL

Five Members Present:

Director Khan (Irvine) (arrived at 9:30 a.m.)
Director Posey (Huntington Beach)
Director Sonne (Buena Park)
Vice Chair Jung (Fullerton)
Chair Carroll (Irvine)

4. ENERGY 101 WORKSHOP

Chief Executive Officer Brian Probolsky and Chief Operating Officer Antonia Castro-Graham facilitated the workshop. Speakers included: Beth Vaughan Executive Director of CalCCA, who provided an overview of Community Choice Aggregation; Ted Bardacke, Executive Director, Clean Power Alliance, Tom Habashi, Chief Executive Officer, Central Coast Community Energy, and Cody Hooven, Chief Operation Officer, San Diego Community Power, who provided perspectives from Active CCA Executive Officers; Council Member Diana Mahmud, Chair, Clean Power Alliance and Council Member Steve McShane, Vice Chair, Central Coast Community Energy, who shared their perspectives as Active CCA Executive Board Members; Gary Saleba, Executive Consultant, EES Consulting and Ryan Baron, General Counsel, OCPA, discussed the technical and regulatory obstacles of a CCA; and Craig Perkins, Executive Director, the Energy Coalition, Howard Choy, Executive Consultant, EES Consulting, and Jack Clark, Director of Customer Programs, Clean Power Alliance, who provided an overview of CCA Customer Programs.

No members of the public offered comment. Questions that were submitted and not answered during the session will be forwarded to staff for follow up.

5. PUBLIC COMMENTS

Opportunity for members of the public to address the Board on any items not on the agenda but within the jurisdiction of the Board.

No members of the public offered comment.

6. DIRECTOR COMMENTS

Board Members may briefly provide information to other members of the Board and the public, ask questions of staff, request an item to be placed on a future agenda, or report on conferences, events, or activities related to Authority business. There is to be no discussion or action taken on comments made by Board Members unless authorized by law.

The Directors expressed appreciation to CEO Probolsky and COO Castro-Graham for facilitating the workshop.

7. REPORT BY CHIEF EXECUTIVE OFFICER

Chief Executive Officer may briefly provide information to the Board and the public. The Board may engage in discussion if the specific subject matter of the report is identified, but the Board may not take any action other than to place the matter on a future agenda. Otherwise, there is to be no discussion or action taken unless authorized by law.

CEO Probolsky provided no additional remarks.

8. REPORT BY GENERAL COUNSEL

General Counsel may briefly provide information to the Board and the public. The Board may engage in discussion if the specific subject matter of the report is identified, but the Board may not take any action other than to place the matter on a future agenda. Otherwise, there is to be no discussion or action taken unless authorized by law.

General Counsel Baron provided no additional remarks.

9. ADJOURNMENT

On motion by Director Posey, second by Director Sonne, the meeting was adjourned at 12:18 p.m.

Brian Probolsky, Secretary

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 4.B

To: Orange County Power Authority Board of Directors

From: Antonia Graham, Chief Operating Officer

Subject: ADOPTION OF ADMINISTRATIVE POLICY NUMBER 007: RECORDS
MANAGEMENT AND RETENTION POLICY AND SCHEDULE

Date: April 13, 2021

RECOMMENDATION

Adopt Administrative Policy Number 007: Records Management and Retention Policy and Schedule.

BACKGROUND

The proposed Orange County Power Authority (Authority) Records Management and Retention Policy and Schedule establish policies and procedures for the retention and disposal of the Authority's records in compliance with applicable legal requirements. The Records Retention Policy (Policy) provides the general procedures and requirements related to retention and disposal of Authority records. The Records Management and Retention Schedule (Schedule) details the retention period for specific records maintained by the Authority and includes references to State and federal laws or guidelines which establish the applicable periods.

DISCUSSION

Regulations for retaining public agency records are governed by various State and federal laws, including Government Code Section 34090, *et seq.* To assist the Authority in complying with various legal requirements for records retention and destruction, the Authority's General Counsel has prepared the proposed Records Retention Policy and Schedule.

The Policy contains general procedures and requirements related to the retention and destruction of the Authority's records. Under these general rules contained in the Policy, the Authority is required to retain any records required to be kept by law or the Records Retention Policy/Schedule, as well as any other records necessary or convenient to the performance of the Authority's duties. Once the required retention period passes, Authority staff may dispose of obsolete records by following specific procedures established under the Policy. Specifically, the Authority's department heads will complete a form requesting to dispose of obsolete records, and the form will be reviewed and signed by the Authority's General Counsel and the Authority's designated Records Coordinator. The Policy also provides that the Authority must postpone disposal of any record that is relevant to a Public Records Act request, subpoena, court order, litigation hold, or claim against the Authority.

The Schedule details the retention period for specific records maintained by the Authority and includes references to statutes or regulations which establish minimum retention periods. This information will assist staff in tracking future changes in the law and updating the retention requirements when necessary. Under the proposed Policy, the Authority's CEO and Records

Coordinator would be authorized to update the Schedule as necessary to maintain compliance with State and federal law.

FISCAL IMPACT

The Authority may experience savings in both labor and future storage expenses through adopting and implementing the proposed Records Retention Policy and Schedule.

ATTACHMENTS

1. Administrative Policy Number 007: Records Management and Retention Policy and Schedule.
2. Proposed Records Management and Retention Schedule.

Item 4.B
ADOPTION OF RECORDS
RETENTION POLICY

Attachment 1
Administrative Policy Number 007:
Records Management and Retention
Policy.

**Orange County Power Authority
Administrative Policy Number 007:
Records Management and Retention Policy**

PURPOSE

California Government Code §§ 34090 through 34090.8 and the Secretary of State Local Government Records Management Guidelines govern the retention of records of the Orange County Power Authority (Authority) and the disposal of the Authority's obsolete records. The purpose of this Policy is to provide policies regarding the retention of Authority records; provide for the identification, maintenance, safeguarding of Authority records and the disposal of obsolete records in the normal course of business; ensure prompt and accurate retrieval of records; and ensure compliance with all legal and regulatory requirements.

AUTHORIZATION

The Chief Executive Officer, or designee (CEO), is authorized by the Board of Directors (Board) to interpret and implement this Policy and to designate a Records Coordinator who shall be responsible for the administration of this Policy. The CEO and the Records Coordinator are authorized to do any and all acts necessary to comply with the provisions and intent of this Policy. The CEO and Records Coordinator are responsible for the appropriate retention of records and the destruction of any obsolete records that meet the qualifications governing the retention and disposal of records, as specified below.

DEFINITIONS

1. "Document," "record," or "writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, electronic mail or facsimile transmission, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.
2. "Official Record" means a record that: (a) is required to be maintained for a specific period of time under the attached Record Retention Schedule; (b) is otherwise required by law to be kept permanently or for a specific period of time; or (c) is necessary and convenient to the discharge of an Authority officer or employee's official duties and was made or retained for the purpose of preserving its informational content.
3. "Transitory Record" means a record whose value is comparatively short-lived and may be discarded when it has fulfilled the brief, limited purpose for which it was created. Transitory records include, but may not be limited to, preliminary drafts, notes, or inter- or intra-agency memoranda not kept in the ordinary course of business and the retention of which is not necessary for the discharge of an Authority officer or employee's official duties. Specific examples are: transmittal letters, acknowledgments, drafts, rough notes, preliminary calculations, non-substantive follow-up communications or reminders, and similar electronic communications that, based on their content, are not required to be retained as "Official Records."

GENERAL GUIDELINES

The following general guidelines apply to all Authority records:

1. Except where a record is expressly required to be preserved by law or this Policy, the Authority may destroy any original obsolete record without retaining a copy of the document as long as the retention and destruction of the document complies with this Policy and the attached Record Retention Schedule. (Cal. Gov. Code § 34090.)
2. In addition to the retention periods required under the attached Record Retention Schedule, the Authority shall retain original administrative, legal, fiscal and/or historical records with continued value (*i.e.*, records for long-term transactions and/or special projects) as Official Records until all matters pertaining to such records are completely resolved or the time for appeals has expired.
3. At any time, the Authority may discard Transitory Records that have fulfilled their limited purpose; provided, however, that any Transitory Records subject to the “Exceptions to Disposal of Obsolete Records” section of this Policy may not be discarded and shall be temporarily retained for the necessary period.
4. As further provided in the Authority’s Computer Usage and Email Management Policy, emails relating to Authority business, whether located on an Authority electronic device or account or a personal electronic device or account: (a) are considered “public records” under the California Public Records Act and may be subject to disclosure; and (b) may be required to be retained by the Authority either as Official Records or as Transitory Records subject to the “Exceptions to Disposal of Obsolete Records” section of this Policy.
5. Pursuant to Government Code § 34090, the Authority shall not destroy any of the following records:
 - a. Records affecting the title to real property or liens thereon;
 - b. Court records;
 - c. Records required to be kept by statute;
 - d. Records less than two years old; or
 - e. The minutes, ordinances, or resolutions of the Board of Directors or of another legislative body established by the Authority.
6. In addition, the Authority shall not destroy any of the following records:
 - a. Original, final records relating to the execution or amendment of the Authority’s Joint Powers Agreement;
 - b. Any records that are the subject of any pending request for records under the California Public Records Act, whether the document is exempt from disclosure or considered a Transitory Record, until the request has been granted or two (2) years after the request has been denied by the Authority.

7. The Records Coordinator may authorize the destruction of hard-copy originals of Official Records upon complying with all of the requirements of Government Code § 34090.5, which ensures that such records are reproduced and maintained in a format that is accurate, legible, and not subject to modification. Such methods may include, but are not limited to, having the records photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data processing system, recorded on optical disk, reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document, or reproduced on film, optical disk, or any other medium in compliance with Government Code § 12168.7 for recording of permanent records or nonpermanent records.

RECORDS RETENTION SCHEDULE

The Records Retention Schedule for the Authority is attached to this Policy as Attachment A. This Policy, including the Records Retention Schedule, shall comply with state and federal law, as well as the records retention guidelines provided by the California Secretary of State. The Records Retention Schedule may be updated from time to time by the CEO and/or the Records Coordinator in order to stay current with federal and state laws, as well as any other regulations, regarding the retention of the Authority's records.

RECORDS TO BE RETAINED IN ORIGINAL FORMAT

The records listed above in Section 4 of the "General Guidelines" must be retained in their original format, whether the original record is in hard copy or electronic format.

In addition, the following records are required to be retained in their original hard copy format for at least two (2) years before imaging or scanning them into electronic format for retention:

- Statements of Economic Interest for Elected Officials (copies of FPPC Form 700). (Total retention is four (4) years)
- Statements of Economic Interest for Non-Elected Officials (originals of FPPC Form 700). (Total retention is seven (7) years)

After two (2) years, the Authority may image/scan the above documents and dispose of the hard copy versions. The electronic version becomes the "original," pursuant to state law. (Cal. Gov. Code §§ 34090.5 and 81009(g).)

DUPLICATE RECORDS

The CEO and/or the Records Coordinator are authorized to destroy at any time any **duplicate** record of the Authority, while the original, whether in paper or electronic format, is retained by the Authority for the legally required time period.

PROCEDURES FOR DISPOSAL OF OBSOLETE RECORDS

1. At least once annually, each department is responsible for reviewing all Official Records in its custody. Official Records that have reached the end of their retention period, including electronic records, are to be destroyed by following the procedures described below.

2. The department head completes and signs a “Request for Destruction of Obsolete Records” form, listing the date and description of each document to be destroyed. A sample form is attached to this policy as Attachment B. The department head submits the form to the Records Coordinator.
3. The Records Coordinator checks the records listed on the submitted form to confirm that each document: (1) is not required to be permanently retained; (2) has been retained for the legally required period of time; and (3) is not subject to an exception requiring continued retention under this Policy (*e.g.*, public records request, subpoena, litigation hold, etc.). The Records Coordinator also confirms that any applicable reproduction requirements (*i.e.*, scanning/imaging, etc.) for each document are complete.
4. The Records Coordinator submits the form to the General Counsel, who reviews and signs the form and then returns the signed form to the Records Coordinator.
5. After receiving the signed form from the General Counsel, the Records Coordinator oversees the destruction of the obsolete records, indicates the method of destruction on the form, signs the form and retains the original signed form.
 - a. The Records Coordinator will retain all original signed forms requesting destruction of obsolete records for a minimum period of two (2) years.
 - b. The Records Coordinator will retain a permanent record, such as a log or copies of certificates of destruction, in whatever format the Records Coordinator determines to be convenient for the purpose, to document the destruction of obsolete records of the Authority.

EXCEPTIONS TO DISPOSAL OF OBSOLETE RECORDS

Disposal of **any** record, whether it is an Official Record that has met or exceeded its retention periods or a Transitory Record that has fulfilled its limited purpose, must be postponed if the record is responsive to, subject to, or relates in some way to any of the following:

1. A pending Public Records Act request received by the Authority;
2. A subpoena served on the Authority;
3. A Request for Production received by the Authority from an opposing party in litigation;
4. A court order;
5. A litigation hold or request for preservation of evidence received by the Authority; or
6. A claim filed against the Authority under the Government Claims Act.

The above exceptions apply to both hard copy and electronic records.

ATTACHMENT A

**RECORDS RETENTION SCHEDULE
FOR ORANGE COUNTY POWER AUTHORITY**

[Attached]

ATTACHMENT B
REQUEST FOR DESTRUCTION OF OBSOLETE RECORDS

[Attached]

ORANGE COUNTY POWER AUTHORITY

To: Orange County Power Authority Records Coordinator
Orange County Power Authority General Counsel

From: Department Head

Subject: Request for Destruction of Obsolete Records

I am requesting approval to destroy the obsolete records listed below.

DATE OF RECORD	DESCRIPTION OF RECORD

If additional space is needed, attach a second page to this form.

APPROVED

Department Head

Date

General Counsel

Date

The obsolete records described above were destroyed under my supervision using the following method:

☐ Shredding ☐ Electronic deletion ☐ Other (specify: _____)

I certify that such destruction meets the requirements of the Records Retention Policy of Orange County Power Authority and all applicable requirements of State and federal law.

Records Coordinator

Date of Records Destruction

Item 4.B
ADOPTION OF RECORDS
RETENTION POLICY

Attachment 2
Proposed Records Management and
Retention Schedule.

RECORDS RETENTION SCHEDULE FOR ORANGE COUNTY POWER AUTHORITY

Destruction of any Authority record must have the Board of Directors approval and written consent from the General Counsel,
unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Accident/Illness Reports	For Employee Medical Records & Employee Exposure Records regarding exposure to toxic substances or harmful physical agents --Includes Material Safety Data Sheets (MSDS) Does NOT include: records of health insurance claims maintained separate from employer's records; first aid records of one-time treatments for minor injuries; records of employees who worked less than one (1) year if records are given to employee upon termination	8 CCR 3204(d)(1)(A)(B)	Length of employment + 30 years
Accidents/Damage to Agency Property	Risk management administration	GC 34090 CCP 337.15	10 years
Accounting Records – General Ledger	General Ledger	GC 34090 CCP 337	Until audited + 4 years Published articles show 4 – 7 years retention as typical Sec. of State Guidelines recommends permanent retention.
Accounting Records – - Permanent Books of Accounts	Records showing items of gross income, receipts and disbursement (including inventories, per IRS regulations)	26 CFR 1.6001-1(c) & (e)	Permanent

Legal Authority Abbreviations

CCP	Code of Civil Procedure (California)	GC	Government Code (California)	PC	Penal Code (California)
CCR	California Code of Regulations	R&TC	Revenue & Taxation Code (California)	H&S	Health & Safety Code (California)
CFR	Code of Federal Regulations	USC	United States Code		
EC	Elections Code (California)	LC	Labor Code (California)		

RECORDS RETENTION SCHEDULE FOR ORANGE COUNTY POWER AUTHORITY

Destruction of any Authority record must have the Board of Directors approval and written consent from the General Counsel,
unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Accounts Payable	Journals, statements, asset inventories, account postings with supporting documents, vouchers, investments, invoices and back-up documents, purchase orders, travel expense reimbursements, petty cash, postage, retirement reports, check requests, etc.	CCP 337 26 CFR 31.6001-1(e)(2); Sec. of State Local Gov't. Records Mgmt. Guidelines recommendation	Until audited + 4 years
Accounts Receivable	Receipts for deposited checks, coins, currency; checks received, reports, investments, receipt books, cash receipts, cash register tapes, etc.	CCP 337 26 CFR 31.6001-1(e)(2); Sec. of State Local Gov't. Records Mgmt. Guidelines recommendation	Until audited + 4 years
Affidavits of Publication / Posting	Legal notices for public hearings, publication of ordinances, etc.	GC 34090	Current + 2 years, unless part of a project or matter that requires longer retention (e.g., CEQA documents)
Agency Report of Consultants (FPPC Form 805)	Identifies consultants hired by the Agency who must file Form 700	2 CCR 18734; GC 81009(e)	7 years
Agency Report – Events and Ticket/Pass Distribution (FPPC Form 802)	Report of tickets/passes; identifies persons who received tickets/passes and describes the public purpose for the distribution	GC 81009(e)	7 years
Agency Report of New Positions (FPPC Form 804)	Identifies new positions that will make or participate in making governmental decisions on behalf of the Agency	GC 81009(e)	7 years

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RECORDS RETENTION SCHEDULE FOR ORANGE COUNTY POWER AUTHORITY

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Agency Report of Public Official Appointments (FPPC Form 806)	Report of additional compensation received by agency officials when appointing themselves to committees, boards or commissions of other public agencies, special districts, joint powers agencies or joint powers authorities. <u>Copy of current report must be posted on the Agency's website.</u>	2 CCR 18702.5(b)(3); GC 81009(e)	Original - 7 years
Agenda / Agenda Packets	Board of Directors, committees – agendas and packets can be imaged immediately for retention, if desired.	GC 34090 GC 34090.5	2 years
Agenda reports (staff reports)	Board/committees - Originals can be imaged immediately for retention, if desired. The imaged record can serve as the “original” record, if desired.	GC 34090 GC 34090.5	2 years
Agreements (See also Contracts)	Original contracts and agreements and back-up materials, including leases, license agreements, energy procurement contracts, service/maintenance contracts, etc.	CCP 337 CCP 337.2 CCP 343	4 years after termination/completion
	Original contracts/agreements regarding the development of real property, design, specifications, surveying, planning, supervision, testing, or observation of construction or improvement to real property; may include records of retention releases, retention withheld, change orders, etc.	CCP 337.15	10 years after termination/completion

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Agreement – Joint Powers Agreement	Original Joint Powers Agreement and amendments	GC 34090	Permanent
Annual Financial Report	May include independent auditor analysis	GC 34090	Until audited + 2 years Sec. of State Guidelines recommends while current + 7 years
Applications for Boards, Commissions Committees	Not selected	GC 34090	2 years
Applications for Boards, Commissions, Committees	Selected	GC 34090 Sec. of State Guidelines	Current + 5 years
Appraisals	For Real Property Owned by Agency	GC 34090	2 years
Audit Hearing or Review	Documentation created and or received in connection with an audit hearing or review	GC 34090	2 years
Audit Reports	Financial services; internal and/or external reports	GC 34090 CCP 337 CCP 343	Current + 4 years Sec. of State Guidelines recommends permanent retention
Bank Account Reconciliations	Bank statements, receipts, certificates of deposit, etc.	26 CFR 31.6001-1(e)(2)	4 years (Sec. of State Guidelines – recommended retention: until audited + 5 years)
Behested Payment Report (FPPC Form 803)	FPPC form used by elected officials to disclose payments made at their behest (\$5,000 or more from same source) for legislative, governmental, or charitable purposes.	GC 81009; 82015(b)(2)(B)(iii)	7 years

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Bids, Successful	Includes plan and specifications; notices/affidavits.	GC 34090 CCP 337, 337.1	4 years
Bids, Unsuccessful	Unsuccessful bid packages only	GC 34090	2 years
Billing Records	Utility bill stubs – submitted with payment	GC 34090	Current + 2 years
Bonds	Authorization/public hearing records/prospectus/proposals/certificates/notices (transcripts)/registers/statements.	CCP 336a, 337.5	Upon cancellation, redemption or maturity + 10 years
Bonds, Employee (Fidelity Bonds)	Form of insurance that covers employer (Agency) for losses resulting from fraudulent acts of specified employees	GC 34090	Length of employment + 2 years
Bonds - Final	Final bond documentation; monthly statement of transactions; supporting documents	GC 34090 CCP 337.5	Upon cancellation, redemption or maturity +10 years
Bonds – Paid/Cancelled	Paid or cancelled bonds; warrant certificates; interest coupons	GC 34090 GC 53921	2 years
Bonds, Surety	Documentation created and/or received in connection with the performance of work/services for the Agency, or for parcel maps and subdivision work	CCP 337	4 years
Bonds – Unsold/Unused	Unsold/unused bonds	GC 34090 GC 43900 et seq.	2 years (specific requirements for disposal of unused bonds)
Brochures/ Publications	Informational/promotional documents created for or by the Agency	GC 34090	2 years

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Budget, Annual	Annual operating budget approved by Board of Directors	GC 34090	Current + 2 years Sec. of State Local Gov't. Records Mgmt. Guidelines recommends permanent retention.
Cal-OSHA	Log of work related injuries & illnesses (Form 300), Annual Summary (Form 300A), Incident reports (Form 301)	LC 6410; 8 CCR 14300.33	5 years
California State Tax Records	Forms filed annually; quarterly and year-end reports	R&TC 19530 R&TC 19704	6 years
Checks (Agency-issued)	Includes payroll checks; canceled or voided checks; copies of checks; electronic versions of checks	GC 34090 CCP 337 26 CFR 31.6001-1(e)(2)	Until audited +4 years (Sec. of State Guidelines – recommended retention: until audited + 5 years)
Citizen Feedback	General correspondence.	GC 34090	2 years
Claims Against the Agency	Government Claims Act – Claims paid or denied	GC 34090	Until settled + 2 years
Collective Bargaining Agreements	Memoranda of Understanding (MOUs) with employee unions; represented employee groups	29 CFR 516.5(b)	Current + 3 years
Community Surveys	Review final survey reports for historic significance	GC 34090	2 years
Complaints - Miscellaneous	Miscellaneous complaints, not related to specific lawsuits involving the Agency and not otherwise specifically covered by the Retention Schedule.	GC 34090	2 years

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Comprehensive Annual Financial Reports (CAFR)	Finance	GC 34090 CCP 337	Until audited + 4 years
Conflict of Interest Code	Conflict of Interest Code – required under Political Reform Act; must be reviewed by July 1st of every even-numbered year and amended if necessary	GC 87300 et seq.	Permanent
Contracts, Agency (see also Agreements)	Original contracts and agreements and back-up materials, including leases, license agreements, service/maintenance contracts, etc.	CCP 337 CCP 337.2 CCP 343	4 years after termination/ completion
	Original contracts/agreements regarding the development of real property, design, specifications, surveying, planning, supervision, testing, or observation of construction or improvement to real property; may include records of retention releases, retention withheld, change orders, etc.	CCP 337.15	10 years after termination/completion
Correspondence	General correspondence regarding Agency business that is necessary and convenient to the discharge of Agency's duties; may include letters, text messages, posts/comments on Agency-owned social media accounts.	GC 34090	2 years

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Credit Cards, Agency-owned	Credit card bills or statements and related receipts.	26 CFR 31.6001-1(e)(2)	Until audited + 4 years
	Other records related to use of Agency-owned credit cards (policies, correspondence, etc.)	GC 34090	Current + 2 years
Deeds, Real Property (Grant Deeds)	File with recorded documents; originals may not be destroyed.	GC 34090	Permanent
Deferred Compensation Reports	Finance - pension/retirement funds	29 CFR 516.5 29 CFR 1627.3	3 years
Demographic/ Statistical Data		GC 34090	Current + 2 years
Development Agreements	Agreements for development of real property; Development and Disposition Agreements (DDAs); May include infrastructure contracts (i.e., architects, treatment plants, utility lines, etc.), franchises, etc.	CCP 337, 337.1, CCP 337.15 GC 34090 48 CFR 4.703	Permanent (Sec. of State Guidelines recommends retaining paper original for minimum 7 years)
Development Conditions	Mitigation measures; filed with project files	GC 34090	For the life of the project
Development, General Subject Files	Internal working files including correspondence	GC 34090	2 years
Development Logs	Logs, registers or similar records listing permits, certificates of occupancy issued, may include inspection, building activity, daily, plan check, utility	GC 34090(a) GC 4003, GC 4004 H&S 19850 - 19853	5 years
Development, Photographs	Aerial Photographs	GC 30490	Current + 2 years
Development, Reports	Activity, Periodic	GC 34090	2 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Development, Surveys	Recording data and maps	GC 34090	Permanent
DMV Drivers' Records Reports (DMV Pull-Notice System)	Motor Vehicle Pulls; Personnel record	GC 34090 VC 1808.1(c)	Until superseded (should receive new report every 12 months)
Drawings, Project Plan	Does not include those usually filed with case or project.	GC 34090	2 years
Easements, Real Property	File with recorded documents; originals may not be destroyed.	GC 34090	Permanent
EEOC Records (Equal Employment Opportunity Commission)	Records, reports showing compliance with federal equal employment requirements (EEO-4 Reports, etc.)	29 CFR 1602.30	3 years
Employee Benefits	Benefit plans (including "cafeteria" and other plans); health insurance programs; records regarding COBRA – extension of benefits for separated employees, insurance policies (health, vision, dental, deferred compensation, etc.)	29 USC 1027 28 CCR 1300.85.1 11 CCR 560 29 CFR 1627.3(b)(2)	For life of plan/policy + 6 years
Employee Files	Personnel files	GC 12946 29 CFR 1627.3	While current + 3 years
Employee Information, General	Name, address, date of birth, occupation, rate of pay and weekly compensation earned	GC 12946 29 CFR 1627.3 LC 1174	3 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Employee Information - CEIR	Personnel--California Employer Information Report (for employers of 100 or more employees)	2 CCR 11013 (c)(1) GC 12946	Received + 2 years
Employee Information - Applicant Identification Records	Personnel--Data regarding race, gender, national origin of applicants	2 CCR 11013 (c)(2)	Received + 2 years
Employee, Medical & Exposure Records (toxic substances or harmful physical agents)	Includes medical records made or maintained by a physician, nurse, or other health care personnel, or technician pertaining to employees exposed to toxic substances or harmful physical agents. Does <u>not</u> include first-aid records of one-time treatment made on-site by a non-physician or observation of minor scratches, cuts, burns, splinters, etc., which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job. (For employees of less than 1 year, no need to retain medical records regarding exposure to toxic substances/harmful physical agents if they are returned to employee upon termination)	29 CFR 1910.1020(d)(1)(i)(ii) 8 CCR 3204 (d)(1)(A)(B)	Length of employment + 30 years

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Employee, Medical Records (routine)	Maintained separate from other medical records - - Health insurance claims; Records of one-time first aid treatment for minor injuries (burns, splinters, etc), not involving medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a non-physician	GC 12946, 34090 29 CFR 1627.3	Length of employment + 3 years
Employee, Noise Exposure	Noise exposure measurement records Employee audiometric test records	8 CCR 5100 8 CCR 5100	Current + 2 years Length of employment
Employee	Employee records may include release authorizations; certifications; reassignments; outside employment; commendations, disciplinary actions; terminations; oaths of office; pre-employment medical evaluations; fingerprints; identification cards (ID's)	29 CFR 1627.3 LC 1174 GC 12946 GC 34090	Length of employment + 3 years
Employee Programs	May include Employee Assistance Program (EAP), Employee Recognition program, etc.	GC 34090 GC 12946	2 years
Employee, Recruitment	Alternate lists/logs, ethnicity disclosures, examination materials, examination answer sheets, job bulletins	GC 12946 GC 34090 29 CFR 1602.31 29 CFR 1627.3	2 years
Employee, Reports	Employee statistics, benefit activity, liability loss	GC 34090	2 years
Employment Agreements – At-Will Employees; Temporary Employees	Original agreements/contracts for at-will employees or temporary employees	CCP 337 CCP 343	Length of employment + 4 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Employment Applications - Not Hired	Applications submitted for existing or anticipated job openings, including any records pertaining to failure or refusal to hire applicant	GC 34090 GC 12946 29 CFR 1627.3(b)(1)(i)	2 years
Employment Eligibility Verification (I-9 Forms)	Federal Immigration and Nationality Act; Immigration Reform/Control Act 1986	8 USC 1324a (b)(3) Pub. Law 99-603	3 years after date of hire, or 1 year after date of termination, whichever is later
Employment - Public Safety certifications	Certification/designations	GC 34090	Length of employment + 2 years
Employment - Surveys and Studies	Includes classification, wage rates	GC 12946 GC 34090 29 CFR 516.6	2 years
Employment - Training Records, Non-Safety	Paperwork documenting internal and external training for non-safety employees; includes any volunteer program training - class training materials, internships	GC 34090 GC 12946	Length of employment + 2 years
Employment - Vehicle Mileage Reimbursement Rates	Annual mileage reimbursement rates	GC 34090	Until superseded + 2 years
Engineering Capital Improvement Projects	Supporting documentation including bidders list, specifications, reports, plans, work orders, schedules, etc.	GC 34090, CCP 337.15	Project completion + 10 years
Enterprise Systems Catalog	Catalog of software applications, computer systems used by the Agency.	GC 6270.5	Must be posted on Agency website and updated annually
Environmental Quality Air Quality (AQMD)	Participants/voucher logs, Total Daily Mileage Survey (TDM); various local authorities	CCP 338(k); GC 34090	3 years

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Environmental Quality Asbestos	Documents, abatement projects, public buildings	GC 34090	Permanent
Environmental Quality California Environmental Quality Act (CEQA)	Exemptions, Environmental Impact Report, Mitigation monitoring, negative declaration, notices of completion and determination, comments, statements of overriding considerations,	GC 34090 CEQA Guidelines	Permanent
Environmental Quality Congestion Management	Ride sharing, trip management	GC 34090	Completion + 2 years
Environmental Quality Environmental Review	Evidence, correspondence, consultants, issues, conservation, any other substantive materials related to CEQA compliance or project, including staff notes and memoranda	GC 34090	Completion + 2 years
Environmental Quality Pest Control	Pesticide applications, inspections and sampling, documents	GC 34090	Completion + 2 years
Environmental Quality Soil	Analysis, construction recommendations	GC 34090	Completion + 2 years
Environmental Quality Soil Reports	Final Reports	GC 34090	Permanent

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ERISA Records (Employee Retirement Security Act)	Employee Retirement Income Security Act of 1974 - Plan reports, certified information filed; records of benefits due	29 USC 1027 29 USC 1059	6 years
Ethics Training Records (AB 1234; effective 1/1/06)	Records required to be kept under Gov. Code section 53235.2. Records must show dates that local officials satisfied the training requirements and the entity that provided the training	GC 53235.2	5 years after receipt of training
Events Planning, Community	Review for historic significance	GC 34090	2 years
Family and Medical Leave Act (federal)	Records of leave taken, Agency policies relating to leave, notices, communications relating to taking leave	29 CFR 825.500 GC 12946	3 years (federal) 2 years (State)
Federal Tax Records	May include Forms 1095-C, 1096, 1099, W-4 and W-2	26 CFR 31.6001-1(e) 29 CFR 516.5-516.6	Current + 4 years
Fixed Assets Inventory	Reflects purchase date, cost, account number	GC 34090	Until audited + 2 years
Fixed Assets Surplus Property	Auction; disposal – Listing of property; sealed bid sales of equipment	GC 34090 CCP 337	Until audited + 4 years
Fixed Assets Vehicle Ownership & Title	Title transfers when vehicle is sold	VC 9900 et. seq.	Until sold + 2 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Forms	Administrative - blank		Until Superseded
Fund Transfers	Internal; bank transfers & wires	GC 34090	Until audited + 2 years
General Ledgers	All annual financial summaries--all agencies	GC 34090 CCP 337	Until audited + 4 years Published articles show 4 – 7 years retention as typical Sec. of State Guidelines recommends permanent retention
Gift to Agency Report (FPPC Form 801)	FPPC form showing payment or donation made to the Agency or to an Agency official and which can be accepted as being made to the Agency	2 CCR 18944(c)(3)(F), (G); FPPC Fact Sheet : “Gifts to an Agency – Part 2”	Originals – 7 years; Copy must be posted on Agency website
Gifts/Bequests	Finance - to the Agency (kept with cash receipts)	GC 34090	2 years
Grants Community Development Block Grant (CDBG); Urban Development; other Federal and State grants	Grant documents and all supporting documents: applications, reports, contracts, project files, proposals, statements, sub-recipient dockets, environmental review, inventory, consolidated plan, etc.	GC 34090 24 CFR 570.502 24 CFR 85.42	Until completed + 4 years
Grants - Unsuccessful	Applications not entitled	GC 34090	2 years

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Hazardous Materials & Hazardous Waste Disposal Records	Examples of hazardous materials/hazardous waste: medical waste; used oil; pesticides	H&S 117945 H&S 118165 22 CCR 66279.91 3 CCR 6624(g)	3 years
Hazardous Materials - Permits, Hazardous Materials Storage		GC 34090	While current + 2 years [Permanent retention of documents regarding environmentally sensitive materials is recommended]
Hazardous Materials - Programs, Household Hazardous Waste	Documents regarding federal, State or local programs on disposal of household hazardous waste	GC 34090	Until superseded + 2 years
Hazardous Materials - Exposure Records, etc.	Employee exposure records; name/identity of chemical substance used; when & where chemical substance was used	8 CCR 3204(d) et. seq.	Length of employment + 30 years
Hazardous Materials - Underground Storage Tank Compliance	Documents regarding: storage, location, installation, removal, remediation	GC 34090	Permanent
Hazardous Materials - Underground Storage Tank Maintenance and Repair	Documents regarding: repairs, lining and upgrades	23 CCR 2660(j), 2712	For the life of the tank
Insurance	Personnel related	GC 34090	While current, + 4 years
Insurance Certificates, Agency	Liability, performance bonds, employee bonds, property; Insurance certificates filed separately from contracts, includes insurance filed by licensees.	GC 34090	While current + 4 years

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Insurance, Liability/Property	May include liability, property, Certificates of Participation, deferred, use of facilities	GC 34090	While current + 4 years
Insurance, Risk Management Reports	Federal OSHA Forms; Loss Analysis Report; Safety Reports; Actuarial Studies	29 CFR 1904.44 GC 34090	5 years (Federal) 2 years (State)
Investment Reports, Transactions	Summary of transactions, inventory and earnings report	GC 34090 CCP 337	Until audited + 4 years
Invoices	Invoices from vendors and back-up documents	CCP 337 26 CFR 31.6001-1(e)(2); Sec. of State Local Gov't Records Mgmt. Guidelines recommendation	Until audited + 4 years
Job Descriptions	Descriptions of duties, qualifications, responsibilities for each position/classification/job title	29 CFR 1627.3	While current + 3 years
Labor Organizations	Records of payments, loans, promises or agreements by Agency to any labor organization or representative of same	29 USC 436	5 years
Lease Agreement	Property or equipment	CCP 337 CCP 337.2 CCP 343	Until terminated + 4 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Legal Notices / Affidavits of Publication or Posting	Examples: Notices of public hearings, notices to member agencies, notices of liens, etc. Also proof of publication of notice, or proof of posting of notice	GC 34090	Current + 2 years, unless part of a project or matter that requires longer retention (e.g., CEQA documents)
Legal Opinions	Confidential – not for public disclosure (attorney-client privilege)	GC 34090	Until superseded + 2 years
Legislative Support/Opposition, Requests & Responses	Related to legislation.	GC 34090	2 years
Litigation	Case files	GC 34090	Until settled + 2 years
Lobbying or Lobbyist Forms (FPPC forms)	FPPC Form 602 – Lobbying Firm Activity Authorization; FPPC Form 635 – Report of Lobbyist Employer & Report of Lobbying Coalition – forms used when employing or contracting with a lobbying firm	FPPC Reg. 18615(d)	5 years
Local Appointments List (“Maddy List”)	List of all regular and ongoing boards, commissions, and committees appointed by the Board of Directors – pursuant to the Maddy Local Appointive List Act	GC 54970, et seq. GC 34090	Until superseded (new list prepared each Dec. 31 st)
Maintenance Manuals	Equipment service/maintenance	GC 34090	Until superseded
Maintenance/Repair Records	Equipment	GC 34090	2 years

Legal Authority Abbreviations

CCP	Code of Civil Procedure (California)	GC	Government Code (California)	PC	Penal Code (California)
CCR	California Code of Regulations	R&TC	Revenue & Taxation Code (California)	H&S	Health & Safety Code (California)
CFR	Code of Federal Regulations	USC	United States Code		
EC	Elections Code (California)	LC	Labor Code (California)		

RECORDS RETENTION SCHEDULE FOR ORANGE COUNTY POWER AUTHORITY

Destruction of any Authority record must have the Board of Directors approval and written consent from the General Counsel,
unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Maps & Plats	Engineering & field notes and profiles; cross section of roads, streets, right-of-way, bridges; may include annexations, parks, tracts, block, storm drains, water easements, bench marks, trees, grading, landfill, fire hydrants, base maps, etc.	GC 34090	Permanent
Marketing, Promotional	Brochures, announcements, etc.	GC 34090	2 years
Master/Strategic Plans	Special or long range program plan for Agency – coordination of services; strategic planning	GC 34090	Current + 2 years
Memoranda of Understanding (MOU)	Personnel related; agreements with employee bargaining units resulting from negotiations	GC 34090; 29 USC 211(c) 29 CFR 516.5 Sec. of State Local Gov't. Records Mgmt. Guidelines	Current + 3 years Sec. of State recommends permanent retention
Minutes	Board/committees	GC 34090(e)	Permanent
Newsletter, Agency	May wish to retain permanently for historic reference.	GC 34090	2 years
Notices – Public Meetings	Special Meetings	GC 34090	2 years
Oaths of Office	Elected and public officials (i.e., Board members; commissioners; etc.)	GC 34090 29 USC 1113 Sec. of State Guidelines	Current + 6 years
Offers of Dedication		GC 34090	Until Completed

Legal Authority Abbreviations

CCP Code of Civil Procedure (California)
CCR California Code of Regulations
CFR Code of Federal Regulations
EC Elections Code (California)

GC Government Code (California)
R&TC Revenue & Taxation Code (California)
USC United States Code
LC Labor Code (California)

PC Penal Code (California)
H&S Health & Safety Code (California)

RECORDS RETENTION SCHEDULE FOR ORANGE COUNTY POWER AUTHORITY

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unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Ordinances	Ordinances adopted by Board of Directors	GC 34090(e)	Permanent
OSHA	OSHA 300 Log, privacy case list, OSHA 300A annual summary, OSHA 301 incident report forms	LC 6410; 8 CCR 14300.33 29 CFR 1904.33	5 years
OSHA (Accident/Illness Reports)	Personnel - Employee Exposure Records & Employee Medical Records regarding exposure to toxic substances	LC 6410; 8 CCR 14300.33; 8 CCR 3204(d)(1)(A)	Duration of employment plus 30 years
Payroll - Federal/State Reports	Annual W-2's, W-4's, Form 1099s, etc.; quarterly and year-end reports	29 USC 436 26 CFR 31.6001-4 R&TC 19530 R&TC 19704 26 USC 6001 26 CFR 301.6501(a)-1 26 CFR 31.6001-1(e) 29 CFR 516.5 – 516.6	6 years
Payroll Deduction/Authorizations	Finance	29 CFR 516.6(c)	Current + 2 years
Payroll records (employee information)	Records showing employee information/data – names, addresses, etc.; hours worked; regular and overtime wages, etc.	29 CFR 516.5 LC 1174(d), 1197.5	Length of employment + 3 years

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unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Payroll, registers	Finance Labor costs by employee & program	29 CFR 516.5(a) LC 1174(d)	3 years (Sec. of State Guidelines – recommended permanent retention)
Payroll, time cards/sheets	Employee	29 CFR 516.6(a)(1) LC 1174(d)	2 years (Sec. of State guidelines – recommends retention: until audited + 6 years)
Payroll - Wage Rates / Job Classifications	Employee records	LC 1197.5(d) LC 1174(d) GC 34090 GC 12946 29 CFR 516.6 29 CFR 1602.4 29 CFR 1627.3	While current + 3 years
Permits, Construction	Other than building permits - For signs, grading, encroachment, including copies of blueprints and specifications	GC 34090	Until completed + 2 years
Personnel Policies -- Rules and Regulations	Including employee handbooks, employee manuals, and other policies/procedures	29 CFR 516.6 29 CFR 1627.3(a)	Current + 3 years
Personnel Records	Payroll or other records containing name, address, date of birth, occupation, rate of pay, etc., including records relating to promotion, demotion, transfer, lay-off, termination	29 CFR 1627.3	3 years
Petitions	Submitted to legislative bodies	GC 34090	Current + 2 years

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RECORDS RETENTION SCHEDULE FOR ORANGE COUNTY POWER AUTHORITY

Destruction of any Authority record must have the Board of Directors approval and written consent from the General Counsel, unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Policies, Administrative	All policies and procedures, directives rendered by Board not assigned a resolution or ordinance number	GC 34090	Until Superseded + 2 years
Policies, Board of Directors	Original policies adopted by the Board of Directors.	GC 34090	Until Superseded
Press Releases	Agency related.	GC 34090	2 years
Procedure Manuals	Administrative	GC 34090	Until superseded + 2 years
Proclamations	Agency issued proclamations	GC 34090	2 years; if done by Board of Directors Resolution, then permanent retention
Project Facilities Construction	Contains records of plans, design, construction, conversion or modification of local government-owned facilities, structures and systems	GC 34090 H&S 19850	For the life of the project
Project Facilities Facility Rentals; Use	Permits, contracts, diagrams, schedules, insurance binders	GC 34090	Current + 2 years
Project Facilities Maintenance and Operations	Service requests, invoices supporting documentation, buildings, equipment, field engineering, public facilities including work orders and graffiti removal	GC 34090	2 years
Property, Abandonment	Buildings, condemnation, demolition	GC 34090	Permanent
Property Acquisition/ Disposition	Agency owned. Supporting documents regarding sale, purchase, exchange, lease or rental of property by Agency	CCP 337.15	10 years
Public Records Act Request	Requests from the public to inspect or copy public documents	GC 34090	2 years

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RECORDS RETENTION SCHEDULE FOR ORANGE COUNTY POWER AUTHORITY

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unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Purchasing RFQs, RFPs	Requests for Qualifications; Requests for Proposals regarding goods and services	GC 34090	Current + 2 years
Purchasing, Requisitions, Purchase Orders	Original Documents	GC 34090 CCP 337	Until audited + 4 years
Rates and Fees, Schedules/Studies	Approved by the Board of Directors	GC 34090	Current + 3 years
Recordings - audio (e.g., for preparation of meeting minutes)	Board/committee meetings -- audio recording "made for whatever purpose by or at the direction of the local agency"	GC 34090; 54953.5(b)	Minimum 30 days
Recordings - routine video monitoring, telephone, and radio communications	Routine daily recording of telephone & radio communications; routine video monitoring including in-car video systems, building security systems.	GC 34090, 34090.6	Videos - 1 year; Phone & Radio communications - 100 days (destruction must be approved by Board of Directors & Agency Attorney)
Recordings, video or digitally recorded – meetings of legislative bodies	Videos or digital recordings of public meetings made by or at the direction of the Agency (e.g., Board/committee Agency meetings)	GC 54953.5(b)	Minimum 30 days
Recordings, video or digitally recorded (Duplicate – see Description or Example of Record)	Other than videos or digital recordings of public meetings; Considered duplicate records if another record of the same event is kept (i.e., written minutes)	GC 34090, 34090.7 85 Ops. Cal. Atty. Gen. 256 (2002)	Minimum 90 days after event is recorded
Records Management Disposition Certification	Documentation of final disposition of records	GC 34090	Permanent
Records Retention Schedules		GC 34090	Current + 2 years
Recruitments and Selection	Records relating to hiring, promotion, selection for training	29 CFR 1627.3	3 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Regulatory Filings	Final filings submitted by or on behalf of Agency to CPUC, other state or federal agencies or regulatory bodies, etc.	GC 34090	Permanent
Release Forms/Waivers	Releases/waiver signed by visitors, volunteers, etc.	GC 34090	2 years
Resolutions	Resolutions adopted by the Board of Directors	GC 34090(e)	Permanent
Returned Checks	Finance-NSF (not Agency checks)	GC 34090	2 years after audit
Salary/Compensation Studies, Surveys	Studies or surveys of other agencies regarding wages, salaries and other compensation or benefits	GC 34090	While current + 2 years
Settlement Agreements	Final, signed/approved settlement agreements for litigation matters, claims, citations, etc.	GC 34090	2 years after signed/approved
	For Workers Compensation claims – final, signed/approved settlement agreements	8 CCR 10102 8 CCR 15400.2	5 years after signed/approved
State Controller	Annual reports filed by Agency	GC 34090	2 years
Statements of Economic Interest - Form 700 (copies) (elected officials)	<u>Copies</u> of original statements of elected officials forwarded to Fair Political Practices Commission (FPPC)	GC 81009(f), (g)	4 years (can image after 2 years)
Statements of Economic Interest - Form 700 (originals) (non-elected)	<u>Originals</u> of statements of designated employees	GC 81009(e), (g)	7 years (can image after 2 years)
Stop Payments	Finance - bank statements	GC 34090	2 years
Studies, Various Agency		GC 34090	While current + 2 years

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RECORDS RETENTION SCHEDULE FOR ORANGE COUNTY POWER AUTHORITY

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Subpoenas (Subpoena Duces Tecum; Deposition Subpoena, etc.)	Subpoena served on the Agency or on an Agency employee by a third party (Agency/ Employee is not a party in the litigation), including copies of any records produced in response to the subpoena	GC 34090	2 years
Unemployment Insurance Records	Records relating to unemployment insurance – claims, payments, correspondence, etc.	26 USC 3301-3311; Calif. Unemployment Insurance Code; CCP 343	While current + 4 years
Utility Services - Applications	Applications for utility connections, disconnects, opt-out requests, registers, service	GC 34090; Sec. of State Guidelines recommendation	Current + 2 years
Utility Services - Billing Records	Customer name, service address, meter reading, usage, payments, applications/cancellations	GC 34090; CCP 337	Until audited + 4 years
Utility Services - Customer Data Requests	Cost comparisons, bill analyses, usage history, billing history, rate comparisons, customer service emails	GC 34090	Customer request + 2 years
Utility Services - Journals, Utility Billing	Billing including monthly activity	GC 34090; CCP 337	Current + 4 years
Utility Services - Connection Records	Maps	GC 34090; Sec. of State Guidelines recommendation	Permanent
Utility Services - Meter Reading; Reports		GC 34090; Sec. of State Guidelines recommendation	Current + 2 years

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RECORDS RETENTION SCHEDULE FOR ORANGE COUNTY POWER AUTHORITY

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unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Utility Services - Utility Rebates, Reports		GC 34090	Current + 2 years
Vouchers - Payments	Account postings with supporting documents	GC 34090 CCP 337	Until audited + 4 years
Wage Garnishment	Wage or salary garnishment	CCP 337	Active until garnishment is satisfied; then retain until audited + 4 years
Workers Compensation Files	Work-injury claims (including denied claims); claim files, reports, etc.	8 CCR 10102 8 CCR 15400.2	Until settled + 5 years

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ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 4.C

To: Orange County Power Authority Board of Directors

From: Antonia Graham, Chief Operating Officer

Subject: ADOPTION OF ADMINISTRATIVE POLICY NUMBER 008: COMPUTER
USE AND EMAIL MANAGEMENT

Date: April 13, 2021

RECOMMENDATION

Adopt Administrative Policy Number 008: Computer Use and Email Management

BACKGROUND

The proposed Orange County Power Authority (Authority) Computer Use and Email Management Policy (Policy) is to establish standard operating procedures, guidelines, and clear and concise boundaries for the use of the Authority's computer network, data management, and electronic communications.

DISCUSSION

The Policy will apply to all who may have access or use of the Authority's network or have been issued Authority-owned technology, including all Authority personnel. This Policy applies when Authority-issued technology is used on or off Authority property, when non-Authority devices access the Authority network or are used to prepare or receive information within the scope of Authority Employment, and when private information is prepared, used, or retained by the Authority.

The Policy outlines appropriate and inappropriate uses in regards to computer use and email management. Electronic communications relating to Authority business, whether located on the network, an Authority devices, or a personal electronic device or account are considered "public records" under the California Public Records Act and may be subject to disclosure and may be required to be retained by the Authority under the Authority's Records Retention Policy.

The Policy also applies to all uses of the Internet. The Internet s to be used to further the Authority's mission, to provide effective service of the highest quality to the Authority's customers and staff, and to support other direct job-related purposes.

FISCAL IMPACT

The Authority may experience savings in both labor and future storage expenses through adopting and implementing the proposed Computer Use and Email Management Policy.

ATTACHMENT

1. Administrative Policy Number 008: Computer Use and Email Management.

Item 4.C

**ADOPTION OF ADMINISTRATIVE
POLICY NUMBER 008: COMPUTER
USE AND EMAIL MANAGEMENT**

Attachment 1

**Administrative Policy Number 008:
Computer Use and Email Management.**

**Orange County Power Authority
Administrative Policy Number 008:
Computer Use and Email Management Policy**

PURPOSE

The purpose of this Computer Use and Email Management Policy (Policy) is to establish standard operating procedures, guidelines and clear and concise boundaries for the use of the Orange County Power Authority (Authority) Network, as defined below, and ensure that Authority personnel use computing technology in a responsible, efficient, ethical, and legal manner. Use of the Authority Network and the data stored thereon is the property of Authority and is to be used for valid business functions and authorized purposes only. This Policy also prevents the unauthorized access to or disclosure of sensitive information prepared, owned, used, or retained by Authority and complies with the California Electronic Communications Privacy Act.

GENERAL

Personal use of the Authority Network that is deemed to be excessive, interferes with performance by Authority personnel, or that is intended for personal monetary gain, is strictly prohibited.

Those in violation of this Policy could be subject to disciplinary action up to and including dismissal and/or termination of contract, as described in further detail under the “Violations” section of this Policy.

All questions regarding the interpretation or applicability of this Policy should be directed to the Human Resources Department for clarification.

APPLICABILITY

This Policy will apply to all who may have access to or use of the Authority Network or have been issued Authority-owned technology, including all Authority personnel. Furthermore, this Policy applies when Authority-issued technology is used on or off Authority property, when non-Authority devices access the Authority Network or are used to prepare or receive information within the scope of Authority employment, and when private information is prepared, used, or retained by the Authority.

DEFINITIONS

Term	Definition
Authority Network	Any Internet access, computer server, computer network, intranet, local area network, wireless network, email system, cloud storage system, or file-sharing system owned or made available by Authority.
Authority personnel	Collectively refers to all Authority employees, officers (including Board members and members of advisory bodies), consultants, volunteers, and other non-employees who create, transmit, or retain electronic communications related to Authority business.
Electronic communications	Any and all electronic transmissions, and every other means of recording upon any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. Without limiting the nature of the foregoing, “electronic communications” include e-mails, texts, voicemails, and also include communications on or within commercial applications (apps) such as Facebook Messenger, Twitter, WhatsApp, etc.
Electronic device	A device depending on the principles of electronics and using the manipulation of electron flow for its operation, including but not limited to cellular telephones, laptops and desktop computers, hotspots, tablets, pagers, cameras, televisions, and DVD/CD players.
Electronic mail (email)	Electronic messages sent within an email application (e.g. Microsoft Outlook) or other email platform(s) (e.g., Gmail, Yahoo!, etc.).
Electronic messaging account	Any account that creates, sends, receives or stores electronic communications, such as email messages or text messages, or voicemail messages.
Excessive use	Use is defined as "excessive" if it interferes with normal job functions, impacts responsiveness, and/or the ability to perform daily job activities.
Listservs	A messaging function hosted by server computers that automatically mails messages to subscribers and can also be referred to as “electronic bulletin boards.”

INAPPROPRIATE USE

1. The Authority Network shall not be used for any activity that is a violation of local, state, or federal law or to further private or personal business activities.
2. Authority personnel may not intentionally intercept, eavesdrop, record, read, alter, or receive another person’s electronic communications without proper authorization.

3. Authority personnel are prohibited from using the Authority Network to transmit any electronic communication containing or expressing:
 - a. Messages in support or opposition to campaigns for candidates for an elected office or a ballot measure, or that otherwise involve partisan politics;
 - b. Messages of a religious nature or promoting or opposing religious beliefs;
 - c. Messages containing language which is insulting, offensive, disrespectful, demeaning, or sexually suggestive;
 - d. Messages containing harassment of any form, sexual or ethnic slurs, obscenities, or any representation of obscenities (which violates the Authority's anti-harassment policies and is subject to Authority disciplinary action);
 - e. Messages that promote, foster, or perpetuate discrimination on the basis of race, creed, color, age, religion, gender, marital status, or status with regard to public assistance, national origin, physical or mental disability or sexual orientation, as well as any other category protected by federal, state, or local laws (which violates the Authority's anti-harassment policies and is subject to Authority disciplinary action);
 - f. Messages used to send or receive copyrighted material, proprietary financial information or similar materials, unless the transmission of such material is directly related to Authority business;
 - g. Messages used for gambling or any activity that is a violation of local, state, or federal law;
 - h. Threats of violence or injury to any person, property, or organization;
 - i. Messages that conduct or encourage illegal activity;
 - j. Messages containing pornographic materials;
 - k. Messages containing chain letters or other forms of junk mail generally containing unsolicited commercial and non-commercial messages transmitted as a mass mailing to a number of recipients;
 - l. Messages that cause disruption in the performance or reliability of the Authority Network; and
 - m. Messages that defeat or attempt to defeat security restrictions on the Authority Network.
4. Electronic communications relating to Authority business, whether located on the Authority Network, an Authority device, or a personal electronic device or account: (a) are

considered “public records” under the California Public Records Act and may be subject to disclosure; and (b) may be required to be retained by the Authority under Authority’s Records Retention Policy. To help ensure proper retention of records and compliance with the California Public Records Act, the use of personal electronic messaging accounts or personal devices to conduct Authority business where such messages or other records are not saved or otherwise available on the Authority Network is strongly discouraged.

- a. Authority personnel should use reasonable efforts to use Authority devices and accounts and/or the Authority Network whenever possible, and are encouraged to forward and/or copy messages sent or received on non-Authority devices or accounts to their Authority devices or accounts or the Authority Network on an ongoing basis. Authority personnel who use a non-Authority device or account for Authority business shall make public records on the device or account available to the Authority upon request.
- b. In the event that the Authority receives a Public Records Act (“PRA”) request, subpoena, or other request that either explicitly seeks documents on non-Authority devices or accounts or can be reasonably interpreted as such, the Authority will promptly communicate the request to the relevant Authority personnel who may be in possession of responsive records.
- c. Authority personnel shall provide responsive public records to the Authority’s PRA coordinator. These records are still subject to review and redactions for PRA exemptions before production. Authority personnel shall provide responsive public records regardless of the potential exemptions.
- d. Records that do not relate to the conduct of the public’s business need not be provided to the PRA coordinator. In the event that any Authority personnel makes a decision to withhold any responsive records that do not qualify as public records, he or she shall submit a statement with facts sufficient to show the record is not related to Authority business. The Authority shall determine whether the statement has sufficient information.
- e. Employees who are terminating their employment with the Authority shall provide any public records on their non-Authority devices or accounts to the PRA coordinator before the last day of their employment.

MONITORING

1. Authority personnel have no right or expectation of privacy or confidentiality in any electronic communication created, sent, received, deleted, or stored using the Authority Network or on an Authority-issued device.
2. The Authority owns the rights to all data and files in any computer, network, or other information system used by Authority. The Authority reserves the right to retrieve and make proper and lawful use of any and all electronic communications transmitted through the Authority Network or on Authority-owned technology. As a routine matter, the Authority does not read or monitor the content of electronic communications created, sent,

received, deleted, or stored through the Authority Network or on Authority-owned technology. However, the Authority may monitor or access such electronic communications as allowed by the Electronic Communications Privacy Act, the federal Stored Communications Act, and any other applicable federal or State laws.

3. Most communications among Authority personnel are not confidential communications. However, certain communications such as personnel records, customer data, or attorney-client communications may be or contain confidential information. Questions about whether communications are confidential, and how they are to be preserved, should be discussed with the Authority's Record Retention Coordinator or General Counsel if a Records Retention Coordinator is not yet assigned. When in doubt, DO NOT USE email, text messages, or voicemail messages as a means of communication. Furthermore, the use of passwords to protect documents does not guarantee confidentiality or security.
4. Authority personnel shall not disclose personal, confidential, or privileged information prepared, owned, used, or retained by the Authority or on behalf of the Authority, unless expressly permitted by the Authority's legal counsel or required by law.
5. When the release of personal information prepared, owned, used, or retained by the Authority is authorized, Authority personnel will only use Authority-issued electronic messaging accounts or an Authority-approved file sharing or collaboration service to transmit such identifiably personal information.
6. Authority personnel shall not forward messages from their Authority-issued electronic messaging account to any non-governmental account(s) for the purpose of creating a personal email archive of any record related to Authority business.
7. The Authority may comply with reasonable requests from law enforcement and regulatory agencies for logs, diaries, archives, or files on individual computer and email activities. No Authority personnel member may access another's computer, computer files, or electronic mail messages without prior authorization from either the employee or an appropriate Authority official.

ELECTRONIC MAIL

1. All Authority employees (and certain other personnel designated by the Chief Executive Officer) shall be issued an Authority email account, and all Authority business conducted through email must only be done within the Authority email account. However, if Authority personnel must use their personal email account to conduct Authority business, the personnel member must retain the email message in accordance with this Policy and the Authority's records retention policies.
2. Brief and occasional personal use of the electronic mail system or the Internet is acceptable as long as it is not excessive or inappropriate, occurs during personal time (lunch or other breaks), and does not result in expense to the Authority. Generally, Authority personnel are not to use email for non-governmental business, including, but not limited to: union activities (unless expressly allowed in the collective bargaining agreement or other binding agreement with the Authority); commercial ventures; or religious or political causes.

Incidental use of the Authority Network for personal use is permissible pursuant to Government Code § 8314(b)(1) and Penal Code § 424(c), though not encouraged.

3. Authority personnel are responsible for managing their mailboxes, including organizing and deleting any non-Authority related messages.
4. Authority personnel are expected to remember that email sent from Authority email accounts or on behalf of the Authority is a representation of the Authority. All Authority personnel must use normal standards of professional and personal courtesy and conduct when drafting email messages.
5. Authority personnel should avoid “broadcasting” messages and documents unless the message is of interest to all Authority personnel.
6. Spam can contain malicious software that is harmful to the Authority Network. If an email message does not pertain to Authority business, it should be deleted from your email account and not forwarded. Examples include jokes, thoughts for the day, “chain” type email messages, etc. Users shall contact the IT department/representative immediately after a user clicks on any type of spam or malicious software that user believes may be harmful to the Authority.
7. Avoid the use of Authority email accounts to subscribe to non-work related (personal) newsletters or other mailers, as it may create susceptibility for spam or a malicious attack on the Authority Network.
8. The Authority's email system must not be used to violate the laws and regulations of the United States or any other nation or any state, city, province, or other local jurisdiction in any way. Use of Authority resources for illegal activity can lead to disciplinary action, up to and including dismissal and criminal prosecution.

Retention of E-mails Relating to Authority Business

1. All Authority e-mails shall be automatically retained for ninety (90) days after the email was sent/received and be automatically deleted on a rolling basis thereafter, except as provided below.
2. Electronic communications that are owned by the Authority but in the possession of consultants or contractors must also be retained in accordance with this Policy. Whether such electronic communications are owned by the Authority is governed by the agreement between the Authority and the consultants or contractors.
3. Emails may be subject to longer retention periods as determined by the content of the email. Authority personnel shall retain e-mails subject to a retention period longer than ninety (90) days as determined by applicable laws, regulations, and the Authority’s Records Retention Policy/Schedule.
4. It is the responsibility of the Authority personnel member sending or receiving an email to determine if it is subject to a retention period of longer than ninety (90) days.

5. All emails subject to a Public Records Act request, subpoena, request for production, court order, litigation hold, or claim against the Authority shall be retained until the matter is completed, plus any additional period required under the Authority's Records Retention Policy/Schedule. If an email is scheduled for automatic deletion, Authority personnel shall save or otherwise move the e-mail to a safe location where it will be retained for the necessary period.
6. Pursuant to the California Environmental Quality Act ("CEQA") and the Authority's Record Retention Policy/Schedule, the Authority shall retain all records required to be retained by law under Public Resources Code § 21167.6(e). This includes, but is not limited to, all written correspondence, including emails sent or received by the Authority, relating to compliance with CEQA or a "project" under CEQA, as well as internal Authority communications, notes, or memoranda related to CEQA compliance or the project. (Cal. Pub. Res. Code § 21167.6(e)(7), (10); *Golden Door Properties v. Superior Court*, 53 Cal. App. 5th 733 (2003)). Authority personnel shall save or otherwise move the e-mails to a safe location where they will be retained for the required period. Non-substantive emails that provide no insight into CEQA compliance or the project (e.g., the equivalent of sticky notes, calendaring faxes, or social hallway conversations), are not subject to this section and may be discarded after ninety (90) days.
7. Authority personnel shall consider an e-mail's attachments when determining whether the email needs to be retained. Admittedly, many email attachments are simply duplicates of documents that are retained elsewhere or are draft versions of documents that might not be retained by the Authority after the final version of the document is complete. However, if the attachment to the email is an official Authority record that must be retained pursuant to applicable law or Authority's Records Retention Policy/Schedule, Authority staff or officials shall preserve the attachment and discard the e-mail after ninety (90) days. If you need help in determining whether an attachment to an email message must be retained, please contact the Records Coordinator.
8. To the extent that it is practical to do so, prior to any Authority employee's separation from the Authority, the employee shall identify any email(s) subject to a retention period of longer than ninety (90) days. If not practical, the Authority employee's supervisor or other designee shall identify any email(s) subject to a retention period of longer than ninety (90) days. All other e-mails shall be deleted after the ninety (90) day period.
9. The following provisions provide direction regarding storing and filing of emails.:
 - a. To aid in the effective organization of retained records, Authority personnel may store emails in subfolders on their exchange email server. Emails in a subfolder shall not be subject to automatic deletion after ninety (90) days.
 - b. Authority personnel may also store emails in locations other than subfolders that appropriately retain the email, including metadata.
 - c. District personnel shall not use PST files to store emails.

- d. When permitted by applicable law, this Policy, and the Authority's Records Retention Policy/Schedule, mails shall be deleted after ninety (90) days in a timely and cost-efficient manner so as to destroy the record without permitting duplicates, either electronic or hard copies. Authority personnel should consider email servers, archives, back-up systems, shared drives amongst Authority personnel, CDs and DVDs, USB Flash drives in storage, and external hard drives. The confidentiality of a record's contents shall be considered when deciding the level of security used in that record's destruction.
- e. To ensure maximum efficiency in the operation of the email system, Authority personnel are directed to regularly delete email messages that do not pertain to Authority business from their mailboxes. Examples of such messages are personal emails, email advertisements/ announcements, or newsletters received via email.

Electronic Mail Tampering

Email messages received should not be altered without the sender's permission; nor should electronic mail be altered and forwarded to another user and/or unauthorized attachments be placed on another's email message.

Authority Listservs

1. Listservs hosted on Authority computers, but not operated by the Authority, are to be subscribed to for Authority business purposes only, because the amount of traffic generated by Listservs can significantly impact the email system.
2. Listservs hosted on Authority servers may be created and subscribed to by Authority personnel, subject to approval by the appropriate Executive Staff member. Appropriate postings to these Authority Listservs include: employee recognition announcements; announcement of birth/adoption of a child; announcement of death in family; announcement of hospitalization/severe illness; announcement of employee retirement; and news from staff of various Authority divisions or departments. However, Authority personnel shall not share or disclose others' personal information unless expressly permitted by the Authority's legal counsel or unless required by law.

INTERNET

1. This Policy applies to all uses of the Internet, but does not supersede any state or federal laws or Authority policies regarding confidentiality, information dissemination, or standards of conduct.
2. The Internet is to be used to further the Authority's mission, to provide effective service of the highest quality to the Authority's customers and staff, and to support other direct job-related purposes. Supervisors should work with Authority personnel to determine the appropriateness of using the Internet for professional activities and career development. The various modes of Internet/Intranet access are Authority resources and are provided as business tools to employees who may use them for research, professional development, and work-related communications.

3. While accessing the Internet, Authority personnel should conduct themselves appropriately, exercise good judgment, and behave with common courtesy.
4. Authority personnel are individually liable for any and all damages incurred as a result of violating Authority security policy, copyright, and licensing agreements.
5. All Authority policies and procedures apply to the conduct of Authority personnel on the Internet, especially, but not exclusively, relating to: intellectual property, confidentiality, Authority information dissemination, standards of conduct, misuse of Authority resources, anti-harassment, and information and data security.
6. Brief and occasional personal use of the electronic mail system or the Internet is acceptable as long as it is not excessive, inappropriate or violate any applicable laws or Authority policies, occurs during personal time (lunch or other breaks), and does not result in expense to the Authority.
7. If Authority personnel are provided hotspots to access the Internet, the Authority is not responsible for any ancillary charges incurred by Authority personnel. Further, the Authority reserves the right to recover any unanticipated costs arising from Authority personnel using an Authority-owned hotspot.
8. In using Authority-provided Internet access, all users must scan for viruses all files that are downloaded from the Internet and comply with license agreements and policies of networks and on-line services accessible via the Internet. Users shall contact the IT department immediately after a user clicks on any type of virus that user believes may be harmful to the Authority.
9. Authority personnel and other users are specifically prohibited from using Authority-provided Internet access:
 - a. In a manner or for any purpose that violates a federal, state, or local law, regulation, or ordinance or resolution;
 - b. To access or distribute indecent or obscene material or child pornography (see 18 U.S.C. § 2252);
 - c. In a manner that interferes with or disrupts the Authority Network, services, or equipment;
 - d. To intentionally seek out information, obtain copies or modify files or other data that are private, confidential or not open to public inspection, unless specifically authorized to do so by the file owner;
 - e. To copy software without determining that permission to do so has been granted by the file owner;

- f. To represent oneself electronically as another, unless specific permission to do so has been granted; and
 - g. To access a website or location on the Internet where a fee is charged. Authority personnel incurring such charges will bear sole responsibility for them, unless otherwise authorized by the Authority.
10. Violation of these policies and/or state and federal laws can lead to disciplinary action, up to and including dismissal and possible criminal prosecution, as described in further detail under the “Violations” Section of this Policy.

SOFTWARE

The Authority has licensed the use of certain commercial software application programs for business purposes. Third parties retain the ownership and distribution rights to such software. No Authority personnel may create, use, or distribute copies of such software in a manner that is not in compliance with the license agreements for the software. Additionally, no software should be downloaded, installed, or otherwise applied to Authority computer resources without prior approval from the IT department.

Valid Software Registration or Licensing

Each piece of proprietary software (*i.e.*, Microsoft Word, Microsoft Excel, etc.) operating on an Authority computer must have valid registration (individually for stand-alone personal computers) or must be covered by users’ license (if connected to a local area network). Proprietary software and associated documentation are subject to copyright laws and licensing agreements, and are not to be reproduced unless authorized under a licensing agreement. Appropriate documentation to substantiate the legitimacy of the software is necessary. Employees will not use “unauthorized” software on Authority computer resources.

Downloads

It is illegal under federal law to download copies of copyrighted music, games, or videos, using any copying scheme or media format. Downloading of copyrighted, protected materials or software is strictly prohibited. Additionally, downloading of files, software or other items from email or the internet from unknown sources is to be avoided at all costs. Users should contact the IT department if there is any doubt about a download or its source.

INFORMATION SECURITY

Internet/Intranet Security

1. Authority personnel are responsible for respecting and maintaining the security of Authority Network and other electronic resources.
2. Authority personnel shall only use software and hardware that has been authorized for use by the Authority.

3. Use of the Authority Network or technology to obtain unauthorized information, attempt to access information protected by privacy laws, or impersonate other users is strictly prohibited.
4. Do not try to bypass security settings and filters, including through the use of proxy servers.
5. Do not install or use illegal software or files, including unauthorized software or apps, on any Authority-issued electronic devices.
6. All electronic communications or records created, sent, received, deleted, or stored using the Authority Network, using an Authority-owned device, or on a private device or account but within the scope of Authority employment, are the property of the Authority and may only be accessed by authorized Authority personnel. Authority personnel who are separating from employment have no rights to the contents such communications or records.
7. The Authority has taken the necessary actions to assure the safety and security of our network. Any employee who attempts to disable, defeat, or circumvent Authority security measures is subject to disciplinary action, up to and including dismissal.

Passwords

1. A confidential password does not guarantee privacy, nor does deletion mean the Authority cannot retrieve past communications, nor does it suggest that voice mail or email are the property right of the employee. Please refer back to the section of this Policy on "Monitoring."
2. Passwords and codes will help secure information, but they do not ensure privacy and security. Passwords should be changed periodically to ensure security. Under no circumstances should users share their passwords with anyone else.

LEGAL

If any paragraph, sentence, clause or phrase of this Policy is held unlawful or invalid for any reason, said unlawfulness or invalidity shall not affect the remaining portions of this Policy. Additionally, due to the ever-changing facets of the realm of Information Technology and its related areas, this Policy shall not be construed to be all inclusive. Revisions to this Policy shall be made periodically in an effort to keep up with changing technology.

VIOLATIONS

1. Any Authority personnel found to have violated this Policy may have his/her access to the Authority Network limited or revoked completely. Furthermore, unlawful use may result in referral for criminal prosecution.
2. Additionally, failure of Authority personnel to comply with this Policy, following its adoption, may result in one or more of the following:

- a. Disciplinary action, up to and including termination (for Authority employees);
- b. Breach of contract or termination of contract (for Authority consultants); and
- c. Revocation of electronic device privileges.

Computer Use and E-mail Management Policy Acknowledgment

I hereby acknowledge that I have received a copy of the Orange County Power Authority Computer Use and Email Management Policy and that I understand that I am to read and comply with its contents. I am aware that failure to comply with this policy may lead to disciplinary action, up to and including termination. I further understand that if I have any questions about the policy or its contents, I am to discuss them with my supervisor or the Human Resources Department.

Print Employee Name

Employee Signature

Date

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 5.A

To: Orange County Power Authority Board of Directors

From: Antonia Graham, Chief Operating Officer

Subject: COMMUNITY ADVISORY COMMITTEE UPDATE AND NEXT STEPS

Date: April 13, 2021

RECOMMENDATION

Discuss and provide direction.

BACKGROUND

The Orange County Power Authority's (Authority's) Joint Powers Agreement (JPA) gives the Board the authority to "establish committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the purposes of this Agreement (JPA)." The JPA also provides that Committees that include or consist of non-Board members shall be advisory only.

At previous Board meetings, the Directors have requested that staff bring forward more information on the development of a Community Advisory Committee (CAC) for the Authority. Staff is providing a matrix of existing CCAs, as well as Orange County Transportation Authority (OCTA) to show the members how each CCA has handled the development of a CAC. At the February 23, 2021 meeting, the Board directed staff to return with specifics on the formation of the CAC. This report outlines the membership criteria, terms, and meetings of the CAC.

DISCUSSION

The CAC intends to promote membership throughout the communities of the Authority's four-member cities and meet the goal of representing a diverse cross-section of interests, skills set, and geographic regions.

As outlined in Attachment 1, to ensure varied perspectives and participation, it is recommended that the CAC consist of ten (10) members, with two (2) direct appointments from the Board; but no member agency shall have more than two members to the CAC. In addition to the direct appointments, there will be two at-large appointments selected by the Board via an application process (Attachment 2). This composition maybe revisited by the Board if new member cities are added to Authority.

CAC members shall be residents (either property owners or renters), business owners, and/or employees or representatives of a community-based organization within one of the Authority's four member cities: Buena Park, Fullerton, Huntington Beach, and Irvine. When reviewing CAC applicants for membership, Authority staff and the Board of Directors are to prioritize residents, when feasible, from diverse social, economic, and racial backgrounds that are representative of all residents within the service territory of the Authority. Finally, applicants must be committed to serving on the CAC and regularly attending CAC meetings and occasional Authority Board meetings. CAC meetings, times, and location will be determined once the members are approved by the full Board. These meetings could be rotated through the member cities the meetings so that

they are held in each member City at a public building and if feasible broadcast via the local Public Educational Governmental (PEG) channel.

Members will initially serve a one-year term with a limit of two terms. This can be revisited at any time by the Board.

If approved, staff envisions the process of creating the Community Advisory Committee as follows:

1. Each Board Member will directly appoint two CAC members; but each Member city shall have no more than two members. Each CAC member will serve at the pleasure of the appointing Board Member.
2. Application forms for the two at-large seats will be made available to the public in April 2021 and could be publicized by each Board Member and member city.
3. Applications will be accepted by Authority staff until May 15th and distributed to each Board Member for review based on which city the applicant(s) resides, works or owns a business in.
4. Staff will present nominees for the at-large at the May Board meeting for Board approval in late June.

Community Advisory Committee Purpose and Scope

The purpose of the CAC shall be to advise the Board of Directors and provide for a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of Authority. The Committee shall be advisory only and is subject to the Brown Act. In providing guidance on the roles and responsibilities of the CAC, staff is recommending the adoption of a CAC 'Purpose and Scope' "Attachment 3" which may be updated or changed at the Board's discretion.

Staff has reviewed the CAC scopes of several operational CCAs and integrated the best practices from those CAC scopes. It is expected that Authority staff will provide information regarding the operation of its CCA program to the Community Advisory Committee, as necessary and appropriate. The CAC shall appoint officers to manage its committee independently. Authority shall provide staff support to the Committee to assist with meetings, posting of information, etc.

FISCAL IMPACT

Costs associated with CAC meetings are unknown; however, they may include staff time to manage the meetings, costs for lunch or refreshments, and possible meeting space charges if public facilities aren't available.

ATTACHMENTS

1. Community Advisory Committee Membership Criteria and Terms.
2. Community Advisory Committee Application.
3. Community Advisory Committee Purpose and Scope.

Item 5.A
COMMUNITY ADVISORY
COMMITTEE UPDATE AND NEXT
STEPS

Attachment 1
Community Advisory Committee
Membership Criteria and Terms.

**Orange County Power Authority
Community Advisory Committee Membership Criteria**

1. The Committee Advisory Committee (CAC) shall be made up of ten (10) committee members. Each Board Member shall appoint two members; but, no member agency shall have more than two members. The CAC members shall serve at the pleasure of their appointing Board Member. This composition may be revisited by the Board if new member cities are added to the Orange County Power Authority (Authority). In addition to direct appointments, there will two at-large appointments selected by the Board via an application process.
2. The CAC is a Brown Act Committee, and all meetings shall be posted and held in public spaces.
3. The Authority aims to ensure a wide variety of perspectives and participation on the CAC;
4. Members shall be residents (property owners and/or tenants), business owners, employees or representatives of a community-based organization located within one of the member cities of the Authority.
5. When reviewing applicants for membership, Authority staff, and the Board of Directors are to prioritize residents, when feasible, from diverse social, economic, and racial backgrounds that are representatives of all residents within the service territory.
6. There shall be two at-large members who shall be required to submit an application and the Board shall make the selection to the Committee.
7. Applicants must be committed to serving on the CAC and attending regular meetings along with the occasional Authority Board meeting. CAC meetings and times will be determined once the members are approved by the full Board. Members will initially serve a one-year term and there will be a limit of two terms. The one-year term will be the initial term period and could amended by the Board.
8. Meetings of the CAC could rotate throughout the service territory. If technology permits, the meetings shall be broadcast on the local PEG channel run by each member jurisdiction.

Item 5.A
COMMUNITY ADVISORY
COMMITTEE UPDATE AND NEXT
STEPS

Attachment 2
Community Advisory Committee
Application.

**Orange County Power Authority
Community Advisory Committee 2021 Application**

Orange County Power Authority (Authority), the new Community Choice Energy program consists of the cities of Buena Park, Fullerton, Huntington Beach, and Irvine, is now taking applications for membership in its Community Advisory Committee (CAC). Complete application along with a resume are to be sent via email to info@ocpower.org by 5 p.m. on _____. Applications can also be mailed to the following address:

Orange County Power Authority
PO Box 54283
Irvine, CA 92619
Attention: Antonia Graham

Each Board Member may appoint two members to the CAC, but no member city can appoint more than two members. In addition to direct appointments, the Board shall appoint two at-large members via an application process.

The role of the CAC members includes, but is not limited to the following:

1. Elect officers (Chair, Vice Chair, and Secretary) and define priorities and duties to ensure the Committee can operate independently and collaboratively, with limited support from Authority staff.
2. From time to time the Board may ask the CAC to work on defined objectives and produce materials or advice that will assist the Board in decision-making.
3. Help the Board to identify issues of concern and opportunities to educate community members about the Authority.
4. Draft reports to the Board with findings and recommendations as may be needed.
5. Represent the views of the Committee constituencies in comments and recommendations.
6. Plan for and engage in community events and special projects, as appropriate.
7. Serve as an information-channel back to their colleagues and communities.
8. Other duties or tasks, as deemed appropriate by the CAC and Board, that meet the purpose of providing a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of the Authority.

**Orange County Power Authority
Community Advisory Committee 2021 Application**

Applicant Criteria:

Applicants must be residents (property owners and/or renters), business owners, employees, or representatives of a community-based organization within one of the four member cities of the Authority: Buena Park, Fullerton, Huntington Beach, and Irvine.

Applicants must be committed to serving on the CAC and regularly attending CAC meetings and occasional Authority Board meetings. CAC meetings, times, and locations will be determined once the members are approved by the Authority Board of Directors. Members will initially serve a one-year term and there is a limit of two terms.

Name:

Address:

Organization Representing (if applicable):

Phone & Email:

Member City:

Are you a business owner in one of the four member cities? If so, which one?

Please use a separate sheet of paper to explain why you wish to be appointed to the Orange County Power Authority Community Advisory Committee and briefly describe your qualifications including any applicable experience. Please indicate if you are a representative of an organization with expertise in energy issues generally and/or Community Choice Energy specifically. Please attach a resume.

As a member of the Orange County Power Authority Community Advisory Committee, you are making a time commitment to actively participate in the planning and development of the Orange County Power Authority (Authority) program. Please sign the statement below indicating you have the time to prepare for and attend meetings:

I have sufficient time to devote to this responsibility and will attend scheduled meetings if appointed. I am also aware that this application is a public document. I will abide by the Political Reform Act and Form 1090, where I will refrain from voting on issues in which I have a financial interest.

Signature

Date

Item 5.A
COMMUNITY ADVISORY
COMMITTEE UPDATE AND NEXT
STEPS

Attachment 3
Community Advisory Committee
Purpose and Scope.

**Orange County Power Authority
Community Advisory Committee Purpose and Scope**

The purpose of the Orange County Power Authority (Authority) Community Advisory Committee (CAC) is to advise the Authority Board of Directors on the operation of its Community Choice Energy program. This Scope will be adopted by the Board of Directors and may be updated or changed at the Board's discretion.

The CAC will, under the direction of the Authority Board of Directors and authorized Authority staff:

1. Elect officers (Chair, Vice Chair, and Secretary) and define priorities and duties to ensure the Committee can operate independently and collaboratively, with limited support from Authority staff.
2. From time to time the Board may ask the CAC to work on defined objectives and produce materials or advice that will assist the Board in decision-making.
3. Help the Board to identify issues of concern and opportunities to educate community members about the Authority.
4. Represent the views of the Committee constituencies in comments and recommendations.
5. Plan for and engage in community events and special projects, as appropriate.
6. Serve as an information-channel back to their colleagues and communities.
7. Other duties or tasks, as deemed appropriate by the CAC and Board, that meet the purpose of providing a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of the Authority.

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 5.B

To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer

Subject: AGREEMENT FOR PORTFOLIO MANAGEMENT AND POWER
PROCUREMENT SERVICES WITH THE ALLIANCE FOR COOPERATIVE
ENERGY SERVICES POWER MARKETING LLC

Date: April 13, 2021

RECOMMENDATIONS

1. Select Alliance for Cooperative Energy Services Power Marketing, LLC (ACES) to provide power supply portfolio management services.
2. Authorize the Chief Executive Officer to negotiate and execute a Professional Services Agreement with ACES in substantially similar form with review and approval by the General Counsel.

BACKGROUND

On January 26, 2021, staff released a Request for Proposal for Multiple Services: Power Supply Portfolio Management, Scheduling and Dispatch Services, and Data Management and Customer Call Center Services (Solicitation Number: 21-001) . Three (3) firms submitted proposals for the Power Supply Portfolio Management Services. The review committee, comprised of Authority staff, EES Consulting staff, and the Authority's General Counsel, interviewed the respondents. All interviewed firms were highly qualified and offered their own perspective on moving forward with a 2022 launch.

After careful consideration of the firms interviewed and alignment with the Authority's goals and objectives, staff is recommending the Board select the Alliance for Cooperative Energy Services Power Marketing LLC (ACES) to provide power supply and portfolio management services. ACES has a long history of providing power supply, portfolio optimization, risk management, and other power utility services to its customers at competitive rates. Established in 1999 to help rural generation and transmission cooperatives navigate newly deregulated power markets, ACES is an advocate and partner for community choice energy providers. Its California customers include several municipal utilities and community choice aggregators. The firm also has a national presence in energy and resource adequacy markets.

ACES will be providing the following services.

1. Power supply and portfolio management and optimization
2. Resource adequacy procurement
3. California Independent System Operator (CAISO) procurement
4. Support risk management services.

The attached agreement was developed by BB&K, the Authority's General Counsel. It includes a detailed scope of work and description of ACES's proposed pricing structure.

FISCAL IMPACT

While the final amount of the contract is still being negotiated, ACES proposed the following:

1. A one-time fixed fee of \$70,000 for tasks to be completed during the Implementation Period.
2. Ongoing Services: \$395,000 annually.

ACES propose that its fees shall escalate 3% annually beginning January 1, 2023.

ATTACHMENT

1. Draft Agreement for Portfolio Management and Power Procurement Services.

Item 5.B
**AGREEMENT FOR PORTFOLIO
MANAGEMENT AND POWER
PROCUREMENT SERVICES WITH
THE ALLIANCE FOR
COOPERATIVE ENERGY SERVICES
POWER MARKETING LLC**

Attachment 1
**Draft Agreement for Portfolio
Management and Power Procurement
Services.**

AGREEMENT FOR PORTFOLIO MANAGEMENT AND POWER PROCUREMENT SERVICES

This Agreement for Portfolio Management and Power Procurement Services (“**Agreement**”) is made and entered into on April 13, 2021 (“**Effective Date**”), by and between the ORANGE COUNTY POWER AUTHORITY, a California joint powers authority (the “**Authority**”) and ALLIANCE FOR COOPERATIVE ENERGY SERVICES POWER MARKING LLC, a Delaware limited liability company, a California corporation (“**Consultant**”). The Authority and Consultant are sometimes individually referred to as a “**Party**” and collectively as “**Parties**.”

RECITALS

A. Consultant desires to perform and assumes responsibility for the provision of certain professional services required by the Authority as part of its community choice aggregation (“CCA”) program on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing portfolio management and power procurement energy services and is familiar with the plans of the Authority.

B. The Authority desires to engage Consultant to render such professional services for the Authority’s community choice aggregation program (“**Project**”), as set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Scope of Services and Term.

1.1. General Scope of Services. Consultant promises and agrees to furnish to the Authority all services and incidental and customary work necessary to fully and adequately provide the services described in Exhibit A (“**Services**”). All Services shall be subject to, and performed in accordance with, this Agreement, the schedules and/or exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

1.2. Term. This Agreement shall be effective on the Effective Date. Unless earlier terminated as provided herein, this Agreement shall remain in effect through April 13, 2024 (“**Initial Term**”). At the end of the Initial Term, the Agreement shall renew on an annual basis for successive one (1) year terms (each, a “**Renewal Term**”), unless a Party provides sixty (60) days’ prior written notice of its intent not to extend the term of the Agreement. Consultant shall provide the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

2. Responsibilities of Consultant.

2.2. Control and Payment of Subordinates: Independent Contractor. The Services shall be performed by Consultant or under its supervision. The Authority retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of the Authority and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

2.2. Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the terms of Exhibit A. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's timely performance under this Agreement, the Authority shall respond to Consultant's submittals in a timely manner.

2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of the Authority.

2.4. Sub-Consultants. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of the Authority. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3. Conditions to Consultant's Performance.

3.1 Information and Assistance. Upon Consultant's reasonable request, the Authority shall provide such information and assistance as is reasonably required for Consultant to provide the Services. If the Authority fails to provide Consultant with such requested information or assistance, then Consultant shall continue to provide in a timely manner any such portion(s) of the affected Services that Consultant can reasonably provide to the extent possible in the absence of such information or assistance.

3.2 Notification. The Authority will notify all other relevant parties, including, but not limited to, its data manager ("**Data Manager**"), the Utility Distribution Company ("**UDC**"), which is currently Southern California Edison, the California Independent System Operator ("**CAISO**") and the Authority's lender(s), as necessary, of the existence of this Agreement and Consultant's role as contemplated in this Agreement.

3.3. Authority's Representative. The Authority hereby designates its Chief Executive Officer, or designee, to act as its representative for the performance of this Agreement ("**Authority's Representative**"). The Authority's Representative shall have the power to act on

behalf of the Authority for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than the Authority's Representative, or designee.

3.4 Consultant's Representatives. Consultant hereby designates **[INSERT NAME]** to act as Consultant's representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using their best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.5 Coordination of Services. Consultant agrees to work closely with the Authority staff in the performance of Services and shall be available to the Authority's staff, consultants and other staff at all reasonable times.

3.6 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by energy professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the Authority, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the Authority to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the Authority, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.7 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with pertinent local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the Authority, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold the Authority, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

4. Insurance

4.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to the Authority that it has secured all insurance required under this section, in a form and with insurance companies acceptable to the Authority.

4.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

1.3.8.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of two (2) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

4.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the Authority to add the following provisions to the insurance policies:

(A) General Liability.

(i) Commercial General Liability Insurance must include coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(iii) The policy shall give the Authority, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(iv) The additional insured coverage under the policy shall be “primary and non-contributory” and will not seek contribution from the Authority’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(B) Automobile Liability.

(i) The automobile liability policy shall be endorsed to state that: (1) the Authority, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Authority, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant’s scheduled underlying coverage. Any insurance or self-insurance maintained by the Authority, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant’s insurance and shall not be called upon to contribute with it in any way.

(C) Workers’ Compensation and Employers Liability Coverage.

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against the Authority, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages.

(i) Defense costs shall be payable in addition to the limits set forth hereunder.

(ii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to the Authority, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

(iii) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Authority (if agreed to in a written contract or agreement) before the Authority's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(iv) Consultant shall provide the Authority at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Authority at least ten (10) days prior to the effective date of cancellation or expiration.

(v) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(vi) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the Authority, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(vii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the Authority has the right but not the duty to obtain the insurance it deems

necessary and any premium paid by the Authority will be promptly reimbursed by Consultant or the Authority will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, the Authority may cancel this Agreement. the Authority may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) Neither the Authority nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

4.3. Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the Authority, its directors, officials, officers, employees, agents and volunteers.

4.4. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Authority. Consultant shall guarantee that, at the option of the Authority, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Authority, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

4.5. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the Authority.

4.6. Verification of Coverage. Consultant shall furnish the Authority with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Authority. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the Authority if requested. All certificates and endorsements must be received and approved by the Authority before work commences. the Authority reserves the right to require complete, certified copies of all required insurance policies, at any time.

4.7. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the Authority that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the Authority as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, the Authority may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

5. Fees and Payments.

5.1. Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement as set forth in Exhibit A. Extra

Work may be authorized, as described in Section 5.4 below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

5.2 Payment of Compensation. Consultant shall submit to the Authority a monthly itemized invoice which shall include all fees and authorized expenses related to Services during the previous month. The Authority shall, within 30 days of receiving Consultant's invoice, review the invoice and pay all approved charges thereon.

Consultant acknowledges that as of the Effective Date of this Agreement, the Authority is currently in the process of obtaining financing for the Authority operations. Notwithstanding the fees and payments obligations in this Section 5, Consultant agrees that payment of compensation for Services will commence within sixty (60) days of receiving Consultant's invoice and will then revert to 30 day payment periods thereafter. Consultant further agrees that should the Authority not obtain financing for the Authority operations, Consultant will not be entitled to compensation from the Authority and waives any rights thereto.

5.3. Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by the Authority. For all authorized expenses, Consultant shall reflect such items, on the Authority an itemized basis, in its monthly invoices as noted in Section 5.2.

5.4. Extra Work. At any time during the term of this Agreement, the Authority may request that Consultant perform Extra Work. As used herein, "**Extra Work**" means any work which is determined by the Authority to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, or be compensated for, Extra Work without written authorization from the Authority's Representative.

6. Accounting Records.

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. No more than once per year, Consultant shall allow a representative of the Authority, at the Authority's sole cost and expense, during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement. Any audit or inspection shall, at Consultant's exclusive option, take place off of Consultant's premises.

7. Termination and Expiration of Agreement: Meet and Confer.

7.1. Termination for Convenience. The Authority may, by providing sixty (60) days prior written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof. Upon termination, Consultant shall be compensated in accordance with this section.

7.2. Termination for Cause. The following events (each an “**Event of Default**”) occurs with respect to a Party, then the other Party may terminate this Agreement (inclusive of Schedules, Exhibits and Addenda) upon written notice to the defaulting Party: (i) with respect to the Authority, Authority fails to pay amounts due hereunder, and such failure continues for thirty (30) days following written notice from Consultant; (ii) either Party defaults in the observance or performance of any of its material covenants or agreements in this Agreement and such default continues uncured for sixty (60) days following written notice to the defaulting Party; or (iii) either Party makes an assignment for the benefit of creditors (other than a collateral assignment to an entity providing financing to such Party), files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or has such a petition filed against it or otherwise becomes bankrupt or insolvent (however evidenced), or is unable to pay its debts as they become due.

7.3 Effect of Termination. Upon the date of expiration or notice of termination of this Agreement (whether terminated for convenience or for cause, or whether expiring at the end of a term): (i) Consultant shall cease providing Services and Extra Work hereunder except as required or authorized in Section 3.6.1.4 below; (ii) Consultant shall issue an invoice (the “**Termination Invoice**”) to the Authority for (a) all outstanding fees for Services rendered by Consultant through and including the date of expiration or termination, (b) all authorized expenses outstanding and unpaid as of the date of expiration or termination, the Authority; and (iii) the Authority shall pay within thirty (30) days of receipt of Consultant’s invoice.

7.4. Transition of Services Upon Termination or Expiration. Upon such expiration or termination, and upon request of the Authority, Consultant shall reasonably cooperate with the Authority to ensure a prompt and efficient transfer of all the Authority data, documents and other materials to the Authority or a new services provider, in an industry standard format or formats, and in a manner such as to attempt to minimize the impact of expiration or termination on the Authority’s customers. Consultant and the Authority shall mutually agree on transition activities requiring completion and a reasonable schedule of completion associated therewith. Consultant shall provide to the Authority data and documentation, and other Consultant non-proprietary information reasonably requested by the Authority in connection with the transition. Consultant shall provide transition assistance, subject to a mutually agreeable schedule, in such a manner as to attempt to reasonably: (a) ensure the uninterrupted performance of the services, (b) with no degradation in quality, and (c) to avoid disruption in the operation. If the Authority terminates for convenience, and not in the event of a Consultant default, the Authority agrees to pay Consultant reasonable compensation for additional services performed in connection with such transfer, to the extent not otherwise provided for or contemplated in the Agreement, and not otherwise included in the Termination Payment. Consultant shall (i) return all documents and other materials received from the Authority and all copies (if any) of such documents and tangible materials, and (ii) destroy all other documents or materials in Consultant’s possession that contain the Authority customer data; provided, however, that Consultant may retain copies of information necessary for Consultant’s tax, billing or other financial purposes, to be used solely for such purposes.

(A) Under no circumstances, except for any event of default by the Authority, shall Consultant cease providing Services to the Authority under this Agreement until clear and unequivocal arrangements for (i) the Authority to assume provision of the Services under this Agreement, (ii) a third party provided to assume provision of the Services under this Agreement, or (iii) a return to Utility electric procurement, is established.

7.5. Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, the Authority may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

7.6. Dispute Resolution. The Parties shall meet and confer together in good faith regarding any dispute, controversy or claim (each, a “**Dispute**”) arising out of or relating to this Agreement, or any breach or alleged breach hereof, prior to either Party declaring a breach of the Agreement. A meet and confer shall occur within ten (10) business days of any Dispute whereby the Parties agree to cooperate in good faith to resolve the Dispute, and may use a mutually agreeable third party to resolve such Dispute. In no event shall either Party be delayed or impeded from exercising any of its rights at law or equity, including, without limitation, petitioning a court for provisional relief, including injunctive relief, prior to invoking the meet and confer resolution process.

8. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:

Authority: Orange County Power Authority
Attn: Chief Executive Officer
P. O. Box 54283
Irvine, CA 92619-4283

Such notice shall be deemed made when personally delivered or delivered by nationally recognized courier that renders a receipt for delivery.

9. **Intellectual Property and Confidentiality.**

The Authority owns all right, title and interest in and to all the Authority Materials. Upon the expiration of this Agreement, or in the event of termination, the Authority Materials and all the Authority customer data, in whatever form and in any state of completion, shall remain the property of the Authority and shall be promptly returned to the Authority. Upon termination, Consultant may make and retain a copy of such contract materials if permitted by law. the Authority Materials shall mean any and all data created by Consultant specifically for the Authority in the

performance of the Services and Extra Work pursuant to this Agreement (“**the Authority Materials**”).

For the avoidance of doubt, Consultant’s intellectual property, including, but not limited to, Consultant’s trademarks, service marks, trade names and other designations, web site(s), web design(s), internal systems, computer systems, programs, software (including software code), ideas, know-how, work product, copyrights, patents, trade secrets and other proprietary and/or intellectual property shall remain the exclusive property of Consultant.

10. Confidentiality. All memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to Consultant specifically in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of the Authority, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use the Authority’s name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the Authority.

11. Cooperation: Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

12. Attorney’s Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney’s fees and all other costs of such action.

13. Indemnification. Consultant (including its officials, officers, employees, agents, sub-consultants and contractors, collectively the “Indemnifying Party”) shall, to the extent of its own willful, reckless or negligent misconduct, defend, indemnify and hold the Authority, its officials, officers, consultants, employees, and volunteers (“**Indemnified Party**”) free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident, arising out of or in connection with the performance of the Services, the Project or this Agreement, including reasonable attorney’s fees and other related costs and expenses. Consultant’s obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Authority, its directors, officials, officers, consultants, employees, agents or volunteers. Consultant’s indemnification obligations herein are conditioned upon the Indemnified Party: (i) promptly notifying the Consultant of any claim in writing; and (ii) cooperating with Consultant in the defense of the claim.

14. Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

15. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be governed by a court of competent jurisdiction in San Diego County.

17. Authority's Right to Employ Other Consultants. The Authority reserves right to employ other consultants in connection with this Project.

18. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

19. Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the Authority. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Notwithstanding the foregoing, the Parties agree that in the absence of a merger, the sale or transfer of all or substantially all of the shares of the Consultant shall not constitute an assignment or transfer of this Agreement.

20. Construction: References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to the Authority include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

21. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

22. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

23. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

24. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

25. Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Authority shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of the Authority, during the term of his or her service with the Authority, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

26. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

27. Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

28. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

29. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereby have made and executed this Agreement as of the date first written above.

**ORANGE COUNTY POWER
AUTHORITY, a California joint powers
authority**



By : _____
Name: _____
Title: _____

By : _____
Name: _____
Title: _____

By : _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Authority General Counsel

* A corporation requires the signatures of two corporate officers.

One signature shall be that of the chairman of board, the president or any vice president and the second signature (on the attest line) shall be that of the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation.

If the above persons are not the intended signatories, evidence of signature authority shall be provided to the Authority.

EXHIBIT A – ACES Services

This Exhibit A dated as of [Date], is hereby incorporated into the Service Agreement between Customer and ACES and together constitute the understanding of the Parties with regard to the Services. Customer hereby indicates, by checking the appropriate boxes, the Services ACES will provide for Customer. Customer and ACES may agree to amend this Exhibit A, from time to time, to conform to the needs of Customer and the Services provided by ACES. Customer and ACES shall cooperate and provide sufficient notice of any pending change in the Services selected by Customer or provided by ACES. Notwithstanding anything to the contrary herein, the designation of ACES as Customer's agent and representative to perform the Services shall at all times be pursuant to, subject to, and only to the extent authorized by the Customer.

I. Trading and Counterparty Controls and Risk Policies:

A. Credit

- ☒ 1) **Credit Analysis and Counterparty Monitoring:** ACES will analyze and monitor the on-going financial viability of the Customer's power, natural gas, financial, emission allowance, and coal counterparties and any other counterparties upon request.
- ☒ 2) **Credit Exposure Monitoring and Management:** ACES will provide counterparty credit exposure monitoring; and collateral management services consistent with approved credit limits in accordance with either a Customer's credit policy or a procedure that is mutually agreed to by the parties. On a daily business day basis, a Combined Credit Exposure Report and a Threshold Report will be posted to the Customer Only Website. Periodically, ACES' Recommended Trading Restriction Report will be sent to selected Customer staff via email and posted to the Customer Only Website. Coal and emission allowance trading counterparties may be added at the Customer's request.
- ☒ 3) **Credit Negotiations:** ACES, as Customer's agent, shall negotiate or assist in the negotiation of credit terms included in standardized or structured contracts with the exception of negotiating with other ACES clients (due to a conflict of interest). ACES will serve as an active advocate of the Customer in the credit community including contact coordinated with the Customer: counterparties, ISO/RTOs, credit rating agencies, energy credit risk management associations/coalitions, lenders and regulatory bodies, etc.
- ☒ 4) **Credit Reports:** On a daily business day basis, a business/news email will be distributed to selected Customer staff. On a monthly basis, a report on bond spreads and credit default swaps will be distributed to selected Customer staff. Every 6 months, or more often if specifically requested by Customer, a Capital Adequacy Report will be distributed to selected Customer staff.
- ☒ 5) **ISO/RTO Credit Monitoring Service:** ACES will sit in on all credit-related ISO/RTO meetings that ACES' Customers participate in, either in person or via conference call. ACES will periodically distribute to selected Customer staff a report

on the activities and/or issues pertaining to each of these meetings, whenever they may take place.

B. Contracts

- ☐ 1) **Master Agreement Negotiations:** ACES, as Customer's agent, will negotiate or assist in the negotiation of provisions between Customers and counterparties for standardized energy contracts with the exception of negotiating with other ACES clients (due to a conflict of interest). However, when negotiating standardized energy contracts between ACES clients, ACES will facilitate and offer explanation of provisions for both parties. ACES will administer the process from initiation to contract execution on a timely basis, and provide periodic status reports as requested by Customer. Within this service, ACES facilitates the establishment of Customer brokerage and NYMEX accounts.
- ☒ 2) **Emissions Allowances and Renewable Energy Credits Agreement Negotiations:** ACES, as Customer's agent, will negotiate or assist in the negotiation of provisions between Customers and counterparties for emissions allowances and renewable energy credits contracts with the exception of negotiating with other ACES clients (due to a conflict of interest). However, when negotiating these environmental contracts between ACES clients, ACES will facilitate and offer explanation of provisions for both parties. ACES will administer the process from initiation to contract execution on a timely basis, and provide periodic status reports as requested by Customer.
- ☒ 3) **Contract Administration – Agreements:** ACES will administer the terms of power, natural gas, financial derivative, emissions, and renewable contracts. Such administration includes developing procedures to ensure appropriate oversight and administration of the following provisions: contract execution, modification and termination, authorized signatories, default, assignments, and notices.
- ☒ 4) **Contract Monitoring – Agreements:** ACES will monitor agreements for compliance with ACES delegated trading activities. This includes oversight and procedures for entering commercial provisions into ACES' risk system, confirmation processes, notifying traders of contractual relationships, and monitoring/mitigating and reporting trading violations of commercial contract terms.
- ☒ 5) **Structured/Customized Contract Evaluations:** ACES, at the request of the Customer, evaluates structured/customized contracts in their entirety including: pricing, delivery terms, contract flexibility, missing provisions, legal provisions, etc.
- ☐ 6) **Contract Service – RTO Applications:** ACES, at the request of Customer, will initiate the RTO application process. This service will include initiating and completing, with Customer's assistance, the necessary forms and filing the application with the applicable RTO. ACES will also provide any necessary follow-up with the RTO until the application is approved and the ACES Customer is granted Customership or market participation status.

C. Trading Control

- ☒ 1) **Trade Capture and Validation:** ACES will capture all transactions executed by Customer as requested. In addition ACES will review all transactions captured in the ACES risk management systems to ensure the transactions are captured completely, accurately, and timely. ACES will perform various tasks to validate the accuracy of the transactions captured in the risk system. These validation processes include transaction confirmations and reconciliations to external transaction sources.
- ☒ 2) **Policy Compliance Monitoring:** ACES' Trading Control Department will monitor all trading activity for compliance with both the Customer's trading authority policy and the internal ACES Trading Authority Policy. Exceptions to the trading authority policies are reported to ACES' Risk Management Committee ("RMC"). The ACES RMC determines the appropriate disciplinary action for all violations by ACES' personnel in accordance with ACES' Trading Sanctions Policy. ACES' Trading Control Department will also monitor a Customer's compliance with its hedge policy in coordination with the ACES Structuring department via its monthly portfolio modeling reports.
- ☒ 3) **Forward Curve Reporting:** ACES Trading Control Department will post on the ACES Portal on a daily basis forward price curves for various commodities and products, such as power, capacity, natural gas, heating oil, crude oil, coal, emissions and renewable energy, as well as forward curves for interest rates and inflation rates. ACES Trading Control Department will also report forward volatility information for power and natural gas.
- ☒ 4) **Mark-to-Market Valuation and Reporting:** ACES will mark-to-market its Customers' forward transactions on a daily basis. The mark-to-market gain/loss (mark-to-market exposure) of forward positions is a component of the total credit exposure Customer has with each of its counterparties. Mark-to-Market Reports will post to the ACES Portal on a daily basis.
- ☒ 5) **Transaction Reporting:** ACES will prepare various transaction reports regularly and post such to the ACES Portal or provide them directly to the Customer. Other customized reports will be prepared at Customer's request and, at ACES' option, at Customer's cost.

D. Risk Management and Training

- ☒ 1) **Risk Management Policy Development:** ACES will assist and facilitate the process of policy development for Customer. Policies include: energy risk management, credit, trading authority, trading sanction, and hedging. The overall development process involves various ACES groups.
- ☐ 2) **Education and Training (within limits):** ACES offers both on-line and in-person training and education for various risk management, compliance, and personal development subject areas suitable for Board Directors, Executive Management and Staff. ACES maintains a Learning Management System (“LMS”) which has dozens of courses available to assist Customer in their training and certification needs (i.e. NERC system operators, CPA’s, PE’s). Additionally, Customer may use the LMS to host its own training needs and ACES shall consult and assist Customer, within reason, for the development of training and use of the LMS. Use of the LMS requires the Customer to sign an additional letter agreement stating Customer shall abide by terms of ACES’ LMS vendor agreement and pay for users that exceed a predetermined number. Furthermore, ACES will offer the Customer one free customized in-person training course per year.

E. Regulatory and Market Development Participation

- ☐ 1) **State Regulatory Participation:** At the request of Customer, ACES and Customer will design a customized program for ACES to participate, at Customer’s direction, in regulatory proceedings, rate cases, etc. ACES will bill these services at hourly consulting rates.
- ☐ 2) **Legislative Initiative Participation:** ACES will participate in Federal, Regional, State and Local proceedings that represent Customer’s interests for coal transportation and/or environmental management.
- ☒ 3) **Regulatory and Market Development Participation:** ACES will participate, on behalf of Customer, in the rules making process with existing and emerging RTO’s/ISO’s and other regulatory bodies that implement market development rules. Committee representations range from credit issues to treatment of grandfathered transmission agreements. The following services are provided: develop a Customer strategy to address key ISO/RTO, regional reliability organization, NAESB, and other regulatory committees or working groups; establish issues-based coverage and provide a structured approach to analyzing regulatory issues and their impacts on Customer portfolios; establish proxy voting rights on behalf of Customer as appropriate.

F. Electric Reliability Organization (“ERO”) Compliance Consulting

- ☐ 1) **Reliability Compliance Consulting:** ACES will serve as an information broker, advisor, and provider of training through the creation of individual Customer relationships and the formation of a Customer ERO compliance working group. ACES will conduct its work through identification and prioritization of ERO

issues. Other work products include: filtering and proactive dissemination of relevant information from NERC/FERC/regional reliability organization, proactive lobbying efforts, establishing a communication method among Customers for sharing information and questions, creating forums for Customer-to-Customer communications, hosting relevant workshops and webinars, coordinating and advocating NERC standards drafting among ACES Customers and providing a conduit for submitting questions to FERC, NERC, and regional reliability organizations - including interpretation and applicability of Standards/Requirements. Additionally, ACES will support ERO compliance training needs of Customers by: developing on-line training addressing culture-of-compliance issues, general power industry topics, assisting Customers with developing NERC-compliant training plans, assisting Customers with developing CEH-eligible training courses, and sharing training among Customers. Additional work products and training requested by Customers may be performed, but may be subject to additional consulting fees.

- ☐ 2) **Delegated Electric Reliability Standard Compliance:** For those operations where ACES directly fulfills required functions for which a Customer is registered to comply with a reliability standard promulgated by either the North American Electric Reliability Corporation or one of the regional reliability organizations, ACES will ensure that ACES' activities on behalf of Customer are in compliance with the electric reliability standards requirements formally delegated in writing to ACES. For those operations that do not require ACES to fulfill reliability functions, ACES and the Customer will execute a "no-delegation" agreement formalizing the understanding in writing.

G. Compliance Services Associated with Financial Transactions and Dodd Frank Physical Trade Options

- ☐ 1) **Compliance Services Associated with Financial Transactions and Dodd Frank Physical Trade Options:** Compliance services associated with ACES executed financial transactions and Dodd Frank physical trade options can include: classifications of transactions, counterparties, and Customer; capture of unique identifiers; reporting party agreements; negotiation of master agreement amendments; swap data regulatory recordkeeping; monitoring of positions and transactions, including large trader monitoring as well as ICE and CME/NYMEX exchange limits; data verifications and reconciliations with counterparties and swap data repositories; providing Customer notifications, representations, and elections to counterparties; preparing regulatory forms for submission to CFTC and/or swap data repositories; and preparing responses to Dodd-Frank related data requests, if any. Compliance services may also be performed associated with Customer executed transactions, if requested.

II. Portfolio Strategy and Management:

The Portfolio Strategy and Management Services will be performed pursuant to the trading controls, processes, or procedures established by the Parties. By checking a box under this Section II - Portfolio Strategy and Management, Customer hereby grants ACES authority to act and make decisions on behalf of Customer (both

according to the Risk Controls established between ACES and Customer, and consistent with the underlying contracts between Customer and the Customer's counterparties) and to perform the selected Services pursuant to the following designation of authority to ACES:

- (a) The planning, negotiating, purchasing, and selling of electric power and energy or any natural gas that is authorized to be purchased and/or sold by ACES;
- (b) The entering into, making, executing, delivering, and performing such necessary and proper agreements, writings, or other things that may be necessary or proper to be entered into, made, executed, delivered, or performed;
- (c) The utilization of any other agent or broker ACES may deem necessary or desirable for the purpose of purchasing and selling any electric power and energy or natural gas that is authorized to be purchased and sold by indication in the boxes in this Section II;
- (d) The buying or arranging of natural gas transportation services or capacity in order to effectuate delivery or sale, from a receipt or delivery point to or from Customer's facility, of natural gas that is authorized to be purchased and sold by ACES; and
- (e) The negotiation and resolution of any errors or disputes which may arise in the normal course of business between ACES and any agent, broker, or entity counterparty as a result of this Agreement, provided that any disputes shall not be settled without the prior consent of Customer.

Some services under this Section II may be performed using CFTC jurisdictional transactions which may include, but not be limited to:

- Futures and other Exchange-traded Transactions;
- Swaps: Over the Counter ("OTC") financial swaps, OTC financial swaptions, OTC financial commodity options; and
- Physical Trade Options: A Physical Trade Option is defined as a commodity option purchased by a commercial party that, upon exercise, results in the sale of a physical commodity for immediate (spot) or deferred (forward) shipment or delivery. Common examples may include heat rate call options (with no forward component, such as capacity), or day-ahead fixed strike price call or put options.

Where Customer agrees to grant ACES authority to perform CFTC jurisdictional transactions, Customer shall so designate by checking the box indicating that "☐ Customer authorizes the use of CFTC jurisdictional transactions." directly under that Service description. Alternatively, Customer may designate that it does not authorize the use of CFTC jurisdictional transactions in providing the Service by checking the box indicating that "☐ Customer does not authorize the use of CFTC jurisdictional transactions".

A. Long-term Portfolio Strategy

- ☒ 1) **Portfolio Strategy and Analysis:** ACES will provide Customer with energy portfolio risk analytics, utilizing ACES' Portfolio Model or other analysis methods, to derive products and strategies that support risk mitigation or opportunities for portfolio composition changes. Portfolio strategies require documentation and analysis that support them, along with an action plan for managing the collective energy risks of Customer. ACES will work with Customer to develop requirements

consistent with the risk tolerance and reporting needs of Customer, and provide supporting analysis and recommendation reports utilizing the market experience and knowledge of ACES. ACES will also oversee the coordination of various functions for an action plan and execution strategy, consistent with instructions provided by Customer. ACES will perform this Service based on the time horizon and responsibilities it has been granted by Customer. Portfolio products may include capacity, energy, ancillary services, natural gas, coal, heating oil, financial transmission rights (“FTRs”) or other congestion management products, transmission positions, renewable energy credits (“RECs”), emissions allowances, load management operations or other physical or financial products that may address a portfolio risk for Customer. The term will cover the four (4) months to twenty (20) years forward or greater, depending on Customer risk tolerance or instruction. Customer’s internal risk management function approves specific recommendations and risk tolerance and ACES may be delegated responsibility to execute and administer the strategies in the short-term, mid-term, and long-term markets in accordance with the established Risk Controls.

☐ Customer authorizes the use of CFTC jurisdictional transactions.

☐ Customer does not authorize the use of CFTC jurisdictional transactions.

- ☒ 2) **Origination (4 months to 20 years):** ACES will find, negotiate, price, structure and execute transactions for seasonal to long-term over-the-counter products intended to enhance the Customer portfolio power supply or hedge position. Transactions are subject to specific delegations given to ACES by the Customer (generally for 1 month to 20 year forward contracts). In this context, Origination services:

- Deliver structured or longer-term power market products and hedges;
- Maintain commercial relationships with existing and potential market counterparties such as banks and other utilities;
- Engage market counterparties for specific deal negotiation and execution;
- Make pricing evaluations of potential product or asset opportunities from a market-comparable perspective;
- Coordinate application of originated products in context of the overall Customer portfolio management;
- Employ both financially-settled and physical delivery wholesale products for power and generation fuels;
- Provide collaborative commercial advice to Customer for counterparty and product choices; and
- Provide market intelligence and analysis on issues impacting energy markets and counterparties.

☐ Customer authorizes the use of CFTC jurisdictional transactions.

☐ Customer does not authorize the use of CFTC jurisdictional transactions.

- ☒ 3) **Emissions Allowances, Carbon and Renewable Strategy, Analysis and Transactions:** ACES will provide emissions, carbon and renewable energy risk management including strategy and transaction services. ACES will assist Customer in meeting requirements for Federal or State mandatory Renewable Portfolio Standards (“RPS”), emission and carbon requirements. ACES will also provide similar services for voluntary renewable strategies or transactions. Transactions will be based on ACES’ delegated trading authority pursuant to the Risk Controls and consistent with the overall emissions, carbon and renewable execution strategies developed for and approved by each Customer.

☐ Customer authorizes the use of CFTC jurisdictional transactions.

☐ Customer does not authorize the use of CFTC jurisdictional transactions.

- ☒ 4) **Standard Portfolio Modeling and Risk Analytics:** ACES will provide portfolio modeling as a service designed to provide the Customer with quantitative analysis on key power supply risks and cost variables that impact their specific portfolio of assets, contracts and load. The focus will be on analysis of month-ahead to five year future time horizons, corresponding to wholesale market liquidity in traded hedge products and defined Customer risk/hedging policies. The modeling will provide risk analytics and quantification intended to:

- Identify risk exposure of Customer power supply portfolio to normal market variation and to stress events;
- Support Customer risk reporting responsibilities;
- Assist Portfolio Strategy in determining the economic fit and fundamental value for various portfolio hedge products;
- Demonstrate cost and risk tradeoffs associated with hedging strategies;
- Support measuring cost uncertainties around the portfolio;
- Assist Portfolio Strategy in determining fundamental power supply asset valuation components (modeling longer-term cash flows and using stochastic methods); and
- Assist in providing metrics to support Customer management within their risk tolerances.

Portfolio Model Reporting is intended to be delivered with a mutually agreed routine reporting frequency (example: monthly or quarterly) to account for market and portfolio changes. Reporting output and timing has a dependency on Customer input parameters. ACES will provide written reports with analysis, information, evaluations, data, and risk metrics designed to meet Customer’s needs.

- ☐ 5) **Long-Term Generation and Transmission Planning Studies:** On a project-request basis, ACES will provide evaluations and risk analytics for long-term generation and transmission studies that may benefit from the use of fundamental power production simulation modeling and resulting locational marginal price and congestion forecasts.

B. Short-term Portfolio Management

- ☐ 1) **Portfolio Management (Intraday to 4 months):** ACES will initiate and execute short-term trading and operating strategies designed to optimize Customer's portfolio and within the authority and responsibility delegations given to ACES by Customer through the Risk Controls. This Service may include the optimization of contracts, generating assets, and power market activity in either the traditional physical markets or in the ISO structured markets. ACES will actively manage the supply and demand balance to minimize hourly deviations and limit market price risk to the portfolio. By selecting this Service, Customer hereby grants ACES authority to act and make decisions on behalf of Customer (both according to the delegated authority established between ACES and Customer, and consistent with the underlying contracts between Customer and its counterparties), as its agent, to sell the short-term energy and ancillary services made available pursuant to this Agreement and to purchase short-term energy on behalf of Customer. Customer shall provide a Schedule of Available Resources, which shall include: period(s); capabilities; location; and heat rates and/or operating costs consistent with the market design requirements. Such Schedule of Available Resources shall be delivered in advance by Customer, by electronic means prior to eight o'clock (8:00) a.m. Eastern Standard Time on the day prior to the operating day, or at any mutually agreed upon time. ACES will accommodate changes to the timeline on a best efforts manner to limit risk to the Customer portfolio. Short term operations and portfolio optimization may also include the management and execution of financially binding transactions within the ISO market structure. These transaction types include, but are not limited to, demand bids, virtual transactions, generation offers, and ancillary service bids/offers.
- ☐ Customer authorizes the use of CFTC jurisdictional transactions.
- ☐ Customer does not authorize the use of CFTC jurisdictional transactions.
- ☐ 2) **Portfolio Performance Reporting ("PPR"):** Using internally developed software and data management processes, ACES will perform routine analysis of Customer portfolio revenue and cost performance based on preliminary settlement and operational data. ACES will use the PPR internally to identify short-term (daily or weekly) trends and improve Customer's portfolio performance as well as enable reporting of such information to the Customer. The PPR reporting is not billing-quality accounting and is not intended to replace Settlements services.
- ☐ 3) **Demand-Side or Load Management Operations:** ACES will execute and administer certain specified operations such as; water heater, air conditioner, day ahead and/or real time pricing notifications, buy through programs, or behind the meter generation operations.
- ☐ 4) **Short-Term Load Forecasting:** ACES will perform and provide load forecasting for next hour, day, and weekly as needed to manage the portfolio

- ☐ 5) **Native Load Following:** ACES will provide native load following service to minimize hourly deviations between supply and demand so as to minimize imbalance costs.
- ☐ 6) **Generation Management Services:** ACES will create and/or upload generation offer parameters to the markets and monitor generating unit dispatch instructions (deployment levels, commitment, and decommitment)
- ☐ 7) **Optimization Modeling:** ACES model assists in the short-term optimization of Customer's portfolio of supply assets and load, providing unit commitment recommendations and expectations, market transaction strategies, and bid/offer strategies for both energy and ancillary services.
- ☐ 8) **Real Time Data Monitoring:** ACES will validate data accuracy of the Customer's SCADA/EMS systems and notify Customer of material data inaccuracies.
- ☐ 9) **Physical Transmission Scheduling and e-Tagging:** ACES will procure transmission service as needed, and provide physical scheduling and tagging of bilateral and/or ISO trading activities.
- ☒ 10) **Capacity Services:** ACES shall perform tasks leading up to and during the RTO capacity auctions to ensure Customer resources are represented in the auction as directed by the Customer. These tasks may include but are not limited to: confirming resources, entering or confirming bilateral transactions, updating forced outage rates, entering capacity modifications, submitting bids and offers, and relaying clearing information.
- ☐ 11) **RTO / ISO Market Meter Data Submission Services:**

RTO / ISO Market Selection

- ☐ **ERCOT**
- ☐ **CAISO**
- ☐ **MISO**
- ☐ **SPP**
- ☐ **PJM**

ACES will submit meter data to the above selected RTO/ISO ("Market") on behalf of the Customer, Market Participant ("MP") / Scheduling Coordinator ("SC") following approved Market Protocols and Business Practices for meter data submission. ACES will submit meter data in the Market format (ERCOT-Set Meter Data Exchange Format, MDEF or CSV) utilizing ACES provided Market specific interaction software systems or a Third Party EDI service provider.

The MP/SC or their Meter Data Management Agent ("MDMA") will be responsible for the collection of all meter data and providing to ACES, such meter data in an ACES specific format (XML file). The MP or SC is responsible for the validation and accuracy of all meter data provided to ACES. ACES can also work directly with the MP or SC's designated MDMA to receive meter data.

ACES will provide project management to support development of the Market specific file layout and connectivity testing with the RTO/ISO.

ACES will provide the security management support to set up all digital certificates required to access Market systems for meter data submission. This service does not include any metering equipment or out-of-pocket hardware costs by ACES. Any such cost would be additional.

ACES back office settlements will coordinate the timely submission of the meter data and will notify the MP/SC if the meter data was not received in time for market submission. A monthly report comparing the MP's meter data against the RTO/ISO Market downloaded meter data will be provided by the settlement group as a work product of this service.

C. Natural Gas and Fuels

- ☐ 1) **Physical Gas Trading and Scheduling:** ACES will provide execution services and schedule physical natural gas supply and manage supply imbalances. By selecting this service, Customer hereby grants ACES authority to act and make decisions on behalf of Customer, as its agent, to transact in the natural gas markets in accordance with Customer's direction, the risk controls established between ACES and Customer, and consistent with the underlying contracts between Customer and its counterparties as well as the overall portfolio execution strategy. In addition, ACES will analyze the need for and make recommendations for pipeline transportation contracts and other pipeline services. ACES will also work with Customer to develop long term gas supply strategies in accordance with the Customer's daily supply strategies.

☐ Customer authorizes the use of CFTC jurisdictional transactions.
(i.e. Physical Gas Trade Options)

☐ Customer does not authorize the use of CFTC jurisdictional transactions.

- ☐ 2) **Financial Gas and Fuels Trading:** ACES will provide execution services for financial natural gas transactions and other exchange and over-the-counter traded commodities such as fuel oil. By selecting this service, Customer hereby grants ACES authority to act and make decisions on behalf of Customer, as its agent, to transact in the natural gas markets in accordance with Customer's direction, the risk controls established between ACES and Customer, and consistent with the underlying contracts between Customer and its counterparties, as well as, the overall portfolio execution strategy. ACES will develop customized hedging strategies based on Customer's risk tolerance, goals, objectives, and policies.

☐ Customer authorizes the use of CFTC jurisdictional transactions.

☐ Customer does not authorize the use of CFTC jurisdictional transactions.

- ☐ 3) **Gas Service Consulting:** ACES will provide consulting services, to include a variety of general services including gas transportation decision making, issues around new plants, transportation contract negotiations, pipeline offers, supply RFP services, storage services, etc. including the following services:
- Analyze natural gas feasibility of potential sites for new generation;
 - Develop long-term natural gas supply, transportation and balancing plans;
 - Negotiate natural gas supply agreements;
 - Negotiate & administer natural gas transportation agreements;
 - Identify transportation, storage or supply changes in the marketplace & provide recommendations;
 - Provide guidance regarding the natural gas – electric harmonization process;
 - Identify regulatory impacts on natural gas industry; and
 - RFP suppliers for short-term natural gas transportations, supply and balancing.
- ☐ Customer authorizes the use of CFTC jurisdictional transactions.
- ☐ Customer does not authorize the use of CFTC jurisdictional transactions.
- ☐ 4) **Coal Consulting Services:** ACES will provide consulting to include a variety of general services including coal transportation decision making and supply RFP services, etc. including the following services:
- Coal transportation analysis;
 - Pricing analysis;
 - Market intelligence;
 - Inventory management; and
 - Analysis of fuel adders in rail production and transportation.
- ☐ Customer authorizes the use of CFTC jurisdictional transactions.
- ☐ Customer does not authorize the use of CFTC jurisdictional transactions.
- ☐ 5) **Short-Term and Seasonal Weather Forecasting:** ACES will provide short-term weather forecasts including hourly, 5 day, 10 day and 15 day outlooks. In addition, ACES will provide seasonal weather forecasts including month-ahead, winter and summer. Both short-term and seasonal forecasts include high impact weather outlooks such as tropical, winter storm and thunderstorm activity. In addition, ACES will provide forecasts for solar generation sites and wind generation sites.

D. Transmission Risk Management

- ☐ 1) **Financial Transmission Right Evaluations and Hedge Execution:** ACES will model and evaluate financial transmission rights (variously identified in markets as financial transmission rights (“FTR”), congestion revenue rights (“CRR”), transmission congestion rights (“TCR”) and auction revenue rights

(“ARR”)) for Customer that participates in an ISO/RTO market that offers these hedging tools for transmission users. ACES will develop and maintain fundamental market information and provide modeling using security-constrained, cost-based dispatch, power production simulation model(s) to analyze locational prices, develop transmission right evaluations and formulate hedging strategies. Execution of transmission right auction bids or bilateral transactions will be subject to specific Customer delegations. ACES will provide routine reporting associated with providing these services. The timing of reporting is determined by RTO/ISO auction schedules. Other customized reports for project or studies will be prepared at Customer’s request and, at ACES’ option, at an incremental cost to Customer.

☐ Customer authorizes the use of CFTC jurisdictional transactions.

☐ Customer does not authorize the use of CFTC jurisdictional transactions.

- ☐ 2) **Transmission Service Analysis and Advice (Physical):** ACES will provide physical transmission analysis of availability for the short, mid, and long-term planning horizons in connection with Customer’s energy strategy. Analyses may include the review of transmission availability posting on OASIS (or similar system), outages, secondary offerings from owners of confirmed transmission rights, and the value of existing transmission rights. ACES will provide routine reporting associated with providing these services. The timing of reporting is determined by RTO/ISO auction schedules. Other customized reports for project or studies will be prepared at Customer’s request and, at ACES’ option, at an incremental cost to Customer.
- ☐ 3) **Long-Term Locational Price Studies:** On a project-request basis, ACES will provide evaluations and risk analytics for long-term studies that may benefit from the use of nodal simulation modeling that forecasts the financial impact of transmission constraints and provides localized basis forecasts to major market hubs.
- ☐ 4) **Power Analysis:** Power Flow analytics to support physical transmission decision making. ACES will perform load flow analysis to test different transmission build scenarios, test system reliability, and/or investigate the causes of congestion issues faced by Customer. Further, these analyses may be used to support future portfolio decisions or the impact of some RTO tariff decisions.
- ☐ 5) **Business Intelligence:** Help analyze business opportunities and transmission related processes. ACES will support Customer’s transmission related business decisions through research, analytics, coordination, and/or decision framework facilitation.
- ☐ 6) **RTO Support:** Focused vigilance on the transmission tariffs of RTOs, particularly those sections impacting physical transmission build and transmission cost allocation. In this effort ACES monitors the planning, cost allocation, and tariff service initiatives at the RTOs with an eye towards the impacts to Customers. ACES will engage the RTOs to seek clarity on issues or, if requested, to advocate for Customer’s positions.

- ☐ 7) **Projects & Partnerships:** Identify competitively bid project opportunities. ACES will monitor the RTO planning processes for projects that will be competitively bid that will impact Customers. Impactful projects will include those projects where Customer could participate in the construction and ownership either independently or in partnership with other entities.
- ☐ 8) **SWOT Analysis:** Strategic analysis centered on the transmission assets. ACES will facilitate strategic planning for the transmission oriented divisions of Customers to develop 3-5 year strategic plans. ACES can then consult with the Customer to translate those strategic plans into near-term operating plans.

III. Settlements:

- ☐ 1) **Bilateral Power and Transmission Settlements:** ACES will perform the back office settlement services including verifying/confirming with each external counterparty the total units and dollar value of transactions on all purchases and sales that are to be billed during the month for power or transmission service. This process will be performed for physical energy, transmission transactions, broker fees, capacity, and financial transactions. The process includes preparation of invoices and reporting of the information to Customer.
- ☐ 2) **Bilateral Natural Gas, Transportation Settlements:** ACES will perform back office settlements that will include verifying/confirming with each external counterparty the total units and dollar value of transactions on all purchases and sales that are to be billed during the month for natural gas or transportation service. This process will be performed for physical gas, transportation transactions, broker fees, capacity, and financial transactions. The process includes the preparation of invoices and reporting of the information to Customer.
- ☐ 3) **RTO/ISO Pool Settlements:** ACES will provide ISO/RTO settlement services, which is a process that assigns financial charges and credits to Customer as a "Market Participant" ("MP") and /or as an "Asset Owner" ("AO") based upon Customer's specific participation in the day-ahead energy, real time and financial transmission rights ("FTR") markets. ACES' process shadow settles the charges and credits on Customer market settlement statements and or invoices. ACES will file disputes on behalf of Customer for errors which are identified during the shadow settlement process. The shadow settlement process will be performed pursuant to each ISO/RTO's unique operating requirements and rules.
- ☐ 4) **Energy Imbalance Validation:** ACES will provide energy imbalance validation services including analysis and verification of energy imbalance invoices from non-ISO/RTO transmission providers.
- ☒ 5) **Reporting:** ACES will provide standardized reports to meet Customer's needs. Other customized reports will be prepared at Customer's request and, at ACES' option, at Customer's cost.

- ☐ 6) **Cost Allocation Settlement Model:** ACES will develop a customized cost allocation model and provide ongoing analysis services. The cost allocation model offers flexibility in modeling resources and contracts, Customer objectives and operational constraints. The model also incorporates rule-based and cost-benefit allocation methodologies including (i) unit/contract commitment; (ii) unit/contract dispatch; (iii) unit/contract provision of ancillary services and ancillary requirements; (iv) bilateral trades; (v) market settlement data; and (vi) invoicing and adjustments. Using Customer's data such as (i) load; (ii) resource availability; (iii) data from jointly-owned resources; (iv) price data; (v) fuel cost data; (vi) transaction data; (vii) settlement data; (viii) invoices; and (ix) reporting posted to ACES' secure website, ACES will provide analysis at the agreed desired frequency.
- ☐ 7) **Submits Complete Electric Quarterly Reports ("EQR") Filing to FERC:** For each EQR filing, ACES submits the complete EQR filing on behalf of the Customer. If ACES does not capture 100% of a Customer's required sales transactions within ACES risk systems, the Customer will provide ACES with the additional required data, so as to enable ACES to file a complete EQR.
- ☐ 8) **Submits Partial Electric Quarterly Reports ("EQR") Filing to FERC:** For each EQR filing, ACES submits the required sales transactions which are captured in ACES risk systems. The Customer (on behalf of itself or through other EQR agents) would submit the remaining EQR data.
- ☐ 9) **Provides Electric Quarterly Reports ("EQR") Data to Customer:** ACES will provide the Customer with an XML-formatted file of required sales transactions that have been captured in ACES' risk systems for the Customer's use in completing and filing Customer's EQR with FERC.

IV. Ad Hoc Consulting and Other Services:

- ☒ 1) **Ad Hoc Consulting:** Upon request, and subject to its expertise, ACES can perform consulting services for Customer. All consulting services provided by ACES, whether on a fixed fee, monthly, hourly, or gratuitous basis, that are not specifically outlined in this Exhibit A shall nevertheless be performed under the terms and conditions of this Agreement. All consulting services will be charged at ACES' current consulting rates or as otherwise agreed upon between ACES and Customer.
- ☐ Customer authorizes the use of CFTC jurisdictional transactions.
- ☐ Customer does not authorize the use of CFTC jurisdictional transactions.
- ☐ 2) **Other Services:** ACES will perform for Customer such other services as agreed upon by Customer and ACES and as described below:
- ☐ [Particular Service Name]: [Description]

V. Customer Annual Service Fees:

Annual Customer Service Fees: During the Term of this SA, Customer shall pay to ACES Annual Services Fees in the amount _____ Dollars (\$____) payable in equal monthly installments of _____ Dollars (\$____) each due and payable on the first day of the month.

IN WITNESS WHEREOF, the Parties have caused this Exhibit A to the Service Agreement to be executed and delivered as of [Month] [Date], [Year], by their respective duly authorized officers.

PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH ACCOUNTS OF QUALIFIED ELIGIBLE PERSONS, THIS BROCHURE OR ACCOUNT DOCUMENT IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A TRADING PROGRAM OR UPON THE ADEQUACY OR ACCURACY OF COMMODITY TRADING ADVISOR DISCLOSURE. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS TRADING PROGRAM OR THIS BROCHURE OR ACCOUNT DOCUMENT.

**ALLIANCE FOR COOPERATIVE
ENERGY SERVICES POWER
MARKETING LLC**

ORANGE COUNTY POWER AUTHORITY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 5.C

To: Orange County Power Authority Board of Directors

From: Antonia Graham, Chief Operating Officer

Subject: AUTHORIZATION FOR LETTER OF CREDIT FOR FINANCIAL SECURITY REQUIREMENT

Date: April 13, 2021

RECOMMENDATION

Authorize the Chief Executive Officer to secure a Letter of Credit, in substantially similar form with review and approval by the General Counsel, from the Authority's financial institution in the amount of \$147,000 to meet the Financial Security Requirement of the California Public Utilities Commission Decision 05-12-041.

BACKGROUND

Orange County Power Authority (Authority) is required to register with the California Public Utilities Commission (Commission) within 90-days of submitting its Implementation Plan (March 29, 2021). Staff has requested a 30-day extension from the Commission so that it can secure the financial security requirement (FSR). The Public Utilities Code § 366.2(c)(17) states "the community choice aggregator shall register with the commission, which may require additional information to ensure compliance with the basic consumer protection rules and other procedural matters." The Commission's Resolution E-5059 also requires a FSR in a minimum amount of \$147,000 be posted with the Investor Owned Utility, Southern California Edison (SCE), as part of its registration packet pursuant to D.05-12-041.

"Each CCA registration packet should be required to include (1) the CCA's service agreement with the serving utility; and (2) evidence of insurance or bond that will cover such costs as potential re-entry fees, penalties for failing to meet operational deadlines, and errors in forecasting."

DISCUSSION

Staff has executed its Service Agreement with SCE and is in the process of securing a line of credit to meet the FSR requirement. Staff has been working with its financial institution to secure a line of credit in the amount of \$147,000 and is requesting that the Board of Directors authorize the Chief Executive Officer to secure the line of credit to meet the FSR requirement so that the Authority can complete its registration requirements with the Commission.

FISCAL IMPACT

The cost associated with Letter of Credit (\$147,000) is included in the Authority's 2020-2021 budget.

ATTACHMENT

1. Irrevocable non-transferable standby letter of credit.

Item 5.C

**AUTHORIZATION FOR LETTER OF
CREDIT FOR FINANCIAL SECURITY
REQUIREMENT**

Attachment 1

**Draft irrevocable non-transferable
standby letter of credit.**

Form of Letter of Credit

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

Bank Reference Number: _____

Issuance Date: March 31, 2021

Issuing Bank:

[insert bank name and address]

Applicant:

[insert applicant name and address]

Beneficiary:

Southern California Edison Company

Attn: Manager of Risk Operations and Collateral Management

2244 Walnut Grove Avenue

GO#1, Quad 2B

Rosemead, CA 91770

Available Amount: \$147,000 (One Hundred Forty-Seven Thousand U.S. Dollars)

Expiration Date: March 31, 2022

Ladies and Gentlemen:

_____ (the "Bank") hereby establishes this Irrevocable Non-transferable Standby Letter of Credit ("Letter of Credit") in favor of Southern California Edison Company, a California corporation (the "Beneficiary"), for the account of the Orange County Power Authority (the "Applicant"), a California joint powers authority formed for the purpose to provide community choice aggregation, to serve as the Financial Security Requirement for the amount stated above (the "Available Amount"), effective immediately.

It is a condition of this Letter of Credit that the Expiration Date shall be automatically extended without amendment for one (1) year from the initial Expiration Date March 31, 2022 hereof or any future Expiration Date unless at least sixty (60) days prior to such Expiration Date, we send notice to you by nationally-recognized overnight courier service to the address set forth above or at such other address as you may have notified us in writing, that we elect not to extend this Letter of Credit for any such additional period.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary upon presentation of the following:

1. The original Letter of Credit and all amendments, or a copy of such documents in the case of partial drawings;

2. A Drawing Certificate in the form of Exhibit "A" attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary signing as such; and
3. A Sight Draft in the form of Exhibit "B" attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary.

Drawing certificates shall be drawn on us and presented to us at the Letter of Credit Office at or before 5:00 p.m. California time on a Business Day (as hereinafter defined) occurring not later than the Expiration Date. As used herein: "Letter of Credit Office" means our office located at 1888 Century Park East, 2nd Floor, Los Angeles, CA 90067, Attn: Business Banking; and "Business Day" means any day other than a Saturday, Sunday or other day on which the Letter of Credit Office is not open for business or on which commercial banks are authorized or required to close, or are in fact closed, under the laws of California.

All demands for payment shall be made by presentation of original drawing documents and an original of this Letter of Credit; or by facsimile transmission of documents to 415-249-2870, Attention: Commercial Loan Servicing, with original drawing documents and the original Letter of Credit to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at 415-364-4410 to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation. We agree that all drawing certificates drawn on us under and in compliance with the terms of this letter of credit will be duly honored by us not later than three (3) Business Days following presentation to the Letter of Credit Office.

Our obligation hereunder is our individual obligation and is not contingent upon reimbursement. We will pay all drawings under this Letter of Credit with our own funds and not with funds derived from Applicant or a subsidiary or affiliate thereof.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

This Letter of Credit is not transferable or assignable. Any purported transfer or assignment shall be void and of no force or effect.

All correspondence hereunder are to be directed to Business Banker contact.

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment. Except in the case of an increase in the Available Amount

or extension of the Expiration Date, this Letter of Credit may not be amended or modified without the Beneficiary's prior written consent.

The Bank engages with the Beneficiary that Beneficiary's drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

AUTHORIZED SIGNATURE for Bank

By: _____

Name: [print name]_____

Title: [print title]_____

EXHIBIT A TO LETTER OF CREDIT No. [____]
DRAWING CERTIFICATE

TO [ISSUING BANK NAME & ADDRESS]

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT
REFERENCE NUMBER: _____

DATE: _____

Southern California Edison Company (the “Beneficiary”), demands [Issuing Bank Name] (the “Bank”) payment to the order of the Beneficiary the amount of U.S. \$ _____ (_____ U.S. Dollars), drawn under the Letter of Credit referenced above (the “Letter of Credit”), for the following reason(s) [check applicable provision]:

[] A. Under terms of the Tariff Rule 23 and consistent with California Public Utilities Commission (“Commission”) Decision No. 18-05-022 and Resolution E-5059, Beneficiary is entitled to draw under Letter of Credit No. [insert number] amounts owed by the Orange County Power Authority (“CCA”). In presenting this statement and making this request (“Draw Notice”), Beneficiary represents and warrants as follows:

- i. Beneficiary has not issued this Draw Notice except (A) upon written agreement between CCA and Beneficiary or (B) after at least 15 days (“15-day Period”) following Beneficiary’s written demand for payment in the amount of the reentry fees from CCA, calculated and delivered in conformance with Beneficiary’s tariff; provided, however, the end of the 15-day Period shall not occur any sooner than 20 days following Beneficiary’s notification to CCA and the Commission, through Beneficiary’s submission of a Tier 1 advice letter consistent with Resolution E-5059, that CCA has involuntarily returned its customers to Beneficiary.
- ii. CCA has not, within the 15-day Period, (A) paid the amounts owed by CCA for reentry fees through direct payment by CCA to IOU or (B) notified Beneficiary in writing that the CCA consents to Beneficiary withholding CCA customer remittances in satisfaction of the reentry fee amount.
- iii. The amount requested in this Draw Notice does not include any amount that CCA disputes in writing within the 15-day Period, it being understood and agreed by CCA and Beneficiary that such disputed amount shall continue to be held as part of the Letter of Credit Amount until the disposition of such disputed amount has been addressed through an order, ruling or disposition letter of the Commission in the Provider of Last Resort proceeding or such other administrative proceeding as the Commission shall determine.

[] B. The Letter of Credit will expire in fewer than twenty (20) Business Days from the date hereof, and the CCA or its successor has not provided Beneficiary alternative financial security acceptable to Beneficiary.

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

Authorized Signature for Beneficiary:

SOUTHERN CALIFORNIA EDISON COMPANY

By: _____

Name: [print name]_____

Title: [print title]_____

DRAFT

EXHIBIT B TO LETTER OF CREDIT No. [____]
SIGHT DRAFT

[INSERT DATE]

TO:
[ISSUING BANK NAME & ADDRESS]

PAY AT SIGHT TO THE ORDER OF SOUTHERN CALIFORNIA EDISON COMPANY
(THE "BENEFICIARY") THE AMOUNT OF USD [INSERT AMOUNT] DRAWN
UNDER [ISSUING BANK NAME] IRREVOCABLE NON-TRANSFERABLE STANDY
LETTER OF CREDIT NUMBER [INSERT NUMBER] ISSUED ON [INSERT DATE].

FUNDS PAID PURSUANT TO THE PROVISIONS OF THE LETTER OF CREDIT
SHALL BE WIRE TRANSFERRED TO THE BENEFICIARY IN ACCORDANCE WITH
THE FOLLOWING INSTRUCTIONS:

[INSERT WIRING INSTRUCTION]

AUTHORIZED SIGNATURE

SOUTHERN CALIFORNIA EDISON COMPANY

By: _____

Name: [print name] _____

Title: [print title] _____