

AGENDA

ORANGE COUNTY POWER AUTHORITY MEETING OF THE BOARD OF DIRECTORS

Tuesday, September 14, 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:

[Launch Meeting - Zoom](#)

Passcode: 513610

Dial-in: 1 (669) 900 - 6833

Webinar ID: 865 1752 6259

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL**

4. **PRESENTATION**

1. **PRESENTATION BY INCOMING CHIEF FINANCIAL OFFICER**

5. **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.

1. **MINUTES FOR THE REGULAR BOARD MEETING OF AUGUST 10, 2021**

Recommended Action:

Approve as submitted.

6. **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.

1. **ADOPT RESOLUTION 2021-08 APPROVING A CREDIT FACILITY AUTHORIZING THE CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL TO FINALIZE AND EXECUTE A CREDIT AGREEMENT AND RELATED DOCUMENTS**

Recommended Action:

Adopt Resolution approving a Credit Facility with MUFG Union Bank N.A. (MUFG), in an amount not to exceed \$35,000,000, and approving MUFG to administer a lockbox collateral account for OCPA power providers, and authorizing the Chief Executive Officer and General Counsel to finalize and execute a credit agreement and related documents.

2. **PRESENTATION ON COMMUNITY PROGRAM SUBMITTAL FOR THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

Recommended Action:

Approve Staff's Recommendations on the Submittal of Seven Energy Efficiency Customer Programs to the California Public Utilities Commission for the Elect to Administer and Apply to Administer funding pathways.

3. AWARD OF CONTRACT FOR DATA MANAGEMENT AND CUSTOMER CALL CENTER SERVICES

Recommended Action:

Approve Data Management Agreement with Calpine Energy Solutions, LLC for a term of five years and a total amount of \$12,900,000.

4. APPROVAL OF MASTER POWER PURCHASE AND SALE AGREEMENTS WITH PACIFIC GAS AND ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON COMPANY, AND MORGAN STANLEY CAPITAL GROUP

Recommended Actions:

1. Adopt Resolution No. 2021-05, a Resolution of the Board of Directors of Orange County Power Authority Approving a Master Power Purchase and Sale Agreement and Collateral Annex with Pacific Gas and Electric Company, and Authorizing the Chief Executive Officer to Execute the Agreement.
2. Adopt Resolution No. 2021-06, a Resolution of the Board of Directors of Orange County Power Authority Approving a Master Power Purchase and Sale Agreement, Collateral Annex, and Certificate of Authority with Southern California Edison Company, and Authorizing the Chief Executive Officer to Execute the Agreement.
3. Adopt Resolution No. 2021-07, a Resolution of the Board of Directors of Orange County Power Authority Approving a Master Power Purchase and Sale Agreement with Morgan Stanley Capital Group, and Authorizing the Chief Executive Officer to Execute the Agreement in Substantially Similar Form, with approval to form by the General Counsel.

5. AWARD OF CONTRACT FOR FINANCIAL AUDIT SERVICES

Recommended Action:

1. Approve Staff's recommendation of Pimenti & Brinker, LLP for Financial Audit Services
2. Authorize the Chief Executive Officer to execute a contract for Financial Audit Services

7. 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.

8. 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.

9. STAFF REPORT

Staff 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
REGULAR MEETING OF THE BOARD OF DIRECTORS**

MINUTES

August 10, 2021

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)
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. CLOSED SESSION

The Board adjourned to Closed Session at 10:05 a.m. to discuss the following matters.

- 4.1 Public Employee Performance Evaluation – Six Month Review**
Employee: Chief Executive Officer
Authority: Government Code Section 54957(b) (1)

4.2 Public Employee Performance Evaluation – Six Month Review
Employee: Chief Executive Officer
Authority: Government Code Section 54957(b) (1)

Action: Conducted Closed Session.

The Board returned to Open Session at 12:36 p.m.

5. REPORT FROM CLOSED SESSION

General Counsel Ryan Baron stated there was no reportable action taken during Closed Session.

Director Posey left the meeting at 12:36 p.m.

6. 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 Director Sonne, to approve the Consent Calendar as submitted with the exception of Agenda Item 6.1, which was removed from the Consent Calendar for separate consideration.

MOTION CARRIED BY THE FOLLOWING VOTE:

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

Noes: None

Abstained: None

Absent: Director Posey

6.1 MINUTES FOR THE REGULAR BOARD MEETING OF JULY 13, 2021.

Action: Approved as amended.

Alternate Director Kalmick joined the meeting at 12:38 p.m.

PULLED CONSENT CALENDAR ITEMS

**6.2 CONSIDERATION OF ADMINISTRATIVE POLICY NUMBER 010:
VOLUNTEER POLICY**

This item was removed from the consent calendar by Director Khan for separate consideration.

The following members of the public offered comment:

Ayn Craciun, Irvine, spoke in opposition of the Conflict of Interest Code as presented.

Lisa Swanson, Huntington Beach, spoke in opposition of the Conflict of Interest Code as presented.

Tomas Castro, Irvine, spoke in opposition of the Conflict of Interest Code as presented.

Sylvia Walker, spoke in opposition to the Conflict of Interest Code as presented.

Katherine Chang, Irvine, spoke in opposition to the Conflict of Interest Code as presented.

Director Khan requested General Counsel Baron explain the reporting requirements in the Conflict of Interest Code.

General Counsel Baron highlighted the filing requirements of Government Code Section 87200 and how they did not exempt filers. He further stated that designated employees were also listed in the Conflict of Interest Code, provided clarification of the filing requirements for consultants, and noted that the Board of Supervisors of Orange County was the final approving body for the Code.

MOTION: It was moved by Director Khan, second by Director Sonne, to: 1. Adopt Resolution 2020-06, a Resolution of the Board of Directors of the Orange County Power Authority adopting a revised Conflict of Interest Code pursuant to the Political Reform Act of 1974; and 2. Authorize Staff to execute the appropriate documents and submit the adopted Code to the Orange County Board of Supervisors as the Authority's code reviewing body and request approval of the Code pursuant to Government Code section 87303.

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

7. REGULAR CALENDAR

The following items called 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 was so inclined.

7.1. UPDATE ON CALIFORNIA PUBLIC UTILITIES COMMISSION ENERGY EFFICIENCY PROGRAM FUNDING AND DEVELOPMENT

Antonia Graham, Chief Operating Officer, presented the report and reviewed outreach efforts to date and the proposed application schedule.

Responding to Board inquiry, Ms. Graham stated that Staff will be reaching out to the International Brotherhood of Electrical Workers (IBEW) union to discuss workforce development opportunities under the program.

The following members of the public offered comments:

Amina Khaleed, Irvine, spoke regarding renewable energy.

Ayn Craciun, Irvine, thanked Staff for their work on the program.

Tomas Castro, Irvine, spoke regarding clean energy.

Linda Kraemer thanked Staff for their work on the program.

ACTION: The report was received and filed.

8. PUBLIC COMMENTS

The following members of the public offered comment:

The following people spoke in support of community choice aggregation and 100% renewable energy:

- Ayn Craciun, Irvine
- Tomas Castro, Irvine
- Linda Kraemer Climate Reality OC
- Ashton Gilbert, Tustin
- Joshua, no residence given
- Denny Gray, Capistrano Beach
- John Lee, Tustin
- Katherine Chang, Irvine
- Linda Swansen, Huntington Beach

Sylvia Walker requested Board Members be limited in the acceptance of gifts and spoke regarding term limits for Board Members.

Douglas Elliott, Irvine, spoke regarding transparency and professional qualifications of Staff.

Jose Trinidad Castaneda, Fullerton, spoke regarding Community Choice Aggregation Finance Authorities.

Branda Lin, Irvine, spoke regarding meeting videos and professional qualifications of Authority Staff.

9. DIRECTOR COMMENTS

Chair Carroll apologized for the length of Closed Session, noting the importance of the agenda items.

10. REPORT BY CHIEF EXECUTIVE OFFICER

CEO Probolsky deferred his comments.

11. REPORT BY GENERAL COUNSEL

General Counsel Baron had nothing to report.

12. ADJOURNMENT

On a motion by Vice Chair Khan, second by Director Khan, adjourned the meeting at 1:30 p.m.

Brian Probolsky, Authority Secretary

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 6.1

To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer
Ryan Baron, General Counsel
Michael Berwanger, Managing Director, PFM Financial Advisors, LLC
Glen Price, Best Best & Krieger LLP

Subject: ADOPT RESOLUTION 2021-08 APPROVING A CREDIT FACILITY
AUTHORIZING THE CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL
TO FINALIZE AND EXECUTE A CREDIT AGREEMENT AND RELATED
DOCUMENTS

Date: September 14, 2021

RECOMMENDATION

Adopt Resolution approving a Credit Facility with MUFG Union Bank N.A. (MUFG), in an amount not to exceed \$35,000,000, and approving MUFG to administer a lockbox collateral account for OCPA power providers, and authorizing the Chief Executive Officer and General Counsel to finalize and execute a credit agreement and related documents.

BACKGROUND

The Authority retained PFM Financial Advisors, LLC (PFM) on January 19, 2021 to provide financial advisory services regarding a proposed credit facility and banking services for the Authority. PFM issued a *Request for Proposals for Credit and Banking Services* on April 5, 2021 (RFP). The RFP included background information about the Authority, program specifics, estimated start-up costs, pro-forma cash flows and overall scope of services being requested to meet the needs of the program.

Credit proposals were to provide financing and credit support for Authority operations and power procurement (Credit Facility). The request for credit included a line of credit and letter of credit feature for a total facility of \$29 million to cover Authority start-up costs, which include operations and power procurement. Power procurement costs include resource adequacy and initial energy contracts as well as long-term power purchase agreements for renewable energy as required by Senate Bill 350 (de Leon, 2015).

Banking services proposals would provide for the deposit and disbursement of Authority funds as well as administration of a lockbox/secured account that would be established for the benefit of energy providers (Banking Services). The request for Banking Services included comprehensive management of the Authority's bank accounts, lockbox/secured account and related depository and cash operations.

The Authority received four competitive proposals overall, including four Credit Facility proposals in amounts equal to and exceeding the Authority's initial Credit Facility request of \$29 million, and three Banking Services proposals. The proposals received are as follows:

1. Bank of the West (Credit Facility and Banking Services)
2. JP Morgan Chase Bank (Credit Facility)
3. MUFG Union Bank N. A. (Credit Facility and Banking Services)
4. River City Bank (Credit Facility and Banking Services)

DISCUSSION

PFM reviewed and discussed the proposals with Authority staff, and proposal details were shared with the Authority Board of Directors. Proposal review and interviews focused on experience, cost and the ability to meet the Authority's desired terms. PFM has noted that the Authority received very competitive proposals, more proposals than recent community choice aggregators (CCA) to date, and interest from lenders that have not historically participated in California CCA implementation.

Authority staff, in conjunction with PFM, initially determined that J.P. Morgan Chase Bank (JP Morgan) offered the most suitable terms for a Credit Facility and that River City Bank should provide the Authority's Banking Services as J.P. Morgan was not offering to provide these. The lack of a cash collateral requirement by J.P. Morgan was a significant term in its favor. The Board of Directors gave direction to staff to negotiate and finalize the Credit Facility and Banking Services agreements with the two banks and bring those back to the Board for approval.

During negotiations with J.P. Morgan, it became clear that J.P. Morgan was backing away from the commitments made in its initial proposal due to concerns about CCA credit risk in the California energy market. As discussions with J.P. Morgan continued, staff determined that it would be prudent to open discussions with MUFG (the bank with the next highest ranked proposal during the evaluation process) in case the negotiations with J.P. Morgan were deemed unfavorable to OCPA. MUFG was willing to hold discussions and undertake review of a \$35 million commitment by its credit committee and legal team without a firm commitment. In late August, J.P. Morgan agreed to move forward with a \$35 million credit line, with substantial and material changes in the terms provided, including a new provision that whereby J.P. Morgan's credit line required that OCPA members put up \$10 million in cash which had to be spent down before the credit line could become available. The \$10 million cash contribution to operations by the members was considered to be a non-viable, non-market term and unacceptable to OCPA. During this time, MUFG agreed to move forward with a credit facility for OCPA on substantially the same terms as its original offer. One of the requirements of the MUFG offer was that it administer the lockbox portion of the Banking Services. As with all credit facilities in this sector, the MUFG credit facility is secured by a pledge of the net revenues of OCPA after payment of energy providers and other operating expenses and a cash collateral account in the amount of \$5 million dollars, which the City of Irvine had previously agreed to provide pursuant to the Capital Loan Agreement with OCPA.

The terms of the Credit Facility are set forth in a Credit Agreement and Fee Agreement that are attached to this Staff Report. The negotiation of the definitive terms of the Credit Agreement and Fee Agreement is complete and prepared for execution if approved by the Board of Directors. Staff seeks Board approval of the Credit Facility and the authority for the CEO and General Counsel to execute such documents, together with lockbox and ancillary documents and certificates related to the Credit Facility.

FISCAL IMPACT

Credit Facility debt service payments and Banking Services fees are programmed into the Fiscal Year 2021/2022 Budget.

ATTACHMENTS

- A. Resolution No. 2021-08 a Resolution of the Board of Directors of the Orange County Power Authority approving a Credit Facility with MUFG Union Bank N. A., in an amount not to exceed \$35 Million, and approving MUFG to administer a lockbox collateral account for OCPA power providers, and authorizing the Chief Executive Officer and General Counsel to finalize and execute a credit agreement and related documents.
- B. Revolving Credit Agreement
- C. Fee Agreement
- D. Security Agreement Re Deposit Account

RESOLUTION NO. 2021-08

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF ORANGE COUNTY POWER AUTHORITY
APPROVING A CREDIT FACILITY
AND AUTHORIZING
THE CHIEF EXECUTIVE OFFICER AND
GENERAL COUNSEL TO FINALIZE
AND EXECUTE A CREDIT AGREEMENT AND RELATED
DOCUMENTS**

A. The Orange County Power Authority (“Authority”) is a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Cal. Gov. Code § 6500 *et seq.*), California Public Utilities Code § 366.2, and a Joint Powers Agreement effective on November 20, 2020 (“JPA Agreement”).

B. The Authority intends to launch the services of its community choice aggregation program in 2021 consistent with Public Utilities Code § 366.2 and its Implementation Plan and Statement of Intent certified by the California Public Utilities Commission.

C. The Authority requires a credit facility to provide working capital during the Authority’s start-up period and the initial two years of operation, as well as credit support in the form of a line of credit for the posting of letters of credit and cash collateral for the purchase of energy and other products such as resource adequacy and renewable energy credits to comply with regulatory requirements and the Authority’s commitment for renewables in its energy portfolio.

D. The Authority received an offer from MUFG Union Bank N.A. (“MUFG”) for a credit facility in the amount of \$35 million (“Credit Facility”) on terms that are the most favorable of the proposals that have been received by the Authority and the Authority has negotiated a Credit Agreement (with ancillary documents and exhibits) and a Fee Agreement with MUFG setting forth the terms of such Credit Facility (collectively, the “Credit Documents”), which Credit Documents have been presented to the Board for review in their final form.

E. The Credit Documents provide that the Credit Facility will be secured by a pledge of the net revenues of the Authority after payment of energy providers and other operating and maintenance costs, as well as the posting of \$5 million dollars in cash collateral that has been made available to the Authority by the City of Irvine pursuant to the existing funding agreement between the Authority and the City.

F. A condition to issuance of the Credit Facility is that the Authority agree to contract with MUFG for the administration of its lockbox account which will be used to provide collateral to energy providers.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Orange County Power Authority as follows:

Section 1. The Board of Directors hereby approves the Credit Facility with MUFG as memorialized in the Credit Documents.

Section 2. The Board of Directors approves the pledge of net revenues of the Authority as collateral for the repayment of the Credit Facility as defined in the Credit Documents.

Section 3. The Board of Directors approves drawing on the funding agreement with the City of Irvine to provide \$5 million in cash collateral for the Credit Facility to be held in an account controlled by MUFG.

Section 4. The Board of Directors authorizes the CEO and General Counsel to take such action as is necessary and appropriate to finalize and execute the Credit Facility Documents and related lockbox agreements, including any exhibits, schedules, certificates and ancillary documents that are described therein, as necessary to close the Credit Facility and obtain access to the funding provided thereby.

Section 5. This resolution shall take effect immediately upon its adoption, and shall supersede any and all prior direction by the Board of Directors to the contrary with respect to the matters listed in this resolution.

PASSED AND ADOPTED at a meeting of the Board of Directors of Orange County Power Authority held on September 14, 2021.

Secretary
Orange County Power Authority

REVOLVING CREDIT AGREEMENT

Dated as of September [], 2021

by and between

ORANGE COUNTY POWER AUTHORITY,
as Borrower

and

MUFG UNION BANK, N.A.,
as Lender

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EXHIBITS

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Exhibit F	—	Form of Account Control Agreement
Exhibit G	—	Form of Intercreditor Agreement
Exhibit H	—	Form of Security Agreement

REVOLVING CREDIT AGREEMENT

This REVOLVING CREDIT AGREEMENT, dated as of September [], 2021 (together with all amendments and supplements hereafter, this “*Agreement*”) is by and between ORANGE COUNTY POWER AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq. (together with its successors and assigns, “*Borrower*” or “*OCPA*”), and MUFG UNION BANK, N.A. (together with its successors and permitted assigns, the “*Lender*”).

WITNESSETH:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a revolving credit facility upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, Borrower and Lender agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1. Definitions. As used in this Agreement:

“*Account Control Agreement*” means the Account Control Agreement, substantially in the form attached hereto as Exhibit F, as amended and supplemented in accordance with the terms hereof, by and among (i) [], (ii) OCPA and (iii) Lender, in its capacity as collateral agent.

“*Act*” means the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq.

“*Adjusted Term SOFR*” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation *plus* (b) the Term SOFR Adjustment; *provided, that* if Adjusted Term SOFR as so determined shall ever be less than 0.10%, then Adjusted Term SOFR shall be deemed to be 0.10%.

“*Affiliate*” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Amortization End Date*” means the third (3rd) anniversary of the Maturity Date.

“*Amortization Payment*” has the meaning set forth in Section 2.16(d) hereof.

“Amortization Payment Date” means (a) the Initial Amortization Payment Date and each three-month anniversary of the Initial Amortization Payment Date occurring thereafter which occurs prior to the Amortization End Date and (b) the Amortization End Date.

“Amortization Period” has the meaning set forth in Section 2.16(d) hereof.

“Annual Debt Service” means, as of any date of calculation, for any Fiscal Year or other designated four fiscal quarter period, the sum of (a) all interest and fees (including facility fees, undrawn fees and commitment fees) due and payable on the Loans, other Parity Debt and other Subordinate Debt (or, in the case of projected Annual Debt Service, projected to be due and payable) in such Fiscal Year or other designated four fiscal quarter period and (b) the quotient obtained by dividing the average daily outstanding principal balance of the Loans, other Parity Debt and Subordinate Debt during such Fiscal Year or other designated four fiscal quarter period by 5.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to Borrower from time to time concerning or relating to bribery or corruption.

“Applicable Law” means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

“Applicable Margin” has the meaning set forth in the Fee Agreement.

“Audited Financial Statements” has the meaning set forth in Section 4.6 hereof.

“Authorized Representative” means an “Authorized Representative” as defined in the Resolution, and any other individual designated from time to time as an “Authorized Representative” in a certificate executed by Borrower and delivered to Lender.

“Availability Period” means the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitment.

“Bank Agreement” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to (x) make or provide funds to make payment of, or to purchase or provide credit enhancement for, bonds or notes of Borrower or (y) extend credit to Borrower.

“Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day plus two percent (2.00%), (b) the Federal Funds Effective Rate in effect on such day plus four percent (4.0%) per annum, and (c) 7.0%.

“Basic Documents” means, at any time, each of the following documents and agreements as in effect or as outstanding, as the case may be, at such time: (a) this Agreement, including schedules and exhibits hereto, (b) the Fee Agreement, (c) the Collateral Documents, (d) the Subordination Agreement, and (e) and any other documents executed and delivered by Borrower in connection with this Agreement or the Fee Agreement, if any. For the avoidance of doubt, PPAs are not Basic Documents.

“Board” means the Board of Directors of Borrower.

“Borrower” has the meaning set forth in the introductory paragraph hereof.

“Borrowing” means the making of a Loan pursuant to Article II hereof.

“Borrowing Request” means a request by Borrower for a Borrowing in accordance with Section 2.3 hereof and in the form of Exhibit B hereto.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or San Diego are authorized or required by law to remain closed.

“Change in Law” means the occurrence after the date of this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by Lender (or, for purposes of Section 2.10(b) hereof, by any lending office of Lender or its holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“Closing Date” means the first date on which the conditions precedent set forth in Section 3.1 hereof are satisfied and/or waived in writing by Lender.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, including regulations, rulings and judicial decisions promulgated thereunder.

“Collateral Documents” means the Security Agreement re Deposit Account and all other security agreements, pledge agreements, assignments, financing statements, control agreements, and other documents as shall from time to time secure or relate to the security for the Obligations or any part thereof.

“Commitment” means the commitment of Lender to make Loans and to issue Letters of Credit, expressed as an amount representing the maximum aggregate amount of Lender’s Revolving Credit Exposure hereunder, as such commitment may be reduced from time to time pursuant to Section 2.5 hereof. The initial amount of the Commitment is \$35,000,000.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, “Controlling” and “Controlled” have meanings correlative thereto.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Daily Simple SOFR” means, for any day (a *“SOFR Rate Day”*), a rate per annum equal to the greater of (a) SOFR for the day (such day, a *“SOFR Determination Day”*) that is fifteen (15) USGSBDs prior to (i) if such SOFR Rate Day is a USGSBD, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a USGSBD, the USGSBD immediately preceding such SOFR Rate Day and (b) 0.10%. If by 5:00 P.M., New York City time, on the second (2nd) USGSBD immediately following any SOFR Determination Day, the SOFR in respect of such SOFR Determination Day has not been published on the SOFR Administrator’s Website then the SOFR for such SOFR Determination Day will be the SOFR as published in respect of the first preceding USGSBD for which such SOFR was published on the SOFR Administrator’s Website; *provided* that any SOFR determined pursuant to this sentence shall be utilized for purposes of calculation of Daily Simple SOFR for no more than three (3) consecutive SOFR Rate Days. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to Borrower. Subject to the provisions set forth in Exhibit C attached hereto, notwithstanding anything contained in this Agreement, if Lender determines that adequate and reasonable means do not exist for ascertaining SOFR or Daily Simple SOFR, then Lender shall give Borrower notice thereof, and Lender shall be under no obligation to maintain the relevant Loan as a Daily Simple SOFR based Borrowing, and the relevant Loan shall be continued bearing interest at the rate (together with any spread adjustment, if applicable) selected by Lender in its sole discretion and payable on each Interest Payment Date or as otherwise may be agreed by Lender and Borrower.

“Daily Simple SOFR Rate” means a fluctuating rate per annum equal to the sum of (i) Daily Simple SOFR and (ii) the Applicable Margin.

“Daily SOFR Rate Loan” means, at any time, a Revolving Loan which then bears interest at the Daily Simple SOFR Rate.

“Debt” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all debt of others secured by a Lien on any asset of such Person, whether or not such debt is assumed by such Person, (f) all Guarantees by such Person of debt of other Persons, (g) the net obligations of such Person under any Swap Agreement and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument. The amount of any net obligation under any Swap Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“Debt Service Coverage Ratio” means, for any fiscal quarter of Borrower, the quotient obtained by dividing Net Revenues by Annual Debt Service, in each case as determined for the four consecutive fiscal quarter periods ended on the last date of such fiscal quarter.

“Debt Service Coverage Ratio Notice” has the meaning set forth in Section 5.1(q) hereof.

“Default” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Rate” has the meaning set forth in the Fee Agreement.

“Direction Letter” has the meaning set forth in the Security Agreement.

“dollars” or *“\$”* refers to lawful money of the United States of America.

“Electronic System” means any electronic system, including e-mail, e-fax, web portal access for Borrower, and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by Lender and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

“Employee Plan” means an employee benefit plan covered by Title W of ERISA and maintained for employees of Borrower.

“Environmental Laws” means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of

pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

“*Event of Default*” has the meaning set forth in Section 6.1 hereof.

“*Excluded Taxes*” means, with respect to Lender or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which Lender or such Participant is organized or in which its principal office is located and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which Borrower is located.

“*FATCA*” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“*Federal Funds Effective Rate*” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as shall set forth on NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, *provided* that if the Federal Funds Effective Rate as so determined would be less than zero (0.0%), such rate shall be deemed to be zero (0.0%) for the purposes of this Agreement.

“*Federal Reserve Board*” means the Board of Governors of the Federal Reserve System of the United States of America.

“*Fee Agreement*” means the Fee Agreement of even date herewith between Borrower and Lender, as supplemented, amended, restated or otherwise modified from time to time in accordance with the terms hereof.

“*Fiscal Year*” means each twelve-month period commencing on July 1 of a calendar year and ending on June 30 of the following calendar year.

“*Funding Agreement*” means that certain Agreement between the City of Irvine and the Orange County Power Authority for the Advance of Funds for Implementation of a Community Choice Energy Program effective as of December 16, 2020, as the same may be amended, restated or otherwise modified from time to time.

“*GAAP*” means generally accepted accounting principles in the United States of America from time to time as set forth in (a) the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and (b) statements and pronouncements of the Government Accounting Standards Board, as modified by the opinions,

statements and pronouncements of any similar accounting body of comparable standing having authority over accounting by governmental entities.

“Governmental Approval” means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

“Governmental Authority” means the government of the United States or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

“Guarantees” means, for any Person, all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

“Indemnified Taxes” means (a) Taxes other than Excluded Taxes and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

“Initial Amortization Payment Date” means the Maturity Date.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, substantially in the form attached hereto as Exhibit G, as amended and supplemented in accordance with the terms hereof, is entered into by and among (i) Lender, in its capacity as collateral agent, (ii) each of the creditors from time to time signatory thereto that are party to a PPA, and (iii) OCPA.

“Interest Payment Date” means (i) with respect to any Daily SOFR Rate Loan, the first Business Day of each calendar month, and the Maturity Date, and (ii) with respect to any Term SOFR Rate Loan such dates as the Lender may prescribe with respect to such Revolving Loans, and the Maturity Date.

“Interest Period” with respect to any Term SOFR Rate Loan, shall mean the time period selected by Borrower pursuant to Section 2.9(e) or Section 2.9(d) and approved in writing by Lender, which commences on the first day of such Term SOFR Rate Loan or the effective date of any conversion and ends on the last day of such time period, and thereafter, each subsequent time period selected by Borrower pursuant to Section 2.9(d) and approved in writing by Lender, which commences on the day following the last day of the immediately preceding time period and ends on the last day of that time period.

“Investment Policy” means the investment guidelines of Borrower, as the same may be adopted by Borrower and amended from time to time in accordance with State laws.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et. Seq.)

“Joint Powers Agreement” means the Joint Powers Agreement of Borrower effective as of November 20, 2020, and as amended from time to time.

“Law” means any treaty or any Federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, policy, guideline, supervisory standard, order or decree of any court or other Governmental Authority.

“LC Collateral Account” has the meaning set forth in Section 2.17(h) hereof.

“LC Disbursement” means a payment made by Lender pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of Borrower at such time.

“Letter of Credit” means any letter of credit issued pursuant to this Agreement.

“Letter of Credit Fees” has the meaning set forth in the Fee Agreement.

“Letter of Credit Request” means a request by Borrower for a Letter of Credit in accordance with Section 2.17(a) hereof and in the form specified by Lender from time to time.

“Letter of Credit Sublimit” means \$21,000,000 or, subject to the terms and conditions set forth herein, such greater amount as may be agreed upon by Lender in writing from time to time.

“Lender” has the meaning set forth in the introductory paragraph hereof.

“Lender Rate” means, for each day of determination on and after the Maturity Date, a fluctuating rate per annum, with respect to any Term Loan, equal to the Base Rate from time to time in effect plus one percent (1.00%); *provided* that from and after the occurrence of an Event of Default, *“Lender Rate”* shall mean the Default Rate.

“Liabilities” mean all claims (including intraparty claims), actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“Lien” means, with respect to any asset, (a) any lien, charge, claim, mortgage, security interest, pledge or assignment of revenues of any kind in respect of such asset or (b) the interest of

a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“Loans” means individually, each Revolving Loan and the Term Loan under this Agreement and, collectively, the Revolving Loans and Term Loan under this Agreement.

“Lockbox Security Document(s)” means, individually or collectively, as applicable, the Security Agreement, the Account Control Agreement, the Intercreditor and Collateral Agency Agreement and the Direction Letter.

“Material Adverse Change” means any material or adverse change in the operations, properties, assets, liability or financial condition Borrower which, in the reasonable determination of Lender, materially impairs Borrower’s ability to perform Borrower’s Obligations hereunder.

“Material Adverse Effect” means (a) a Material Adverse Change; (b) a material impairment of the rights and remedies of any Lender under this Agreement or any other Basic Document; (c) the ability of Borrower to perform its Borrower’s Obligations under this Agreement and any other Basic Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability of Borrower’s Obligations under this Agreement or any other Basic Document to which Borrower is a party.

“Material Litigation” shall have the meaning assigned to such term in Section 4.5 hereof.

“Maturity Date” means the date on which Commitment is scheduled to expire pursuant to its terms, initially 5:00 p.m. (New York time) on September [], 2026, or such later date to which the Maturity Date may be extended pursuant to Section 2.14 hereof and, if any such date is not a Business Day, the next preceding Business Day.

“Maximum Rate” means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

“Member” or *“Members”* means, individually or collectively, as applicable, (i) the City of Buena Park, California (ii) the City of Fullerton, California, (iii) City of Huntington Beach, California, and (iv) the City of Irvine, California, and (v) City of Lake Forest, California.

“Net Revenues” means, for any period and as of any date of determination, the amount obtained by subtracting Operating and Maintenance Costs from Revenues, in each case for such period as of such date. Amounts distributed from the Lockbox Account to the parties entitled to such distributions in accordance with the Security Agreement (not including distributions to Borrower) are included in Operating and Maintenance Costs and are not Net Revenues.

“NYFRB” means the Federal Reserve Bank of New York.

“NYFRB’s Website” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“Obligations” means all obligations of Borrower to Lender or any Participant arising under or in relation to this Agreement and the Fee Agreement, including all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees (including, without limitation, the Undrawn Fee and the Letter of Credit Fees) and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of Borrower to Lender or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Basic Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

“Operating and Maintenance Costs” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission, the cost to purchase Regulatory Compliance Products, the cost of preparing and filing regulatory plans, reports and filings required by Governmental Authority, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, retirement benefits, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of legal counsel and an independent certified public accountant, and including Borrower’s share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Maintenance and Operation Costs shall include all amounts required to be paid by Borrower under take or pay contracts.

“Operating Reserve” means a reserve fund established by Borrower to provide a reserve that can be utilized by Borrower to pay Operating and Maintenance Costs (including power costs) when Revenues are insufficient.

“Other Connection Taxes” means, with respect to Lender, Taxes imposed as a result of a present or former connection between Lender and the jurisdiction imposing such Tax (other than connections arising from Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Basic Document, or sold or assigned an interest in any Loan or Basic Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Basic Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“Parity Debt” means any Debt of Borrower issued or incurred by Borrower (i) the payment of which is on parity with Borrower’s payment Obligations under this Agreement and (ii) that is subject to an intercreditor agreement in form and substance satisfactory to Lender.

“Participant” has the meaning set forth in Section 7.3(b) hereof.

“Participation” has the meaning set forth in Section 7.3(b) hereof.

“Person” means an individual, a firm, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“PPA” means a power purchase agreement executed between Borrower and a PPA Counterparty. A power purchase agreement may be for short term or multi-year transactions and may take the form of Edison Electric Institute, WSPP or investor owned utility master agreement templates or custom agreements for the purchase of Products.

“PPA Counterparty” means a party to a PPA other than Borrower.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by Lender) or any similar release by the Federal Reserve Board (as determined by Lender). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Product” means any of the following: energy, renewable energy attributes, capacity attributes, transmission rights, resource adequacy benefits, or any other similar or related products contemplated in the PPAs.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“Reimbursement Obligations” means any and all obligations of Borrower to reimburse Lender for LC Disbursements under Letters of Credit and all obligations to repay Lender for any Loan relating thereto, including in each instance all interest accrued thereon.

“Regulatory Compliance Product” means any Product required to be purchased by Borrower to satisfy the requirements of the California Public Utilities Commission, the Federal Energy Regulatory Commission, the California Independent System Operator or any other Governmental Authority with jurisdiction over the operation of the System.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Requirement of Law” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserve Policy” means the Financial Reserve Policy to be adopted by OCPA, which policy shall be reasonably acceptable to the Lender, and in any event comply with Section 5.1(t).

“Resolution” means Resolution No. 2021-[], adopted by OCPA on September 14, 2021.

“Revenues” means all revenues, rates and charges received and accrued by Borrower for electric power and energy and other services, facilities and commodities sold, furnished or supplied by the System, together with income, earnings and profits therefrom, as determined in accordance with GAAP.

“Revolving Credit Exposure” means, with respect to Lender at any time, the sum of the outstanding principal amount of the Loans and its LC Exposure at such time.

“Revolving Loan” means, collectively and individually, each revolving loan extended by Lender to Borrower pursuant to the terms and conditions hereof, which shall be a Daily SOFR Rate Loan, and, after the Term SOFR Transition Date, a Term SOFR Rate Loan.

“Sanctioned Country” means, at any time, a country, region or territory which is the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union,

any European Union member state or Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority.

"Security Agreement" means the Security Agreement, substantially in the form attached hereto as Exhibit H, as amended and supplemented in accordance with the terms hereof, by and among OCPA, and Lender, in its capacity as collateral agent, for the benefit of each seller of Product under a PPA that is made a party to the Intercreditor Agreement, and its respective successors and assigns.

"Security Agreement re Deposit Account" means that certain Security Agreement re Deposit Account dated September [], 2021 between Borrower and Lender, as the same may be amended, restated, or otherwise modified in accordance with the terms hereof and thereof.

"SOFR" means a rate per annum equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website" means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"State" means the State of California.

"Subordinate Debt" means any unsecured Debt of Borrower issued or incurred by Borrower, the payment of which is subordinate to the payment in full of Borrower's payment Obligations under this Agreement in form and substance satisfactory to Lender. The Funding Agreement shall be treated as Subordinate Debt, and Borrower's obligations under such Funding Agreement shall at all times be unsecured.

"Subordination Agreement" means that certain Subordination Agreement to be entered into pursuant to Section 5.1(v) by and between the City of Irvine, California and Lender, as the same may be amended, restated, or otherwise modified from time to time in accordance with the terms hereof and thereof.

"Swap Agreement" means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or any option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Borrower or the Subsidiaries shall be a Swap Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include Lender or any Affiliate of Lender).

“System” means (i) contractual rights to generation, distribution, metering and billing services, electric power, scheduling and coordination and transmission capacity of Borrower for the generation, transmission and distribution of electric power to its customers, and (ii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Loan” means a Revolving Loan that is converted to a Term Loan pursuant to Section 2.16 hereof.

“Term SOFR” means the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the *“Term SOFR Determination Day”*) that is fifteen (15) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Transition Event with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

“Term SOFR Adjustment” means the spread adjustment, expressed as a per annum percentage, selected by Lender to calculate Adjusted Term SOFR upon the extension of any Term SOFR Rate Loan.

“Term SOFR Administrator” means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Lender in its reasonable discretion).

“Term SOFR Rate Loan” means, at any time after the Term SOFR Transition Date, a Revolving Loan which then bears interest at the Term SOFR Rate.

“Term SOFR Rate” means a fluctuating rate per annum equal to the sum of (i) Term SOFR, and (ii) the Applicable Margin; *provided* that for any Interest Period other than one month, the “Term SOFR Rate” shall mean a fluctuating rate per annum equal to the sum of (i) Adjusted Term SOFR, and (ii) the Applicable Margin.

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“Term SOFR Transition Date” means the date that is 30 days after Lender has determined that Term SOFR is available for use and has opted, in its discretion, to transition to the Term SOFR Rate.

“Undrawn Fee” has the meaning set forth in the Fee Agreement.

Section 1.2. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and © the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.3. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided* that, if Borrower notifies Lender that Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

ARTICLE 2

THE CREDITS

Section 2.1. Commitments. Subject to the terms and conditions set forth herein, Lender agrees to make Loans to Borrower from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.7 hereof) in the Revolving Credit Exposure exceeding the Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, Borrower may borrow, prepay and reborrow Loans.

Section 2.2. Loans and Borrowings. Subject to the terms of this Agreement, at the time of each Borrowing, Borrower may elect to incur a Revolving Loan that is either a Daily SOFR Rate Loan or, after the Term SOFR Transition Date, a Term SOFR Rate Loan. Each Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less than \$250,000. Each Revolving Loan shall be made solely for the purpose of working capital and general purposes, including without limitation, the purchase of Products or posting of collateral in connection with the purchase of Products. The Revolving Credit Exposure at any time shall not exceed the Commitment at such time.

Section 2.3. Requests for Revolving Borrowings. To request a Borrowing, Borrower shall notify Lender of such request by telephone not later than 10:00 a.m., New York City time three (3) Business Days before the date of the proposed Borrowing. Each such telephonic request for a Borrowing shall be irrevocable and shall be confirmed promptly by electronic means to Lender in the form of a written Borrowing Request as attached hereto as Exhibit B and signed by an Authorized Representative of Borrower. Each such telephonic and written Borrowing Request shall specify the information set forth in Exhibit B hereto. Subject to satisfaction of the terms and conditions of Section 3.2 hereof, Lender shall make available to, or for the account of, Borrower the amount of each Borrowing no later than 2:00 p.m., New York City time, on date of the applicable Borrowing. If, after examination, Lender shall have determined that a Borrowing Request does not conform to the terms and conditions hereof, then Lender shall use its best efforts to give notice to Borrower to the effect that documentation was not in accordance with the terms and conditions hereof and stating the reasons therefor. Borrower may attempt to correct any such nonconforming Borrowing Request, if, and to the extent that, Borrower is entitled (without regard to the provisions of this sentence) and able to do so.

Section 2.4. Interest Elections. Lender shall promptly notify Borrower of the Daily Simple SOFR Rate or, after the Term SOFR Transition Date, the Term SOFR Rate, as applicable, for any Revolving Loan upon determination of such interest rate; *provided, however*, that the failure by Lender to provide notice of the applicable interest rate shall not relieve Borrower of its obligation to make payment of amounts as and when due hereunder. Each determination by Lender of an interest rate shall be conclusive and binding for all purposes, absent manifest error.

Section 2.5. Termination and Reduction of Commitment. (a) Unless previously terminated, the Commitment shall terminate automatically on the Maturity Date.

(b) Subject to the provisions of the Fee Agreement, Borrower may at any time terminate, or from time to time reduce, the Commitment; *provided* that (i) each reduction of the Commitment shall be in an amount that is an integral multiple of \$100,000 and not less than \$500,000 and (ii) Borrower shall not terminate or reduce the Commitment if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.7 hereof, the Revolving Credit Exposure would exceed the Commitment.

(c) Borrower shall notify Lender of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least ten (10) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Each notice delivered by Borrower pursuant to this Section shall be irrevocable. Any termination or reduction of the Commitment shall be permanent.

Section 2.6. Repayment of Loans; Evidence of Debt. (a) Subject to Section 2.16 hereof, Borrower hereby unconditionally promises to pay to Lender the then unpaid principal amount of each Loan and any then unpaid accrued interest on such Loan on the Maturity Date.

(b) Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrower to Lender resulting from each Loan made by Lender and the amounts of principal and interest payable and paid to Lender from time to time hereunder. The entries made in such account or accounts shall be prima facie evidence of the existence and amounts of the obligations recorded therein; *provided* that the failure of Lender to maintain such account or accounts or any error therein shall not in any manner affect the obligation of Borrower to repay the Loans in accordance with the terms of this Agreement.

(c) The Loans shall be evidenced by a promissory note in the form of Exhibit D attached hereto (which, for the avoidance of doubt, includes any applicable Revolving Loans and the Term Loan). Borrower shall prepare, execute and deliver to Lender such promissory note as set forth in the immediately preceding sentence payable to Lender and in a form approved by Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 7.3 hereof) be represented by such promissory note.

Section 2.7. Prepayment of Loans. (a) Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section.

(b) Borrower shall notify Lender by telephone (confirmed by electronic mail) or through the Electronic System, if arrangements for doing so have been approved by Lender, of any prepayment hereunder not later than 10:00 a.m., New York City time, ten (10) Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Loan or portion thereof to be prepaid.

Section 2.8. Fees. Borrower agrees to pay to Lender the fees and other amounts set forth in the Fee Agreement at the time and in the manner set forth in the Fee Agreement, including, but not limited to, the Undrawn Fee and Letter of Credit Fees. The Fee Agreement is, by this reference,

incorporated herein in its entirety as if set forth herein in full. All fees and other amounts payable under the Fee Agreement shall be paid in immediately available funds. Fees paid shall not be refundable under any circumstances.

Section 2.9. Interest.

(a) *Daily SOFR Rate Loans.* The Revolving Loans comprising Daily SOFR Rate Loans shall bear interest at the Daily Simple SOFR Rate.

(b) *Term SOFR Rate Loans.* After the Term SOFR Transition Date, the Revolving Loans comprising Term SOFR Rate Loans shall bear interest at the Term SOFR Rate.

(c) *Term SOFR Rate Loan Interest Periods.* (i) The initial and each subsequent Interest Period selected by Borrower for a Term SOFR Rate Loan shall be one month or such other periods as Lender may designate to Borrower in writing as being available from time to time; *provided, however,* that (A) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such next Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day; (B) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and (C) no such Interest Period shall extend beyond the final maturity date of the relevant Term SOFR Rate Loans.

(d) With respect to each outstanding Term SOFR Rate Loan, Borrower shall notify Lender by an irrevocable written notice in the form of Exhibit E attached hereto, appropriately completed (a “*Notice of Interest Period Selection*”), at least three (3) Business Days prior to the last day of each Interest Period for such Term SOFR Loan of the Interest Period selected by Borrowers for the next succeeding Interest Period for such Term SOFR Rate Loan. Each Notice of Interest Period Selection shall be given by first-class mail, e-mail or facsimile to the office or the facsimile number or e-mail address and during the hours specified in Section 7.2 hereof. If Borrower fails to notify Lender of the next Interest Period for any Term SOFR Rate Loan in accordance with this Section 2.9(d), such Term SOFR Rate Loan shall automatically convert into a Term SOFR Rate Loan with an Interest Period of one month on the last day of the current Interest Period therefor.

(e) Upon the occurrence and continuance of an Event of Default hereunder, the Default Rate shall apply to all Loans and Letters of Credit. Interest and fees for Loans and Letters of Credit accruing at the Default Rate shall be payable on demand to Lender.

(f) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitment; *provided* that (i) interest accrued pursuant to paragraph (e) of this Section shall be payable on demand, and (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(g) All interest hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed. The applicable Term SOFR Rate or Daily Simply SOFR Rate shall be determined by Lender, and such determination shall be conclusive absent manifest error.

(h) Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any interest period shall not exceed the Maximum Rate. If for any interest period the applicable interest rate would exceed the Maximum Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any Obligation hereunder will bear interest at the Maximum Rate until the earlier of (x) payment to Lender of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the Maturity Date. Upon the Maturity Date or, if no Revolving Credit Exposure is outstanding, on the date the Commitment is permanently terminated, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by Applicable Law, Borrower shall pay to Lender a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section 2.9(g) that has not previously been paid to Lender in accordance with the immediately preceding sentence.

Section 2.10. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, Lender; or

(ii) impose on Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by Lender or any Letter of Credit; or

(iii) subject Lender to any Taxes (other than (A) Indemnified Taxes, (B) Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to Lender of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to Lender of issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by Lender hereunder (whether of principal, interest or otherwise), then Borrower will pay to Lender such additional amount or amounts as will compensate Lender for such additional costs incurred or reduction suffered.

(b) If Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on Lender's capital or on the capital of Lender's holding company, as a consequence of this Agreement, the Commitment of or the Loans made by Lender, to a level below that which Lender or Lender's holding company could have achieved but for such Change in Law (taking into consideration Lender's policies and the policies of Lender's holding company with respect to capital adequacy and liquidity), then

from time to time Borrower will pay to Lender such additional amount or amounts as will compensate Lender or Lender's holding company for any such reduction suffered.

(c) A certificate of Lender setting forth the amount or amounts necessary to compensate Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to Borrower and shall be conclusive absent manifest error. Borrower shall pay Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of Lender to demand compensation pursuant to this Section shall not constitute a waiver of Lender's right to demand such compensation, *provided* that Borrower shall not be required to compensate Lender pursuant to this Section for any increased costs incurred or reductions suffered more than twelve (12) months prior to the date that Lender or notifies Borrower of the Change in Law giving rise to such increased costs or reductions, and of Lender's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the twelve-month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.11. Payments Free of Taxes. (a) Any and all payments by or on account of any obligation of Borrower under any Basic Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of Borrower) requires the deduction or withholding of any Tax from any such payment by Borrower, then Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.11) Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made. The foregoing obligation of Borrower shall not apply to any payment to a Participant that is a non-U.S. person that would be subject to withholding under FATCA.

(b) Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of Lender timely reimburse Lender for, Other Taxes.

(c) As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 2.11, Borrower shall deliver to Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Lender.

(d) Borrower shall indemnify Lender, within thirty (30) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by Lender or required to be withheld or deducted from a payment to Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or

asserted by the relevant Governmental Authority. A reasonably detailed certificate as to the calculation of the amount of such payment or liability delivered to Borrower by Lender shall be conclusive absent manifest error.

(e) If Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.11 (including by the payment of additional amounts pursuant to this Section 2.11), it shall pay to Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.11 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Borrower, upon the request of Lender, shall repay to Lender the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will Lender be required to pay any amount to Borrower pursuant to this paragraph (e) the payment of which would place Lender in a less favorable net after-Tax position than Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to Borrower or any other Person.

(f) Each party's obligations under this Section 2.11 shall survive any assignment of rights by Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Basic Document.

Section 2.12. Payments Generally. (a) Borrower shall make each payment required to be made by it hereunder or under the Fee Agreement (whether of principal, interest, fees, or reimbursement of LC Disbursements, or of amounts payable under Section 2.10, 2.11 or 2.17 hereof, or otherwise) prior to 3:00 p.m., New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to Lender at its offices at Commercial Loan Operations, 1980 Saturn Street, 1st Floor, MC V01-120, Monterey Park, California 91755, or such other location as the Lender may direct in writing to Borrower from time to time, except that payments pursuant to Sections 2.10, 2.11 or 2.17 and 7.5 hereof shall be made directly to the Persons entitled thereto. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) If at any time insufficient funds are received by and available to Lender to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, and (ii) second, ratably towards payment of principal and unreimbursed LC Disbursements then due hereunder.

Section 2.13. Mitigation Obligation. If Lender requests compensation under Section 2.10 hereof, or if Borrower is required to pay any Indemnified Taxes or additional amounts to Lender or any Governmental Authority for the account of Lender pursuant to Section 2.11 hereof, then Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.10 or 2.11 hereof, as the case may be, in the future and (ii) would not subject Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by Lender in connection with any such designation or assignment.

Section 2.14. Extension of Maturity Date. The Maturity Date may be extended an unlimited number of times, in each case in the manner set forth in this Section 2.14. Upon receipt of written request of Borrower to extend the Maturity Date, received no more than ninety (90) days and no less than forty-five (45) days prior to the then current Maturity Date, Lender will use its commercially reasonable efforts to notify Borrower of its response within thirty (30) days of receipt of the request therefor (Lender's decision to be made in its sole and absolute discretion and on such terms and conditions as to which Lender and Borrower may agree); *provided, however*, that the failure of Borrower to receive a written confirmation from Lender within the time established therefor shall be deemed a denial of such request. Any extension of the Maturity Date will be deemed to be on the existing terms of this Agreement unless Lender and Borrower have entered into a written agreement confirming a change in any term of this Agreement.

Section 2.15. Security of Obligations. The Net Revenues shall be and hereby are pledged by Borrower to the payment of the Obligations without priority or distinction of one Obligation over another Obligation. The pledge of Net Revenues is valid and binding in accordance with the terms of the Act, the Joint Powers Agreement and the Resolution, and the Net Revenues shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Net Revenues and be effective, binding, and enforceable against Borrower, its successors, creditors, and all others asserting the rights therein, to the extent set forth in this Agreement, and in accordance with the Act, the Joint Powers Agreement and the Resolution, irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. The pledge of the Net Revenues herein made shall be irrevocable until the Commitment has expired or been terminated and all Obligations hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed. The pledge of the Net Revenues herein made shall be senior to any pledge of the Net Revenues made with respect to any Subordinate Debt. In addition to the security set forth in this Section 2.15, Borrower shall also provide to Lender cash collateral in amount equal to \$5,000,000 to be held for the benefit of Lender.

Section 2.16. Term Loan. (a) Borrower shall have the option to convert the unpaid principal amount of any Revolving Loan to a single Term Loan if the conditions set forth in Section 2.16(b) hereof are satisfied on and as of the Maturity Date.

(b) The obligation of Lender to convert the principal amount owed on a Revolving Loan to a Term Loan shall be subject to the fulfillment of each of the following conditions precedent on the Maturity Date in a manner satisfactory to Lender:

(i) the representations and warranties of Borrower contained herein and in each of the other Basic Documents and each certificate, letter, other writing or instrument delivered by Borrower to Lender pursuant hereto or thereto are true and correct on and as of the Maturity Date as though made on and as of such date; and

(ii) no Default or Event of Default has occurred and is continuing as of the Maturity Date or would result from converting a Revolving Loan to a Term Loan.

(c) The Term Loan shall bear interest from the Maturity Date to the date the Term Loan is paid in full at a rate per annum equal to Lender Rate as determined by Lender. Interest on the Term Loan shall be paid to Lender quarterly in arrears on the last Business Day of each March, June, September, and December. Interest on the Term Loan shall be calculated on the basis of a year of 360 days based on the actual number of days elapsed.

(d) The principal of the Term Loan shall be paid in installments payable on each Amortization Payment Date (each such payment, an "*Amortization Payment*"), with the final installment in an amount equal to the entire then-outstanding principal amount of the Term Loan to be paid in full on the Amortization End Date (the period commencing on the Maturity Date and ending on the Amortization End Date is herein referred to as the "*Amortization Period*"). Each Amortization Payment shall be that amount of principal which will result in equal (as nearly as possible) aggregate Amortization Payments over the Amortization Period.

Section 2.17. Letters of Credit.

(a) *General.* Subject to the terms and conditions set forth herein, Borrower may request the issuance of Letters of Credit as the applicant thereof for the support of its PPA payment obligations, collateral postings with the California Independent System Operator and the posting of collateral for regulatory obligations pursuant to the requirements of the California Public Utilities Commission, in the form of a Letter of Credit Request at any time and from time to time during the Availability Period; *provided, however*, that prior to the issuance of each Letter of Credit hereunder, Borrower shall execute a Letter of Credit Request in the form prescribed by Lender from time to time. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by Borrower to, or entered into by Borrower with, Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) *Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.* To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), Borrower shall hand deliver or fax (or transmit through an Electronic System approved by Lender) to Lender (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than five (5) Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or

extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the Revolving Credit Exposure shall not exceed the Commitment and (ii) the LC Exposure shall not exceed the Letter of Credit Sublimit.

Lender shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain Lender from issuing such Letter of Credit, or any Requirement of Law relating to Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Lender shall prohibit, or request that Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which Lender in good faith deems material to it, or

(ii) the issuance of such Letter of Credit would violate one or more policies of Lender applicable to letters of credit generally.

(c) *Expiration Date.* Unless otherwise expressly agreed to by Lender, each Letter of Credit shall expire (or be subject to termination by notice from Lender to the beneficiary thereof) one (1) year from issuance and at or prior to the close of business on the date that is thirty (30) calendar days prior to the Maturity Date.

(d) *Reimbursement.* If Lender shall make any LC Disbursement in respect of a Letter of Credit, Borrower shall reimburse such LC Disbursement by paying to Lender an amount equal to such LC Disbursement not later than 11:00 a.m., New York City time, on the date that such LC Disbursement is made, if Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., New York City time, on such date, or, if such notice has not been received by Borrower prior to such time on such date, then not later than 11:00 a.m., New York City time, on the Business Day immediately following the day that Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; *provided* that, if such LC Disbursement is not less than \$250,000, and no Default or Event of Default shall have occurred, Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.3 hereof that such payment be financed as a Revolving Loan in an equivalent amount and, to the extent so financed, Borrower's obligation to make such payment shall be discharged and replaced by the resulting Revolving Loan.

(e) *Obligations Absolute.* Borrower's obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, Borrower's obligations hereunder. Neither Lender nor any of its Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit, any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of Lender; *provided* that the foregoing shall not be construed to excuse Lender from liability to Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by Borrower to the extent permitted by applicable law) suffered by Borrower that are caused by Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of Lender (as finally determined by a court of competent jurisdiction), Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) *Disbursement Procedures.* Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Lender shall promptly after such examination notify Borrower by telephone (confirmed by fax or through an Electronic System) of such demand for payment if Lender has made or will make an LC Disbursement thereunder; *provided* that any failure to give or delay in giving such notice shall not relieve Borrower of its obligation to reimburse Lender with respect to any such LC Disbursement.

(g) *Cash Collateralization.* If any Event of Default shall occur and be continuing, on the Business Day that Borrower receives notice from Lender demanding the deposit of cash collateral pursuant to this paragraph, Borrower shall deposit in an account with Lender, in the name and for the benefit of Lender (the "*LC Collateral Account*"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon; *provided* that

the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to Borrower described in Section 6.1© or Section 6.1(f) hereof. Lender shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and Borrower hereby grants Lender a security interest in the LC Collateral Account and all moneys or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of Lender and at Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by Lender for LC Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other Obligations. If Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to Borrower within three (3) Business Days after all such Events of Default have been cured or waived as confirmed in writing by Lender.

Section 2.18. Alternate Rate of Interest; Illegality. (a) Subject to Exhibit C hereof, if prior to the Borrowing of any Loan:

(i) Lender determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining SOFR or Daily Simple SOFR; or

(ii) Lender determines that SOFR or Daily Simple SOFR will not adequately and fairly reflect the cost to Lender of making or maintaining its Loans (or Loan) included in such Borrowing;

then Lender shall give notice thereof to Borrower by telephone, fax or through an Electronic System as provided in Section 7.2 hereof as promptly as practicable thereafter and, until Lender notifies Borrower that the circumstances giving rise to such notice no longer exist, (A) any Borrowing shall be repaid or converted into a Borrowing that bears interest at the Base Rate, and (B) all Borrowing Requests shall be for Loans that bear interest at the Base Rate.

(b) If Lender determines that any Requirement of Law has made it unlawful, or if any Governmental Authority has asserted that it is unlawful, for Lender or its applicable lending office to make, maintain, or fund any Borrowing, or any Governmental Authority has imposed material restrictions on the authority of Lender to purchase or sell, or to take deposits of, dollars in the London interbank market, then, on notice thereof by Lender to Borrower, any obligations of Lender to make, maintain, or fund Loans will be suspended until Lender notifies Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, Borrower will upon demand from Lender, either prepay or convert all Borrowings of Lender to Loans that bear interest at the Base Rate immediately. Upon any such prepayment or conversion, Borrower will also pay accrued interest on the amount so prepaid or converted.

ARTICLE 3

CONDITIONS

Section 3.1. Conditions Precedent to Effectiveness. The obligation of Lender to make Loans and to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied:

(a) *Opinions.* Lender shall have received from Borrower's legal counsel an opinion, addressed to Lender and dated as of the Closing Date, as to the due authorization, execution and delivery of this Agreement and the other Basic Documents, and as to the validity and enforceability with respect to the Authority of this Agreement and the other Basic Documents, the pledge of Net Revenues securing the Obligations constituting a valid pledge, and such other matters as Lender may reasonably request, in form and substance satisfactory to Lender and its counsel.

(b) *Documents.* (i) Lender has received executed copies of the Basic Documents (other than the Subordination Agreement) executed by Borrower on the Closing Date or prior to the Closing Date if certified by the Secretary of Borrower, the Clerk of the Board or any Authorized Representative or the Board, as applicable, as being complete and in full force and effect on and as of the Closing Date.

(ii) Lender has received a certified copy of the Joint Powers Agreement, any PPAs entered into as of the Closing Date, and the Resolution.

(c) *Defaults; Representations and Warranties.* On and as of the Closing Date, the representations of Borrower set forth in Article Four hereof are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of such date and no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Agreement and the Fee Agreement, each as certified to by an Authorized Representative of the Board.

(d) *No Litigation.* No action, suit, investigation or proceeding is pending or, to the knowledge of Borrower, threatened (i) in connection with the Basic Documents or any transactions contemplated thereby or (ii) against or affecting Borrower, the result of which could have a Material Adverse Effect.

(e) *No Material Adverse Change.* Since the date of the interim internally prepared financial statements dated as of May 31, 2021, (i) no Material Adverse Change has occurred in the status of the business, operations or condition (financial or otherwise) of Borrower or its ability to perform its obligations under the Basic Documents and (ii) to the best of its knowledge, no law, regulation, ruling or other action (or interpretation or administration thereof) of the United States, the State of California or any political subdivision or authority therein or thereof is in effect or has occurred, the effect of which would be to prevent Lender from fulfilling its obligations under this Agreement or the Letters of Credit.

(f) *Certificate.* Lender has received (i) certified copies of all proceedings of Borrower authorizing the execution, delivery and performance of the Basic Documents (other than the Subordination Agreement) and the transactions contemplated thereby and (ii) a certificate or certificates of one or more Authorized Representatives dated the Closing Date certifying the accuracy of the statements made in Section 3.1(c), (d), (e) and (i) hereof and further certifying the name, incumbency and signature of each individual authorized to sign this Agreement, the Fee Agreement and the other documents or certificates to be delivered by Borrower pursuant hereto or thereto, on which certification Lender may conclusively rely until a revised certificate is similarly delivered, and that the conditions precedent set forth in this Section 3.1 have been satisfied.

(g) *Payment of Fees.* Lender has received all fees and expenses due and payable to Lender and/or its legal counsel pursuant to the Fee Agreement.

(h) *Financial Statements.* Lender has received the internally prepared interim financial statements dated as of May 31, 2021, internally prepared quarterly budget reports of Borrower for the most recent fiscal quarter end, if not previously provided.

(i) *Budget.* Lender has received copies of the current financial information, budgets, or projections, as requested by the Lender.

(j) *Cash Collateral Account.* Lender shall have received evidence satisfactory to Lender that Borrower has created a depository account naming Lender as beneficiary containing an amount not less than \$5,000,000 and delivered to Lender an executed copy of the Security Agreement Re Deposit Account.

(k) *Other Matters.* Lender has received such other statements, certificates, agreements, documents and information with respect to Borrower and matters contemplated by this Agreement as Lender may have requested.

Section 3.2. Conditions Precedent to each Credit Event. The obligation of Lender to make a Loan on the occasion of any Borrowing, and of Lender to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of Borrower set forth in this Agreement shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

(c) It has provided Lender with a completed Borrowing Request substantially in the form of Exhibit C hereto or a Letter of Credit Request substantially in the form of Exhibit D-1 hereto, as applicable.

(d) Any other statements, certificates, agreements, documents and information with respect to Borrower as Lender may request.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

In order to induce Lender to make Loans and issue the Letters of Credit, Borrower represents and warrants to Lender as follows:

Section 4.1. Organization, Powers, Etc. Borrower (a) is a public agency formed under the provisions of the Joint Powers Act that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and; (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified could not reasonably be expected to have a Material Adverse Effect. Borrower has the agency power to (i) execute, deliver and perform its obligations under the Basic Documents; (ii) provide for the security of this Agreement and the Fee Agreement pursuant to the Joint Powers Act; and (iii) has complied with all Laws in all matters related to such actions of Borrower as are contemplated by the Basic Documents.

Section 4.2. Authorization, Absence of Conflicts, Etc. The execution, delivery and performance by Borrower of the Basic Documents (a) have been duly authorized by all necessary action on the part of Borrower, (b) do not conflict with, or result in a violation of, any Laws, including the Joint Powers Agreement, or any order, writ, rule or regulation of any court or governmental agency or instrumentality binding upon or applicable to Borrower which violation would result in a Material Adverse Effect and (c) do not conflict with, result in a violation of, or constitute a default under, any resolution, agreement or instrument to which Borrower is a party or by which Borrower or any of its property is bound which, in any case, would result in a Material Adverse Effect.

Section 4.3. Binding Obligations. The Basic Documents are valid and binding obligations of Borrower (assuming due authorization, execution and delivery by the other parties thereto) enforceable against Borrower in accordance with their respective terms, except to the extent, if any, that the enforceability thereof may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or other similar law of the State or Federal government affecting the enforcement of creditors' rights generally heretofore or hereafter enacted, (ii) the fact that enforcement may also be subject to the exercise of judicial discretion in appropriate cases and (iii) the limitations on legal remedies against public agencies of the State.

Section 4.4. Governmental Consent or Approval. No consent, approval, permit, authorization or order of, or registration or filing with, any court or government agency, authority or other instrumentality not already obtained, given or made is required on the part of Borrower for execution, delivery and performance by Borrower of the Basic Documents.

Section 4.5. Absence of Material Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, arbitrator or governmental or other board, body or official pending or, to the best knowledge of Borrower, threatened against or affecting Borrower questioning the validity of the Joint Powers Agreement, the execution, delivery and performance by Borrower of the Basic Documents or any proceeding taken or to be taken by Borrower or the Board in connection therewith, or seeking to prohibit, restrain or enjoin the execution, delivery and performance by Borrower of the Basic Documents, or which could reasonably be expected to result in any Material Adverse Effect, or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the transactions contemplated by the Basic Documents (any such action or proceeding being herein referred to as “*Material Litigation*”).

Section 4.6. Financial Condition. Borrower has not yet completed its first year of operations and has provided to Lender interim internally prepared financial statements dated as of May 31, 2021. The most recent unaudited financial statements of Borrower delivered (or deemed delivered) to Lender were prepared in good faith and fairly present Borrower’s results of operations and financial position for the period(s) set forth therein. The data on which such financial statements and budget reports are based were true and correct in all material respects. The financial statements and the budget reports present fairly the net position of Borrower as of the date they purport to represent and the revenues, expenses and changes in fund balances and in net position for the periods then ended.

Section 4.7. Incorporation of Representations and Warranties. The representations and warranties of Borrower set forth in the Basic Documents (other than this Agreement and the Fee Agreement) are true and accurate in all material respects on the Closing Date, as fully as though made on the Closing Date. Borrower makes, as of the Closing Date, each of such representations and warranties to, and for the benefit of, Lender, as if the same were set forth at length in this Section 4.7 together with all applicable definitions thereto. No amendment, modification or termination of any such representations, warranties or definitions contained in the Basic Documents (other than this Agreement and the Fee Agreement) will be effective to amend, modify or terminate the representations, warranties and definitions incorporated in this Section 4.7 by this reference, without the prior written consent of Lender.

Section 4.8. Accuracy and Completeness of Information. The Basic Documents and all certificates, financial statements, documents and other written information furnished to Lender by or on behalf of Borrower in connection with the transactions contemplated hereby were, as of their respective dates, complete and correct in all material respects to the extent necessary to give Lender true and accurate knowledge of the subject matter thereof and did not contain any untrue statement of a material fact.

Section 4.9. No Default. (a) No Default or Event of Default under this Agreement has occurred and is continuing.

(b) No “event of default” has occurred and is continuing under any other material mortgage, indenture, contract, agreement or undertaking respecting the System (including, but not limited to, any PPA) to which Borrower is a party or which purports to be binding on Borrower or on any of the property of Borrower.

Section 4.10. No Proposed Legal Changes. There is no amendment or, to the knowledge of Borrower, proposed amendment to the Constitution of the State, any State law or the Joint Powers Agreement or any administrative interpretation of the Constitution of the State, any State law, or the Joint Powers Agreement, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect.

Section 4.11. Compliance with Laws, Etc. Borrower is in compliance with the Investment Policy and all Laws applicable to Borrower, non-compliance with which could reasonably be expected to have a Material Adverse Effect. In addition, no benefit plan maintained by Borrower for its employees is subject to the provisions of ERISA, and Borrower is in compliance with all Laws in respect of each such benefit plan.

Section 4.12. Environmental Matters. Borrower contracts for all of Products necessary for the operation of the System and does not own or operate any real property or physical infrastructure. Borrower has not taken any action in the operation of the System that would constitute a violation of any Environmental Laws.

Section 4.13. Regulation U. Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

Section 4.14. Liens. This Agreement creates a valid Lien on and pledge of Net Revenues to secure the payment and performance of Borrower’s obligations under this Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of Borrower, Lender or any other Person to create or perfect such Lien. Except for the Lien over Net Revenues contained in this Agreement, there is no pledge of or Lien on Net Revenues.

Section 4.15. Sovereign Immunity. Borrower is not entitled to claim immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) with respect to itself or its revenues (irrespective of their use or intended use) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any other Basic Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or for recovery of property or (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be made subject in any action, suit or proceeding relating to this Agreement or any other Basic Document, and no such immunity (whether or not claimed) may be attributed to Borrower or its revenues.

Section 4.16. Usury. The terms of the Basic Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

Section 4.17. Insurance. As of the Closing Date, Borrower maintains such insurance, including self-insurance, as is required by Section 5.1(k) hereof.

Section 4.18. ERISA/CALPERS. Borrower does not maintain or contribute to, and has not maintained or contributed to, any Employee Plan that is subject to Title IV of ERISA. Borrower does plan to offer retirement benefits to its employees pursuant to the California Public Employees' Retirement System, which is a government funded plan that is not subject to ERISA.

Section 4.19. Sanctions Concerns and Anti-Corruption Laws. Borrower and its respective officers and directors and to the knowledge of Borrower, its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) Borrower, any of its directors or officers or employees, or (b) to the knowledge of Borrower, any agent of Borrower that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Borrowing or Letter of Credit, use of proceeds, Transaction or other transaction contemplated by this Agreement or the other Basic Documents will violate Anti-Corruption Laws or applicable Sanctions.

Section 4.20. Debt of Borrower. Other than the Funding Agreement, Borrower has not incurred or issued any Debt of Borrower other than the Debt of Borrower created under this Agreement.

ARTICLE 5

COVENANTS

Section 5.1. Affirmative Covenants. Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, Borrower covenants and agrees with Lender that:

(a) *Accounting and Reports.* Borrower shall maintain a standard system of accounting in accordance with GAAP consistently applied and furnish to Lender:

(i) as soon as available, and in any event within sixty (60) days after each June 30, an unaudited balance sheet of Borrower, including the specific amount in the Operating Reserve, as of the last day of the quarterly period then ended and the statements of income, retained earnings and cash flows of Borrower for the quarterly period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(ii) as soon as available, and in any event within six (6) months after the close of each Fiscal Year of Borrower, a copy of the audited balance sheet of Borrower, including the specific amount in the Operating Reserve, as of the last day of the Fiscal Year then ended and the statements of income, retained earnings and cash flows of Borrower for the Fiscal Year then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous Fiscal Year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such Fiscal Year and the results of its operations and cash flows for the Fiscal Year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(iii) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(iv) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, could reasonably be expected to have a Material Adverse Effect or result in the occurrence of any Default or Event of Default hereunder;

(v) as soon as available, and in any event within forty-five (45) days of adoption, Borrower shall provide Lender its annual budget;

(vi) as soon as available, and in any event within forty-five (45) days of the end of each fiscal quarter, the quarterly operating information of Borrower, substantially in the form agreed upon between OCPA and Lender, which shall include customer enrollments, opt-outs, and total revenues; *provided* that if such information set forth in this Section 5.1(a)(vi) shall become available on a monthly basis, then the information set forth in this Section 5.1(a)(vi) shall be delivered to Lender as soon as available, and in any event within forty-five (45) days of the end of each calendar month;

(vii) promptly after receipt thereof, copies of each PPA entered into by Borrower; and

(viii) promptly after the request therefor, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to subsection (a)(i) and (ii) of this Section 5.1 shall be accompanied by a compliance certificate, substantially in the form of Exhibit A hereto, signed by an Authorized Representative stating that no Event of Default or Default has occurred or if any Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default and the amount set forth in the Operating Reserve.

(b) *Access to Records.* At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days' notice, Borrower shall permit Lender or any of its agents or representatives to visit and inspect any of the properties of Borrower and the other assets of Borrower, to examine the books of account of Borrower (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of Borrower with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as Lender may reasonably request.

(c) *Compliance with Basic Documents; Operation and Maintenance of System.*
(i) Borrower shall perform and comply with each covenant set forth in the Basic Documents and any other agreements, instruments or documents evidencing Parity Debt or Subordinate Debt. By the terms of this Agreement, Lender is hereby made a third party beneficiary of the covenants set forth in each of the Basic Documents (other than this Agreement and the Fee Agreement), and each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.1(c) with the same effect as if it were set forth herein in its entirety. Except as otherwise set forth in paragraph (ii) below and in Section 5.2(a) hereof, Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing), or request or agree to any consent or waiver under, or effect or permit the cancellation, acceleration or termination of, or release or permit the release of any collateral held under any of the Basic Documents in any manner without the prior written consent of Lender, and Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by Lender to strictly enforce the obligations of the other parties to any of the Basic Documents, as well as each of the covenants set forth therein. Borrower shall give prior written notice to Lender of any action referred to in this subparagraph (i).

(ii) Borrower will enter into, perform and maintain such contractual relationships and PPA as are necessary for Borrower to provide Product and such other services and resources as are necessary for the operation of the System.

(d) *Defaults.* Borrower shall notify Lender of any Default or Event of Default of which Borrower has knowledge, as soon as possible and, in any event, within three (3) Business Days of acquiring knowledge thereof, setting forth the details of such Default or Event of Default and the action which Borrower has taken and proposes to take with respect thereto.

(e) *Compliance with Laws.* Borrower shall comply in all material respects with all Laws binding upon or applicable to Borrower (including Environmental Laws) and material to the Basic Documents. Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by Borrower and its respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. Borrower will not use or allow any tenants or subtenants to use its Property for any business activity that violates any federal or state law or that supports a business that violates any federal or state law.

(f) *Investment Policy and Guidelines.* Borrower shall promptly notify Lender in writing, not less than thirty (30) days after Borrower receives notice of the formal consideration thereof, of any change proposed to the Investment Policy, which proposed change would increase the types of investments permitted thereby.

(g) *Notices.* Borrower shall promptly give notice to Lender of any action, suit or proceeding actually known to it at law or in equity or by or before any court, governmental instrumentality or other agency which, if adversely determined, would materially impair the ability of Borrower to perform its obligations under any Basic Document.

(h) *Bank Agreements.* In the event that Borrower shall enter into or otherwise consent to any amendment, supplement or other modification of any Bank Agreement after the Closing Date which Bank Agreement contains additional or more restrictive covenants or additional or more restrictive events of default or additional or improved remedies (“*Improved Provisions*,” which for the avoidance of doubt does not include pricing, termination fees and provisions related to interest rates but does include improved term-out provisions), then Borrower shall provide Lender with a copy of such Bank Agreement and the Improved Provisions shall automatically be deemed incorporated into this Agreement and Lender shall have the benefit of the Improved Provisions until such time as the Bank Agreement containing such Improved Provisions terminates. Borrower shall promptly cooperate with Lender to enter into an amendment of this Agreement to include such Improved Provisions.

(i) *Further Assurances.* Borrower shall execute, acknowledge where appropriate and deliver, and cause to be executed, acknowledged where appropriate and delivered, from time to time, promptly at the request of Lender, all such instruments and documents as are usual and customary or advisable to carry out the intent and purpose of the Basic Documents.

(j) *Additional Notices.* Borrower shall promptly furnish, or cause to be furnished, to Lender (i) notice of the occurrence of any “default” or “event of default” or “termination event” under any Basic Document (other than this Agreement and the Fee Agreement) or any PPA, (ii) copies of any communications received from any Governmental Authority with respect to the transactions contemplated by the Basic Documents or any other Debt of Borrower which are not restricted or prohibited from being shared with Lender under the law or the direction of a court of competent jurisdiction or

other Governmental Authority, (iii) notice of any proposed modification to any Lockbox Security Document, (iv) copies of all PPAs and modifications thereto, promptly following the execution thereof; *provided, however*, that to the extent any such PPA is subject to a confidentiality agreement, pricing, credit-specific, and other commercially sensitive provisions may be redacted by Borrower in order to comply with such confidentiality agreement, (v) notice of any proposed substitution of any Letter of Credit, and (vi) notice of the passage of any state or local Law not of general applicability to all Persons of which Borrower has knowledge, which could reasonably be expected to have a Material Adverse Effect.

(k) *Maintenance of Insurance.* Borrower shall maintain, or cause to be maintained, at all times, insurance on and with respect to its properties with responsible and reputable insurance companies; *provided, however*, that Borrower may maintain self-insurance coverage from a California public agency risk pool. Such insurance must include casualty, liability and workers' compensation and be in amounts and with deductibles and exclusions customary and reasonable for governmental entities of similar size and with similar operations as Borrower. Borrower shall, upon request of Lender, furnish evidence of such insurance to Lender. Borrower shall also procure and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any Revenues or funds of the System, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million dollars (\$1,000,000), whichever is less. The insurance described above may be provided as part of any comprehensive fidelity and other insurance and not separately for the System.

(l) *Preservation of Security.* Borrower shall take any and all actions necessary to preserve and defend the pledge of Net Revenues set forth in this Agreement.

(m) *Rates.* Borrower shall fix, establish, maintain and collect rates and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of the System, which shall be set in accordance with applicable law and shall be sufficient to provide Borrower with Revenues in each Fiscal Year sufficient to pay, to the extent not paid from other available moneys, any and all amounts Borrower is obligated to pay or set aside from Revenues by law or contract in such Fiscal Year (including, without limitation, all Obligations when due hereunder).

(n) *Budget.* Borrower shall include in each annual budget of Borrower all amounts reasonably anticipated to be necessary to pay all obligations due to Lender hereunder and under the Fee Agreement. If the amounts so budgeted are not adequate for the payment of the obligations due hereunder and under the Fee Agreement, Borrower shall take such action as may be necessary to cause such annual budget to be amended, corrected or augmented so as to include therein the amounts required to be paid to Lender during the course of the Fiscal Year to which such annual budget applies.

(o) *Payment of Taxes, Etc.* Borrower shall pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may

hereafter be lawfully imposed upon Borrower on account of the System or any portion thereof and which, if unpaid, might impair the security of this Agreement and the Fee Agreement, but nothing herein contained will require Borrower to pay any such tax, assessment or charge so long as it in good faith contests the validity thereof. Borrower shall duly observe and comply with all valid material requirements of any Governmental Authority relative to the System or any part thereof.

(p) *Lockbox Security Documents and PPAs.* Borrower shall perform and comply with all its agreements and covenants set forth in the Lockbox Security Documents and the PPAs. Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing) any Lockbox Security Document in any manner that could reasonably be expected to have a materially adverse effect on the interests of Lender without the prior written consent of Lender, and Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by Lender to strictly enforce the obligations of the other parties to any of the Lockbox Security Documents, as well as each of the covenants set forth therein. Borrower shall give prior written notice to Lender of any proposed action referred to in this subparagraph (p).

(q) *Debt Service Coverage.* Borrower shall maintain a Debt Service Coverage Ratio for each fiscal quarter of Borrower of not less than (i) commencing with the fiscal quarter ended June 30, 2023, and for each fiscal quarter of Borrower ended thereafter to and including December 31, 2023, 1.25, and (ii) commencing with the fiscal quarter ending June 30, 2024 and for each fiscal quarter of Borrower ending thereafter, 1.40. The Debt Service Coverage Ratio shall be tested on a rolling last twelve-month basis. Borrower shall determine the Debt Service Coverage Ratio at each fiscal quarter and provide written notice thereof together with supporting calculations in reasonable detail to Lender as soon as practicable following the end of a fiscal quarter and in any event no later than forty-five (45) calendar days following the end of such fiscal quarter (each such notice, a “*Debt Service Coverage Ratio Notice*”).

(r) *Reserve Policy.* (i) Borrower shall adopt a Reserve Policy which is consistent with its obligations under Section 5(t) below no later than March 31, 2022, and shall not amend such Reserve Policy without the prior written consent of Lender.

(ii) As of the end of each Fiscal Year, as shown in the audited balance statement of Borrower delivered pursuant to Section 5.1(a)(ii) hereof for such Fiscal Year, Borrower shall fund and maintain an Operating Reserve as set forth in the schedule described in subsection (t) below to cover unexpected revenue losses, extraordinary payments and other contingencies, and to provide liquidity in connection with Borrower’s outstanding Debt.

(s) *Use of Proceeds.* (i) The proceeds of the Loans will be used only for the purposes expressly provided for in this Agreement. No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulations T, U and X. Letters of Credit will be issued only to support collateral posting requirements under PPAs.

(ii) Borrower will not request any Borrowing or Letter of Credit, and Borrower shall not use, and shall procure that its directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(t) *Reserve Account.* Not later than June 30, 2025, and at all times thereafter, Borrower shall maintain the Operating Reserve with a minimum amount equal \$17,000,000.

(u) *Enforcement of Rights under Joint Powers Agreement; Termination of the Joint Powers Agreement.* Borrower shall at all times diligently pursue all of its rights and remedies against any Party (as defined in the Joint Powers Agreement) that seeks to withdraw or withdraws from Borrower under the Joint Powers Agreement, or that is terminated as a Party to the Joint Powers Agreement, including, without limitation, seeking repayment of obligations of Borrower attributable to such Party under the Joint Powers Agreement, in each case to the fullest extent contemplated by the Joint Powers Agreement.

(v) *Subordination Agreement; Control Agreement.* No later than December 31, 2021, Borrower will deliver to Lender an executed copy of (i) the Subordination Agreement from the City of Irvine, and (ii) a deposit account control agreement among Borrower, the Lender, and First Republic Bank from its operating account ending in 4276, in each case in form and substance satisfactory to Lender and its counsel.

Section 5.2. Negative Covenants. Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, Borrower covenants and agrees with Lender that it will not:

(a) *No Impairment.* Take any action that would have an adverse effect on (i) the ability of Borrower to pay when due amounts owing to Lender or any Participant under this Agreement or the Fee Agreement; (ii) the pledge of Net Revenues as security for the Obligations or the priority of payments from Net Revenues provided in this Agreement; or (iii) the rights or remedies of Lender under the Basic Documents.

(b) *Merger, Disposition of Assets.* Consolidate or merge with or into any Person or sell, lease or otherwise transfer all or substantially all of its assets to any Person.

(c) *Abandon.* Take any action to abandon the System or any significant portion thereof.

(d) *Preservation of Corporate Existence, Etc.* Take any action to terminate its existence as a public agency under the Joint Powers Act or its rights and privileges as such entity within the State. Borrower shall not permit the termination of the Joint Powers Agreement or the cessation of Borrower's CCA Program (as defined in the Joint Powers Agreement).

(e) *Liens.* Create or suffer to exist or permit any Lien on the Revenues or the proceeds thereof other than the Liens created by this Agreement or the Lockbox Security Documents.

(f) *Sovereign Immunity.* To the fullest extent permitted by applicable law, with respect to its obligations arising under this Agreement or any other Basic Document, Borrower irrevocably agrees that it will not assert or claim any immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any other Basic Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be entitled in any such action, suit or other proceeding, and Borrower hereby irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues (irrespective of their use or intended use), all such immunity.

(g) *Preservation of Existence, Etc.* Take any action to accomplish a merger, consolidation or combination of the System with any other entity or enterprise.

(h) *Use of Proceeds.* Use the Letters of Credit for any purpose other than the uses set forth in Section 2.17(a). Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board of Governors of the Federal Reserve System. Use the proceeds for any Loan for any purposes other than (i) to provide cash collateral to secure Borrower's obligations under PPAs, collateral postings with the California Independent System Operator and the posting of collateral for regulatory obligations pursuant to the requirements of the California Public Utilities Commission, (ii) to repay in whole or in part any LC Disbursement, or (iii) for general working capital and operational purposes. For the avoidance of doubt, Loan Proceeds may not be used for long-term expenditures other than long term purchases of Products pursuant to PPA or for funding the Operating Reserve. Use the proceeds of any Loan or any Letter of Credit in violation of any Sanctions or Anti-Corruption Laws.

(i) *Debt of Borrower.* Not issue, incur or assume to exist any Parity Debt or Subordinate Debt except for Debt existing under this Agreement and the Funding Agreement.

(j) *Excess Revenues.* Not use excess revenues for any purpose other than: (i) payment of Operating and Maintenance Costs; (ii) payment of Obligations; (iii) funding and replenishment of the Operating Reserve; (iv) rebates or programs that provide benefits to System customers; and (v) any other lawful purpose that inures to the direct benefit of the System.

(k) *Swap Agreements.* Not enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which Borrower has actual exposure, and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of Borrower, and, in each case, the payments under which are not secured by any Lien on any portion of Borrower's Net Revenues securing any termination payment pursuant to any Swap Agreement to be pari passu or senior to the Lien on Borrower's Net Revenues securing the payment of Obligations hereunder or under the Fee Agreement, provided, however, that it is understood that certain PPA entered into to hedge against pricing risk in connection with energy requirements and Regulatory Compliance Products may participate in the Lockbox Security Documents.

(l) *Amendments.* Amend, modify or supplement in any manner whatsoever the Basic Documents, the Joint Powers Agreement, the PPAs, or the Lockbox Security Documents, in each case, in a manner which could reasonably be expected to have an adverse effect upon Borrower's ability to perform its obligations under this Agreement or to repay indebtedness that is secured by Borrower's Net Revenues or which adversely affects the security for the Obligations or Borrower's ability to repay when due the Obligations or the rights, interests, security or remedies of Lender under this Agreement or the other Basic Documents and the Joint Powers Agreement.

ARTICLE 6

DEFAULTS

Section 6.1. Events of Default and Remedies. If any of the following events occur, each such event will be an "Event of Default":

(a) Borrower fails to pay, or cause to be paid, as and when due, (i) any principal of or any interest on any Loan or Reimbursement Obligation, or (ii) any other Obligation hereunder or under the Fee Agreement and, in the case of clause (ii), such failure continues for five (5) Business Days.

(b) any representation or warranty made by or on behalf of Borrower in this Agreement or in any other Basic Document or in any certificate or statement delivered hereunder or thereunder is incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(c) Borrower defaults in the due performance or observance of any of the covenants set forth in Section 5.1(a), 5.1(c), 5.1(d), 5.1(e), 5.1(g), 5.1(j), 5.1(k), 5.1(l), 5.1(m), 5.1(q), 5.1(r)(i), 5.1(s) or 5.2 hereof;

(d) Borrower defaults in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Basic Document and such default remains unremedied for a period of thirty (30) days after the occurrence thereof;

(e) Borrower, directly or indirectly, (i) has entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) becomes insolvent or does not pay, or is unable to pay, or admits in writing its inability to pay, its debts generally as they become due, (iii) makes an assignment for the benefit of creditors, (iv) applies for, seeks, consents to, or acquiesces in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institutes any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fails to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) takes any corporate action in furtherance of any matter described in clauses (i) through (v) above or (vii) fails to contest in good faith any appointment or proceeding described in Section 6.1(f) hereof;

(f) a custodian, receiver, trustee, examiner, liquidator or similar official is appointed for Borrower or any substantial part of its Property, or a proceeding described in Section 6.1(e)(v) hereof is instituted against Borrower and such proceeding continues undischarged, undismissed and unstayed for a period of thirty (30) days;

(g) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Debt of Borrower by Borrower or any Governmental Authority with appropriate jurisdiction;

(h) any material provision of this Agreement, the Joint Powers Agreement or any other Basic Document at any time for any reason ceases to be valid and binding on Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by Borrower, or Borrower publicly contests the validity or enforceability of any obligation to pay Debt of Borrower, or Borrower repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this Agreement, the Joint Powers Agreement, any other Basic Document or any operative document related to Debt of Borrower;

(i) dissolution or termination of the existence of Borrower;

(j) Borrower (i) defaults on the payment of the principal of or interest on any Debt of Borrower beyond the period of grace, if any, *provided* in the instrument or agreement under which such Debt of Borrower was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any Debt of Borrower, including, without limitation, any Bank Agreement, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such Debt of Borrower to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Debt of Borrower; or

(k) any final, nonappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, in an aggregate amount not less than \$250,000 are entered or filed against Borrower or against any of its Property and remain unpaid, unvacated, unbonded and unstayed for a period of sixty (60) days.

Section 6.2. Remedies. Upon the occurrence of any Event of Default (other than an Event of Default described in Section 6.1(e) or 6.1(f) hereof), and at any time thereafter during the continuance of such event, Lender may by notice to Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitment, and thereupon the Commitment shall terminate immediately, (ii) require cash collateral for the LC Exposure in accordance with Section 2.17(g) hereof and (iii) declare all Obligations then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrower; and in case of any Event of Default described in Section 6.1© or 6.1(f) hereof, the Commitment shall automatically terminate and the principal of the Loans then outstanding, and cash collateral for the LC Exposure, together with accrued interest thereon and all fees and other obligations of Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by Borrower.

ARTICLE 7

MISCELLANEOUS

Section 7.1. Amendments, Waivers, Etc. No amendment or waiver of any provision of this Agreement, or consent to any departure by Borrower therefrom, will in any event be effective unless the same is in writing and signed by Lender and an Authorized Representative of Borrower,

and then such waiver or consent is effective only in the specific instance and for the specific purpose for which given.

Section 7.2. Notices. Except as otherwise will provided herein, notices and communications between Borrower and Lender with respect to reporting obligations, draw requests and other day to day implementation of this Agreement may be made via facsimile or Electronic System. All formal notices, including notices of default, provided for hereunder must be in writing (including required copies) and sent by courier (including Federal Express or other receipted courier service), as follows:

(a) if to Borrower:

Orange County Power Authority
Attention: Chief Executive Officer
15642 Sand Canyon Ave.
P.O. Box 54283
Irvine, CA 92619-4283
Email: bprobolsky@ocpower.org

(b) if to Lender:

MUFG Union Bank, N.A.
445 South Figueroa Street
Floor 16
Los Angeles, California 90071
Attention: Nicholas Boyle

with a copy to:

MUFG Union Bank, N.A.
Commercial Loan Operations
1980 Saturn Street, 1st Floor
MC V01-120
Monterey Park, California 91755

or, as to each Person named above, at such other address or telephone or telecopy number as is designated by such Person in a written notice to the parties hereto. All such notices and other communications will, when delivered, be effective when deposited with the courier, addressed as aforesaid, except that requests for LC Disbursements submitted to Lender will not be effective until received by Lender.

Section 7.3. Survival of Covenants; Successors and Assigns. (a) All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto will survive the making of any Loan, and will continue in full force and effect until all of the Obligations hereunder are paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference will, subject to the last sentence of this Section, be deemed to include

the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of Borrower which are contained in this Agreement will inure to the benefit of the successors and assigns of Lender. Borrower may not transfer its rights or obligations under this Agreement without the prior written consent of Lender. Lender may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Agreement with, so long as no Event of Default has occurred and is continuing, the prior written consent of Borrower (which consent may not be withheld unreasonably); *provided* that Lender shall be responsible for all costs solely relating to such transfer or assignment. This Agreement is made solely for the benefit of Borrower and Lender, and no other Person (including, without limitation, any PPA Counterparty) will have any right, benefit or interest under or because of the existence of this Agreement.

(b) Notwithstanding the foregoing, Lender will be permitted to grant to one or more financial institutions (each a “*Participant*”) a participation or participations in all or any part of Lender’s rights and benefits and obligations under this Agreement, the Fee Agreement, the Loans and the Letters of Credit on a participating basis but not as a party to this Agreement (a “*Participation*”) without the consent of Borrower. In the event of any such grant by Lender of a Participation to a Participant, Lender shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and Borrower may continue to deal solely and directly with Lender in connection with Lender’s rights and obligations under this Agreement, under the Fee Agreement and under the Letters of Credit. Borrower agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were Lender; *provided* that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 6.1 hereof; and *provided, further*, that Borrower’s liability to any Participant (including, without limitation, amounts payable pursuant to Sections 2.12, 2.13 and 2.14 hereof) will not in any event exceed that liability which Borrower would owe to Lender but for such participation.

Section 7.4. Liability of Lender; Indemnification. (a) To the extent permitted by the laws of the State, Borrower assumes all risks of the acts or omissions of the PPA Counterparties with respect to the use of the Letters of Credit or the use of proceeds thereunder; *provided* that this provision is not intended to and will not preclude Borrower from pursuing such rights and remedies as it may have against the PPA Counterparties under any other agreements. Neither Lender nor any of its respective officers or directors will be liable or responsible for (i) the use of any Letter of Credit, the LC Disbursements or the Loans or the transactions contemplated hereby and by the other Basic Documents or for any acts or omissions of any PPA Counterparty or the California Independent System Operator, (ii) the validity, sufficiency or genuineness of any documents determined in good faith by Lender to be valid, sufficient or genuine, even if such documents, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (iii) payments by Lender against presentation of requests for LC Disbursements or requests which Lender in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement or (iv) any other circumstances whatsoever in making or failing to make payment hereunder; *provided* that Borrower is not required to indemnify Lender for any claims, losses, liabilities, costs or expenses to the extent, but only to the extent that a court of competent jurisdiction has determined by a final, non-appealable judgment were caused by the gross negligence or willful misconduct of Lender.

(b) To the extent permitted by the laws of the State, Borrower indemnifies and holds harmless Lender from and against any and all direct, as opposed to consequential, claims, damages, losses, liabilities, costs and expenses (including specifically reasonable attorneys' fees) which Lender may incur (or which may be claimed against Lender by any Person whatsoever) by reason of or in connection with the execution, delivery and performance of the Basic Documents, the Letters of Credit and the transactions contemplated thereby; *provided* that Borrower is not required to indemnify Lender to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by Lender's willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction. Lender is expressly authorized and directed to honor any demand for payment which is made under any Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between Borrower, any PPA Counterparty (including, without limitation, the California Independent System Operator) or any other Person or the respective rights, duties or liabilities of any of them or whether any facts or occurrences represented in any of the documents presented under any Letter of Credit are true and correct.

(c) To the fullest extent permitted by Applicable Law, Borrower shall not assert, and waives, any claim against Lender, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Basic Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby or the use of the proceeds thereof.

(d) The obligations of Borrower under this Section 7.5 will survive the termination of this Agreement.

Section 7.5. Expenses. Upon receipt of a written invoice, Borrower shall promptly pay (i) the reasonable fees and expenses of counsel to Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents as set forth in the Fee Agreement, (ii) the reasonable out-of-pocket expenses of Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents, (iii) the fees and disbursements of counsel to Lender with respect to advising Lender as to its rights and responsibilities under the Basic Documents after the occurrence of a Default or an Event of Default and (iv) all costs and expenses, if any, in connection with the administration and enforcement of the Basic Documents, including in each case the fees and disbursements of counsel to Lender. In addition, and notwithstanding the foregoing, Borrower agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by Lender in enforcing any obligations or in collecting any payments due from Borrower hereunder or under the Fee Agreement by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings. The obligations of Borrower under this Section 7.6 will survive the termination of this Agreement.

Section 7.6. No Waiver; Conflict. Neither any failure nor any delay on the part of Lender in exercising any right, power or privilege hereunder, nor any course of dealing with respect to

any of the same, will operate as a waiver thereof or preclude any other or further exercise thereof, nor will a single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. To the extent of any conflict between this Agreement and any other Basic Documents, this Agreement will control solely as between Borrower and Lender.

Section 7.7. Modification, Amendment Waiver, Etc. No modification, amendment or waiver of any provision of this Agreement will be effective unless the same is in writing and signed in accordance with Section 7.1 hereof.

Section 7.8. Dealings. Lender and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with Borrower and/or any PPA Counterparty (including, without limitation, the California Independent System Operator) regardless of the capacity of Lender hereunder or under any Letter of Credit.

Section 7.9. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic or legal effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.10. Counterparts; Integration; Effectiveness; Electronic Execution. (a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Basic Documents and any separate letter agreements with respect to fees payable to Lender constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 3.1, this Agreement shall become effective when it shall have been executed by Lender and when Lender shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Basic Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 7.2), certificate, request, statement, disclosure or authorization related to this Agreement, any other Basic Document and/or the transactions contemplated hereby and/or thereby (each an “*Ancillary Document*”) that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Basic Document or such *Ancillary Document*, as applicable. The words “execution,” “signed,” “signature,”

“delivery,” and words of like import in or relating to this Agreement, any other Basic Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; *provided* that nothing herein shall require Lender to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; *provided, further*, without limiting the foregoing, (i) to the extent Lender has agreed to accept any Electronic Signature, Lender shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of Borrower without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, Borrower hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among Lender and Borrower, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Basic Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) Lender may, at its option, create one or more copies of this Agreement, any other Basic Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person’s business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Basic Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Basic Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any Lender-Related Person for any Liabilities arising solely from Lender’s reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of Borrower to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 7.11. Table of Contents; Headings. The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

Section 7.12. Entire Agreement. This Agreement and the Fee Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties hereto as to such subject matter.

Section 7.13. Governing Law Waiver of Jury Trial. (a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND

CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS; *PROVIDED*, THAT THE OBLIGATIONS OF LENDER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE BASIC DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE IS EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND CONSENT AND, FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS, KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(c) Each of the parties hereto hereby submits to the exclusive jurisdiction of any federal or state court of competent jurisdiction in the State and sitting in the County of San Francisco for the purpose of any suit, action or other proceeding arising out of or relating to this Agreement or any other Basic Document; service of process may be accomplished by registered mail, return receipt requested to each of the parties at the address listed for notice in Section 7.2 hereof.

(d) The covenants and waivers made pursuant to this Section 7.13 are irrevocable and unmodifiable, whether in writing or orally, and are applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 7.14. USA PATRIOT Act. Lender notifies Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the Act. Borrower agrees to provide such documentary and other evidence of Borrower’s identity as may be requested by Lender at any time to enable Lender to verify Borrower’s identity or to comply with any Applicable Law or regulation, including, without limitation, the Act.

Section 7.15. Assignment to Federal Reserve Bank. Lender may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, *provided* that any payment in respect of such assigned obligations made by Borrower to Lender in

accordance with the terms of this Agreement will satisfy Borrower's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release Lender from its obligations hereunder.

Section 7.16. Acknowledgement Regarding Any Supported QFCs. To the extent that the Basic Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "*QFC Credit Support*" and each such QFC a "*Supported QFC*"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "*U.S. Special Resolution Regimes*") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "*Covered Party*") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 7.17. Arm's Length Transaction. The transaction described in this Agreement is an arm's length, commercial transaction between Borrower and Lender in which: (i) Lender is acting solely as a principal (*i.e.*, as a lender) and for its own interest; (ii) Lender is not acting as a municipal advisor or financial advisor to Borrower; (iii) Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to Borrower with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether Lender or any of its affiliates has provided other services or is currently providing other services to Borrower on other matters); (iv) the only obligations Lender has to Borrower with respect to this transaction are set forth in this Agreement, the Fee Agreement and the Letters of Credit; and (v) Lender is not recommending that Borrower take an action with respect to the transaction described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, Borrower should discuss the information contained herein with Borrower's own legal, accounting, tax, financial and other advisors, as Borrower deems appropriate.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Borrower and Lender have duly executed this Agreement as of the date first written above.

ORANGE COUNTY POWER AUTHORITY

By: _____
Name: _____
Title: _____

MUFG UNION BANK, N.A.

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate (this "*Certificate*") is furnished to MUFG Union Bank, N.A. (including its successors and assigns, the "*Lender*") pursuant to the Revolving Credit Agreement, dated as of September [], 2021 (together with all amendments and supplements thereto, the "*Agreement*"), by and between the Orange County Power Authority (including its successors and assigns, the "*Borrower*") and Lender. Unless otherwise defined herein, the terms used in this Certificate have the meanings assigned thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am an Authorized Representative of Borrower;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. To the best of my knowledge the financial statements required by Section 5.1(a) of the Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the Clean Energy Alliance System in accordance with GAAP as of the date and for the period covered thereby.

[Describe below the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which Borrower has taken, is taking, or proposes to take with respect to each such condition or event:

[6. Amounts held in the Operating Reserve are as follows:
\$_____.]

[Remainder of page intentionally left blank]

The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this ____ day of _____, 20__.

ORANGE COUNTY POWER AUTHORITY

By: _____

Name: _____

Title: _____

EXHIBIT B

FORM OF BORROWING REQUEST

_____, 20__

MUFG Union Bank, N.A.
445 South Figueroa Street
Floor 16
Los Angeles, California 90071
Attention: Nicholas Boyle

With respect to requests for Revolving Loans:

MUFG Union Bank, N.A.
Commercial Loan Operations
1980 Saturn Street, 1st Floor
MC V01-120
Monterey Park, California 91755
Attention: Rhonda Brooks

Ladies and Gentlemen:

The undersigned refers to the Revolving Credit Agreement, dated as of September [], 2021 (together with any amendments or supplements thereto, the "*Agreement*"), by and between Orange County Power Authority (with its successors and assigns, the "*Borrower*") and MUFG Union Bank, N.A. (with its successors and assigns, the "*Lender*") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.3 of the Agreement, that Lender make a Loan under the Agreement and disburse such funds as set forth in #6 below, and in that connection sets forth below the following information relating to such Loan (the "*Proposed Loan*");

1. The Business Day of the Proposed Loan is _____, 20__ (the "*Issuance Date*").
2. **[The Proposed Loan shall be a Term SOFR Rate Loan for an Interest Period of _____ months]¹ [The Proposed Loan shall be a Daily SOFR Rate Loan].**
3. The principal amount of the Proposed Loan is \$_____, which is not greater than the Revolving Credit Exposure as of the Issuance Date set forth in 1 above. After giving effect to the Proposed Loan, the aggregate principal amount of all Loans outstanding under the Agreement will not exceed the Commitment as of the Issuance Date,

¹ May only be selected after the Term SOFR Transition Date.

and the aggregate principal amount of all Loans and LC Exposure outstanding under the Agreement will not exceed the Revolving Credit Exposure as of the Issuance Date.

4. The interest rate with respect to the Proposed Loan shall be the **[Daily Simply SOFR Rate] [Term SOFR Rate]**.

5. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect to the Proposed Loan:

(a) The representations and warranties of Borrower set forth in Article IV of the Agreement (other than in Section 4.7 thereof) are true and correct in all material respects (or in the case of any representation qualified by materiality, in all respects) on the date hereof, as if made on the date hereof;

(b) No Event of Default has occurred and is continuing; and

© No event or change shall be in effect or shall have occurred that could reasonably be expected to have a Material Adverse Effect.

6. The proceeds for Proposed Loan are being used for the following purposes:

[(a) qualified expenditures]

[(b) working capital and general purposes]

7. The Proposed Loan shall be made by Lender by wire transfer of immediately available funds or deposited **[in the amount of \$_____]** into Borrower's account at Lender in accordance with the instructions set forth in the Agreement or to or on behalf of Borrower in accordance with the instructions set forth below and Borrower hereby confirms that Lender is authorized to make said disbursements:

[Insert wire instructions and amounts]

ORANGE COUNTY POWER AUTHORITY

By: _____

Name: _____

Title: _____

Approved by Lender:

MUFG UNION BANK, N.A.

By: _____

Name: _____

Title: _____

EXHIBIT C

BENCHMARK REPLACEMENT SETTING

The following provisions of this Exhibit C (this “*Exhibit*”) shall be effective notwithstanding anything to the contrary in the Revolving Credit Agreement dated as of September [], 2021 (as amended, restated, or otherwise modified, the “*Agreement*”), between Orange County Power Authority, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq. (the “*Borrower*”) and MUFG Union Bank, N.A. (the “*Lender*”), to which this Exhibit is attached or in any other loan document related to the Agreement. All capitalized terms used in this Exhibit and not defined in this Exhibit shall have the meanings assigned to such terms in the Agreement.

(a) *BENCHMARK REPLACEMENT.* Upon the occurrence of a Benchmark Transition Event, Lender may amend the Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. (New York City time) on the fifth (5th) Business Day after Lender has posted such proposed amendment to Borrower. Lender will have the right to make any changes (“Benchmark Replacement Conforming Changes”) to the Agreement that Lender decides may be appropriate to reflect the adoption and implementation of any such Benchmark Replacement and to permit the administration thereof by Lender from time to time and any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of Borrower.

(b) *STANDARDS.* Any determination, decision or election that may be made by Lender pursuant to this Exhibit C, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in Lender’s sole discretion and without consent from Borrower. Lender does not warrant or accept responsibility for, and shall not have any liability to Borrower under the Agreement or otherwise for, any loss, damage or claim arising from or relating to (i) the continuation of, administration of, submission of, calculation of or any other matter related to the Benchmark, any component definition thereof or rates referenced in the definition thereof or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Benchmark or any other Benchmark prior to its discontinuance or unavailability, (ii) the effect or implementation of any Benchmark Replacement Conforming Changes or (iii) any mismatch between the Benchmark or the Benchmark Replacement and any of Borrower’s other financing instruments (including those that are intended as hedges).

© *CERTAIN DEFINED TERMS.* As used in this Exhibit:

“*Benchmark*” means, initially, Daily Simple SOFR, and after the Term SOFR Transition Date, Term SOFR; *provided* that if a Benchmark Transition Event has occurred with respect to

Daily Simple SOFR, or after the Term SOFR Transition Event, Term SOFR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has become effective pursuant to this Exhibit C.

“*Benchmark Replacement*” means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by Lender as the replacement for the then-current Benchmark and (b) the related Benchmark Replacement Adjustment; *provided* that, in each case, if such Benchmark Replacement as so determined would be less than zero, such Benchmark Replacement will be deemed to be zero for the purposes of the Agreement and the other loan documents related thereto.

“*Benchmark Replacement Adjustment*” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by Lender.

“*Benchmark Transition Event*” means, with respect to the then-current Benchmark, a public statement or publication of information: (a) by or on behalf of the administrator of such Benchmark announcing that such administrator has ceased or will cease to provide such Benchmark, permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark, (b) by the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, which states that the administrator of such Benchmark has ceased or will cease to provide such Benchmark permanently or indefinitely, *provided* that, at the time of such statement or publication, there is no successor administrator that will continue to provide such Benchmark, or (c) by the regulatory supervisor for the administrator of such Benchmark announcing that such Benchmark is no longer representative.

“*Relevant Governmental Body*” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“*Unadjusted Benchmark Replacement*” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

EXHIBIT D

[FORM OF PROMISSORY NOTE]

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “1933 ACT”), OR UNDER THE SECURITIES LAWS OF ANY STATE OR JURISDICTION. THIS NOTE IS SUBJECT TO CERTAIN TRANSFER RESTRICTIONS AS PROVIDED IN SECTION 7.3 OF THE HEREIN DEFINED AGREEMENT.

**UNITED STATES OF AMERICA
STATE OF CALIFORNIA
ORANGE COUNTY POWER AUTHORITY**

Dated Date: September [], 2021

For value received, the ORANGE COUNTY POWER AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. Seq. (together with its successors and assigns, “*Borrower*” or “*OCPA*”) hereby promises to pay to the order of MUFG Union Bank, N.A., and its successors and assigns, as their respective interests may appear (the “*Lender*”) located at Commercial Loan Operations, 1980 Saturn Street, 1st Floor, MC V01-120, Monterey Park, California 91755, the aggregate unpaid principal amount of all Loans made by Lender from time to time pursuant to the Revolving Credit Agreement, dated as of September [], 2021 (together with any amendments or supplements thereto, the “*Agreement*”), by and between Borrower and Lender, plus interest thereon, on the dates, in the amounts and in the manner provided for in the Agreement.

The unpaid principal amount of all Loans from time to time outstanding shall bear interest at the rate or rates and be payable as provided in and calculated in the manner set forth in the Agreement.

Payments of both principal and interest are to be made in lawful money of the United States of America.

This Note evidences indebtedness (including the Loans) incurred under, and is subject to the terms and provisions of, the Agreement to which reference is hereby made for a statement of said terms and provisions, including those under which this Note may be paid or become due prior to its due date. This Note is the promissory note referred to in Section 2.6© of the Agreement and is entitled to the benefits thereof and of the Basic Documents referred to therein. This Note is subject to prepayment, in whole or in part, in accordance with the terms of the Agreement.

This Note dated September [], 2021 (the “*Note*”) has been issued pursuant to the Agreement.

Reference is hereby made to the Agreement for a description of the terms on which this Note is issued and all of the terms of the Agreement are hereby incorporated herein and constitute a contract between Borrower and the holder of this Note, and by acceptance hereof the holder of this Note assents to said terms and conditions.

This Note is an obligation of Borrower payable from and secured by a pledge of and a senior lien and charge upon Borrower's Net Revenues.

This Note is payable as to principal and interest thereof, exclusively from Borrower's Net Revenues.

This Note and the interest hereon are senior to all other debt incurred and payable from Borrower's Net Revenues.

This Note is made under the laws of the State of California, and for all purposes shall be governed by and construed in accordance with the laws of said State, without regard to principles of conflicts of law. Capitalized terms not otherwise defined herein have the meaning set forth in the Agreement.

It is hereby certified that all conditions, acts and things required to exist, happen and be performed under the Agreement precedent to and in the issuance of this Note, exist, have happened and have been performed, and that the issuance, authentication and delivery of this Note have been duly authorized by the Resolution duly adopted by Borrower. Borrower hereby waives presentment for payment, demand, protest, notice of protest, notice of dishonor and all other notices and demands whatsoever.

IN WITNESS WHEREOF, the Orange County Power Authority has caused this Note to be signed as of the Dated Date specified above.

Name:

Title:

TRANSACTIONS ON NOTE

DATE	COMMITMENT	INTEREST RATE	AMOUNT OF PRINCIPAL PAID	DATE TO WHICH INTEREST PAID	NOTATION MADE BY
------	------------	---------------	--------------------------------	--------------------------------------	---------------------

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Please insert Social Security or
Taxpayer Identification Number of Transferee
/ _____ /

(Please print or typewrite name and address, including zip code, of Transferee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints
attorney to register the transfer of the within Note on the books kept for registration thereof, with
full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by a
member or participant of a signature guarantee
program

NOTICE: The signature above must correspond with
the name of the Owner as it appears upon the front
of this Note in every particular, without alteration or
enlargement or change whatsoever.

EXHIBIT E

FORM OF NOTICE OF INTEREST PERIOD SELECTION

To:

MUFG Union Bank, N.A.
445 South Figueroa Street
Floor 16
Los Angeles, California 90071
Attention: Nicholas Boyle

MUFG Union Bank, N.A.
1980 Saturn Street
Monterey Park, CA 91755
Attention: Rhonda Brooks
Facsimile: (800) 892-4857
E-Mail: Rhonda.Brooks@unionbank.com

This Notice of Interest Period Selection is given pursuant to that certain Revolving Credit Agreement, dated as of September [___], 2021 (together with any amendments or supplements thereto, the "*Agreement*"), by and between Orange County Power Authority (with its successors and assigns, the "*Borrower*") and MUFG Union Bank, N.A. (with its successors and assigns, the "*Lender*"). Capitalized terms used and not otherwise defined herein shall have the same respective meanings given to such terms in the Agreement.

1. Pursuant to the Agreement, Borrower hereby irrevocably selects a new Interest Period for a Term SOFR Rate Loan, as follows:

(a) The Term SOFR Rate Loan for which a new Interest Period is to be selected consists of a Loan in the aggregate principal amount of \$_____, which was initially advanced to Borrower on _____.

(b) The last day of the current Interest Period for such Term SOFR Rate Loan is _____.

© The next Interest Period for such Term SOFR Rate Loan, commencing upon the last day of the current Interest Period, will be _____ months.

2. Borrower hereby certifies to Lender that, on the date of this Notice of Interest Period Selection, and after giving effect to the requested Interest Period selection:

(a) The representations and warranties set forth in the Agreement are true and correct as if made on such date (except for the representations and warranties expressly made as of a specified date, which shall be true and correct in all material respects as of such date);

(b) No Default has occurred and is continuing; and

© Each of the Credit Documents remains in full force and effect.

The person signing below on behalf of the Borrower is authorized to do so and has caused this Notice of Conversion to be duly executed on behalf of the Borrower as of _____.

IN WITNESS WHEREOF, the Borrowing Agent has executed this Notice of Borrowing as of the date set forth above.

BORROWER:

ORANGE COUNTY POWER AUTHORITY

By: _____

Name: _____

Title: _____

FEE AGREEMENT

This FEE AGREEMENT dated September [], 2021 (as amended, modified or restated from time to time, this “*Fee Agreement*”), is by and between the ORANGE COUNTY POWER AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 *et. seq.* (together with its successors and assigns, “*Borrower*”), and MUFG UNION BANK, N.A. (together with its successors and permitted assigns, the “*Lender*”).

Reference is made to the Revolving Credit Agreement, dated as of September [], 2021 (as amended, modified, extended or restated from time to time, the “*Agreement*”), entered into between Borrower and Lender. Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

This Fee Agreement is the Fee Agreement referenced in the Agreement and the terms of this Fee Agreement are incorporated by reference into the Agreement. This Fee Agreement and the Agreement are to be construed as one agreement between Borrower and Lender, and all obligations hereunder are to be construed as obligations thereunder. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee Agreement.

ARTICLE I

FEES

Section 1.1. Undrawn Fees. Borrower agrees to pay to Lender, in immediately available funds, for the period from and including the Closing Date to and including the earlier of the Maturity Date and the date the Commitment is terminated in full (the “*Commitment End Date*”), quarterly in arrears on the first Business Day of each January, April, July and October until the Commitment End Date, and on the Commitment End Date (each, a “*Payment Date*”), a non-refundable undrawn fee (the “*Undrawn Fee*”) in an amount equal for each day during such calculation period to the product of (x) the rate per annum corresponding to the Level specified below associated with the applicable Revenue Amount as of the most recent date of determination (the “*Undrawn Fee Rate*”), (y) the Unutilized Commitment (as defined below) for such day and (z) a fraction the numerator of which is 1 and denominator of which is 360.

LEVEL	REVENUE AMOUNT	UNDRAWN FEE RATE
Level 1	\$200,000,000 or more	0.20% (20 basis points)
Level 2	\$175,000,000 to \$199,999,999	0.20% (20 basis points)
Level 3	\$150,000,000 to \$174,999,999	0.45% (45 basis points)

LEVEL	REVENUE AMOUNT	UNDRAWN FEE RATE
Level 4	125,000,000 to \$149,999,999	1.45% (145 basis points)
Level 5	Less than \$125,000,000	2.95% (295 basis points)

The term “Unutilized Commitment” as used in this Fee Agreement means, for any day, the number obtained by subtracting the Revolving Credit Exposure as of 5:00 p.m. New York City time on such day from the Commitment in effect at as of 5:00 p.m. New York City time on such day. The term “Revenue Amount” as used in this Section 1.1 shall mean the Revenues of Borrower, measured on a trailing 12-month period as of each March 1 and September 1, commencing on March 1, 2023. The Undrawn Fee Rate shall be determined and adjusted on the date that Lender receives the financial statements specified in Section 5.1(a)(i) and Section 5.1(a)(ii) of the Agreement (each, a “*Calculation Date*”); *provided* that the Undrawn Fee Rate shall be based on Level 1 until the initial Calculation Date for the trailing 12-month period commencing on March 1, 2023. The applicable Undrawn Fee Rate shall be effective from one Calculation Date until the next Calculation Date. Upon the occurrence and during the continuance of an Event of Default, the Undrawn Fee Rate otherwise in effect will increase by 1.00% per annum automatically and without notice to Borrower, commencing on the date such Event of Default occurs and such increased Unused Fee Rate shall be payable until such Event of Default is cured or waived.

Section 1.2. Amendment Waiver or Consent Fees. Borrower agrees to pay to Lender on the date on which Borrower requests from Lender (i) an amendment, supplement or modification to the Agreement or any other Basic Document, (ii) a consent under, or a waiver of any provision of, the Agreement or any other Basic Document or (iii) the transfer of any Letter of Credit, a non-refundable fee to be determined by Lender at the time of such amendment, supplement or modification or waiver or consent or transfer, but in any event at a minimum of \$5,000, plus, in each case, the reasonable fees and expenses of legal counsel to Lender; *provided*, however, that in the case of a simple extension with no modifications to any Basic Document, there shall be no fee of Lender required hereunder, though reasonable fees and expenses of legal counsel to Lender shall still be applicable.

Section 1.3. Termination Fee; Reduction Fee. (a) Borrower hereby agrees to pay to Lender a termination fee in connection with any termination of the Commitment by Borrower prior to the Maturity Date, in an amount equal to the product of (1) the Undrawn Fee Rate in effect on the date of such termination, (2) the Commitment (without regard to any outstanding Loans, Letters of Credit, or LC Disbursements) and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to but excluding the Maturity Date, and the denominator of which is 360 (the “*Termination Fee*”), which Termination Fee shall be paid on or before the date of such termination. No termination in full of the Commitment shall become effective unless and until all amounts payable by Borrower to Lender under the Agreement and this Fee Agreement (including without limitation the amount payable, if any, pursuant to this Section 1.5(a)) have been paid in full.

(b) Borrower agrees not to permanently reduce the Commitment below the Commitment in effect as of the Closing Date prior to the Maturity Date, without the payment by Borrower to Lender of a reduction fee (the “*Reduction Fee*”) in connection with each and every permanent reduction of the Commitment in an amount equal to the product of (1) the Undrawn Fee Rate in effect on the date of such permanent reduction (without regard to any outstanding Loans, Letters of Credit, or LC Disbursements), (2) the amount of the permanent Commitment reduction and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to but not including the Maturity Date, and the denominator of which is 360. Under no circumstances shall Borrower permanently reduce the Commitment below the Revolving Credit Exposure unless in connection with such permanent reduction Borrower reduces the Revolving Credit Exposure so that after giving effect to such permanent reduction the Revolving Credit Exposure is not greater than the reduced Commitment.

Section 1.4. Applicable Margin. As used in the Agreement and this Fee Agreement, the “Applicable Margin” means the applicable rate per annum under the caption “Applicable Margin” for Revolving Loans as set forth below, in each case, corresponding to the Minimum Amount set forth in the applicable Level as the case may be from time to time:

LEVEL	REVENUE AMOUNT	TAXABLE APPLICABLE MARGIN
Level 1	\$200,000,000 or more	1.62%
Level 2	\$175,000,000 to \$199,999,999	1.62%
Level 3	\$150,000,000 to \$174,000,000	1.87%
Level 4	125,000,000 to \$149,999,999	2.87%
Level 5	Less than \$125,000,000	4.37%

The term “Revenue Amount” as used in this Section 1.4 shall mean the Revenues of Borrower, measured on a trailing 12-month period as of each March 1 and September 1, commencing on March 1, 2023. The Applicable Margin shall be determined and adjusted on the date that Lender receives the financial statements specified in Section 5.1(a)(i) and Section 5.1(a)(ii) of the Agreement (each, a “*Calculation Date*”); *provided* that the Applicable Margin shall be based on Level 1 until the initial Calculation Date for the trailing 12-month period commencing on March 1, 2023. The applicable Applicable Margin shall be effective from one Calculation Date until the next Calculation Date.

Section 1.5. Default Rate. For purposes of this Fee Agreement and the Agreement, “*Default Rate*” means, with respect to any Loans and Letters of Credit, the then applicable Base Rate plus two percent (2.00%).

Section 1.6. Letter of Credit Fees. Borrower agrees to pay to Lender, in immediately available funds, for the period from and including the date of issuance of each Letter of Credit to

but excluding the date such Letter of Credit is terminated (the “*LC Termination Date*”), quarterly in arrears on the first Business Day of each January, April, July and October to the LC Termination Date, and on the LC Termination Date (each, a “*LC Payment Date*”), a non-refundable undrawn fee (the “*LC Facility Fee*”) in an amount equal for each day during such calculation period to the product of (x) the Applicable Margin with respect to Taxable Revolving Loans, (y) the stated amount of such Letter of Credit as of 5:00 p.m. New York City time on such day and (z) a fraction the numerator of which is 1 and denominator of which is 360.

The LC Facility Fee shall be calculated from and including one LC Payment Date (or, in the case of the initial LC Facility Fee payment in respect of a Letter of Credit, the date such Letter of Credit is issued (unless such date of issuance is a LC Payment Date)) to but excluding the next LC Payment Date (each, a “*LC Payment Period*”), and Lender shall provide Borrower with an invoice for each LC Facility Fee; *provided, however*, that the failure of Lender to do so shall not relieve Borrower from its obligation to pay such LC Facility Fee.

Section 1.7. Issuance Fees. Borrower agrees to pay to Lender a non-refundable fee of 25 basis points of the stated amount for each issuance of a Letter of Credit, which fee shall be earned on the issuance date and shall be payable upon invoice on the next LC Payment Date (or, if there is no further LC Payment Date, the LC Termination Date).

ARTICLE II

MISCELLANEOUS

Section 2.1. Legal Fees. On the Closing Date, Borrower shall pay the reasonable legal fees and expenses of Lender incurred in connection with the preparation and negotiation of the Agreement, this Fee Agreement and certain other Basic Documents in an amount equal to \$[] plus disbursements.¹

Section 2.2. Amendments. No amendment to this Fee Agreement will become effective without the prior consent of Borrower and Lender, which consent must be in writing and signed by Lender and an Authorized Representative of Borrower.

Section 2.3. Governing Law. THIS FEE AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS; *PROVIDED*, THAT THE OBLIGATIONS OF LENDER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

Section 2.4. Counterparts. This Fee Agreement may be executed in counterparts in accordance with Section 7.11 of the Agreement, which Section 7.11 is incorporated herein by reference.

¹ To be provided before closing.

Section 2.5. Severability. Any provision of this Fee Agreement which is prohibited, unenforceable or not authorized in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

[Signature Pages To Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized on the date first set forth above.

ORANGE COUNTY POWER AUTHORITY

By: _____
Name: _____
Title: _____

MUFG UNION BANK, N.A.

By: _____
Name: _____
Title: _____

SECURITY AGREEMENT RE DEPOSIT ACCOUNT

This Security Agreement Re Deposit Account (this "*Agreement*") is dated as of September [], 2021, by and between ORANGE COUNTY POWER AUTHORITY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (the "*Debtor*"), and MUFG UNION BANK, N.A., a national banking association, as Lender under the hereafter defined Credit Agreement (in such capacity, the "*Secured Party*").

PRELIMINARY STATEMENT

A. The Debtor, as the Borrower, and the Secured Party, as the Lender, are party to that certain Revolving Credit Agreement dated as of September [], 2021 (as amended, restated, or otherwise modified from time to time, the "*Credit Agreement*"). Unless otherwise defined or the context otherwise requires, terms for which meanings are provided in the Credit Agreement shall have such meanings when used in this Agreement.

B. In connection with the credit and other financial accommodations extended by the Lender under the Credit Agreement and in accordance with Section 2.15 thereof, the Lender has required that the Debtor grant the Secured Party a security interest in the Debtor's property described herein subject to the terms and conditions hereof.

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

1. *Grant of Security Interest.* The Debtor hereby grants to the Secured Party a lien on and security interest in, and acknowledges and agrees that the Secured Party has and shall continue to have a continuing lien on and security interest in, any and all right, title, and interest of the Debtor, whether now owned or existing or hereafter created, acquired or arising, in and to (a) that certain demand deposit account number [], together with any account established in connection with any extension, renewal, or substitution thereof, in each case as any such account may be renumbered or re-titled from time to time (hereinafter referred to collectively as the "*Deposit Account*") maintained by the Debtor with the Secured Party, (b) all additions, extensions, renewals, reinvestments, and substitutions to the foregoing, (c) all income, distributions, and sums distributable or payable from, upon, or in respect of the foregoing, (d) all rights and privileges incident to the foregoing, and (e) all proceeds of the foregoing (all of the foregoing being herein sometimes referred to as the "*Collateral*"). All terms which are used in this Agreement which are defined in the Uniform Commercial Code of the State of California as in effect from time to time ("*UCC*") shall have the same meanings herein as such terms are defined in the UCC, unless this Agreement shall otherwise specifically provide. For the avoidance of doubt, the parties hereto acknowledge and agree that this Agreement constitutes a Collateral Document under the Credit Agreement.

2. *Obligations Hereby Secured.* The lien and security interest herein granted and provided for is made and given to secure, and shall secure, the payment and performance of the Obligations (collectively, the “*Secured Obligations*”).

3. *Covenants, Agreements, Representations and Warranties.* The Debtor hereby covenants and agrees with, and represents and warrants to, the Secured Party that:

(a) The Debtor is the sole and lawful owner of the Collateral, and has full right, power, and authority to enter into this Agreement and to perform each and all of the matters and things herein provided for. The execution and delivery of this Agreement, and the observance and performance of each of the matters and things herein set forth, will not (i) contravene or constitute a default under any provision of law or any judgment, injunction, order or decree binding upon the Debtor or any covenant, indenture or agreement of or affecting the Debtor or any of its property or (ii) result in the creation or imposition of any lien or encumbrance on any property of the Debtor except for the lien and security interest granted to the Secured Party hereunder.

(b) The Collateral and every part thereof is and shall be free and clear of all security interests, liens (including, without limitation, statutory liens), attachments, levies and encumbrances of every kind, nature and description, whether voluntary or involuntary, except for the lien and security interest of the Secured Party therein. The Debtor shall warrant and defend the Collateral against any claims and demands of all persons at any time claiming the same or any interest in the Collateral adverse to the Secured Party.

(c) The Debtor shall promptly pay when due all taxes, assessments, and governmental charges and levies upon or against the Debtor or any of the Collateral, in each case before the same become delinquent and before penalties accrue thereon, unless and to the extent that the same are being contested in good faith by appropriate proceedings which prevent foreclosure or other realization upon any of the Collateral, and the Debtor shall have established adequate reserves therefor.

(d) The Debtor agrees to execute and deliver, and shall cause the depository bank to execute and deliver, to the Secured Party such further agreements, assignments, instruments and documents and to do all such other things as the Secured Party may reasonably deem necessary or appropriate to assure the Secured Party its lien and security interest hereunder, including, without limitation, the Debtor agrees to promptly deliver to the Secured Party all certificates, instruments, and documents at any time evidencing the Collateral or any part thereof. In the event for any reason the law of any jurisdiction other than California becomes or is applicable to the Collateral or any part thereof, the Debtor agrees to execute and deliver all such instruments and documents and to do all such other things as the Secured Party in its sole discretion deems necessary or appropriate to preserve, protect, and enforce the lien and security interest of the Secured Party under the law of such other jurisdiction.

(e) On failure of the Debtor to perform any of the covenants and agreements herein contained, the Secured Party may, at its option, perform the same and in so doing

may expend such sums as the Secured Party may reasonably deem advisable in the performance thereof, including, without limitation, the payment of any taxes, liens, and encumbrances, expenditures made in defending against any adverse claims, and all other expenditures which the Secured Party may be compelled to make by operation of law or which the Secured Party may make by agreement or otherwise for the protection of the security hereof. All such sums and amounts so expended shall be repayable by the Debtor immediately without notice or demand, shall constitute additional Secured Obligations, and shall bear interest from the date said amounts are expended at the rate per annum (computed on the basis of a 360-day year for the actual number of days elapsed) determined by adding 2% to the rate per annum from time to time announced or otherwise established by the Secured Party as its "reference rate" with any change in such rate per annum as so determined by reason of a change in such reference rate to be effective on the date of such change in said reference rate. No such performance of any covenant or agreement by the Secured Party on behalf of the Debtor, and no such advancement or expenditure therefor, shall relieve the Debtor of any default under the terms of this Agreement or in any way obligate the Secured Party to take any further or future action with respect thereto. The Secured Party, in making any payment hereby authorized, may do so according to any bill, statement or estimate procured from the appropriate public office or holder of the claim to be discharged without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim. The Secured Party, in performing any act hereunder, shall be the sole judge of whether the Debtor is required to perform same under the terms of this Agreement.

Section 4. Special Provisions Re: Deposit Account. (a) The initial amount on deposit in the Deposit Account as of the date hereof is \$5,000,000.

(b) The Debtor shall not terminate the Deposit Account without the Secured Party's prior written consent. The Debtor hereby agrees that no funds or other amounts at any time constituting part of the Collateral may be withdrawn for the Deposit Account by the Debtor, notwithstanding any provisions to the contrary contained in any other agreement between the Debtor and the Secured Party, as the depository bank.

(c) The Secured Party may at any time while any Event of Default is continuing, apply the Collateral towards payment of any outstanding Secured Obligation, and transfer such Collateral or any part thereof into the Secured Party's name or into the name of its nominee or nominees.

5. Defaults and Remedies. (a) The occurrence of any event or the existence of any condition specified as an "Event of Default" under the Credit Agreement shall constitute an "*Event of Default*" hereunder.

(b) Upon the occurrence and during the continuation of any Event of Default, the Secured Party, in addition to exercising such other rights and remedies as may be available to it, may (i) liquidate the Collateral or any part thereof without thereby incurring any liability whatsoever to the Debtor and apply the proceeds thereof to the payment of the Secured Obligations or any part thereof, in such order and manner as the Secured Party in its discretion shall determine, (ii) appropriate the Collateral and all sums now or hereafter payable on the Collateral and any

interest accrued or payable thereon and apply the same to the payment of the Secured Obligations, or any part thereof, in such order and manner as the Secured Party in its discretion shall determine, and (iii) exercise with respect to the Collateral, and such sums and interest, all the rights, options, and remedies of a secured party under the UCC (regardless of whether the UCC is the law of the jurisdiction where the rights or remedies are asserted and regardless of whether the UCC applies to the affected Collateral). In addition to all other sums due the Secured Party hereunder, the Debtor shall pay the Secured Party all costs and expenses incurred by the Secured Party, including reasonable attorneys' fees and court costs, in obtaining, liquidating or enforcing payment of Collateral or the Secured Obligations or in the prosecution or defense of any action or proceeding by or against the Secured Party or the Debtor concerning any matter arising out of or connected with this Agreement or the Collateral or the Secured Obligations, including, without limitation, any of the foregoing arising in, arising under or related to a case under the United States Bankruptcy Code (or any successor statute).

(c) The Debtor hereby appoints the Secured Party, its nominee, and any other person whom the Secured Party may designate, as the Debtor's attorney-in-fact, with full power after the occurrence and during the continuation of any Event of Default to liquidate the Collateral or any part thereof without thereby incurring any liability whatsoever to the Debtor and, in the name of the Debtor or in the Secured Party's own name or both, to demand, collect, withdraw, receipt for or sue for all amounts due or to become due and payable in respect of the Collateral, to execute any withdrawal receipts respecting the Collateral, to endorse the name of the Debtor on any and all commercial paper given in payment thereof, and to take any other action, including, without limitation, transfer any certificate evidencing the Collateral into the Secured Party's own name or the name of its nominee, which the Secured Party deems necessary or appropriate to preserve or protect its interest in the Collateral. The Debtor hereby ratifies and approves all acts of any such attorney and agrees that neither the Secured Party nor any such attorney will be liable for any acts or omissions nor for any error of judgment or mistake of fact or law other than such person's gross negligence or willful misconduct. The foregoing power of attorney, being coupled with an interest, is irrevocable until the Secured Obligations have been fully paid and satisfied and this Agreement has terminated in accordance with Section 6 below.

(d) The proceeds from any realization of the Collateral following an Event of Default may be applied by the Secured Party to the Secured Obligations (whether or not then due and payable) in such manner and order as the Secured Party in its discretion shall determine and any proceeds not so applied may be held by the Secured Party under this Agreement as collateral security for the Secured Obligations.

(e) The Secured Party shall have no responsibility for the collection or protection of the Collateral or any part thereof or to exercise (or give notice to the Debtor of) any option, privilege or right with respect to the Collateral, all of which are waived by the Debtor. The powers conferred upon the Secured Party hereunder are solely to protect its interest in the Collateral and shall not impose on it any duty to exercise such powers. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession or control if such Collateral is accorded treatment substantially equivalent to that which the Secured Party accords its own property, consisting of similar type assets. This Agreement constitutes an assignment of rights only and not an assignment of any duties or obligations of the Debtor in any

way related to the Collateral, and the Secured Party shall have no duty or obligation to discharge any such duty or obligation. Neither the Secured Party nor any party acting as attorney for the Secured Party shall be liable for any acts or omissions or for any error of judgment or mistake of fact or law other than their gross negligence or willful misconduct.

(f) Failure by the Secured Party to exercise any right, remedy or option under this Agreement or any other agreement between the Debtor and the Secured Party or provided by law, or delay by the Secured Party in exercising the same, shall not operate as a waiver; and no waiver by the Secured Party shall be effective unless it is in writing and then only to the extent specifically stated. The rights and remedies of the Secured Party under this Agreement shall be cumulative and not exclusive of any other right or remedy which the Secured Party may have.

6. *Continuing Agreement.* This Agreement shall be a continuing agreement in every respect and shall remain in full force and effect until all of the Secured Obligations, both for principal and interest, have been fully paid and satisfied and all agreements of the Secured Party to extend credit to or for the account of the Borrower have expired or otherwise have been terminated. Upon such termination of this Agreement, the Secured Party shall be deemed to have automatically released its security interest in and lien on the Collateral granted to Secured Party hereunder.

7. *Miscellaneous.* (a) This Agreement cannot be changed or terminated orally. All of the rights, privileges, remedies, and options given to the Secured Party hereunder shall inure to the benefit of its successors and assigns, and all the terms, conditions, covenants, agreements, representations and warranties of and in this Agreement shall bind the Debtor and its legal representatives, successors and assigns, *provided* that the Debtor may not assign its rights or delegate its duties hereunder without the Secured Party's prior written consent. The Secured Party may transfer the Secured Obligations, or any part thereof, and deliver the Collateral subject to this Agreement to the transferee, and the transferee shall become vested with all powers and rights given to the Secured Party with respect to the Collateral.

(b) Except as otherwise specified herein, all notices hereunder shall be delivered in accordance with Section 7.2 of the Credit Agreement.

(c) The lien and security interest herein created and provided for stand as direct and primary security for the Secured Obligations. No application of any sums received by the Secured Party in respect of the Collateral or any disposition thereof to the reduction of the Secured Obligations or any part thereof shall in any manner entitle the Debtor to any right, title or interest in or to the Secured Obligations or any collateral or security therefor, whether by subrogation or otherwise, unless and until all Secured Obligations have been fully paid and satisfied and all agreements of the Secured Party to extend credit to or for the account of the Borrower have expired or otherwise have been terminated. The Debtor acknowledges that the lien and security interest hereby created and provided for are absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of the Secured Party or any other holder of any of the Secured Obligations, and without limiting the generality of the foregoing, the lien and security interest hereof shall not be impaired by any acceptance by the Secured Party or any other holder of any of the Secured Obligations of any other security for or guarantors upon any of

the Obligations or by any failure, neglect or omission on the part of the Secured Party or any other holder of any of the Secured Obligations to realize upon or protect any of the Secured Obligations or any collateral or security therefor. The lien and security interest hereof shall not in any manner be impaired or affected by (and the Secured Party, without notice to anyone, is hereby authorized to make from time to time) any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or disposition of any of the Secured Obligations, or of any collateral or security therefor, or of any guaranty thereof, or of any instrument or agreement setting forth the terms and conditions pertaining to any of the foregoing. The Secured Party may at its discretion at any time grant credit to the Borrower without notice to the Debtor in such amounts and on such terms as the Secured Party may elect (all of such to constitute additional Secured Obligations) without in any manner impairing the lien and security interest created and provided for herein. In order to realize hereon and to exercise the rights granted the Secured Party hereunder and under applicable law, there shall be no obligation on the part of the Secured Party or any other holder of any of the Secured Obligations at any time to first resort for payment to the Borrower or to any guaranty of the Secured Obligations or any portion thereof or to resort to any other collateral, security, property, liens or any other rights or remedies whatsoever, and the Secured Party shall have the right to enforce this Agreement irrespective of whether or not other proceedings or steps seeking resort to or realization upon or from any of the foregoing are pending.

(d) In the event and to the extent that any provision hereof shall be deemed to be invalid or unenforceable by reason of the operation of any law or by reason of the interpretation placed thereon by any court, this Agreement shall to such extent be construed as not containing such provision, but only as to such locations where such law or interpretation is operative, and the invalidity or unenforceability of such provision shall not affect the validity of any remaining provisions hereof, and any and all other provisions hereof which are otherwise lawful and valid shall remain in full force and effect.

(e) This Agreement shall be deemed to be a contract under, and for all purposes shall be governed by, and construed and interpreted in accordance with, the laws of the State of California without giving effect to conflicts of laws provisions.

The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

(f) This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a "*Communication*"), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. The Debtor agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on the Debtor to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of each of the Debtor enforceable against it in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the

authorization under this paragraph may include, without limitation, use or acceptance by the Secured Party of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Secured Party may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("*Electronic Copy*"), which shall be deemed created in the ordinary course of the such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Secured Party is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Secured Party pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Secured Party has agreed to accept such Electronic Signature, the Secured Party shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the Debtor without further verification and (b) upon the request of the Secured Party, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, "*Electronic Record*" and "*Electronic Signature*" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time. The Debtor acknowledges that this Agreement is and shall be effective upon its execution and delivery by the Debtor to the Secured Party, and it shall not be necessary for the Secured Party to execute this Agreement or any other acceptance hereof or otherwise to signify or express its acceptance hereof.

(g) The Debtor irrevocably submits to the non-exclusive jurisdiction of the courts of the State of California and the courts of the United States of America located in the County of San Francisco and agrees that any legal action, suit or proceeding arising out of or relating to this Agreement may be brought against the Debtor in any such courts. Final judgment against the Debtor in any such action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the judgment, or in any other manner provided by law. Nothing in this Section 7(g) shall affect the right of the Secured Party to commence legal proceedings or otherwise sue the Debtor in any other appropriate jurisdiction, or concurrently in more than one jurisdiction, or to serve process, pleadings and other papers upon the Debtor in any manner authorized by the laws of any such jurisdiction. The Debtor irrevocably waives to the fullest extent permitted by applicable law: (a) any objection which it may have now or in the future to the laying of the venue of any such action, suit or proceeding in any court referred to in the first sentence above; (b) any claim that any such action, suit or proceeding has been brought in an inconvenient forum; (c) its right of removal of any matter commenced by any other party in the courts of the State of California to any court of the United States of America; (d) any immunity which it or its assets may have in respect of its obligations under this Agreement from any suit, execution, attachment (whether provisional or final, in aid of execution, before judgment or otherwise) or other legal process; and (e) any right it may have to require the Secured Party in any suit, action or proceeding brought in any of the courts referred to above arising out of or in connection with this Agreement to post security for the costs of the Debtor or to post a bond or to take similar action.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Debtor has caused this Agreement to be duly executed and delivered as of the date first above written.

ORANGE COUNTY POWER AUTHORITY

By _____
Name: _____
Title: _____

Accepted and agreed to as of the date first above written.

MUFG UNION BANK, N.A.

By _____
Name _____
Title _____

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 6.2

To: Orange County Power Authority Board of Directors

From: Antonia Graham, Chief Operating Officer

Subject: UPDATE ON CALIFORNIA PUBLIC UTILITIES COMMISSION ENERGY EFFICIENCY PROGRAM FUNDING

Date: September 14, 2021

RECOMMENDED ACTION

Approve Staff's Recommendations on the submittal of seven energy efficiency customer programs to the California Public Utilities Commission for the Elect to Administer and Apply to Administer funding pathways.

DISCUSSION

Since the May Board Meeting, Staff has been updating the Authority Board of Directors on efforts to obtain energy efficiency program funding from the California Public Utilities Commission (CPUC) through two distinct pathways; Elect to Administer and Apply to Administer. Both of which would enable the Authority to fund customer programs as early as 2022. As part of the ongoing research and analysis of potential funding pathways; Staff has held weekly meetings with The Energy Coalition (TEC), met with multiple CCAs who have secured funding from the CPUC, met with community colleges, and industry professionals to assist us in forming the proposed programs.

Currently, three CCAs in California have successfully secured this type of funding for customer programs, with two additional CCA program applications pending CPUC approval. Once approved, CCAs become an administrator of these funds that are collected from CCA customers through a non-bypassable charge authorized by the CPUC for energy efficiency and conservation programs. The CPUC authorized funding covers all costs associated with the implementation and administration of these programs with no impact on CCA operational budgets.

Staff believes that launching programs in Fiscal Year 2022/23 would enable the Authority to attract new members and increase the visibility of the Authority in the communities in which we serve. Part of the application process and Business Plan filing requires that we seek feedback on proposed programs, thus; the Chief Operating Officer and Staff from the Energy Coalition held six community feedback sessions in our four member cities. Feedback was requested on seven distinct program offerings that our communities would be interested in and that meet the cost effectiveness requirements set forth by the CPUC.

The seven programs and their funding prioritization/source are listed below. A detailed Community Workshops Summary document is attached to the Agenda Report.

Programs Selected for Elect To Administer		
Program	Why?	Additional considerations
Business Energy Analysis and targeted EE rebates	<ul style="list-style-type: none"> • Likely “cost-effective” • High reach • OCPA Commercial service launching first • Potential OCPA customer retention 	Low-touch model is more cost effective
Hands-on energy project support for large customers	<ul style="list-style-type: none"> • Likely “cost-effective” • High-touch but limited reach • Significant “peak load” savings opportunity • OCPA Commercial service launching first • Potential OCPA customer retention 	Potential opportunity to leverage upcoming SCE large commercial/industrial program
Residential energy analysis and targeted EE rebates	<ul style="list-style-type: none"> • Likely “cost-effective” • Highest reach • Potential OCPA customer retention 	Low-touch model is more cost effective
Worker match and training program	<ul style="list-style-type: none"> • Limited funding through ETA pathway as a “Market Support” program • Strong interest from community colleges to move this forward 	<ul style="list-style-type: none"> • Not “cost-effective” • Opportunity to leverage SoCalREN resources
Programs Selected for Apply to Administer		
Program	Why?	
Green and small business certification support	<ul style="list-style-type: none"> • Not “cost-effective” • Limited funding through ETA pathway as a “Market Support” or “Equity” program • Limited reach 	
Multifamily tenant-focused improvements	<ul style="list-style-type: none"> • Not “cost-effective” • Limited funding through ETA pathway as a “Market Support” or “Equity” program 	

Municipal incentives for efficiency upgrades	<ul style="list-style-type: none"> • Limited reach • Support is currently being offered and anticipated to expand through SoCalREN
--	--

The feedback meetings were in person and streamed online. Residents and business owners who were in attendance asked questions around prioritization, how programs would be implemented, etc.

It is Staff's professional recommendation that the following programs be submitted for funding under the Elect to Administer Program: (1) Business Energy Analysis and Targeted Energy Efficiency Rebates and (2) Hands on Energy Project Support for large customers. All programs will be submitted in the Business Plan filing for the Apply to Administer pathway.

FISCAL IMPACT

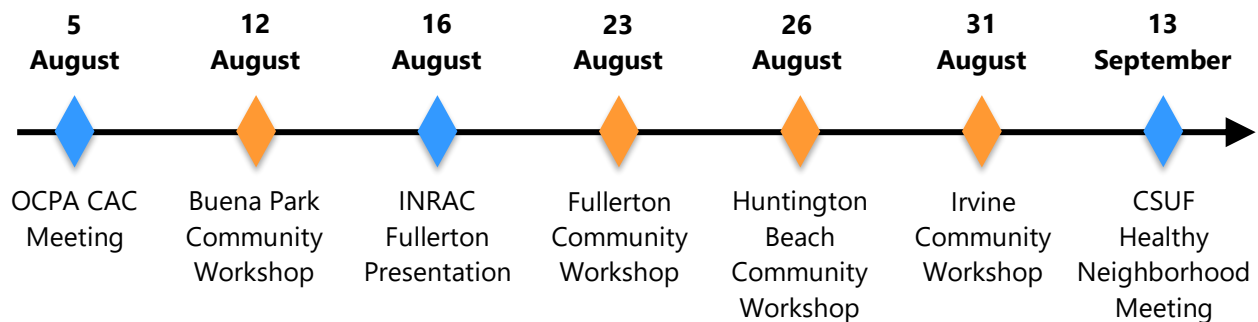
There are costs associated the with the filing of the Business Plan that will necessitate an amendment to the existing professional services agreement with The Energy Coalition. Funds are budgeted and available in the current Fiscal Year budget/

ATTACHMENT

1. Community Workshops Summary

Energy Efficiency Program Development

Workshops and Meetings



Orange County Power Authority
Community Workshop Feedback
September 10, 2021



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Executive Summary & Timeline

Seven energy efficiency programs were presented and discussed at community workshops during the month of August and September as noted in the graphic below. Those seven programs are overviewed on the next page. The discussions and questions/comments from the meetings are provided in the following report. A short listing of frequently used acronyms is included for readability of this report. The Appendix of this document includes a brief overview of the energy efficiency programs offered by existing CCAs, Redwood Coast Energy Authority, Lancaster Choice Energy, Marin Clean Energy, and San Jose Clean Energy.

Timeline of Meetings, August-September 2021





Introduction

Energy Efficiency Programs Under Consideration by OCPA

Business Energy Analysis & Targeted Energy Efficiency Rebates

What: Empower small/medium businesses to lower energy bills with tailored energy-saving tips and roll out rebates based on identified customer need

Why: Provide wide-reaching, high-level support to introduce customers to deeper savings opportunities/rebates

Who: Small/Medium Businesses

Hands-On Energy Project Support for Customers that are Large Energy Users

What: Holistic, tailored energy efficiency approach to maximize energy savings

Why: Target high energy-consuming facilities (with high peak load) to reduce OCPA power costs

Who: Large commercial/industrial

Green Small Business Certification Support

What: Offer support to small businesses to purchase and install energy efficiency technologies and obtain Green Business Certification

Why: Few resources available for small business energy efficiency retrofits

Who: Small businesses (focus on underrepresented businesses)

Residential Energy Analysis and Targeted Energy Efficiency Rebates

What: Empower residents to lower energy bills with tailored energy-saving tips and roll out rebates based on identified customer need

Why: Residential is OCPA's largest customer group (by number of accounts).

Who: Homeowners and renters

Multifamily Tenant-Focused Improvements

What: Empower multifamily residents to lower energy use and bills with tailored energy-saving tips & roll out rebates or full-service retrofits based on identified customer need

Why: The owner and utility bill recipient are often different individuals in multifamily. Rebates or full-service retrofits can bridge the gap between them.

Who: Renters in multifamily housing (target underrepresented neighborhoods)

Worker Match and Training Program

What: Work with community colleges, students and local businesses to design energy efficiency-related curriculum accompanied by apprenticeship and job placement programs.

Why: Mobilize the OC workforce to address energy efficiency industry needs and skill gaps seen by local businesses.

Who: Emerging green-collar workforce, local businesses, community colleges

Municipal Incentives for Energy Efficient Upgrades

What: Targeted energy efficiency rebates and full-service retrofits for cities.

Why: Help OCPA member agencies lead by example and lower energy costs

Who: Cities (city-owned properties) in partnership with SoCalREN



Abbreviations

ATA	Apply to Administer
CAC	Community Advisory Committee
CCA	Community Choice Aggregation
CHERP	Claremont Home Energy Retrofit Project
CPUC	California Public Utilities Commission
EE Program	Energy Efficiency Program
EPIC	Electric Program Investment Charge
ESG	Environmental, Social and Governance
ETA	Elect to Administer
EV	Electrical Vehicle
GHG	Greenhouse Gases
HVAC	Heating Ventilation and Air Conditioning
INRAC	Infrastructure and Natural Resources Advisory Committee
MWD	Metropolitan Water District
NEM	Net Energy Metering
OCBC	Orange County Business Council
OCPA	Orange County Power Authority
OCSD	Orange County Sanitation District
SCE	Southern California Edison
SGIP	Self-Generation Incentive Program
SoCalREN	Southern California Regional Energy Network

Keys to Bulleted Text

➤	This sign indicates a question or comment from a participant.
•	This sign is used in lists, or indicates a reaction to a question or comment.
–	This sign indicates a following point to the previous bullet (•).



OCPA Community Advisory Committee Meeting, 8/5/2021

Community Advisory Committee (CAC) Members in Attendance

City	Name	City	Name
Buena Park	Jose	Huntington Beach	Kathleen
Buena Park	Shannon	Huntington Beach	Steve
Fullerton	Teresa	Irvine	Mohammad
Fullerton	Angela		

General Public Comments Prior to Presentation

Danny Gray from Capo Beach – Greenhouse Gases (GHG) reductions a priority

Linda Kraemer- Costa Mesa -- thanks members

Feedback & Questions from Presentation

- *Would Battery Storage reduce peak demand?*
 - Yes, but would not be eligible to offer financial rebates through this funding, but the funding could market the opportunity here. Also, funding can be used for behavior change programs that shift use.
- *What year was used for the Community Analysis?*
 - Same as what used for the proforma, which was pre-covid.

Business Energy Analysis & Targeted Energy Efficiency Rebates

- *In Buena Park, there is a commercial space called The Source and would you target the large space or the individual tenants?*
 - It would depend on the meter.
 - Potentially explore how we can target tenants.
 - Add entertainment to the list of types of businesses, hotels.
- *This will be data driven to target?*
 - Yes, we will use data to target, but will also want to hear what businesses would be interested.
- *Will this be used to prevent businesses to opt out?*
 - Programs will not launch until later in 2022 but we can tell businesses about this funding.
- *Why would businesses not participate?*
 - We want to hear what would prevent businesses from participating.
- *Suggestion to look at MWD (Metro Water District) and their success since the largest water user was enticed to participate and slash their utility bill.*

Hands-on Energy Project Support for Customers that are Large Energy Users

No comments



Green Small Business Certification Support

- *Why would businesses want to be certified?*
 - Varies by business. Young consumers are interested in eco businesses, some businesses it is in their core values and cities promote the businesses that are certified.
- *Are the savings from the business certification program significant?*
 - Not traditionally cost effective and so the benefits are in the other non-energy market support or equity metrics.
- *Would the benefits from removing polluting refrigerants be recognized?*
 - Yes
 - Should include contractors that manage proper disposal.

Residential Energy Analysis and Targeted Energy Efficiency Rebates

- *Text would be most effective for reaching customers.*
- *How would we be engaging customers: survey online, in-person?*
 - Still exploring

Multifamily Tenant-Focused Improvements

- *Property owner disconnect between tenant and one paying the bill when there is a master meter. Disincentive for the user to conserve, but the owner raises rent. Owners sub-meter to address problems. Supporting installing meters would be most effective.*
- *Is there a limit to how many units to qualify? For example, homes becoming ADU, would they qualify as two unit multifamily?*

Worker Match and Training Program

- *Would love to see this come to Orange County! ESG is hard to find.*
- *Is there an intent to work with Unions? When you talk to apprenticeships, that leads to unions and not sure if they work on the data side.*
- *Do we have metrics or targets yet for these programs?*
 - Not yet and this will come later and will bring it back to group.
- *Interested in an educational ladder program that starts at Junior College (JC) for Associates degrees and leads up.*
 - Connects with discussions with community colleges (CCs) where they have existing sustainability certificates.
- *Mental or confidence barrier for students that think they cannot go the “electrical contractor” gives them a path.*
- *Opportunity to reach out to High School Districts about Career and Technical Education (CTE) programs.*



Municipal Incentives for Energy Efficient Upgrades

- *Discussed program with Superintendent of Facilities at Buena Park. Would special districts such as the Library District qualify?*
 - Yes
- *Would OCSD qualify?*
 - No

General Discussion Post-Presentation

- Resiliency was not discussed -- that would be a separate topic
- Dates of community workshop will be posted on website
- Suggestion to have official name tags for future meetings.
- Presentation and recording will be posted online
- Intro to OCPA packet would be helpful for CAC members when attending community meetings and groups



Buena Park Community Workshop, 8/12/2021

Participants

Councilmember Susan Sonne

Both CAC members, Jose and Shannon

Community Members

6 Community Members

3 City Staff, and translator

Key Observations

Buena Park attendees came with very specific comments, high level of education and engagement on topic. Attendees came prepared to discuss their own utility bills.

Business Energy Analysis & Targeted Energy Efficiency Rebates

No comments

Hands-on Energy Project Support for Customers that are Large Energy Users

➤ *What would this include and will this include audits?*

- Yes, and would be customized for the customer

Green Small Business Certification Support

➤ *This could be used to market and attract businesses in Buena Park?*

- YES! And it can help increase business sales

➤ *Does it include non-profits?*

- Yes

Residential Energy Analysis and Targeted Energy Efficiency Rebates

➤ *Why 4-9?*

- When demand is highest compared to supply

➤ *Will these be on top of SCE rebates?*

- A customer would need to choose.

➤ *Would it go to building management?*

- Complex question; research further

➤ *Feedback: refrigerators are what people are interested in replacing but it needs to be a significant rebate?*

➤ *If I replaced my HVAC 6-months ago, would I be eligible for a rebate?*

- No, it would need to happen in the same calendar year of the program offer likely



- *Would I still be eligible for a low-income program?*
 - Yes
- *Renters in single-family home where they have same challenges as multifamily units?*
 - We will consider
- *How to prevent the waste of the refrigerator?*
 - Renting refrigerator could be an option
 - Hauling old refrigerators potentially partnering with the city franchise hauler

Multifamily Tenant-Focused Improvements

No comments

Worker Match and Training Program

- *Best place is certification testing centers*

Municipal Incentives for Energy Efficient Upgrades / General Discussion

- *Toni mentioned Water energy nexus*
 - Managing when water is pumped
- *Knotts has its own water treatment and conveyance system (not water park)*
 - This would be considered when working through the program.
- *Sprinklers running at peak time of day. Perhaps think of ways to prevent this.*
 - Partnering with other entities like MWD and the City for potential rebates and incentives.

After Meeting Comments

- Hot water circulating pump could be a measure to consider
- Incentivize HVAC is needed
- Tips for small business from City Manager



INRAC Fullerton Presentation, 8/16/2021

Participants

INRAC committee members and INRAC meeting attendees

General Questions

- *Do the benefits of batteries to shift load outweigh the environmental impacts to mine and manufacture these batteries?*
 - Research needed
- *Orange County Sanitation District (OCSD) produce 30% of their own energy to help. What can cities do to support?*
 - Solar + Storage
 - Microgrid
- *Financial assistance in form of grant or loans to replace circuits so they could retrofit from HPS to LED.*
 - Looking for feedback and recognizes that this is a high need.
 - Loan or incentives could be explored for this.
 - OCPA can work with staff to craft this offer.
 - Can partner with SoCalREN on offering.
 - Look at distinct series circuits for retrofits.
- *Residential customers that have their own solar panels and on NEM, will it be possible to shift to OCPA?*
 - OCPA will design a rate so they can transfer from SCE NEM rate
- *Member is interested in having someone give recommendations (i.e. HVAC)*
- *How do you access funding items that are not on the list?*
 - Infrastructure bill may create opportunities for solar/storage/EV
- *Does SCE store energy?*
 - SGIP is SCE's program to incentivize customers to install batteries.
 - Not for residential
- *EV situation and electrification?*
 - SCE funds Charge Ready for charger
 - Natural gas may be phased out
- *What is the impact to the grid from EV charging?*
 - Will look into this.
- *Funding for other items such as microgrid/storage?*
 - EPIC funding and depends on what the community needs



- *Low-interest loans like state revolving funds. Can CCA offer something similar?*
 - Can be explored with ATA
- *Cleaner storage technologies: Pump storage (lift water and then back through generators), hydrogen, liquid air, rotational kinetic energy storage, nuclear*
 - No one is looking at nuclear



Fullerton Community Workshop, 8/23/2021

Participants

Councilmember Fred Jung

Community Members

4 community members in-person

- Jose & Diane from Buena Park
- Arnel Dino, City of Fullerton Planning Commissioner

Zoom 5 participants

- Jane Rands
- Reporter from The Fullerton Observer and 3 others

Key Observations

General Feedback (Energy Efficiency Programs)

- How will resources be divided between commercial and residential customers?
- Will customers on Green Rate be able to access these programs?
- How will we work with owners versus renters for EE incentives?
- Will existing EE efforts be eligible for these programs?
- Interest in audits for energy insight programs
- Interest in involving facility operators and associations

General Feedback (Other Programs)

- Desire for a goal to avoid brownouts
- Interest in solar and storage
- Interest in joining Green Rate

Pre-Program Questions

- *Can we provide a goal to avoid brownouts?*
 - That is the responsibility of SCE.
- *OCPA can invest in local microgrid, storage to support these projects, but this is a few years off.*

Business Energy Analysis & Targeted Energy Efficiency Rebates

- *Can this be done without an audit?*
 - Yes
- *Can businesses leverage solar and storage?*
 - Yes, but these programs do not support those efforts.
 - NEM in the future through OCPA.
 - These programs will focus on EE, top of loading order.



Hands-on Energy Project Support for Customers that are Large Energy Users

- *How could facility managers get engaged in these programs?*
 - We will launch a campaign to reach these customers and coordinating with OCBC to reach these groups

Green Small Business Certification Support

No comments

Residential Energy Analysis and Targeted Energy Efficiency Rebates

- *How much can be saved through the residential program*
 - Educational and Behavioral program, there are savings through simple low-cost actions.
- *Green rate program through SCE. Can I do this through OCPA?*
 - If you stay with SCE, you can utilize some programs.
 - If you move to OCPA 100% renewable rate, you can access all programs.
- *How can you benefit from this program?*
 - No rebate if you purchased equipment in the year prior to the program.
 - Behavioral opportunities
- *How many SCE customers are on the Green rate?*
 - It is a difficult program to join and Toni can look into this.
 - It was not difficult before, but it is now.
 - Toni will follow up on this.

Multifamily Tenant-Focused Improvements

- *Number of multifamily units where the owner pays the bill. How do you incentivize the property owner?*
 - We have been talking about this and will want to work with the property owner about the benefits to upgrades and we are still exploring solutions

Worker Match and Training Program

No comments

Municipal Incentives for Energy Efficient Upgrades

No comments



Huntington Beach Community Workshop, 8/26/2021

Participants

Councilmembers: Mike Posey, Natalie Moser

Mayor Pro Tem Barbara Delgleize

Community Members

4 Community members in-person

Zoom 29 participants

Key Observations

Audience attending workshop engaged and ready to move on with implementation of aggressive renewable energy targets.

General Feedback

- *Steve Shephard/CAC Member: targeting outside funding to help with energy efficiency is spot-on! Not only will this effort help businesses and residents save money on current power bills, but it will also help reduce our peak demand thereby further reducing future energy bills. Excellent ideas and I love the fact that the CPUC via Public Purpose Fees will be supporting this effort!*
- *Steve Shephard/CAC Member: Oftentimes the primary barrier preventing businesses and homeowners from improving their office buildings or homes is a) finding a trustworthy & qualified installer & b) navigating the local permitting process. Would like to see OCPA develop a delivery system within each member city that would allow for simple and efficient delivery of energy conservation upgrades. Examples of this would be: a) OCPA approved installers; b) low or no local permit fees for approved energy conservation upgrade projects; c) digital permitting process for approved installers. By addressing these barriers, it would empower many businesses and homeowners to fully embrace maximum energy conservation upgrades in their commercial buildings and homes.*

Business Energy Analysis & Targeted Energy Efficiency Rebates

- *Ayn Craciun: Why targeting small and medium businesses when large businesses are so significant in target market?*
 - Yes, next program below will discuss that target market.
- *Kathleen McGowan/CAC Member: Peak demand, business sector targeted?*
 - Additional analysis for targeting; if we know customer type, can target programs better.

Hands-on Energy Project Support for Customers that are Large Energy Users

No Comments

Green Small Business Certification Support

- *Kathleen McGowan/CAC Member: Reducing greenhouse gases (swap out refrigerator units)*
 - Extra points if do this particular swap out



- *Council Member/Board Member Mike Posey: Tools to attract/retain businesses to reduce operating costs; attract businesses—cities provide incentives for these businesses with eco-conscious consumers*
- *Bonnie Benton: Doesn't SCE already do these three programs above with businesses?*
 - SCE not providing incentives for the most part today. Limited incentives from investor-owned utilities

Residential Energy Analysis and Targeted Energy Efficiency Rebates

- *Council Member/Board Member Mike Posey: How can renters participate in this if they do not own property?*
 - This is largely behavior-based changes. Make changes on time-of-day energy
- *Sandra Smallshaw: Interested in renewable energy mix—100% renewable, how and when to introduce that—upon initial rollout?*
 - Huntington Beach can offer more than minimum required levels. Board and HB City Council will determine mix.
- *Bonnie Benton: How are peak hours determined?*
 - Based on market need and market demand. When a customer has used most energy throughout whole year. Between 4 p.m. and 9 p.m. the Grid is most stressed. SCE moving customers to Time of Use in CAISO-determined peak.

Multifamily Tenant-Focused Improvements

- *How will this be executed? How would it function?*
 - Contractors would have all proper certifications to execute this.
- *Bonnie Benton: This incentivizes city to process building requests for high density development?*
 - We are really thinking about existing customer base. High density housing development not in conversation. All new construction is more energy efficient because of Title 24.

Worker Match and Training Program

- *Steve Shephard/CAC Member: In order to effectively upgrade thousands of homes and businesses, we will need a workforce skilled in various trades, and it would be wonderful to work with local educational institutions to begin training the workforce we need going forward. If OCPA was to approve installers, one of the conditions could be having locally trained tradesmen and technicians on staff. This is a huge opportunity for both local residents and local business owners to invest in their own communities. Training, jobs, and incentives for local businesses all in an effort to conserve energy, minimize overall demand, and invest in our local communities all sound like a very sustainable model for our cities going forward.*



Municipal Incentives for Energy Efficient Upgrades

- *Ayn Craciun: Climate Action Campaign: integrate into broader policy document to encourage consistency across development.*
- *Council Member/Board Member Mike Posey: What other things can be targeted?*
 - City needs to look at loading order. Take holistic approach. Investment Grade Audit of all City facilities; Energy Action Plan; retro-commissioning. SoCalREN: runs energy efficiency programs. Go deeper with retrofits.
- *Mayor Pro Tem Barbara Delgleize: Energy efficiency for homes, OCPA doing something re bringing sustainability into home; modeled on Claremont CHERP program (Claremont Home Energy Retrofit Project <https://sustainableclaremont.org/what-we-do/cherp/>). All towards benefit of user. A lot of opportunity to educate.*



Irvine Community Workshop, 8/31/2021

Participants

Mayor Farrah Khan

Community Members

5 Community Members

Zoom 18 participants

Key Observations

General Feedback (EE program)

- *What are the prospects for offering all energy efficiency programs at same time?*
 - We will need to wait for program revenue to come in to determine timing of program launches. If OCPA was to partner with a 3rd party provider there is possibility. Elect to administer funding is available in mid to late 2022. We need CAC members, interested residents to spread the word on the programs, along with all City partners.
- *Which program will offer the largest peak use reduction for the grant monies provided? Where can OCPA get the biggest bang for the dollars invested?*
 - Large commercial and industrial users will be targeted in this situation.

General Feedback (non-EE program)

- *How is OCPA as an organization providing transparency in its operating processes when public records requests are not being fulfilled? Where are meeting videos?*
 - Public records requests are being managed as quickly as possible; there are two full-time staff members currently. All meeting videos are posted as soon as received by OCPA.

Business Energy Analysis & Targeted Energy Efficiency Rebates

- *How will programs be prioritized?*
 - Target high energy users. Elect to Administer and Apply to Administer are two funding pathways. Propose all programs to OCPA Board at the next meeting on September 14th at 10:00 a.m. In Elect to Administer, OCPA will likely apply for 1 to 2 programs. High energy users should be a priority, i.e., Commercial business programs. Apply to Administer category has much larger reservoir of funds. Recommendations will be made to OCPA Board for discussion, with Board deciding on which programs to initially apply for.
- *What kinds of incentives and rebates?*
 - We will work with individual businesses to customize incentives and rebates based on respective needs.



Hands-on Energy Project Support for Customers that are Large Energy Users

➤ *Jennifer Ward, Orange County Business Council, Do the program funds cover any implementation costs for this or just the advisory costs?*

- Covers all aspects, marketing, implementation and incentives up to 100% of costs; energy side is fully funded.

Green Small Business Certification Support

➤ *Are businesses required to have a certain level of renewable energy in their electricity mix to gain this certification?*

- No it is not required, but would be great if they did. Would get more points if 100% renewable energy. The businesses will need to be customers of OCPA to gain this certification.

Residential Energy Analysis and Targeted Energy Efficiency Rebates

➤ *Will this program Include rebates for heat pump, water heaters, and the like?*

- Yes, these can be included in the rebates if the community/cities are interested.

Multifamily Tenant-Focused Improvements

➤ *Comment: support investment on electrification for homeowners*

➤ *Residential rebates are detailed on the OCPA website?*

- The site is being revamped, and will include information on this in the future.

Worker Match and Training Program

➤ *Comment: Suggest having quick, short 6-8 week trainings at Junior Colleges/Community Colleges to get program certifications. Non-credit with focus on serving business skill-set needs*

Municipal Incentives for Energy Efficient Upgrades

➤ *How will this be implemented with cities perhaps needing different upgrades?*

- Customize programs will be developed for each city: each city has different needs—for example some will need streetlights, others may focus on older buildings. Customized programs will be developed to fit each city's needs.

➤ *John, how can businesses who make energy efficient business adjustments but get no rebate/incentive be incentivized?*

- OCPA is looking into a split incentive allocation for those businesses.



Appendix 1: California Community Choice Association (CalCCA)

CalCCA Website URL

<https://cal-cca.org/about/>

CalCCA Review of California CCA Programs

<https://cal-cca.org/cca-programs/>

The CalCCA website provides an overview of the many programs California CCAs are offering. The listings in the two tables on the following pages, though not exhaustive, shows a high-level view of the various CCAs offerings. OCPA is pursuing funding for Energy Efficiency Program offerings.



Table 1. Cal Choice, Table of Programs, Part 1



	Apple Valley Choice Energy	Central Coast Community Energy	Clean Power Alliance	CleanPowerSF	East Bay Community Energy	King City Community Power	Lancaster Choice Energy	MCE	Peninsula Clean Energy	Pioneer	PRIME	Rancho Mirage Energy Authority	Redwood Coast Energy Authority	San Jacinto Power	San Jose Clean Energy	Silicon Valley Clean Energy	Solana Energy Alliance	Sonoma Clean Power	Valley Clean Energy
Budget Billing				In dev.			✓												
Battery Storage Rate				In dev.	✓ (pilot)			✓								✓ (Same as PG&E)		In dev.	
Battery Storage Incentives								✓								In dev.		✓	
Demand Response		✓	✓	✓				In dev.	In dev.							In dev.		✓	✓
EV Rate		✓	✓	✓	✓ (Same as PG&E)		✓	✓	✓	✓ (Same as PG&E)	✓		✓		✓ (Same as PG&E)	✓ (Same as PG&E)	✓	✓	✓ (Same as PG&E)
EV Bus Program		✓		✓			✓		✓									✓	
EV Incentives (vehicles and/or charging)		✓					✓	✓	✓				✓		In dev.	✓		✓	In dev.
EV Load Shifting								✓								✓ (pilot)		✓	
Energy Efficiency				In dev.			✓	✓		In dev.			✓			In dev.		✓	✓
Energy Efficiency Data Sharing					✓														
Feed-In Tariff		In dev.		In dev.				✓					✓					✓	
Building Electrification		✓			In dev.			✓	In dev.				✓			✓		✓	In dev.
Low-Income & Multifamily EE		✓						✓	In dev.		✓		✓						
Solar Incentives												✓	✓						
On-Bill Repayment				In dev.				✓										In dev.	
Education, Outreach, and/or Innovation Grants			✓		✓				✓	In dev.						✓		✓	
Low-Income Solar Incentives		✓	In dev.	✓	✓	✓		✓	In dev.		✓								



Table 1. Cal Choice, Table of Programs, Part 2

	Apple Valley Choice Energy	Central Coast Community Energy	Clean Power Alliance	CleanPowerSF	East Bay Community Energy	King City Community Power	Lancaster Choice Energy	MCE	Peninsula Clean Energy	Pioneer	PRIME	Rancho Mirage Energy Authority	Redwood Coast Energy Authority	San Jacinto Power	San Jose Clean Energy	Silicon Valley Clean Energy	Solana Energy Alliance	Sonoma Clean Power	Valley Clean Energy
Customer Load Shifting			✓	✓				✓								In dev.		✓	
Microgrid Development		✓					✓			In dev.			✓						
Citizen Sourcing			✓				✓						✓						
Energy Education in Local Schools				In dev.					✓						✓			✓	
Dividend Program		✓																	✓
Solar Referral Service			✓													✓			
Solar+Storage Offerings			In dev.		✓			✓	✓		In dev.		✓			✓		✓	
Advancing Reach Codes		✓			✓				✓							✓		✓	
Advanced Energy Rebuild								✓										✓	
TOU Rates				✓	✓ (Same as PG&E)		✓	✓		✓ (Same as PG&E)			✓		✓ (Same as PG&E)	✓ (Same as PG&E)	✓	✓ (Same as PG&E)	✓ (Same as PG&E)
Customer C&I Clean Power Offerings																✓			
Workforce Education & Training								✓								✓		✓	
Emissions Inventory Support for Member Agencies		✓														✓			
Property Assessed Clean Energy (PACE)										✓									



Appendix 2: Other CCA Energy Efficiency Programs/Offerings

Energy Efficiency Programs/Offerings from CCAs

The below table outlines the CCAs that have applied for EE funding from the CPUC and current status.

CCA	Option	Programs	Authorized Funding	Status
Marin Clean Energy	Apply to Administer	<ul style="list-style-type: none">• Residential (single & multifamily)• Commercial• Industrial• Agricultural• Workforce, Education & Training	\$85,736,000 (8-yr funding cap)	Approved through 2025
Lancaster Choice Energy	Elect to Administer	<ul style="list-style-type: none">• Small Commercial Direct Install• Energy Advisor program for residential customers	\$1,174,996 (3-yr funding cap)	3-yr funding approved April 2018
Redwood Coast Energy Authority	Elect to Administer	<ul style="list-style-type: none">• Non-Residential Direct Install• Residential Direct Install	\$1,896,704 (3-yr funding cap)	3-yr funding approved May 2020
San Jose Community Energy	Elect to Administer	<ul style="list-style-type: none">• Single-Family Residential• Commercial + Schools	\$5,066,776 (3-yr funding cap)	Approval from CPUC anticipated 9/9/21
CleanPowerSF	Elect to Administer	<ul style="list-style-type: none">• Community Food Service Energy Efficiency Program	\$4,579,056 (3-yr funding cap)	Under review by CPUC

Additional details about Redwood Coast Energy Authority (RCEA), Lancaster Choice Energy (LCE), Marin Clean Energy (MCE), and San Jose Clean Energy (SJCE) offerings are detailed below.



1. Redwood Coast Energy Authority (RCEA)

RCEA Website URL

<https://redwoodenergy.org/>

RCEA: Residential Services

RCEA offers Free Energy Advisor Consultations to residential customers that fill out an interest form on their website.

The RCEA Energy Saving Check List provides residential customers with a short, easy-to-use check list to help with achieving energy savings.


<https://redwoodenergy.org/wp-content/uploads/2020/10/EnergySavingcheck-list.pdf>


RCEA ENERGY SAVING Check List


Here are some easy ways you and your family can reduce your energy consumption and energy bill while at home. Energy bills rise with increased heating and use of electronics and appliances. It is always worth it to take the time to improve your home's environment and efficiency.


Everybody's home is different, but think of your home "as it is" and try to save energy while retaining comfort. Use whatever tools and materials you already have to avoid having to make purchases.

1

☐ Go into your yard or outside in the morning or anytime to **acclimate to weather**, you will be less likely to want to warm the whole house when you are refreshed from the outside. **Put on a sweatshirt** or dress warmly and lower your heater thermostat a couple degrees or turn it off no lower than 55 degrees.

☐ Check your **weatherstripping** on windows and doors, tighten up what you can.

☐ Unblock and vacuum furnace registers. **Free flowing furnace registers** are important to maintain peak efficiency of your heating system. Move furniture and clutter away from your furnace registers to ensure even heating in your rooms. Vacuum any build-up on the registers to ensure free air flow. Also, if floor registers come up easily, pull up & check for debris, and gently vacuum out the duct as needed, being careful not to damage the duct.

☐ Inspect **furnace filter** and replace if it's dirty and you have a spare. Free flowing furnace filters are critical for maintaining peak efficiency of your heating system.

RCEA also offers Heat Pump Rebates (water heaters and HVAC) and no-cost Energy Efficiency Kits for residential customers. The kits are valued up to \$75 and customized to include LED light bulbs, smart power strips, showerheads, weather stripping, and more.

Energy Efficiency Kits

RCEA is offering Heat Pump Rebates for residential and commercial settings.

Our FREE customized Efficiency Kits are valued at up to \$75.

\$ Heat Pump Rebates

Free Efficiency Kit



RCEA: Commercial Services

RCEA offers incentives to commercial and public customers to reduce the cost of EE upgrades.

"Illuminations", gives first-hand accounts from businesses and agencies as to how they strengthened their respective bottom-line at the same time as also saving on energy costs.

<https://redwoodenergy.org/illuminations/>



illuminations

Local businesses and agencies shed light on how they reduced their losses and saved energy at the same time.

Humboldt County businesses are leading the way to achieving economic and energy-reduction goals through reduced- or no-cost LED lighting and other upgrades.

The Redwood Coast Energy Authority has been providing energy services for Humboldt County businesses since 2006. Hear some of our customers' stories and check back as we add more. If you have a story to tell, let us know and we would be happy include you.



Karen Diemer
Arcata City Manager



2. Lancaster Choice Energy (LCE)

LCE Website URL

<https://www.lancasterchoiceenergy.com/>

LCE Overview

LCE has an Energy Savings Tab/Section that includes, Programs, Tips, and Rebates on their website. Though an Energy Advisor Program is prominently displayed, if you click through it notes that the program is no longer available. The Small Commercial Direct Install Program noted in the website is also no longer available. These programs were popular when initially launched and funding is now fully exhausted.



LCE Programs and Rebates

Energy Advisor Program

The Energy Advisor Program allows homeowners get a free survey to highlight some of the ways to use less energy around the house, including weatherization, efficiency upgrades, and special financing programs for energy saving appliances and equipment.

Small Commercial Direct Install Program

The Small Commercial Direct Install Program supplies qualified Lancaster business owners with free energy saving products and free installation, such as lighting and refrigeration upgrades.



LCE Energy Efficiency Tips

Cold Weather	Warm Weather	Everyday	To Teach Children	
<ul style="list-style-type: none">• When using the fireplace, turn down your heater. When you're not using it, close the damper to prevent cold air from coming in.• Open curtains on your south-facing windows during the day to allow sunlight to naturally heat your home, and close curtains, shades, and blinds at night to help prevent warm air from escaping.• When you're at home, set the furnace thermostat at 68°F or lower, health permitting. Three to five percent more energy is used for each degree the furnace is set above 68°F.				

LCE Financing

This section includes several programs that are administered outside of LCE:

Residential Energy Efficiency Loan (REEL) Program

The **Residential Energy Efficiency Loan (REEL) Program** helps California homeowners and renters access attractive financing for energy efficiency projects. REEL is a state-administered program available to California homeowners or renters who receive service from any of the investor-owned utilities, or a CCA such as Lancaster Choice Energy. Financing is available for energy efficient projects including heating and cooling, windows, water heating, appliances, cool roofs, and more.

Property Assessed Clean Energy (PACE) Programs

The City has partnered with multiple Property Assessed Clean Energy (PACE) providers to offer innovative financing solutions for homeowners looking to make energy-efficient and water-saving upgrades to their homes.



3. Marin Clean Energy (MCE)

MCE Website URL

<https://www.mcecleanenergy.org/>

MCE Programs and Rebates for Residential Customers

Residential Customers are offered several programs to assist with energy savings and management.

Energy Savings & Management >	Energy Savings for Homes
Energy Storage	Energy Savings for Multifamily Properties
COVID-19 Relief Resources for Households	Advanced Energy Rebuild Napa
	Smart Energy Practices
	Energy Expert Advice

MCE Program: Energy Savings for Homes


<https://www.mcecleanenergy.org/home-savings/#Energy-Savings>

Increase Comfort and Reduce Bills with Energy Savings

Receive a Free Energy-Saving Gift Box, Virtual Home Energy Assessment & Energy Upgrades!

Heating, cooling, and water heating account for more than half of your home's energy costs. MCE can help you save money and energy while making your home more comfortable. Qualifying single-family homeowners and renters can receive a free gift box with energy-saving products, virtual home energy assessment, and free home energy upgrades – all of which can help lower utility bills and make your home more comfortable.

The free virtual home assessment, performed by a trained energy advisor, will help you maximize your energy savings and identify additional ways to improve your home's efficiency. If you need assistance installing the products from your free energy-saving gift box, your energy advisor can help you during the call. Your energy advisor will also see if your home qualifies for free home energy upgrades, such as attic insulation, gas furnace replacement, water heater replacement, and more!



Free Energy Upgrades**

- Heat pump
- Water heater
- Attic insulation
- Gas furnace
- Duct sealing
- Pipe insulation

*Eligibility for these additional free upgrades will be determined during the virtual home assessment.



MCE Program: Water Heater Rebates

<https://www.mcecleanenergy.org/home-savings/#waterheater>

Heat pump water heaters are 3x more efficient than gas water heaters and eliminate the risk of carbon monoxide or nitrogen dioxide leaks. As an added benefit, heat pump water heaters allow you to preheat water during times of the day when power is cheaper and store the hot water for use during peak times when costs are higher.

Rebates are available to make heat pump water heaters a more economical option for MCE customers. For homeowners wishing to fully electrify their homes, a heat pump water heater is a must have.

Fun Fact: You Already Have Heat Pump Technology in Your Home!

Heat pumps are not a new technology – in fact, if you have a refrigerator in your home, you already have a heat pump. Heat pumps use electricity and refrigerants to take heat from the surrounding air and transfer it to the water in the tank.



Are you a licensed contractor?

If you are a licensed contractor, you can participate in the **Heat Pump Water Heater Program** and receive cash incentives per installed unit. Enrolling is simple.

MCE Supported Program: Low Income Home Energy Assistance Program (LIHEAP)

<https://www.mcecleanenergy.org/home-savings/#Healthy-Home-Offerings>

Low Income Home Energy Assistance Program (LIHEAP) participants in Marin County can automatically take advantage of home energy services from MCE and a network of local providers.* Our comprehensive home assessment takes a whole-house approach to improve the energy efficiency, health, safety, and accessibility of your home, and customize services to best meet your needs.

*Made possible through funding by Marin Community Foundation (MCF).

Benefits

- Free home assessment
- Customized report that pinpoints which measures will save you the most money and be the most beneficial for your home, and for your health and safety



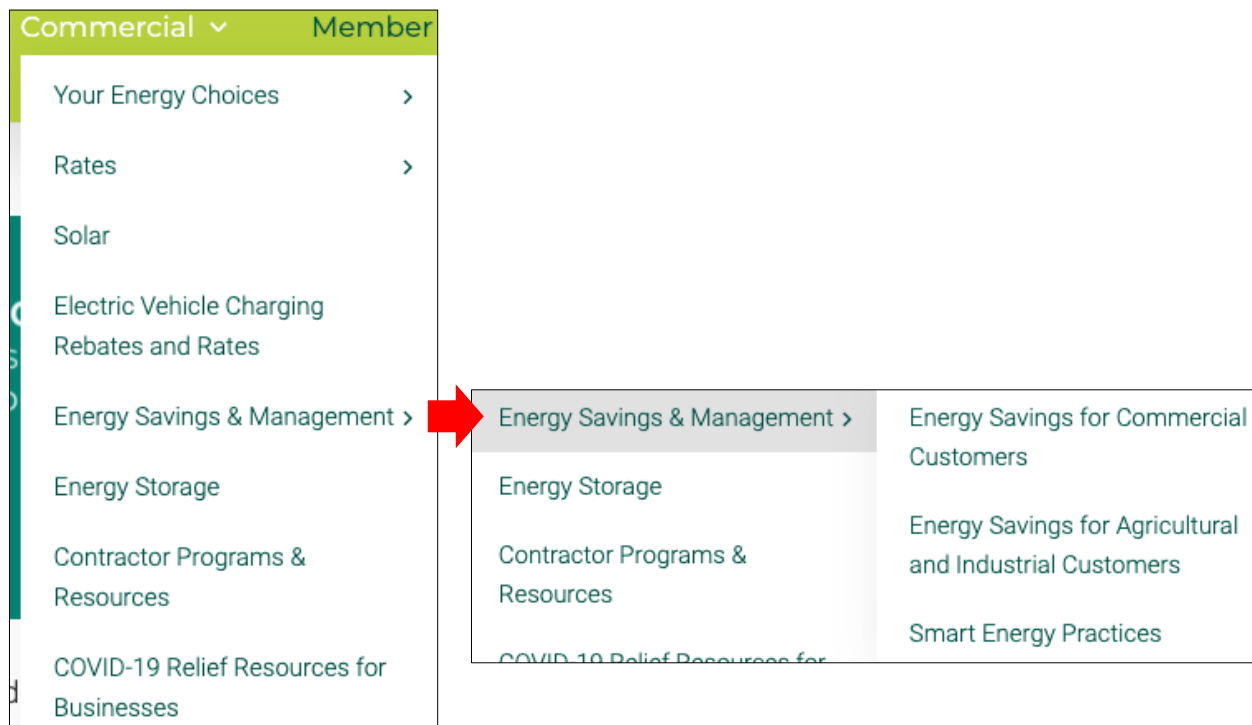
Sample Energy Savings Upgrades

Attic insulation
Air leak seals
Window, door, water heater, furnace repairs or replacements



MCE Programs and Rebates for Commercial Customers

<https://www.mcecleanenergy.org/business-savings/>



We're Here To Serve Your Business

Greener business is better business, and the first step to running a greener business is open to you. Take advantage of MCE's commercial energy efficiency program to lower your energy bills, reduce costs, and improve productivity.

Commercial properties in MCE's service area are eligible to receive:

- No-cost energy assessments and project specifications
- Qualified equipment suppliers and contractors
- Rebates to offset the cost of your project
- Start-to-finish project management and technical assistance
- Post-project quality assurance
- Assistance in sourcing energy efficiency project financing

Eligible energy efficiency projects cover a range of energy efficiency technologies, including heating, ventilation and air conditioning (HVAC), refrigeration and controls.

For more information, please email energysavings@mceCleanEnergy.org.

For agricultural and industrial customers, please visit the [MCE AIR Program webpage](#).



MCE URL: Search of Site for "Efficiency"

<https://www.mcecleanenergy.org/?s=efficiency>



How to Become Energy Efficient

The MCE Cares series focuses on the impacts of climate change, climate action strategies, and the ways you can make a difference. The climate is in our hands. What action will you take? Learn more at mceCares.org. Changing your lifestyle is a simple way to reduce your carbon footprint without making changes to your daily [...]

**SIGN UP
FOR ENEWS**

**SIGN UP
FOR PRESS
RELEASES**

**VIEW
BOARD AND
COMMITTEE
MEETING
PACKETS**

By Sarah Dilleuth | August 27th, 2021 | [Energy Tips and Tricks](#), [Energy and Climate Change](#), [MCE Cares News](#), [Energy Efficiency](#), [MCE News](#) | [Comments Off](#)

efficiency



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Energy 101: Energy Efficiency

By Sarah Dilleuth | July 27th, 2021 | [Energy and Climate Change](#), [Energy 101](#), [Energy Efficiency](#), [MCE News](#) | [Comments Off](#)





4. San Jose Clean Energy (SJCE)

SJCE Website URL

<https://sanjosecleanenergy.org/>

Programs and Rebates Overview

SJCE's CPUC-authorized Energy Efficiency programs have not yet launched. Their current website promotes Do-it-Yourself Energy Assessment for homes and multifamily dwellings, as well as professional assessments performed by BayREN (another EE-program administrator). Rebates along with a Low-Income home energy assistance program administered by PG&E are also listed, along with financing loans for homeowners and renters as well as commercial customers programs available to SJCE customers.

<https://sanjosecleanenergy.org/energy-efficiency/>

Programs

- Electric Vehicles
- Electric Homes
- Going Solar
- Backup Power Options
- Energy Efficiency

Programs and Rebates for Single Family Homes Promoted by SJCE

BAYREN HOME+

BayREN's Home+ program offers a free online home energy evaluation, an energy savings kit (up to \$70 value), rebates from \$150 to \$1,500 for home energy improvements, and a Home Energy Advisor to guide you through the process. Rebates can go toward heating and cooling equipment, water heater upgrades, insulation, and air and duct sealing.

Bay Area Regional Energy Network (BayREN) is a public agency collaboration of the nine counties that make up the San Francisco Bay Area. Led by the Association of Bay Area Governments (ABAG), BayREN is funded by utility ratepayer funds through the California Public Utilities Commission.

LEARN MORE

**BAYREN
HOME +**

COMFORTABLE HOME REBATES

This program, which is paid for by ratepayer funds through the Public Purpose Program charge, offers rebates for energy-saving improvements and equipment maintenance, including air conditioning systems, in your home. Rebates can range from \$50 for HVAC refrigerant charge adjustments to \$500 for a Heat Pump Water Heater. The program also includes rebates up to \$250 for air conditioner system maintenance. SJCE customers are eligible for PG&E incentives because all SJCE customers are PG&E customers for electric delivery.





Programs and Rebates for Low-Income Customers Promoted by SJCE

PG&E ENERGY SAVINGS ASSISTANCE PROGRAM

This program, which is paid for by ratepayer funds through the Public Purpose Program charge, provides income-eligible customers with free energy savings improvements. Income eligibility follows the same guidelines as those for CARE. Improvements can include replacing your refrigerator, repairing or replacing your furnace or water heater and installing insulation, weatherproofing, energy-efficient light bulbs, caulking, low-flow showerheads and more.



[LEARN MORE](#)

LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM AND WEATHERIZATION PROGRAM

This federally-funded program managed by Sacred Heart offers assistance for low income eligible renter and homeowner households with paying utility bills, weatherizing your home, and making energy-related home repairs. Sacred Heart's website provides more details on income eligibility requirements.



[LEARN MORE](#)

Programs and Rebates for Apartments and Condos Promoted by SJCE

BAYREN MULTIFAMILY

This program offers rebates and no-cost energy consulting for multi-family properties that undertake energy and water upgrades. The program can provide \$750 per unit for the upgrades.

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[LEARN MORE](#)



PG&E MULTIFAMILY UPGRADE PROGRAM

This program, which is paid for by ratepayer funds through the Public Purpose Program charge, provides program coordination, technical support, and cash incentives of \$400 to \$3,000 per unit for energy efficiency retrofits to existing multifamily properties with five or more units.



[LEARN MORE](#)

Programs and Rebates for Businesses Promoted by SJCE

BAYREN BUSINESS MICROLOANS

Local government organization, BayREN, and nonprofit Mission Asset Fund (MAF) have partnered to help Bay Area businesses access energy efficient upgrades. The Microloan Program offers 0% interest loans, ranging from \$500 to \$2,500, to cover the cost of certified energy-saving improvements. Start the simple [microloan application process](#) today and you could get approved in as little as 1-2 business days!

Bay Area Regional Energy Network (BayREN) is a public agency collaboration of the nine counties that make up the San Francisco Bay Area. Led by the Association of Bay Area Governments (ABAG), BayREN is funded by utility ratepayer funds through the California Public Utilities Commission.



[LEARN MORE](#)

Financing Options Promoted by SJCE

FHA-Insured Loan Products

FEDERAL HOUSING ADMINISTRATION (FHA)–INSURED LOAN PRODUCTS

Program offers several financing products for homeowners with an FHA-insured mortgage. Products include the Energy Efficient Mortgage Program, the Title 1 Home Improvement Loans Program, and the 203(k) Rehabilitation Mortgage Insurance Program





Financing for Small Business

SMALL BUSINESS ENERGY EFFICIENCY FINANCING PROGRAM

This program offers affordable financing for energy efficiency projects for businesses with 100 employees or fewer. Financing can cover up to 100% of project costs including equipment upgrades and non-energy upgrades.

The Small Business Energy Efficiency Financing (SBF) program is a program of GoGreen Financing is the public-facing platform of the California Hub for Energy Efficiency Financing (CHEEF). The CHEEF is administered by the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), a state agency housed in the State Treasurer's Office. CHEEF and GoGreen Financing are paid for by ratepayer program funds.



Financing for Residential

RESIDENTIAL ENERGY EFFICIENCY LOAN PROGRAM

This program offers affordable financing for energy efficiency projects for homeowners and renters in single family homes, townhomes, condos, duplexes, triplexes, and fourplexes. Financing can cover projects related to heating and cooling, windows, water heating, insulation, appliances, lighting, and cool roofs.

The Residential Energy Efficiency Loan (REEL) program is a program of GoGreen Financing. GoGreen Financing is the public-facing platform of the California Hub for Energy Efficiency Financing (CHEEF). The CHEEF is administered by the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), a state agency housed in the State Treasurer's Office. CHEEF and GoGreen Financing are paid for by ratepayer program funds.





Financing for Residential/Multifamily

AFFORDABLE MULTIFAMILY ENERGY EFFICIENCY FINANCING PROGRAM

Program offers financing for energy savings measures or demand response for affordable multifamily properties of five or more units, where at least 50% of the units are restricted to income-eligible households. Complements existing affordable multifamily energy efficiency programs that offer rebates or incentives by offering attractive financing for project costs not covered by other rebates. Financing can cover projects such as building sealing and insulation, appliance upgrades, and HVAC improvements.



The Affordable Multifamily Energy Efficiency Financing (AMF) program is a program of GoGreen Financing is the public-facing platform of the California Hub for Energy Efficiency Financing (CHEEF). The CHEEF is administered by the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA), a state agency housed in the State Treasurer's Office. CHEEF and GoGreen Financing are paid for by ratepayer program funds.

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 6.3

To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer
Ryan Baron, General Counsel

Subject: AGREEMENT FOR DATA MANAGEMENT AND CUSTOMER CALL
CENTER SERVICES

Date: September 14, 2021

RECOMMENDED ACTION

Approve Data Management Agreement with Calpine Energy Solutions, LLC for a term of five years and a total amount of \$12,900,000.

BACKGROUND

At the June 22, 2021, Board Meeting the Board authorized Staff to negotiate a contract for Data Management and Customer Call Center Services with Calpine Energy Solutions. At that time, the Board directed the Chief Executive Officer and the General Counsel to negotiate a contract and bring said contract back to the Board for approval.

Calpine was selected on the merits of their extensive experience providing data management and customer service to 20 CCAs in California, as well as on the value-added services which they were able to tailor to the Authority's anticipated needs during startup and during continued operations.

The proposed scope of work includes the following:

1. Receive and process CCA service requests from SCE
2. Maintain customer usage data from SCE servers, including hourly interval usage data at billing level quality.
3. Communicate and store the amount to be billed by SCE for services provided by the Authority.
4. Receive and store payment transactions toward Authority charges from SCE after payment is received by the SCE from customers.
5. Provide a portal for all authorized Authority Staff and consultants with continuous real time access to all raw IOU data inputs and post processing data outputs.
6. Provide a collaborative customer call center with specific performance measures.
7. Reporting
 - a. Develop a web-based rate comparison tool for OCPA and IOU rates.
 - b. Submit a monthly generation extract file to Western Renewable Energy Generation Information System (WREGIS) on the Authority's behalf.
 - c. Weekly and monthly reports
 - d. Other reports as needed

Calpine has also offered the Authority the following: 1. A waiver of \$1.75 million in fees over 36 months. 2. Ability for Authority Staff to collocate a new call-center location; this includes roughly \$600,000 of value towards office space and tenant improvements. 3. Program Funds of \$500,000. 4. Recurve FlexMarket Credit of \$1,000,000. 5. 3% community benefit dollars.

The Chief Operating Officer who will oversee this function met with Calpine Staff and has scheduled bi-weekly kick-off meetings to ensure that this highly important operational function is not delayed. Additionally, in the coming weeks Staff will begin the work necessary to launch the data management and call center services such as issuing a Request for Proposal for Print Services, begin the search for a Call Center location, and begin the process of hiring account executives.

FISCAL IMPACT

Initial services will be funded from Fiscal Year 2021/2022 Budget. Upon launch rate revenue will cover ongoing costs in Spring 2022. The estimated fiscal impact over the five-year (60 months) contract period is a not-to-exceed amount of \$12,900,000.

ATTACHMENT

1. Agreement with Calpine Energy Solutions, LLC

DATA MANAGEMENT AGREEMENT BY AND BETWEEN ORANGE COUNTY POWER AUTHORITY AND CALPINE ENERGY SOLUTIONS LLC

1. PARTIES AND DATE.

This Data Management Agreement (“**Agreement**”) is made and entered into on September 14, 2021 (“**Effective Date**”), by and between the ORANGE COUNTY POWER AUTHORITY, a California joint powers authority (“**Authority**”) and CALPINE ENERGY SOLUTIONS, LLC, a California limited liability company (“**Consultant**”). Authority and Consultant are sometimes individually referred to as a “**Party**” and collectively as “**Parties.**”

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assumes responsibility for the provision of certain professional services required by Authority as part of its community choice aggregation program on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing data manager services and is familiar with the plans of Authority.

In addition, Consultant is willing to advance funds to Authority to cover the costs of certain community choice aggregation program services necessary for CCA launch and operations, up to the Power Start Date, as defined in Exhibit A. Authority will reimburse Consultant with interest for such advances, as set forth herein. Consultant is willing to satisfy certain California Public Utilities Commission (“**CPUC**”) bond requirements on Authority’s behalf until the CCA program is generating revenue to Authority, and at such time will relieve Consultant from such requirements, as set forth herein.

2.2 Project.

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

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to Authority all labor, materials, services, and incidental and customary work necessary to fully and adequately supply the data manager services necessary for the Project (“**Services**”), which Services are more particularly described in Exhibit A, attached hereto, and which are stated in the proposal to Authority. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. This Agreement shall be effective on the Effective Date. Unless earlier terminated as provided herein, this Agreement shall remain in effect through sixty (60)

months after the date of initial Power Start Date (“**Initial Term**”). Consultant shall provide the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. 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 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.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement. 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 conformance with the Schedule, Authority shall respond to Consultant’s submittals in a timely manner.

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

3.2.4 Advances for CCA Launch and Startup Operations. Consultant will provide cash advances to Authority, up to a maximum of \$500,000 (“**Advances**”). Authority may make requests for Advances from time to time. Each request shall include a description of the expense that the Advance will be used for. All Advances must be submitted prior to the Power Start Date and approved by Consultant as qualified CCA Services provided by other contractors, including governance and marketing services. Authority shall reimburse Consultant for all such Advances made to Authority, plus the additional sum of five percent (5%) interest per annum to compensate Consultant for its administrative costs and the cost of providing funds for the Advances. Consultant shall notify Authority of the total amount of Advances, including interest owed, as of the Power Start Date. The amount of Advances amount including interest shall be reimbursed in twelve equal monthly installments beginning ninety (90) days after the Power Start Date (“**Advance Reimbursement Payments**”). Full reimbursement shall be made on or before fifteen (15) months after the Power Start Date. The obligations of Authority to reimburse the Consultant and the interest that accrues thereupon will be memorialized by the execution of a promissory note, which is attached hereto as Exhibit B.

3.3 Conditions to Consultant's Performance.

3.3.1 Information and Assistance. Upon Consultant's reasonable request, Authority shall provide such information and assistance as is reasonably required for Consultant to provide the Services. If 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. Notwithstanding any provision to the contrary herein, failure by Authority to provide Consultant with such information or assistance shall not constitute an Event of Default; provided, however, that Consultant's performance or lack of performance under this Agreement shall be excused to the extent that it is materially hindered, prevented or impacted as a result of Authority's failure or inability to provide such information or assistance.

3.3.2 Notification. Authority shall notify all other relevant parties, including, but not limited to, its energy supplier ("**Supplier**"), the Utility Distribution Company ("**UDC**"), which is currently Southern California Edison, and also anticipated to be San Diego Gas & Electric, and Authority's lender(s), as necessary, of the existence of this Agreement and Consultant's role as contemplated in this Agreement.

3.3.3 Authority's Representative. Authority hereby designates the Authority Chief Executive Officer, or designee, to act as its representative for the performance of this Agreement ("**Authority's Representative**"). Authority's Representative shall have full authority to represent and act on behalf of Authority for all purposes under this Agreement.

3.3.4 Consultant's Representative. Consultant hereby designates the Vice President of CCA Commercial Operations, or designee, to act as its 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 his or her 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.

3.3.5 Coordination of Services. Consultant agrees to work closely with Authority staff in the performance of Services and shall be available to Authority's staff, consultants and other staff at all reasonable times, which may occur outside of normal business hours.

3.3.6 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 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 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 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 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.

3.3.7 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to Authority, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold 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.

3.3.8 Insurance.

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

3.3.8.2 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. Authority shall be included as an additional insured, but only to the extent of the indemnity obligations of Consultant pursuant to Section 3.6.7 . 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*: \$5,000,000 per occurrence for bodily injury, personal injury and property damage and in the aggregate. (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.

3.3.8.3 Professional Liability. Consultant shall procure and maintain, for a period of three (3) years following completion of the Services, errors and omissions liability insurance. Such insurance shall be in an amount not less than \$2,000,000 per claim, \$5,000,000 in annual aggregate for all claims. 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.

3.3.8.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide copies of blanket endorsements to add the following provisions to the insurance policies:

(A) General Liability.

(i) The Commercial General Liability 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.

(ii) The Commercial General Liability policy shall give Authority, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 04 13 and 20 37 04 13, or endorsements providing the equivalent or broader coverage.

(iii) The additional insured coverage under the Commercial General Liability policy shall be "primary and non-contributory" and will not seek contribution from 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 include that: (1) 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 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 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 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) 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.

(ii) 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 Authority (if agreed to in a written contract or agreement) before 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).

(iii) Consultant shall use best efforts to provide 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 Authority within ten (10) days after the effective date of the renewal.

(iv) 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.

(v) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by 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.

(vi) 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, Authority has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Authority will be promptly reimbursed by Consultant or Authority will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Authority may cancel this Agreement.

(vii) Neither 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.

3.3.8.5 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 Authority, its directors, officials, officers, employees, agents and volunteers. This requirement, however, will not apply to a separately purchased errors and omissions policy.

3.3.8.6 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 Authority.

3.3.8.7 Verification of Coverage. Consultant shall furnish Authority with original certificates of insurance effecting coverage required by this Agreement on forms reasonably satisfactory to Authority. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and must be received and approved by Authority before work commences.

3.3.9 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.4 Fees and Payments.

3.4.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit A. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.4.2 Payment of Compensation. Consultant shall submit to Authority a monthly itemized invoice which shall include all fees related to Services during the previous month and

Advance Reimbursement Payments starting after the Power Start Date. Authority shall, within 30 days of receiving such invoice, review the invoice and pay all approved charges thereon.

3.4.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by Authority.

3.4.4 Extra Work. At any time during the term of this Agreement, Authority may request that Consultant perform Extra Work. As used herein, “**Extra Work**” means any work which is determined by 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 Authority’s Representative.

3.4.5 Prevailing Wages. Unless otherwise agreed to in writing, Consultant agrees to not undertake any work which requires the payment of prevailing wage rates under California Labor Code §§ 1720 *et seq.*, 1170 *et seq.*, and 8 Cal. Code of Regulations § 16000 *et seq.*

3.5 Accounting Records.

3.5.1 Maintenance and Inspection. 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 Authority, at 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.

3.6 General Provisions.

3.6.1 Termination and Expiration of Agreement; Meet and Confer.

3.6.1.1 Termination for Convenience. Authority may, by providing six (6) months 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 3.6, only for those services which have been adequately rendered to Authority, and Consultant shall be entitled to no further compensation; provided, however, that Authority will pay Consultant all of the following: (i) all outstanding Advance Reimbursement Payments, (ii) all start-up cost incurred by Consultant, including staff time, (iii) all costs/payments incurred/made/owed by Consultant to any and all subcontractors, (iv) all costs incurred by Consultant related to the Call Center, including those costs incurred in compliance with Exhibit A, Section 7, (v) all moneys credited to Authority pursuant to Exhibit A, Section 4, “Waiver of Service Fees”, (vi) all costs incurred by Consultant associated with Exhibit A, Section 8, “Support for Local Energy Efficiency and Demand Response Programs”, (vii) all moneys and interest owed under Section 3.2.4 “Advances for CCA Launch and Startup Operations”, (viii) Authority shall replace the full amount of the CPUC bond posted by Consultant pursuant to Section 3.2.4 and

shall reimburse consultant for all costs incurred by Consultant related to this Section, (ix) any and all documented out-of-pocket costs incurred by Consultant, (collectively, "Termination Payment"), provided, however, that if such termination for convenience shall take effect on or after January 1, 2025, and Authority has fully paid all invoiced amounts up that date, then Authority shall not be liable for items (i) through (vi) inclusive in the foregoing. Consultant may not terminate this Agreement except for cause.

3.6.1.2 Termination for Cause. If any one of the following events (each an "Event of Default") occurs with respect to a Party, then the other Party may terminate this Agreement (inclusive of Exhibits and Addenda) upon written notice to the defaulting Party: (i) with respect to Authority, Authority fails to pay amounts due hereunder, including replacement of the CPUC bond posted by Consultant on behalf of Authority, and such failure continues for seven (7) business 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 twenty (20) business days following written notice to the defaulting Party; (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; or (iv) with respect to Authority, Authority fails to satisfy UDC's credit-worthiness requirements set forth in the UDC tariffs and such failure continues uncured for twenty (20) business days following written notice to Authority from UDC.

3.6.1.3 Effect of Termination. Upon the date of expiration or termination of this Agreement: (i) Consultant shall immediately cease providing Services and Extra Work hereunder; and (ii) the Termination Payment and (iii) any and all outstanding moneys due to Consultant from Authority, if any will become due within ninety (90) days. If the date of expiration or termination of this Agreement occurs prior to the Program Start Date, Authority shall additionally reimburse Consultant for any reasonable out-of-pocket costs actually incurred by Consultant in connection with this Agreement as of the date of such expiration or termination, but in no event shall such costs exceed \$50,000, unless otherwise authorized by Authority in writing.

Upon such expiration or termination, and upon request of Authority, Consultant shall reasonably cooperate with Authority to ensure a prompt and efficient transfer of all data, documents and other materials to 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 Authority's customers. Consultant shall develop with reasonable assistance from Authority a written transition plan specifying in detail all activities, and the timing of such activities, necessary to facilitate an orderly and effective transition of Services. Consultant shall provide to Authority customer data and documentation, and other Consultant non-proprietary information reasonably requested by Authority in connection with the transition that is reasonably sufficient to enable a new services provider to fully assume the provision of the transitioning services. Consultant shall provide transition assistance 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 Authority is the defaulting Party, 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. Consultant shall (i) return all documents and other materials received from 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 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, as well as Residual Backups as defined in 3.6.4.1, below.

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

3.6.1.5 Program Start Delay. If at any time Authority elects to delay the Power Start Date by more than six (6) months, or such a length of time as mutually agreed upon by the Parties, Authority shall pay Consultant all outstanding principal balance of the Advances made plus accrued interest, and the amount of any outstanding bond(s) posted by Consultant on behalf of Authority. The moneys herein stated shall be due and payable thirty (30) days after the date of invoice by Consultant to Authority. If the aggregate amount due is greater than \$150,000, then Authority will commence making payments of any moneys advanced, plus interest at 5 percent per annum, in six (6) equal monthly installments on that date, or the number of installments mutually agreed upon by the Parties. This paragraph shall not apply to delays to the Power Start Date of six (6) months or less.

Consultant may, at its sole discretion, upon complete repayment by Authority of all moneys due as outlined herein, reinstate the availability of the Advances and CPUC bond payment to Authority to use as provided for in this Agreement once the Power Start Date delay expires.

In the event of a delay, the Parties agree to extend the Initial Term of this Agreement automatically by the same length of time as the delay to the Power Start Date.

3.6.2 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.

3.6.3 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: Calpine Energy Solutions
Attn: Legal Dept.
401 West A Street, Suite 500

San Diego, CA 92101
(619) 684-8251 phone
(619) 684-8350 fax

Authority: Orange County Power Authority
15642 Sand Canyon Ave.
P.O. Box 54283
Irvine, CA 92619-4283
(949) 767-8700 phone

With a copy to:

Ryan Baron
Best Best & Krieger LLP
18101 Von Karman Ave.,
Suite 1000
Irvine, CA 92612
(949) 263-2600 phone
(949) 260-0972 fax

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

3.6.4 Ownership of Data and Work Product and Confidentiality.

3.6.4.1 Intellectual Property.

Consultant will collect data based on the operations of Authority in connection with providing the Services and will assemble, derive and create subsets of such data (collectively, “**Authority Data**”) and analyze and present the Authority Data in reports that are created by Consultant for Authority (collectively, “**Work Product**”). Except for Consultant Proprietary Information (as defined below) contained in the Work Product, all Authority Data and the Work Product are owned by Authority and shall be considered a work made for hire by Consultant.

Consultant owns all rights in and to any of the following proprietary data, methods and techniques that are included in the Work Product (including electronic equivalents) without restriction or limitation upon their use, and immediately when and as created by Consultant or any other person engaged directly or indirectly by Consultant to perform Consultant’s services pursuant to this Agreement including: proprietary information and data that is used for analytical and comparative purposes contained in reports (including data sets that have been compiled, purchased or created by Consultant, but excluding Authority Data), software, models, and templates (collectively “**Consultant Proprietary Information**”). Furthermore, Consultant will have the right to use Authority Data in an aggregated and anonymized form that removes all characteristics that could identify such data to the Authority or its customers and incorporate such aggregated and anonymized data within databases that constitute Consultant Proprietary Information. Said aggregated and anonymized data will no longer be considered to be Authority

Data for the purposes of this Agreement.

Consultant shall be deemed to be the author of the Consultant Proprietary Information for purposes of copyright, trademark and patent. Consultant hereby assigns to the Authority a perpetual license to use the Consultant Proprietary Information in connection with all Work Product that is generated by Consultant for the Authority.

Upon the expiration of this Agreement, or in the event of termination, Authority Data and Work Product (subject to 3.6.4.2.2, below), in whatever form and in any state of completion, shall remain the property of Authority and shall be promptly returned to Authority. Upon termination, Consultant may make and retain a copy of such contract materials if permitted by law. Notwithstanding the foregoing, Authority recognizes that some residual copies of all or part of Authority Data may reside on Consultant's servers coincident to system backups ("**Residual Backups**"), and the existence of same shall not be deemed to violate this Agreement, provided that (i) Consultant does not utilize such copies for its own economic benefit in the marketplace and (ii) Consultant maintains the confidentiality thereof in accordance with applicable laws. Authority Data and Work Product shall mean all data and information provided, collected, or produced on Authority's behalf in connection with the services provided under this Agreement; including, but not limited to, confidential personally identifiable information or utility customer data protected under state privacy laws, billing data, usage data, SQMD, enrollment information, contact history, and any other confidential or proprietary information that relates to current, prospective, or former Authority customers

For the avoidance of doubt, Consultant's intellectual property, including, but not limited to, Consultant's internal systems, know-how, programs and Consultant Proprietary Information shall remain the exclusive property of Consultant, and, with regard to any reports specifically for Authority, Authority shall have a perpetual, non-exclusive, royalty free (exclusive of payments made under this Agreement) license to use any such reports on an "as is" basis thereafter.

3.6.4.2 Confidentiality. The Parties acknowledge that certain information and materials exchanged during the term of this Agreement, including this Agreement, may contain proprietary and Confidential Information of the disclosing Party. "**Confidential Information**" means and includes any and all information including, without limitation, trade secrets, analyses, compilations, forecasts, studies, techniques, plans, designs, cost data, pricing data, financial data, customer information, Authority data, total load data, Consultant Proprietary Information, and employee information, disclosed by a Party to the other Party before, on, or after the Effective Date which relates in any manner, directly or indirectly, to the disclosing Party and/or its business, whether such information is disclosed in writing, verbally, electronically, or otherwise. Confidential Information must be kept confidential and handled in accordance with this Agreement and applicable state and federal law. Such materials shall not, without the prior written consent of 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 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 Authority.

Consultant acknowledges that it will have access to information about Authority's customers that could give it or a third party an unfair competitive advantage in the event that Consultant or any third party were to compete with Authority in the provision of electrical or other services to Authority's customers. CONSULTANT AGREES THAT IT WILL NOT ACCESS AND/OR USE ANY INFORMATION IT RECEIVES REGARDING AUTHORITY CUSTOMERS FOR ANY PURPOSE OTHER THAN PROVIDING SERVICES UNDER THIS AGREEMENT. Consultant agrees not to use any of Authority data provided to it by Authority for its own marketing purposes. Consultant shall not access and/or use such customer information to compete with Authority in any manner. Upon termination of this Agreement, Consultant shall (i) return all documents and other materials received from the Authority and all copies (if any) of such documents and tangible materials, (ii) destroy all other documents or materials in Consultant's possession that contain Authority customer data, and (iii) deliver to Authority a certificate, signed by an authorized representative of Consultant, stating that Consultant has returned or destroyed all such documents and materials; provided, however, that Consultant may retain copies of information necessary for tax, billing or other financial purposes, to be used solely for such purposes.

3.6.4.2.1 Notwithstanding anything in the foregoing to the contrary, Consultant recognizes and understands that Authority is governed by the California Public Records Act, and that Authority may be required to release information provided by consultant, including, without limitation, information marked confidential by Consultant, as required by law. For the avoidance of doubt, Confidential Information shall specifically include, but not be limited to (i) any information disclosed in written form and clearly marked "Confidential" and (ii) information which would reasonably be considered proprietary, trade secret, and confidential. The receiving Party agrees that such Confidential Information shall be held confidential, to the extent permitted by law, under the same safeguards as it treats its own confidential information and that it will not use, copy or disclose the Confidential Information other than for the sole purpose of supporting or performing the services in connection with this Agreement. The Confidential Information may be disclosed to officers, directors, employees, agents, representatives or consultants (who shall agree to be bound by the terms of this Section) of the receiving Party on a need to know basis, and shall not be disclosed to any third party without first having obtained the written permission of the disclosing Party. Confidential Information shall specifically exclude any information which the receiving Party can show (i) was known to or was independently developed by the receiving Party without access to or use of the Confidential Information of the disclosing Party; (ii) was disclosed to the receiving Party in good faith by a third party who had the right to make such disclosure; (iii) was made public by the disclosing Party, or was established to be part of the public domain other than as a consequence of a breach of the Agreement by the receiving Party; or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information as shown by documents and other competent evidence in the receiving Party's possession.

As required by subpoena, the California Public Records Act, or other legal or regulatory law/process, the Parties may be required to disclose Confidential Information. Compliance with a subpoena, request under the California Public Records Act, or other legal or regulatory process

shall not constitute a breach of this Agreement. If either Party is required to disclose any Confidential Information, the disclosing Party shall notify the other Party in writing as promptly as feasible so that the other Party may, if it so chooses and at its own expense, challenge the disclosure or seek a protective order. The Party challenging the disclosure or seeking a protective order shall be responsible for any costs or attorneys' fees awarded to a prevailing litigant seeking the records in the event that a court awards such costs or fees against the Party maintaining the records. However, disclosure pursuant to a legal requirement shall not constitute a breach of this section.

3.6.4.2.2 Notwithstanding anything in the foregoing to the contrary, however, Consultant is not prohibited from conducting its business with potential customers in Authority's territory, either due to a business opportunity already known to Consultant as of the date of this Agreement or made known to Consultant in the ordinary course of Consultant's business other than Services under this Agreement. For the avoidance of doubt, any information, including but not limited to customer names, usage, data, etc., that Consultant receives from a third party in the ordinary course of Consultant's business other than performance of the Services under this Agreement, shall not be deemed to be confidential information as between Authority and Consultant, for purposes of this Agreement, even if it is the same or similar information such as would be confidential information pursuant to this Agreement.

3.6.4.2.3 The Parties agree that money damages would be an inadequate remedy for breach of this Section 3.6.4.2 and that either Party shall be entitled to seek equitable relief in connection therewith and shall be entitled to recover any damages for such breach as may be provided by law.

3.6.4.2.4 Exclusion for CCA Program customer account, usage and billing information. Authority retains sole ownership of, and full access to (as reasonably requested from Consultant), account, usage and billing information for customers of the CCA Program. Authority may share all such data with its Supplier or other parties and will assume full responsibility for compliance with customer data protection requirements in doing so. At the termination of this Agreement, Consultant shall provide to Authority all such information and data requested by Authority in an electronic format as kept in the ordinary course of business, and as reasonably agreed to by the Parties.

3.6.5 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.

3.6.6 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.

3.6.7 Indemnification. Consultant (including its officials, officers, employees, agents, sub-consultants and contractors, collectively the "**Indemnifying Party**") shall, to the extent of its own negligence or willful misconduct only, defend, indemnify and hold 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 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; (ii) cooperating with Consultant in the defense of the claim. The Indemnified Party shall have the right to select its legal counsel, at the Indemnifying Party's expense, subject to the Indemnifying Party's approval of such counsel, litigation plan, staffing and litigation budget, which shall not be unreasonably withheld conditioned or delayed.

3.6.8 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.

3.6.9 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 Orange County.

3.6.10 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.11 Authority's Right to Employ Other Consultants. Authority reserves right to employ other consultants in connection with this Project, provided, however, that such use of other consultants will not directly conflict with the ability of Consultant to carry out the Services as set forth in this Agreement or result in the release of Consultant Proprietary Information and/or the Confidential Information of Consultant to such other consultants.

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

3.6.13 Assignment or Transfer. Neither Party shall assign this agreement, or any of its rights or delegate any of its responsibilities hereunder without first obtaining the consent of the other Party, except it may be assigned or transferred without consent (i) by either Party to a successor acquiring all or substantially all of the shares and/or the assets of the transferring Party, whether by merger or acquisition, or (ii) by either Party to any wholly-owned affiliate, provided however, that in the event of such a non-consent transfer, commercially reasonable efforts shall be made to give notice to the other Party prior to the transfer to the successor in interest. Any request for consent to assign shall be made in writing and the consent, if any, shall be made in writing. Any transfer in violation of this provision shall be void.

3.6.14 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 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.

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

3.6.16 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.

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

3.6.18 Conflict of Interest. Consultant will not disparage the Authority, its employees or contractors.

3.6.19 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.

3.6.20 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, Authority shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Authority, during the term of his or her service with Authority, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.21 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.

3.6.22 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.

3.6.23 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.

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

3.7 Subcontracting.

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

4. LIMITATION ON DAMAGES. FOR ANY BREACH HEREOF, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY, INCLUDING ANY CLAIMS FOR MONETARY PENALTIES ASSESSED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR ASSOCIATED WITH THE SETTLEMENT QUALITY METER DATA REPORTING OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO ANY CLAIM ARISING FROM A BREACH OF THE CONFIDENTIALITY PROVISIONS OF SECTION 3.6.4.2. IN NO EVENT SHALL EITHER PARTY'S LIABILITY AUTHORITY TO THE OTHER UNDER THIS AGREEMENT EXCEED THE GREATER OF (A) TEN MILLION DOLLARS AND NO CENTS (US \$10,000,00.00); OR (B) THE AMOUNT OF THE FEES PAID TO CONSULTANT BY AUTHORITY FOR THE SERVICES PROVIDED HEREUNDER. THIS ARTICLE 4 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

5. REMEDIES FOR FAILURE TO MEET CERTAIN PERFORMANCE STANDARDS

The Parties acknowledge that Consultant's failure to achieve substantial compliance with the performance standards and reporting thereon as specified in Exhibit A, Section 2(c)(i), 2(d)(vii), 2(d)(viii), 2(e), 2(f), and 2(h), may cause Authority to incur substantial economic damages and losses of types and in amounts which are difficult impossible to compute and ascertain with certainty as a basis for recovery by Authority of actual damages, including, but not limited to, increased customer opt-out rates, reputational harm and customer dissatisfaction, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages, Consultant agrees that liquidated damages may be assessed and recovered by Authority against Consultant, in the event of a failure to substantially meet these performance standards. For any month in which Authority believes Consultant has failed to substantially meet these performance standards, Authority will provide notification to Consultant within 180 calendar days describing the performance standard(s) that have not been met, and Parties shall then confer within ten (10) days to establish a plan to remedy such failure. In the event Consultant is unable to achieve such remedy within 30 calendar days of notification, Consultant shall be liable to Authority for payment of liquidated damages in an amount of ten percent (10%) of the amount of the fees billed by the Consultant under the Agreement for the first month that Consultant fails to substantially meet these performance standards and twenty-five percent (25%) for each subsequent consecutive month that these performance standards are not met. The foregoing liquidated damages payment shall be limited to the above amount regardless of how many performance standards are not met in any given month. The liquidated damages payment shall not apply to any performance standard that is of a subjective nature. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Consultant shall pay them to Authority without limiting Authority's right to terminate this agreement for default as provided elsewhere herein.

5.1 Force Majeure Event. A Party shall be excused from performance under this Agreement and shall not be considered in default with respect to any obligation hereunder (other than obligations to pay money), if, and to the extent, its failure of, or delay in, performance is due to a Force Majeure Event; provided, however, that (a) such claiming Party gives written notice and full particulars of such Force Majeure Event to the other Party promptly after the occurrence of the event relied on, (b) such notice shall estimate the expected duration and probable impact on the performance of such Party's obligations hereunder, (c) such affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the delay in the affected Party's performance, (d) the suspension of such obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure Event, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the occurrence; (f) the affected Party shall exercise all commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the other Party by promptly taking appropriate and sufficient corrective action; (g) when the affected Party is able to resume performance of the affected obligations under this Agreement, the affected Party shall give the other Party written notice to that effect, and (h) the affected Party promptly shall resume performance under this

Agreement. The term “Force Majeure Event” means the occurrence of any event beyond the reasonable control of the Party affected that results in the failure or delay by such Party of some performance under this Agreement, in full or part, including but not limited to the following: drought, flood, earthquake, storm, fire, volcanic eruption, lightning, epidemic/pandemic, war, pests, riot, civil disturbance, sabotage, terrorism or threat of terrorism, accident or curtailment of supply or equipment, total casualty to equipment, or restraint, order or decree by a governmental authority. Notwithstanding the foregoing, Force Majeure Events shall expressly not include strike or labor difficulty, lack of financial resources, material cost increases in commodities or labor, or other economic conditions.

5.2 Compliance with Law. Each Party shall be responsible for compliance with all laws or regulations applicable to the Services being provided under this Agreement.

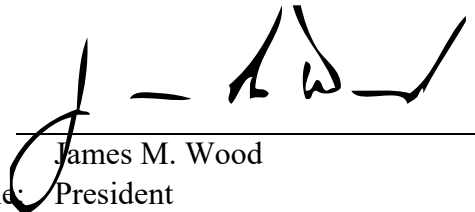
[SIGNATURES ON FOLLOWING PAGE]

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

CALPINE ENERGY SOLUTIONS, LLC

By: _____
Brian Probolsky
Chief Executive Officer

By:  _____
James M. Wood
Title: President

APPROVED AS TO FORM:

By: _____
General Counsel
Best Best & Krieger LLP

Exhibit A
Scope of Services/Compensation

SCOPE OF SERVICES

1. **Term.** The services to be provided under this Addendum will commence upon execution of the Agreement. The delivery date for power (“**Power Start Date**”) is expected to be as early as April 2022 or a date mutually agreed to by the Parties. Consultant will provide all services on a time schedule as necessary to meet the Power Start Date.
2. **Description of Data Manager Services.** In accordance with the timing of the Power Start Date set out above, Consultant shall provide the Data Manager Services listed below.
 - a. Start-Up Support Services. Consultant shall:
 - i. Participate in coordination meetings to initiate community choice aggregation service (“**CCA Service**”) in SCE and/or SDG&E’s territory. Such meetings may include the other contractors, Authority personnel, and/or SCE and/or SDG&E personnel, as necessary, and may require on-site participation by Consultant personnel.
 - ii. Complete the technical testing of all necessary electronic interfaces with SCE and/or SDG&E, which provide for the communication by internet and Electronic Data Interchange (“**EDI**”) between Consultant, SCE and/or SDG&E to confirm system compatibility related to CCA Service Requests (“**CCASRs**”), billing collections, meter reading, and electricity usage data.
 - iii. Obtain all customer information data, including historical usage for enrolled customers, made available by SDG&E and/or SCE.
 - iv. Provide customer mailing list to Authority designated printer for customer notices during each Enrollment Phase using methodology agreed upon by Authority, Consultant and Authority designated printer.
 - v. Provide Authority with an implementation schedule for key startup activities in the form of Appendix A, noting items that require program-specific information from Authority, SCE or SDG&E by a certain date. Parties understand that Consultant is dependent on this information to perform certain services (e.g., setting up technology platform, training customer service representatives, etc.), and a delay in receiving the required information from Authority, SCE, or SDG&E will delay the completion of certain services beyond the dates provided in Appendix A.
 - b. Electronic Data Exchange Services:

- i. Process CCASRs from/to SCE and/or SDG&E for customer enrollment, customer initiated returns to bundled utility service or customer initiated returns to direct access service (814 EDI Files).
 - ii. Obtain customer usage data from SCE and/or SDG&E to timely bill each customer according to SCE and/or SDG&E requirements (867 EDI Files).
 - iii. Maintain and communicate the amount to be billed by SCE and/or SDG&E for services provided by CCA (810 EDI Files).
 - iv. Receive and maintain data related to payment transactions toward CCA Service charges from SDG&E after payment is received by SCE and/or SDG&E from customers (820 EDI Files).
 - v. Process updates from SDG&E when customer status changes.
- c. Customer Information System:
- i. Maintain an accurate database of all eligible accounts who are located in the CCA Service area and identify each account's enrollment status (opt out, program enrollment), rate tariff election(s), payment history, collection status, on-site generating capacity, if applicable, and any correspondence with customer as well as other information that may become necessary to effectively administer CCA Service as mutually agreed to by parties from time to time.
 - ii. Allow CCA to have functional access to the online database to add customer interactions and other account notes.
 - iii. Allow CCA to view customer email or written letter correspondence within online database.
 - iv. Maintain and provide as needed historical usage data on all customers for a time period equal to the lesser of either (a) the start of service to present, or (b) five years.
 - v. Maintain viewing access, available to appropriate CCA staff, to view SCE and/or SDG&E bills for CCA customers. Maintain accessible archive of billing records for all CCA customers from the start of CCA Service or a period of no less than five years.
 - vi. Maintain and communicate as needed records of customers who have been offered CCA Service with CCA but have elected to opt out, either before or after starting CCA Service.
 - vii. Maintain and communicate as needed records of Net Energy Metering credits and generation data for customers to be posted on bill and settled annually.

- viii. When requested by CCA, place program charges on the relevant customer account, identified by SAID.
 - ix. Capture each customer's participation in CCA Service programs in database.
 - x. Maintain all customer data according to CCA's customer privacy policy and the requirements of California Public Utilities Commission Decision 12-08-045, including a daily backup process.
 - xi. Maintain a Data Management Provider Security Breach Policy.
- d. Customer Call Center Management & Staffing:
- i. Create and maintain professional Interactive Voice Response ("IVR") recordings for CCA customer call center; CCA may update recordings once per calendar year.
 - ii. Provide option for IVR self-service and track how many customers start and complete self-service options without live-agent assistance.
 - iii. Staff a call center, during any CCA Statutory Enrollment Period, between the hours of 8 AM and 5 PM PT Monday through Friday, to process opt out requests excluding during Authority, SCE, SDG&E and Consultant holidays.
 - iv. Staff a call center during Non-Enrollment Period between the hours of 8 AM and 5 PM PT Monday through Friday, excluding CCA, Consultant, SCE, and SDG&E holidays.
 - v. Provide sufficient call center staffing to meet the requirements set forth herein.
 - vi. Provide sufficient number of Data Manager Experts are available to manage escalated calls between the hours of 8 AM and 5 PM PT Monday through Friday, excluding SCE, SDG&E and Consultant holidays ("**Regular Business Hours**").
 - vii. During Non-Enrollment Periods, achieve the following service levels:
 - 1. A minimum of 80% of all calls will be answered within 45 seconds.
 - 2. 100% of voicemail messages answered within one (1) business day.
 - 3. 100% of emails receive an immediate automated acknowledgement.
 - 4. 95% of emails receive a customized response within one (1) business day.

5. 100% of emails receive a customized response within three (3) business days.
6. Achieve a no greater than 5% abandon rate for all calls.
- viii. During Enrollment Periods, achieve the following service levels:
 1. A minimum of 75% of all calls will be answered within 60 seconds.
 2. 100% of voicemail messages answered within one (1) business day.
 3. 100% of emails receive an immediate automated acknowledgement.
 4. 90% of emails receive a customized response within one (1) business day.
 5. 100% of emails receive a customized response within three (3) business days.
 6. Achieve a no greater than 10% abandon rate for all calls.
- ix. Provide an automated 'call back' option for callers who will be put on hold for an estimated five minutes or longer. Provide callers with the estimated hold time, if applicable.
- x. Record all inbound calls and make recordings available to CCA staff upon request. Maintain an archive of such recorded calls for a minimum period of 24 months.
- xi. Track call center contact quality with criteria including:
 1. Use of appropriate greetings and other call center scripts
 2. Courtesy and professionalism
 3. Capturing key customer data
 4. Providing customers with correct and relevant information
 5. First-contact resolution
 6. Accuracy in data entry and call coding
 7. Grammar and spelling in written communication
- xii. Evaluate customer satisfaction through voluntary customer surveys that ask general questions about call quality, call resolution, and how satisfied the customer was with the service received.
- xiii. Respond to customer emails pertaining to CCA Service enrollment, CCA Service programs and billing questions.

- xiv. Receive calls from CCA Service customers referred to CCA by SCE and/or SDG&E and receive calls from CCA Service customers choosing to contact CCA directly without referral from SCE and/or SDG&E.
- xv. Request and/or confirm current email, mailing address and phone number of customers and add to or update database during inbound call.
- xvi. Request permission (via live calls, email request, or electronic form submittal) from customers to send electronic correspondence instead of printed mail.
- xvii. Respond to telephone inquiries from CCA Service customers using a script developed and updated quarterly by CCA. For questions not addressed within the script, refer inquiries either back to SCE, SDG&E or to CCA as appropriate.
- xviii. Respond to customer inquiries within one (1) business day, excluding weekends and holidays, including inquiries received either through telephone calls, email or web-portal.
- xix. Participate in call center coordination meetings hosted by SCE and/or SDG&E.
- xx. Provide monthly call center statistics reports during the first full week of each month.
- xxi. Provide weekly call center statistics reports during Statutory Enrollment Periods.
- xxii. Provide translation services for inbound calls for up to ten different languages to be identified by Authority no later than the date specified by Consultant.
- xxiii. Create and maintain English-language web forms for the CCA website so that customers may change their account status to enroll or opt out of CCA Service programs. By mutual agreement, additional languages can be added. Authority will be responsible for providing the translation for all additional languages. Forms may be updated once per calendar year by CCA.
- xxiv. Host CCA meetings to review call center operations on a quarterly basis if requested by CCA.
- xxv. Authority will provide Consultant at least one-month advance notice for any mass-market communication mailed/ emailed by Authority to more than 10,000 of Authority's customers. If at least one month advance notice is given, the service level applicable to periods other than Statutory Enrollment Periods shall apply for one week from the date of such mass

communication in support of Authority. If less than one month advance notice is given, the service level applicable to Statutory Enrollment Periods shall apply for one week from the date of such mass communication in support of Authority. Notwithstanding the forgoing, the service level applicable to Statutory Enrollment Periods shall apply for mass communications disseminated during Statutory Enrollment Periods regardless of notice.

e. Billing Administration:

- i. Consultant shall maintain an accuracy rate of 99% or higher in billing Authority charges on a monthly basis.
- ii. Maintain a table of CCA Service rate schedules provided by CCA.
- iii. Send CCA Service charges as a separate line item to SCE and/or SDG&E for placement on monthly bill.
- iv. Apply SCE and/or SDG&E account usage for each CCA Service customer against applicable rates to allow for customer billing.
- v. Review application of CCA Service rates to SCE and/or SDG&E accounts to ensure that the proper rates are applied to the accounts.
- vi. Timely submit billing information for each customer to SCE and/or SDG&E to meet SCE and/or SDG&E's billing window.
- vii. Use commercially reasonable efforts to remedy billing errors for any customer in a timely manner.
- viii. Assist with annual settlement process for Net Energy Metering customers by identifying eligible customers, providing accrued charges and credits, and providing mailing list to CCA designated printer.
- ix. Provide customer mailing list to CCA designated printer for new move-in customer notices and opt out confirmation letters routinely within 7 days of enrollment or opt out.
- x. Send a CCA-provided letter to customers with delinquent accounts stating that failure to pay will result in customer being returned to SDG&E. Authority shall identify the length of delinquency that triggers such notice, as well as the time period allowed to bring the account current.

f. Settlement Quality Meter Data Services:

- i. Consultant shall provide Authority or Authority's designated Scheduling Coordinator ("SC") with Settlement Quality Meter Data ("SQMD") as required from SC's by the California Independent System Operator ("CAISO").

- ii. Obtain historical usage data for enrolled customers, from SCE and/or SDG&E, and utilize for estimation in SQMD process. In the absence of current historical usage, Authority to provide Consultant with default usage values.
 - iii. Upon Authority's request, Consultant shall submit the SQMD directly to the CAISO on behalf of Authority or Authority's designated SC.
 - iv. Consultant shall prepare the SQMD in accordance with prudent utility practice.
- g. Qualified Reporting Entity ("**QRE**") Services:
 - i. Consultant may serve as a QRE for up to ten (10) locally situated, small scale renewable generators that: a) are metered by SCE and/or SDG&E, b) are interconnected to the SCE and/or SDG&E distribution system in accordance with SCE and/or SDG&E's requirements, and c) supply electric energy to Authority through its feed-in tariff or are owned and/or controlled by Authority. QRE Services will be performed under terms and conditions set forth in a Qualified Reporting Entity Services Agreement mutually agreed to by the Parties.
 - ii. Submit a monthly generation extract file to the Western Renewable Energy Generation Information System ("**WREGIS**") on Authority's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document for Qualified Reporting Entities.
 - iii. For the purpose of collecting applicable generation and usage data for Authority's renewable energy projects and consistent with SCE and/or SDG&E's applicable meter servicing agreement, serve as designated "subcontractor" for certain renewable energy projects: Consultant shall receive applicable electric meter data from SCE and/or SDG&E and shall provide such data to Authority for purposes of performance tracking and invoice creation.
 - iv. Assist Authority in completing requisite generator registration materials, as such materials may be required by WREGIS, the California Energy Commission, the California Public Utilities Commission and/or other entities to effect the successful crediting of renewable energy certificates, as appropriate, to Authority's WREGIS account. These services shall be limited to assistance with the process and shall not involve providing regulatory or legal advice.
- h. Reporting – Consultant Shall include the following reports, frequency and delivery methods:

Report	Frequency	Delivery Method
Aging	Weekly, Monthly	SFTP
Call Center Statistics	Weekly, Monthly	Email
Cash Receipts	Weekly, Monthly	SFTP
Invoice Summary Report	Monthly	SFTP
Monthly Transaction Summary	Monthly	Email
Opt Out with Rate Class	Ad hoc	CRM
Retroactive Returns	Monthly	Email
Sent to Collections	Monthly	Email
Customer Account Snapshot	weekly	CRM
Customer Account Snapshot with Addresses	weekly	CRM
Unbilled Usage	Monthly	SFTP
Full Volume Usage by Rate Class	Monthly	SFTP
Utility User Tax where available	Monthly	Email
Days to Invoice	Weekly, Monthly	SFTP

- i. Ensure monthly status reports are provided during the first week of each month.
- ii. Ensure weekly status reports are provided during all enrollment periods.
- i. Rate Schedule Maintenance
 - i. Maintain a table of Rate Schedules, offered by Authority to its customers, within Consultants billing system.
 - 1. Complete Value Only Rate Changes within 10 Business Days once Consultant has confirmed it is in receipt of a valid Rate Template. A “Value Only Rate Change” alters the values applied to each of the Billing Determinants in a given Rate Schedule buildout, keeping the existing buildout intact.

2. Complete Structural Rate Changes within 40 Business Days once Consultant has confirmed it is in receipt of a valid Rate Template. A “Structural Rate Change” alters one or more Billing Determinants within a Rate Schedule buildout by changing the definition of the Billing Determinant itself and/or adding and/or removing one or more Billing Determinants to an existing buildout.
 3. A Rate Template will be considered valid if it meets the expected formatting requirements as set forth by Consultant and acknowledged by Authority, and the Rate Schedules it contains align with published Authority tariffs. Upon receipt of a Rate Template, Consultant will review it per these guidelines and after Authority has corrected any errors, if present, Consultant will communicate to Authority that a valid Rate Template has been received and work will commence as per the timelines indicated above.
 4. Should Authority submit updates after Consultant has begun work on a valid Rate Template, Authority understands this may be considered a new Rate Change.
 5. Addition of new rate schedules after the initial buildout shall be subject to the fees listed in Section 3 of this Exhibit A
- ii. Conduct no more than one Structural Rate Change within Consultant’s billing system at no additional cost to Authority within each calendar year and for each utility service territory.
 - iii. At Authority’s direction and for the corresponding fee’s noted in section 3 of this Exhibit A, conduct additional Structural Rate Changes beyond those included as noted above.
- j. Data Tools:
- i. Establish a data warehouse environment comprised of data related to the services provided by Consultant under the contract.
 - ii. Provide access for Authority staff to query the data warehouse environment.
 - iii. Provide access for other organizations under contract with the Authority to query the data warehouse environment, if a business need is determined by the Authority to ensure seamless communication of data across Authority operations, provided proper confidentiality and data security policies are mutually agreed upon by the Parties prior to such access being provided.
 - iv. Data made available in the data warehouse shall include:

1. AMI usage data provided by SCE/ SDG&E to Consultant through the EDI 867 data files
 - a. Prior to loading this data into the data warehouse, Consultant will make commercially reasonable efforts to process raw EDI 867 data and associate usage data with customer accounts in Consultant's CIS.
2. Customer account information and characteristics from the customer list provided by SCE/ SDG&E and supplemented by the following data from CRM and CIS:
 - a. Authority participation history
 - b. Product elections
 - c. Opt-out activity
 - d. Authority rate schedule
3. Billing data from Consultant's CIS
4. SQMD submission data
- v. Consultant may, from time to time and at its sole discretion, update the functionality available in the data warehouse which may include, among others, adding or maintaining data visualizations, self-service reporting tools, self-service analytical tools, and Application Program Interface (API) points.
- vi. Consultant may, at its sole discretion, engage with Authority and other Consultant clients to elicit their input on required functionality, data elements, and system design as it pertains to the development, maintenance, and evolution of its data environment.
- vii. In the absence of the data warehouse or adequate data within the data warehouse for Authority to Self Service, Consultant shall assist Authority in compiling Ad Hoc sales, customer, and usage reports from time to time as may be requested by Authority, with each such request being accompanied by mutually agreed upon requirements and proper notice.
- viii. Consultant will provide technical support to access the data warehouse and documentation describing the data. Authority will provide staff with technical database expertise to engage with Consultant in the implementation and use of the data warehouse.

- ix. Consultant will ensure timely data sharing with Authority's other vendors, pursuant to mutually agreed upon schedules, methods, formats, and confidentiality and data security policies.
- x. Data warehouse environment availability expected by end of Q2 2022.
- k. Bill Comparison Tool
 - i. Develop and implement an online bill comparison tool for that performs a comparison of total bill charges for established Authority rates, in accordance with the following:
 - 1. The online bill comparison tool will capture input from the user for certain information from the SCE and/or SDG&E bill to be compared including usage, rate and other required data.
 - 2. The online tool will then perform and display the comparison between Authority and SCE and/or SDG&E charges for the selected month, based on user inputs, SCE and/or SDG&E tariff rates and Authority generation tariff rates.
 - 3. The online tool will be made available as an interactive web page for the Authority to publish via its website. Consultant will make reasonable efforts to incorporate Authority's branding specifications in collaboration with the Authority.
 - 4. The online bill comparison tool will not support complex rates, including NEM rates and demand response program, or rates constituting less than 1% of Authority's customer accounts.
 - 5. Initial deployment of the online bill comparison tool will be in accordance with Authority's mass enrollment phases, with rates being implemented in the tool based on which enrollment phase participating customers are in.
 - 6. Consultant will require six weeks lead time for initial deployment of the online bill comparison tool following receipt and validation of the Authority's generation tariff rates.
 - 7. Consultant will require six weeks lead time to update the tool with new rates that have not been implemented in the tool previously following receipt and validation of those new Authority generation tariff rates.
 - 8. Consultant may require up to two-month lead time to update the tool with new or updated rate structures that have not been implemented in the tool previously following receipt and validation of those new Authority generation tariff rates.

1. Value Added Services

i. Recurve Analytics Platform

Calpine has partnered with Recurve to offer to the Authority access to the Resource Planning tool on the Recurve Platform (“Recurve Platform”) and to establish a Demand Flexibility Marketplace. Access to the platform shall be provided in a mutually agreed upon timeline and subject to the fees listed in Section 3 “Service Fees” A of this Exhibit A. Additional details on the Recurve Analytics platform are included in Appendix B.

ii. See Change Institute

Consultant will work with See Change Institute (SCI) and Authority staff to leverage behavioral science insights and customer research to support the communications, marketing and customer engagement efforts of the Authority for the initial enrollment of customers. Consultant will coordinate with Authority on implementation of See Change Institute’s services. Additional details on See Change’s scope of services can be found in Appendix C.

3. Service Fees.

a. For the month of the Power Start Date, and each month thereafter, Authority shall pay Consultant the following fees:

i. A fixed fee of \$25,000 per month

ii. \$0.85 per meter per month, for each meter served by Authority in the month.

b. Service Fees for Access to the Recurve Analytics Platform (“Platform”) shall be as follows:

i. Access to Resource Planner is included in the monthly meter fee listed in Section 3(a) above.

ii. Should the Authority choose to utilize the Demand Flexibility Marketplace to procure demand flexibility (energy efficiency and/or demand response resources), Consultant will bill the Authority monthly by written invoice (“Invoice”) for 25% of the Total Program Value of the projects completed (each a “DFP Completion”) in the previous month, as defined and further detailed below. Each invoice shall be included as part of the monthly Consultant invoice and paid to Consultant who will then disburse payment to Recurve.

iii. DFP Completion shall be defined in the CPIP and evidenced by receipt of the final invoice, as provided by the Aggregator to the DFM Participant.

iv. “Total Program Value” shall be calculated using the forecasted energy savings estimates provided by the Aggregator, the lead measure that will be used to

forecast the marginal hourly savings load shape of the project for each hour of the year (“Anchor Measure”), and the associated measure expected useful life (“EUL”), Recurve shall calculate the program value of each installed project (“Program Value”), creating an “enrollment summary” that will be delivered to the Authority on a monthly basis. Program mirrors the calculation of “net benefits” as defined by the CPUC.

- v. Parties will work together with Recurve to define details of use of the Platform, including data access and handling.

c. **Rate Changes & New Rate Development**

- i. For any Structural Rate Change that exceeds the amounts specified in Section i of Exhibit A, Consultant shall provide such rate change services in accordance with the following pricing formula:

Rate change type	Number of Billing Determinants Affected							
	0-50	51-250	251-500	501-1000	1001-1500	1501-3000	3001-4500	4501+
Structural Rate Change	\$1,000	\$2,500	\$5,000	\$ 7,500	\$ 10,000	\$ 15,000	\$ 20,000	\$30,000

- ii. The addition of new rates beyond the initial buildout shall be subject to the hourly fee outlined in this Exhibit A, Section 6 “Pricing Assumptions”

4. Waiver of Service Fees

- a. Consultant will waive \$1,750,000 in service fees as follows.
 - i. \$750,000 in fee waivers will be applied to the first invoice generated after the power start date and will continue to be applied against service fees until exhausted.
 - ii. After the initial \$750,000 in Service Fee waivers noted in 4.a.i is exhausted, an additional \$1,000,000 in service fee waivers will be spread out in equal amounts over 36 months and applied to each successive invoice until exhausted.
- b. Should the Authority opt to utilize the Recurve Analytics Demand Flexibility Marketplace, Consultant will waive the first \$1,000,000 in service fees, as defined in Exhibit A, Section 3(b)(ii), associated with procurement of demand flexibility resources.

5. Community Give Back

Each year of the contract, Consultant will rebate three percent (3%) of its annual service fees to organizations in the greater Orange County region for the purpose of promoting economic development, workforce development, local project development, grid resiliency, and other areas that support the mission of OCPA and its communities.

6. Pricing Assumptions.

The Fees defined in Section 3 include only the services and items expressly set forth in this Agreement. Unless otherwise agreed to by the Parties in an amendment to the Agreement, the cost of any additional deliverables provided by Consultant to Authority shall be passed through directly to Authority without mark-up. In addition, Authority will have access to tools and services that will enable the Authority to self-serve a range of requests; however, should the Authority wish to have Consultant staff take on work that could reasonably be self-served, Consultant can provide those services at the labor rate specified here.

A labor rate of \$150.00 per hour will be utilized for labor costs unless otherwise agreed upon in writing by both parties prior to the commencement of additional work

7. Co-Location of Call Center with Authority

In addition to Consultant's call center services described in this Agreement, Consultant will offer the Authority, in Authority's discretion, the ability to supplement the call center operations, including, but not limited to, co-location of the call center onsite or regionally. Over the course of the term of the agreement, Consultant shall provide \$500,000 towards the costs of supplementing the call center, which costs include lease fees, rent, acquisition, and other related costs. Consultant will also provide up to \$100,000 in tenant improvement dollars in addition to any tenant improvements provided by the building owner as part of the lease. . Consultant will also provide reasonable support for real estate search and project management for buildout, as needed by Authority in its discretion.

8. Support for Local Energy Efficiency and Demand Response Programs

Consultant shall provide up to \$500,000 in funding to support the Authority, in its discretion, in administering California Public Utilities Commission energy efficiency and demand response programs to be run by the Authority. These funds are intended to support the Authority with launching local programs and may not be used for purchase of material goods. All costs associated with these funds must be approved by Consultant.

9. Transition of Responsibilities

a. Transition-out Plan

Upon written request by Authority, Consultant shall prepare and deliver to Authority a Transition-Out Plan for transitioning the provision of Services, or a portion thereof, as set forth in this Agreement, within six (6) months from the requested date. Consultant and the Authority shall work together to mutually agree on all necessary activities and timing of those activities as per this Agreement. All work performed by Consultant to develop a Transition-Out Plan shall be performed at no additional cost to the Authority.

10. Definitions.

“CCA Service” means Authority's Community Choice Aggregation Service which permits cities, counties or a joint powers agency whose governing boards have elected to acquire their electric

power needs, hereinafter referred to as Community Choice Aggregation (CCA), to provide electric services to utility end-use customers located within their service area(s) as set forth in California Public Utilities Code Section 366.2 and other Commission directives.

“CCA Service Request (“CCASR”)” means requests in a form approved by SDG&E to change a CCA Service customer’s, utility customer’s or direct access customer’s choice of services which could include returning a CCA Service customer to bundled utility service or direct access service.

“Default Usage” means the average monthly usage value, by rate schedule, used for estimation in the absence of actual historical usage data.

“Mass Enrollment” means the automatic enrollment of customers into a CCA Service program where new service is being offered for the first time to a group of eligible customers.

“Meter Data Management Agent (MDMA) Services” means reading SDG&E’s customers’ meters, validating the meter reads, editing the meter reads if necessary and transferring the meter reading data to a server pursuant to SDG&E standards.

“Prudent Utility Practice” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of similar generating facilities in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, any governmental requirements or guidance, including CAISO, applicable laws, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Utility Practice shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“Power Start Date” means the day the Authority begins selling power to its customers.

“SDG&E” is the local Utility Distribution Company.

“SCE” is the local Utility Distribution Company.

“Statutory Enrollment Period” means three months prior to a Mass Enrollment, the month in which the Mass Enrollment occurs, and two billing cycles following Mass Enrollment. The Statutory Enrollment Period takes place over a six month period.

“Self Service” refers to data and services that Authority can obtain and/or access through the Tools and Services, upon its implementation, or to processes or actions which Authority can reasonably perform without the assistance of Calpine staff. Should Authority request data from Calpine that is available via Self Service or request Calpine perform a process or action that Authority can reasonably perform via Self Service, this shall be considered an Additional Work and subject to the fees listed in Exhibit A, Section 6.

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APPENDIX A

FORM OF CCA IMPLEMENTATION SCHEDULE

Launch Date	<i>Power Start Date</i>		Start	End	
Task No.	Implementation Task	Duration (days)	Days from Launch	Days from Launch	Responsible Party
1	Designated as Calpine with the Utility	7	187	180	CCA
2	Complete and submit required Utility Forms	7	187	180	CCA
3	Infrastructure & Application Configuration	90	150	60	Calpine
4	CRM Install and Configuration	90	180	90	Calpine
5	FAQ Creation and Approval	28	155	127	CCA
6	IVR Scripting Creation and Approval	28	155	127	CCA
7	Website Forms Template Review and Approval	28	155	127	CCA
8	IVR Script Translation	7	127	120	CCA
9	Website iFrames Translation	7	127	120	CCA
10	Website iFrames Design and Construction	42	117	75	Calpine
11	IVR Recordings	10	120	110	CCA
12	Print Vendor Selection	0	90	90	CCA
13	IVR Programming	35	110	75	Calpine
14	Bank Vendor Selection	0	90	90	CCA
15	EDI Certification (Utility and Bank)	42	102	60	Calpine
16	List of phase 1 customers	0	75	75	CCA
17	Print Vendor Collaboration and Testing	14	89	75	Calpine
18	Rate Design and Approval	0	90	90	CCA
19	Contact Center Training	21	88	67	Calpine
20	Program Rates	30	60	30	Calpine

Launch Date	<i>Power Start Date</i>		Start	End	
Task No.	Implementation Task	Duration (days)	Days from Launch	Days from Launch	Responsible Party
21	1st Opt Out Period	30	60	30	Calpine
22	2nd Opt Out period	30	30	0	Calpine
23	Report Programming	30	30	0	Calpine
24	Utility Account Set Up	14	21	7	Utility
25	Power Flow	0	0	0	
26	Accounts Switch	37	7	+30	Utility/Calpine
27	3rd Opt Out Period	30	0	+30	Calpine
28	1st Full Cycle Bills	30	+30	+60	Calpine
29	4th Opt Out Period	30	+30	+60	Calpine

Appendix B – Recurve analytics platform

Resource Planning

With your service territory segmented by load shape, we will undertake a deep dive into customer targeting. Recent research makes clear that demand-side programs must target customers with specific usage characteristics to **achieve desired load impacts** and **cost-effectiveness**. Some customers may have little potential for savings from a particular program, while others present a significant opportunity. You have an opportunity to leverage customer energy usage data to identify and quantify physical asset deployment and usage characteristics at a customer-level, therefore drawing new insights to inform an optimized program design.

In a **targeting analysis**, Recurve computes a suite of customer usage characteristics, or “features” based exclusively on pre-program consumption data. These targeting features are calculated for every customer and range from simple summations (ex. total annual MWh usage) to normalized metrics (ex. the percentage of usage from cooling) to more complex load characteristics (ex. baseload, evening ramp).

Recurve will work with your team to identify key load shapes and target the individual customers based on specific technologies that offer the most potential to help achieve your goals. Recurve will compute a number of customer targeting features for each building. These features will give you a wealth of information on usage characteristics that are indicative of the potential for cost-effective demand flexibility interventions.

- High electric and/or gas heating usage and temperature-to-load correlation can often provide effective beneficial electrification and building decarbonization.
- Steep evening ramps that are exacerbating the duck curve and negative midday usage from PV are excellent load shifting and behind-the-meter storage candidates.
- Residential customers that exhibit high summer peak period usage, summer-to-shoulder usage ratios, and steep evening ramps, often offer high potential for building shell measures, HVAC, and load shifting and demand response.
- Commercial customers with high baseload usage are often good candidates for refrigeration measures that can drive GHG savings during the night and early morning hours when there is little or no solar generation.

Targeting Analytics

Recurve develops hourly load shape profiles for all buildings within a particular targeted service area as well as provides ongoing measurement and verification of demand side energy assets. This solution is made possible by two innovations. First, Recurve developed open-source methods and tools that standardize the development of hourly load profiles across all building types. These methods have now become officially adopted as part of the metered-savings protocols and the code

has been released under an open-source license under the governance of the Linux Foundation. Second, Recurve developed a cloud-based data science platform capable of parallelizing thousands of servers to run the necessary computations and build queryable data warehouses to manage the volume of data required of this effort. Hourly load shape impacts are quantified and tracked at the meter level and mapped to grid assets for full visibility into asset performance.

Recurve's program optimization algorithm identifies the most important factors related to the highest drivers of savings, such as temperature-to-load correlations, that drive high performance within a program. These parameters can be used to identify future program participants with a high likelihood of saving energy with a delivered result being customer load archetypes.

The analysis start date will depend on the quality of the data upon receipt. Complete pre-post data and joinable metadata files (12 month historical meter consumption data and project information, such program enrollment date and project completion date). Additional optional information that will be useful in understanding program performance could include predicted savings, measure combinations, contractor names, and other categorical variables that Recurve can use to cluster projects into cohorts as part of its analysis.

Targeting Use Case Overview

Multiple recent studies^{1,2,3} have shown that targeting customers based on AMI data analysis can dramatically enhance the metered savings of energy efficiency programs. Utilities and CCAs have an opportunity to leverage their customer energy usage data to identify and market programs to the customers who would benefit the most from intervention while driving the greatest savings.

In California, both PG&E and SoCal Edison have put the top-performing targeting schemes to work to optimize their residential pay-for-performance programs. With this step, the California IOUs will achieve savings goals at a lower cost, enhance the value of those savings by focusing on peak load reduction, and provide better, more consistent results for participating customers.

The figure to the right shows the impact of targeting the distribution of participant savings for PG&E's home retrofit program. The upper panel shows savings results for the top half of customers, who were targeted based on their pre-program summer usage and normalized temperature-to-load correlation. The lower panel compares the results for the remaining half of non-targeted customers. The results are clear.

Targeted customers saved nearly 3.5 times more than non-targeted customers.

The change in the shape of demand behind the meter, regardless of what drove the change, is known as the "resource curve." By targeting the right classes of buildings and project types,

¹ *Customer Targeting for Residential Energy Efficiency Programs: Enhancing Electricity Savings at the Meter*, A.M. Scheer, S. Borgeson, K. Rosendo, 2017

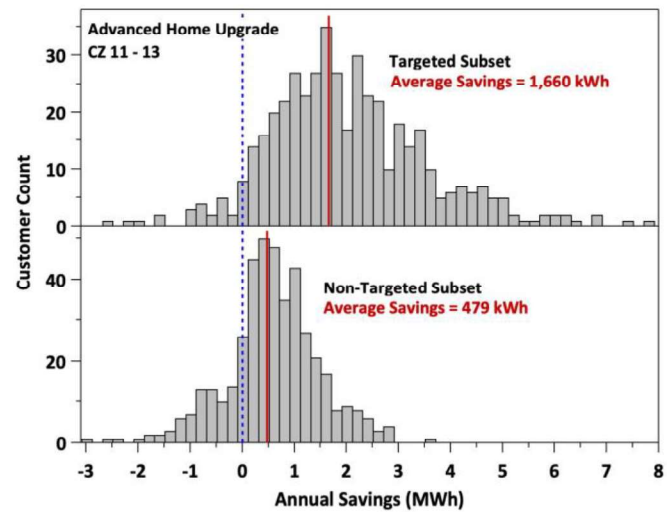
² *Energy Efficiency Program Targeting: Using AMI Data Analysis to Improve At-the-Meter Savings for Small and Medium Businesses*, S. Borgeson, A.M. Scheer, R. Kasman et. al. 2018

³ *Customer Targeting via Usage Data Analytics to Enhance Metered Savings*, 2018 ACEEE Summer Study, A.M. Scheer, S. Borgeson, R. Kasman et al.

whether residential or commercial, HVAC or lighting, the effects are measurable and, in a portfolio, predictable and consistent.

When combined with a T&D constraint's unique signature, it becomes possible to deploy virtual power plants consisting of aggregated behind the meter demand flexibility resources that maximize the value to the grid and the customer. The following examples show how targeting the right types of customers and interventions can maximize grid outcomes and be treated like a true resource.

Targeting Savings For When They Matter Most



The middle and top panels of Figure 1 show Recurve's measurement of the seasonal resource curves of two recent California energy efficiency programs. These measurements are carried out with the CalTRACK 2.0 hourly methods implemented by the open-source OpenEEmeter. The bottom panel gives the average marginal utility avoided cost by the hour for those same periods determined by the California Public Utilities Commission's Avoided Cost Calculator. The vertical dashed lines represent the 4 pm - 9 pm summer peak period where capacity, transmission, and distribution costs spike, making resource adequacy much more costly.

Figure 1 shows that the residential energy efficiency program (top), which consisted of HVAC maintenance, lighting, and smart thermostat measures, along with customer engagement and education, delivered the most significant demand reduction during peak hours, especially during the hot summer months. By comparison, the small/medium business direct install program (middle), consisting mainly of lighting and refrigeration measures, delivered a daytime-peaking resource curve and continual baseload (24 x 7) savings.

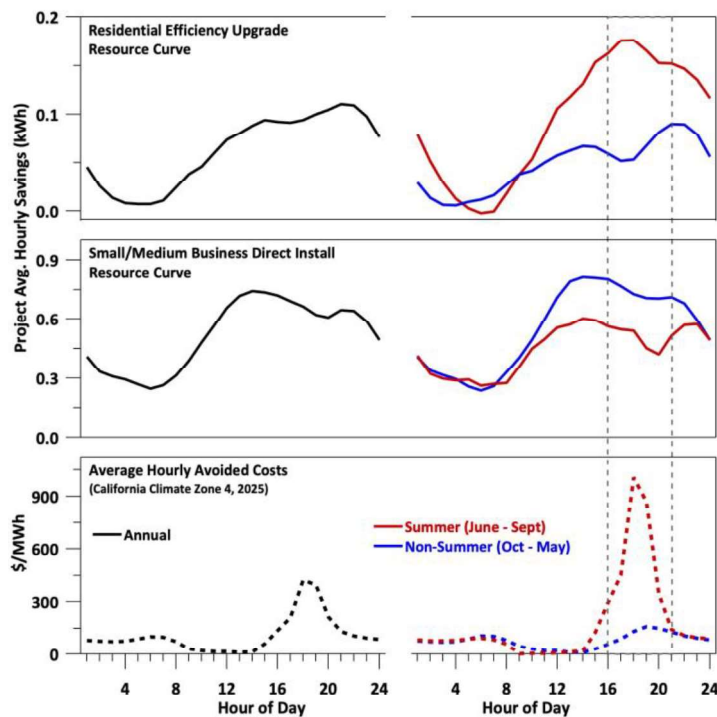


Figure 1: Resource curve (average hourly impact to demand) by season (annual = black, summer = red, non-summer = blue) for a recent California residential efficiency program (Top) and Small/Medium business direct install program (Middle). The bottom panel shows 2025 average hourly avoided costs for a representative California climate zone (Climate Zone 4).

This is reflected in the hourly avoided cost profile (bottom panel of Fig. 1), which essentially disappears during the midday hours of 9 am - 4 pm for all but the summer months. By contrast, the summer peak period exhibits a spike in marginal costs that stems from high capacity, transmission, and distribution costs.

With a metered resource curve that peaks in coincidence with these high summer evening marginal costs, the residential efficiency program yields far greater value on a per-MWh basis than the small/medium business direct install program. This can be seen in Fig. 2, which shows how avoided costs accrue by the hour for 1 MWh of savings for both of these programs.

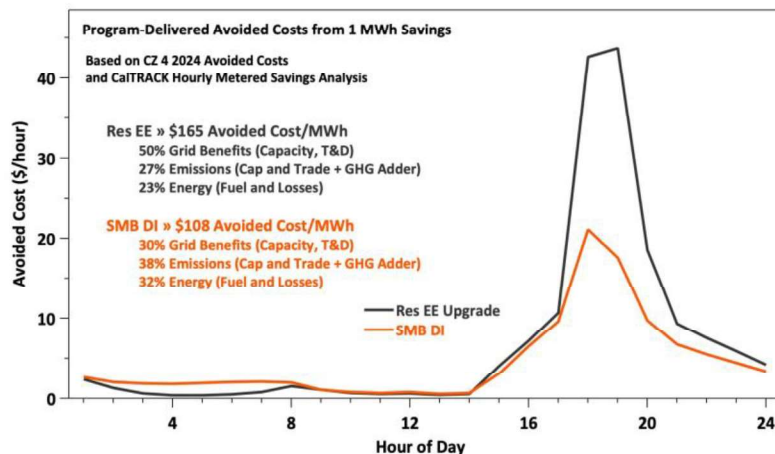


Figure 2: The results of multiplying through the hourly (8760) resource curves of the residential energy efficiency and small/medium business direct install programs by the 8760 avoided cost profile of California Climate Zone 4 (CZ 4) in 2025. The resource curves are normalized to 1 MWh to provide a normalized comparison between the programs. Each hour represents a summation of that

hour's savings and avoided costs for 365 days.

Because the residential program delivers a high fraction of savings during the summer peak hours, 1 MWh equates to \$165 in avoided costs, compared to \$108 for the small/medium business direct

install program. The latter program delivers 35% of its savings between 8 a.m. and 3 p.m., yet these savings yield only 6% of the program's total avoided costs. In contrast, despite only 7% of program savings occurring during the summer peak hours, those savings account for 37% of avoided costs.

Understanding their individual customer usage characteristics and orienting programs toward those customers with a high opportunity will be an essential strategy for achieving reliable, cost-effective impacts while also ensuring programs are serving customers most in need of the interventions.

Demand Flexibility Marketplace

Community Choice Aggregators need to address the growing load shape challenges driven by variability and electrification of heating and transportation to integrate renewable resources into the grid effectively. At the same time, they will need to confront ongoing challenges, costly T&D upgrades, the retirement of legacy power plants, and the need to design for resilience in the wake of climate change and other natural disasters.

In this context, behind-the-meter solutions, such as energy efficiency, demand response, and storage, should not be considered goals in-and-of themselves but viewed instead as integrated flexibility resources that can serve as the reliable counterpart to supply-side resources that non-wires alternatives (NWA) -- all while helping lower energy bills for customers. Flexibility resources must move beyond traditional designs and evaluation approaches to deliver reliable, verifiable changes in demand that meet specific time-and-locational grid needs.

Demand flexibility is all around us and can be captured through traditional utility programs or through markets and price signals. The latter is simply easier, lower cost, and less risk. There are thousands of innovative companies that are shaping demand with a variety of tools and technologies and developing a range of business models to drive customer demand - so why are programs betting the house with one company and leaving all other market participants out to die? Demand flexibility is about results at the meter and not a specific technology.

By allowing innovative private companies to compete for customers and optimize their own business model instead of program rules, we build a market where risk is diversified over the sheer volume of technology being applied. Poor performers drop out of the market; successful companies find their way to new business.

Orange County Power Authority has the opportunity to engage the market to provide best of class solutions to ratepayers while diversifying its own bet on technology and sharing performance risk with the market. This approach is being applied across the country in various forms, leveraging open-source revenue-grade accounting and market economics.

How Demand Flexibility Works

All markets have ground rules. To facilitate competitive demand flexibility markets, a structure for apples-to-apples valuation with other resources is essential. Just as you can't buy a pound of

rice or a gallon of gas without all parties having confidence in the measurement system, a utility can't procure a kilowatt-hour of demand flexibility without knowing ahead of time how it will be determined, paid, and verified.

With behind-the-meter demand flexibility rooted in standardized, transparent, and timely metered measurement, it is finally possible to cultivate a real demand flexibility market that can innovate with confidence.

The challenge of measuring demand flexibility lies in establishing the “counterfactual” or “what would have happened in the program’s absence.” For demand flexibility to compete as a legitimate resource we must address two measurement questions. First, how should the counterfactual be computed? Second, why should everyone have confidence in the results?

The solution comes from meter-based measurement with fully open source methods and deployable code that allows verification and replication by all parties. The CalTRACK methods and their implementation via the OpenEEmeter open-source codebase enable demand flexibility calculations via fully-specified, rigorous, tested, and standardized methods.

Once it is possible to measure the time and locational impacts of demand flexibility at the meter, it is possible to value it, just like other resources.

Demand Flexibility Project Description

Each aggregator enters into a Flexibility Purchase Agreement (FPA) that pays aggregators for all cost-effective value delivered at the meter on performance at the end of the first project year.

The Flex Payment is calculated to provide the maximum market benefits, that are by definition cost-effective per the CPUC Total Resource Cost Test.

The Flex Payment is the difference between the avoided cost value of the project, which is the actual measured hourly resource curve (aka savings load shape) multiplied by the avoided cost value for each hour and the primary measures effective useful life (EUL), minus the total project cost (customer energy-related project spend + admin).

An Aggregator's Flex Payment is paid-on-performance at the end of the first 12-months of project operation. This payment represents the maximum available incentive that delivers a project that is the definition of cost-effectiveness per the Total Resource Cost Test.

Aggregators can increase their projects' value by both increasing savings volume and by delivering load shape impacts that are more valuable than the CPUC's deemed average resource curve (savings load shape).

The Efficiency Value will also be calculated for each project using the CPUC Deemed load shape and Effective Useful Life (EUL) values for a project's primary measure class, then subtracting customer and admin costs. This value can be thought of as a price floor for aggregators.

Recurve will enroll projects and track savings for every project in an aggregator's portfolio and provide aggregator's near-real-time M&V to all through our Fleet Manager portal, and track payment recommendations through the Flex Ledger.

How Payments Are Made

The Demand Flexibility Marketplace pays aggregators based on the value of every project that is cost-effective, defined as achieving a TRC of 1.0. This means that the customer's energy-related spending, administrative costs, and any incentive is equal to the lifetime Total Project Value.

Total Project Value is based on the delivered metered load shape and level of savings in the first 12 months of project operation, multiplied by the hourly avoided costs (in the CPUC Avoided Cost Calculator) for the useful life of the project, adjusted by required free ridership adjustment of .95 net to gross ratio, and the CPUC .076 discount rate. The minimum load shape value floor for any project is the CPUC DEER load shape associated with the primary measure or measure mix.

Project Eligibility

Demand Flexibility Marketplaces are agnostic to measures and business models; however, the expected useful life of the measures being implemented will affect the magnitude of the FPA rate. While final eligibility will be agreed to by Orange County Power Authority, eligibility requirements will likely resemble the following:

- Not currently participating in a CPUC-funded downstream program.
- Project site must be located in Orange County Power Authority territory, and receive electric distribution service from Orange County Power Authority.
- 12 consecutive months of energy usage data.
- If solar, installation must have been completed at least 12 months prior to intervention.
- Model fit needs to be < 1.0 CVRMSE (Recurve will conduct analysis at intake).

Project Enrollment Process

1. Each project is required to undergo an eligibility check.
2. Recurve verifies project eligibility.
3. Aggregators will submit eligible projects for enrollment.
 - a. This is inclusive of a scope of work and third party data release form.

4. Project begins and Recurve tracks savings
5. After tracking 12 months of savings data, Recurve will calculate aggregator payment values according to the FPA and issue a payment recommendation to Orange County Power Authority.
6. Orange County Power Authority payment for the value of savings generated.

APPENDIX C: SEE CHANGE INSTITUTE

There are many elements to setting up and implementing a Community Choice Aggregation (CCA) program, including rate design, message framing, and communication channels. CCAs face a number of tasks: selecting the number and type of rate options, creating marketing copy, planning outreach strategies, and managing inbound communications. Behavioral science can offer insights into consumers' reactions and judgments to information as well as tools for reducing uncertainty, building trust, and encouraging support for and acceptance of CCAs.

Calpine has engaged See Change Institute (SCI) to work with project partners to leverage behavioral science insights and customer research to support the communications and marketing plan for the Orange County Power Authority (OCPA) enrollment period and roll-out.

Services

SCI offers services in each of the following four categories listed below. The team is flexible and able to adapt plans to meet CCA and marketing needs throughout the planning and implementation process. In order to provide the most value to OCPA, as part of the advising task, we will work with the OCPA team to design SCI's engagement in a way that best meets your needs. Potential support activities are listed below.

Advising

The team offers planning and advising support to help the team launch OCPA to minimize opt outs and encourage positive engagement.

Strategic Planning

The SCI team will work with OCPA and the marketing team to review and develop a communications and research plan based on your internal capacity and objectives. We would conduct meetings with key stakeholders from each team to understand internal capacities and align on goals around customer experience. We will then synthesize insights to propose an overall strategy and identify critical research tasks from below to best meet your needs within our support budget.

Behavioral Science Advising

The SCI team will provide full service behavioral science advising through attending meetings with OCPA, Calpine, and marketing team staff, drafting memos to address critical questions (such as the science behind renewable rate naming), and delivering presentations on an as needed basis.

Data-driven customer insights

We can conduct research to document key customer attitudes, experiences, and needs. These activities will support development of communications materials that resonate with customers.

Customer Survey Analysis

SCI and Calpine are conducting a 10-minute online survey this year with a representative sample of 1,000 California energy customers to examine their awareness, attitudes and actions towards energy rates, renewable energy, and CCAs. Questions address customers' awareness, knowledge, attitudes, and support of CCAs, and willingness to pay for renewable energy. We can collect a 200-customer oversample in Orange County and analyze and report on Orange County specific results of this survey, as well as data comparing Orange County to the rest of the statewide sample. These data will help identify messaging strategies that can be incorporated into CCA outreach to encourage customers to stay in their defaulted plan. The ability to compare statewide data will also allow us to determine to what extent past successes and lessons learned from other CCA enrollments can be scaled to OCPA.

Customer Journey Mapping

In this task, SCI will work with Calpine to create a customer journey map to identify the ways that various customers may engage with the OCPA enrollment materials. This process will map out multiple possible journeys that a customer can take based on their communication choices (*e.g.*, visiting the website, calling into the IVR, communicating with a community partner, etc.). This will provide OCPA and its partners with key touchpoints and the different paths to opt-out and help to identify which touchpoints may be most influential to the decision process.

Communications design support

There are a number of activities we can conduct to support the design of customer-facing materials that maximize customer satisfaction and minimize opt-outs.

Behavioral Audit of Touchpoints and Materials

In this task, SCI will review sample content of each touchpoint (based on past CCA enrollments) and make behavioral science-informed recommendations to optimize touchpoints. For example, we can review FAQ language and identify high level suggestions for how they can be optimized to discourage opt-outs.

Optimization Design

SCI can work with OCPA and its partners to identify the highest priority touchpoints for optimization and advise / support the design and review of outreach materials. These may include enrollment notices, bill communications, call center scripts, website content, broadcast marketing materials, and other electronic channels, including text, email, and social media.

Customer Testing

To support touchpoint optimization, SCI can conduct pre-testing of messages. To do this, we would reach out to actual Orange County and/or California residents to test whether revised materials increase awareness, positive attitudes, and behavioral intention to support and stay enrolled in OCPA. Testing methods will be selected based on the materials and tests employed, but could include experimental A/B testing of mocked-up messages (*e.g.*, save money vs. local energy vs. clean energy), and/or deep dive qualitative assessment via video interviews or usability studies using a think aloud procedure and/or eye tracking.

Launch support

We can track customer awareness and behavior during launch to facilitate course corrections and better understand when and why customers opt out of OCPA.

Launch Monitoring and Evaluation

SCI can develop and implement an evaluation of enrollment success. We will identify success metrics based on OCPA goals and design evaluation methods to balance data collection that is non-intrusive, comprehensive, and valid⁴. If possible, we can field test at least one of the customer touchpoints that we've pre-tested to understand its impact on opt-outs. Success will likely be evaluated by a combination of tracking opt-out activity, website traffic, email opens, and call center and IVR logs. We will work with Calpine staff to analyze opt-out rates and assess touchpoint effectiveness.

Audience Pulse

SCI can conduct general audience pulses to gather data from Orange County residents during the commercial and/or residential rollout periods. Data collected during these pulses can be examined in conjunction with data provided from the marketing team on the timing of media buys and other forms of marketing and in comparison to the baseline levels of awareness, understanding, and support collected during the prior phases of our research.

⁴ For example, in past CCA enrollments, most ratepayers pressed "1" as the reason to opt out via IVR. This may be because they are concerned about rate increases or because pressing "1" is the quickest way to get off the phone. Randomizing reasons would remove this confound and improve data quality.

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 6.4

To: Orange County Power Authority Board of Directors

From: Ryan Baron, General Counsel

Subject: Approval of Master Power Purchase and Sale Agreements with Pacific Gas and Electric Company, Southern California Edison Company, and Morgan Stanley Capital Group

Date: September 14, 2021

RECOMMENDED ACTION

1. Adopt Resolution No. 2021-05, a Resolution of the Board of Directors of Orange County Power Authority Approving a Master Power Purchase and Sale Agreement and Collateral Annex with Pacific Gas and Electric Company, and Authorizing the Chief Executive Officer to Execute the Agreement.
2. Adopt Resolution No. 2021-06, a Resolution of the Board of Directors of Orange County Power Authority Approving a Master Power Purchase and Sale Agreement and Collateral Annex with Southern California Edison Company, and Authorizing the Chief Executive Officer to Execute the Agreement.
3. Adopt Resolution No. 2021-07, a Resolution of the Board of Directors of Orange County Power Authority Approving a Master Power Purchase and Sale Agreement with Morgan Stanley Capital Group, and Authorizing the Chief Executive Officer to Execute the Agreement.

BACKGROUND

The Orange County Power Authority (“Authority”) is in the process of negotiating and finalizing Master Power Purchase and Sale Agreements (“Master Agreements”) with Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), and Morgan Stanley Capital Group (“MSCG”) for the purchase of renewable energy.

A Master Agreement is an “evergreen” agreement that allows the Authority to enter into future transactions with the party to the Agreement. This occurs should the Authority submit a successful offer into the party’s solicitations or should the parties agree bilaterally to transact with one another. The Master Agreement will govern individual transactions between the parties, including buyer and seller obligations, defaults, collateral requirements, indemnities and other legal provisions. The Master Agreement will govern purchases for renewable energy, system power, and resource adequacy.

There are two industry standard templates used for Master Agreements – the Edison Electric Institute (EEI) Master Agreement and the Western Systems Power Pool (WSPP) Master Agreement. The Authority will base many of its power supply agreements on the EEI template, which is also used by PG&E, SCE and SDG&E. The first section of the Master Agreement, known as the “Cover Sheet,” enables election of certain optional provisions and allows for modifications to the standard terms agreed to between the parties. Generally speaking, the Cover Sheet

represents the product of negotiations that have occurred among the parties as they relate to the Master Agreement.

Actual purchases by the Authority will be executed through a Confirmation Agreement that will contain the price, resource, quantity, term and other commercial terms of the transaction. Confirmation agreements are typically shorter one-to-two page contracts governed by the Master Agreement.

Certain information contained in the Master Agreement and Confirmation is considered by law to be confidential market sensitive information. This includes price, resource type, term, collateral and other commercial requirements. Such information is considered confidential by the California Public Utilities Commission for up to three years and also falls within certain exceptions to the California Public Records Act. Any contract brought to the Board for approval that contains confidential market sensitive information will be redacted so as not to reveal the Authority's procurement positions and other procurement strategies.

The Collateral Annex sets forth procedures under which the parties will provide security under the Master Agreement (Credit and Collateral Requirements). Specifically, the Collateral Annex describes the conditions under which a party will be required to transfer performance assurance in the form of cash, a letter of credit or other property, as well as the conditions under which a party administers and releases the performance assurance.

In accordance with the below delegation authority in the Authority's Energy Risk Management Policy, approved on July 13, 2021, the CEO has the authority to approve a transaction based on contract limits for term, volume and notional amount for system power, resource adequacy, renewables and GHG-free product types. The delegated authority is shown below and applies to wholesale power procurement outside of the CAISO market:

Delegation of Authority: Title/Governing Body	Product Type	Tenor Limit	Volumetric Limit	Notional Value
Chief Executive Officer	System Power	Up to 3 years	2,000 GWh	\$ 75 M
	Resource Adequacy	Up to 3 years	3,000 MW	\$ 30 M
	Renewables	Up to 3 years	1,500 GWh	\$ 25 M
	GHG-free	Up to 3 years	1,000 GWh	\$ 10 M
OCA Board	All Products	Any	Unlimited	Unlimited

Transactions falling outside these limits require approval of the Board of Directors.

Staff is asking the Board to approve the Master Agreements with PG&E, SCE and MSCG and authorize the CEO to execute. The Authority has recently bid into PG&E's RPS and RA solicitations and has been successfully chosen to purchase certain PCC1 RPS as well as RA for 2022. The Authority will also be making offers in upcoming SCE solicitations. Finally, MSCG is a regular seller of system energy to CCAs, and the Authority expects competitive offers from MSCG when it goes to procure energy prior to launch.

In some cases with RFOs, a winning offer is subject to a 1- to 2-hour window for acceptance and finalization of all documents, such as to accept a counter-party's pricing by 1 p.m. CST when trading markets close, and to execute all agreements, which cannot be done in the time-frame of an Authority Board meeting. Therefore, it is important for the Authority to finalize Master Agreements prior to solicitations whenever possible.

Staff is asking the Board to approve the Master Agreements and related documents to allow the Authority to enter into future transactions with PG&E, SCE, and MSCG for the purchase of various energy product types. Staff is in the process of negotiating Master Agreements with other energy counter-parties and will bring those agreements to the Board for approval at future dates. Staff anticipates the Authority being enabled with 10-20 parties by launch in 2022.

FISCAL IMPACT

There is no fiscal impact at this time.

ATTACHMENTS

Attachment A: Resolution Approving a Master Power Purchase and Sale Agreement and Collateral Annex with PG&E

Attachment B: PG&E Master Power Purchase and Sale Agreement

Attachment C: Paragraph 10 to the Collateral Annex to the PG&E Master Power Purchase and Sale Agreement

Attachment D: Resolution Approving a Master Power Purchase and Sale Agreement and Collateral Annex with SCE

Attachment E: SCE Master Power Purchase and Sale Agreement

Attachment F: Paragraph 10 to the Collateral Annex to the SCE Master Power Purchase and Sale Agreement

Attachment G: SCE Certificate of Authority

Attachment H: Resolution Approving a Master Power Purchase and Sale Agreement with MSCG

Attachment I: MSCG Master Power Purchase and Sale Agreement

RESOLUTION NO. 2021-05

A RESOLUTION OF THE BOARD OF DIRECTORS OF ORANGE COUNTY POWER AUTHORITY APPROVING A MASTER POWER PURCHASE AND SALE AGREEMENT AND COLLATERAL ANNEX WITH PACIFIC GAS AND ELECTRIC COMPANY AND AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE THE AGREEMENT

A. The Orange County Power Authority (“Authority”) is a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Cal. Gov. Code § 6500 *et seq.*), California Public Utilities Code § 366.2, and a Joint Powers Agreement effective on November 20, 2020.

B. The Authority intends to launch the services of its community choice aggregation program in 2021 consistent with Public Utilities Code § 366.2 and its Implementation Plan and Statement of Intent certified by the California Public Utilities Commission.

C. The Authority will administer competitive solicitations (Request for Offers) to certain energy service providers capable of providing energy, renewable energy, carbon free energy, and/or related products and services at competitive prices.

D. In anticipation of administering competitive solicitations, the Authority is negotiating an Edison Electric Institute (“EEI”) Master Purchase and Sale Agreement (“Master Agreement”) with prospective counter-parties so that the Authority will be enabled to procure energy.

E. The Master Agreement is an industry standard contract that governs the purchase and sale of electricity and other products, and requires a separate written confirmation agreement to execute a specific binding transaction.

F. The Collateral Annex is an annex provision to the standard EEI Master Agreement that sets forth procedures under which the parties to the Master Agreement will provide security, including conditions under which a party will be required to transfer, administer, and release performance assurance.

G. The Authority has negotiated an EEI Master Agreement and Collateral Annex with Pacific Gas and Electric Company (“PG&E”) that will enable the Authority to enter into future transactions with PG&E for the purchase of various energy products.

H. Pursuant to the Authority’s Energy Risk Management Policy, approved on July 13, 2021, the Chief Executive Officer (“CEO”) has the authority to approve transactions based on certain contract limits, and transactions falling outside the prescribed limits require approval by the Board of Directors.

I. Due to the time-sensitive nature of bidding and accepting offers in the trading markets, and the Authority’s desire to make competitive offers and enter into agreements, the Master Agreement should be finalized prior to solicitations.

J. The Authority Board of Directors desires to enter into the Master Agreement and Collateral Annex with PG&E and authorizes the CEO to negotiate and execute the Master Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Orange County Power Authority as follows:

Section 1. The Board of Directors hereby approves the Master Agreement and Collateral Annex with PG&E.

Section 2. The Board of Directors authorizes the CEO to execute the Master Agreement and Collateral Annex, and any related documents as approved to form by the General Counsel as are necessary and convenient to complete renewable energy transactions with PG&E.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of the Orange County Power Authority held on September 14, 2021.

Secretary
Orange County Power Authority

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00) ("*Master Agreement*") is made as of the last dated signature on the signature page hereto ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name: Orange County Power Authority, a California joint powers authority ("Party A")

All Notices:

Street: P.O. Box 54283

City: Irvine, CA Zip: 92619

Attn: Brian Probolsky, Chief Executive Officer

Phone: (949) 767-8700

E-mail: brian@ocpower.org

Invoices:

Attn: Michael Maher

Phone: (415) 526-3020

Email: mmaher@mahercpa.com

Scheduling:

Name: TEA CAISO Scheduling Coordinator

Address: 405 114th Ave SE #100, Bellevue, WA 98004

Phone: (425) 460-1118

Email: group-corp-tradingcaiso@teainc.org

Payments:

Attn: Michael Maher

Phone: (415) 526-3020

Email: mmaher@mahercpa.com



Wire Transfer:



Credit and Collections:

Attn: Michael Maher

Phone: (415) 526-3020

Email: mmaher@mahercpa.com

Name: Pacific Gas and Electric Company ("Party B"),
limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions.

All Notices:

Street: 245 Market Street

City: San Francisco, CA Zip: 94105

Attn: Ted Yura, Senior Manager, Contract

Management

Phone: (415) 828-3350

Email: Ted.Yura@pge.com

Invoices:

Attn: Kelly Wong, Senior Manager, Electric

Settlements

Phone: (510) 220-6064

Email: K.Wong@pge.com

Scheduling:

Attn: Mike McDermott

Phone: (415) 973-6222, (415) 973-4072

Email: Michael.McDermott@pge.com

Payments:

Attn: Kelly Wong, Senior Manager, Electric

Settlements

Phone: (510) 220-6064

Email: K.Wong@pge.com



Wire Transfer:



Credit and Collections:

Attn: Manager, Credit and Emerging Market Risk

Phone: (415) 636-0725

Email: PGERiskCredit@pge.com

Confirmations:

Attn: Kirby Dusel, Pacific Energy Advisors
Phone: 916-834-0684
Email: kirby@pacificea.com

Confirmations:

Attn: Berry Ng, Manager, Fuel Settlements
E-mail: egssettlements@pge.com
Phone: (415) 940-9528

**With additional Notices of an Event of Default or
Potential Event of Default to:**

Attn: Ryan Baron
Best Best & Krieger LLP
18101 Von Karman Ave., Suite 1000
Irvine CA 92612
Phone: (949) 263-6568
Email: ryan.baron@bbklaw.com

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff Not Applicable - Party A makes the following representation: Party A does not have a Tariff. Party A is a California joint powers authority. As a governmental entity, it is not required to have a MBR tariff

Party B Tariff Tariff

Dated July 23, 2015 Docket Number ER15-02245-000

Article Two

Transaction Terms and
Conditions

☒ Optional provision in Section 2.4. If not checked, inapplicable

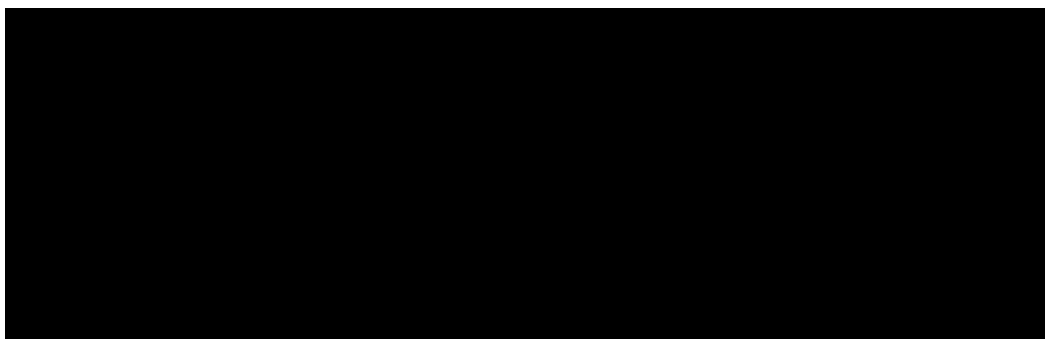
Article Four

Remedies for Failure to Deliver
or Receive

☒ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies



5.6 Closeout Setoff

- ☒ Option A (Applicable if no other selection is made.)
- ☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:
- ☐ Option C (No Setoff)

Article Eight

Credit and Collateral
Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- ☒ Option A
- ☐ Option B Specify
- ☐ Option C Specify

(b) Credit Assurances:

- ☒ Not Applicable
- ☐ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable
- ☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: The Collateral Annex does not secure the obligations of Party B under this Master Agreement

(d) Downgrade Event:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if either S&P or Moody's does not rate Party B.

- ☐ Other:
Specify: .

(e) Guarantor for Party B: None

Guarantee Amount:

8.2 Party B Credit Protection:

(a) Financial Information:

- ☒ Option A
☐ Option B Specify:
☐ Option C Specify:

(b) Credit Assurances:

- ☒ Not Applicable
☐ Applicable

(c) Collateral Threshold:

- ☐ Not Applicable
☒ Applicable

If applicable, complete the following:

Party A Collateral Threshold: See Collateral Annex

(d) Downgrade Event:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's.

- ☐ Other:
Specify: .

(e) Guarantor for Party A: _____

Guarantee Amount: \$ _____

Article Ten

Confidentiality ☒ Confidentiality Applicable
If not checked, inapplicable.

Schedule M

- ☒ Party A is a Governmental Entity or Public Power System
☐ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6. If not checked, inapplicable
☐ Add Section 8.6. If not checked, inapplicable

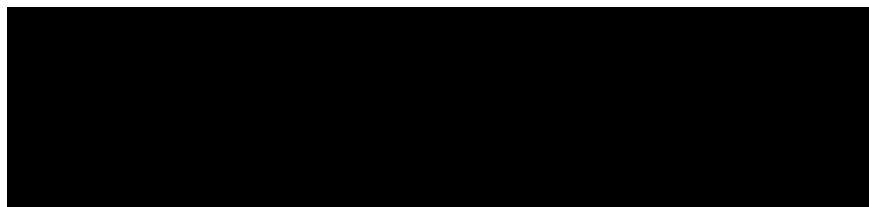
Other Changes

Specify, if any: The following changes shall be applicable.

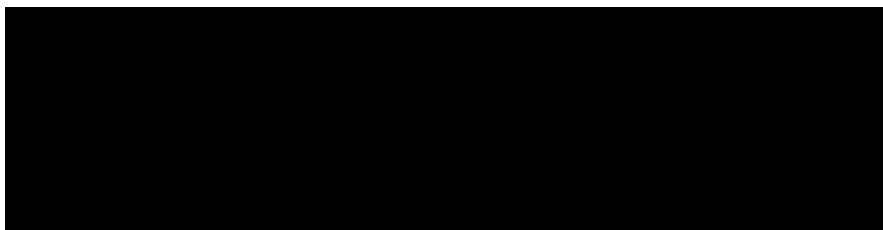
GENERAL TERMS AND CONDITIONS.

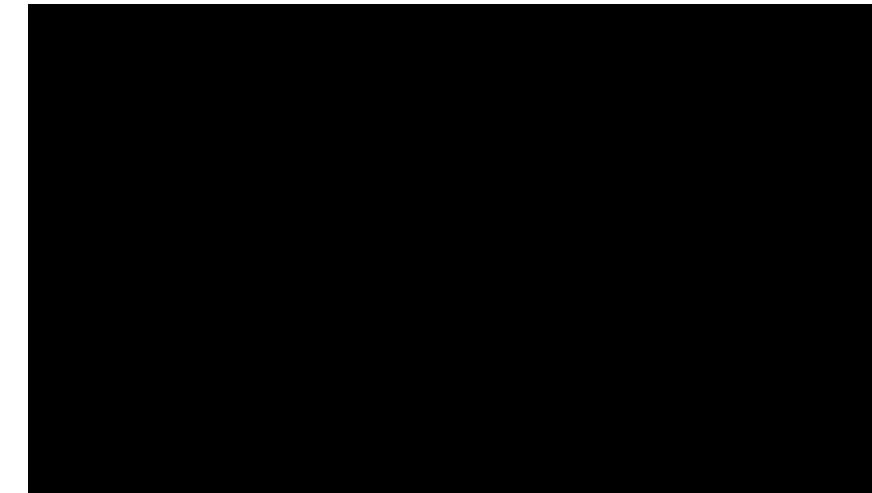
(A) Article One: General Definitions. Amend Article One as follows:

- (1) Section 1.1 is amended in its entirety to read: “Affiliate” means (i) with respect to Party A, any entity which directly or indirectly controls, is controlled by, or is under a common control with Party A, and (ii) with respect to Party B, none. For purposes of this definition, “control” (including, with correlative meaning, the terms “controlling”, “controlled by” and “under common control with”), shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies through the ownership of voting securities, by agreement or otherwise; *provided, however*, that in the case of Party A, the term “Affiliate” shall not include the public entities designated as members or participants under the Joint Powers Agreement creating Party A and shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith.”
- (2) Section 1.12 deleted and replaced with the definition of “Credit Rating” as set forth in Paragraph 10 to the Collateral Annex to this Agreement
- (3) Section 1.27 deleted and replaced with the definition of “Letter of Credit” as set forth in the Collateral Annex to this Agreement (as modified in Paragraph 10 to that Collateral Annex).
- (4) Section 1.45 is deleted and replaced with the definition of “Performance Assurance” as set forth in the Collateral Annex to this Agreement (as modified by Paragraph 10 to that Collateral Annex), and “Credit Assurance” as the term is used in this Cover sheet shall mean Performance Assurance as so defined in the Collateral Annex.
- (5) In Section 1.50 replace the reference to Section 2.4 with reference to Section 2.5.
- (6) In Section 1.51 replace “at Buyer’s option” in the fifth line with “absent a purchase”.
- (7) In Section 1.53 replace “at Seller’s option” in the fifth line with “absent a sale”.
- (8) A new Section 1.62 is added as follows:



- (9) A new Section 1.63 is added as follows:





(10) A new Section 1.64 is added as follows:

“Reference Market Maker” shall have the meaning as set forth in the Collateral Annex to this Agreement.

(11) A new Section 1.65 is added as follows:

“JAMS” means JAMS, Inc., or its successor entity, a judicial arbitration and mediation service.

(B) Article Two: Transaction Terms and Conditions. Amend Article Two as follows:

(1) In Section 2.1, delete the first sentence in its entirety and replace with the following:

“A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

(2) Section 2.3 is hereby deleted in its entirety and replaced with the following:

2.3 “No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified.”

(3) Section 2.4 is hereby amended by deleting the words “either orally or” in the seventh line.

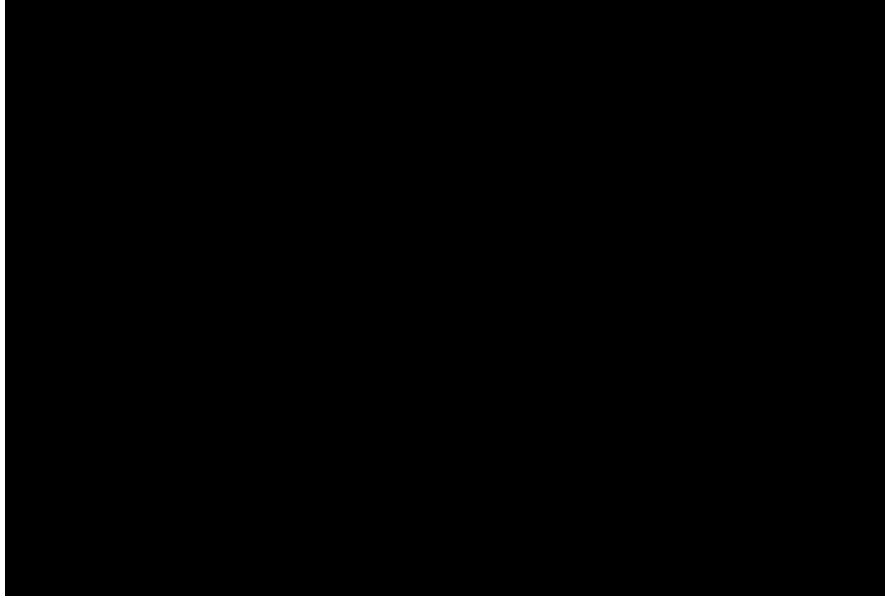
(4) A new Section 2.6 is added to read as follows:

“2.6 Imaged Agreement. Any original executed Master Agreement, Confirmation or other related document may be photocopied and stored in electronic format (the ‘Imaged Agreement’). The Imaged Agreement, if introduced as evidence on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper or into other written format, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation, or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation, or the Imaged Agreement) on the basis that such were not originated or maintained in documentary or written form under either the hearsay rule or the best evidence rule. However, nothing in this Section 2.6 shall preclude a Party from challenging the admissibility of such

evidence on some other grounds, including, without limitation, the basis that such evidence has been altered from the original.”

(C) Article Three: Obligations and Deliveries. Amend Article Three as follows:

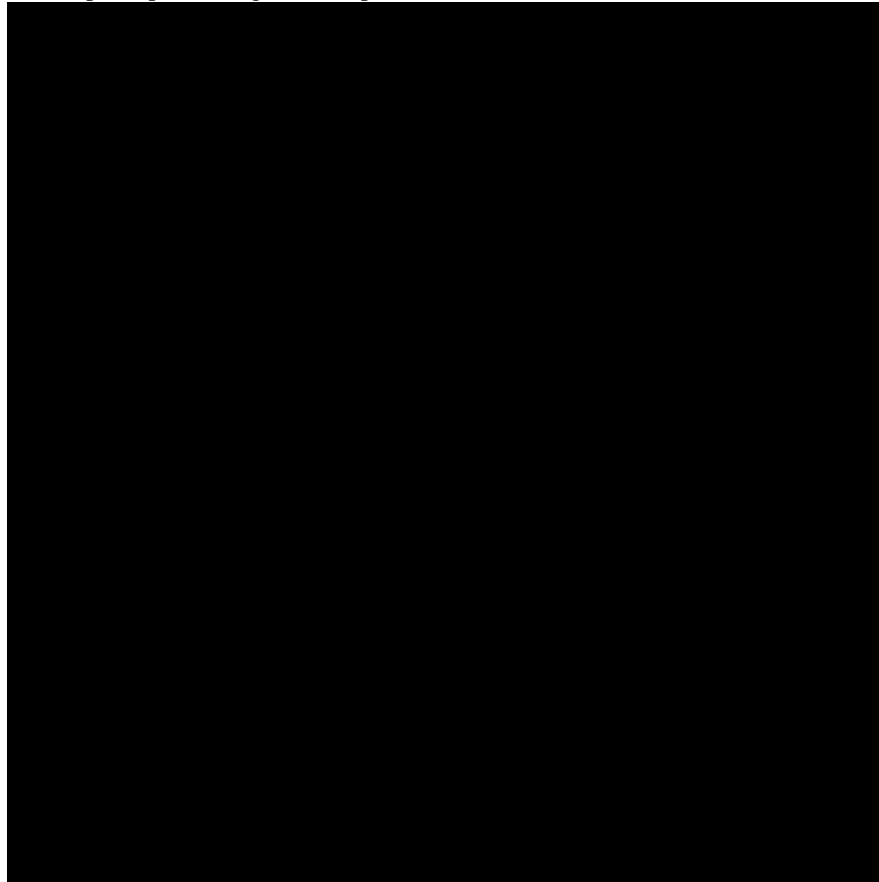
(1) Add a new Section 3.4as follows:

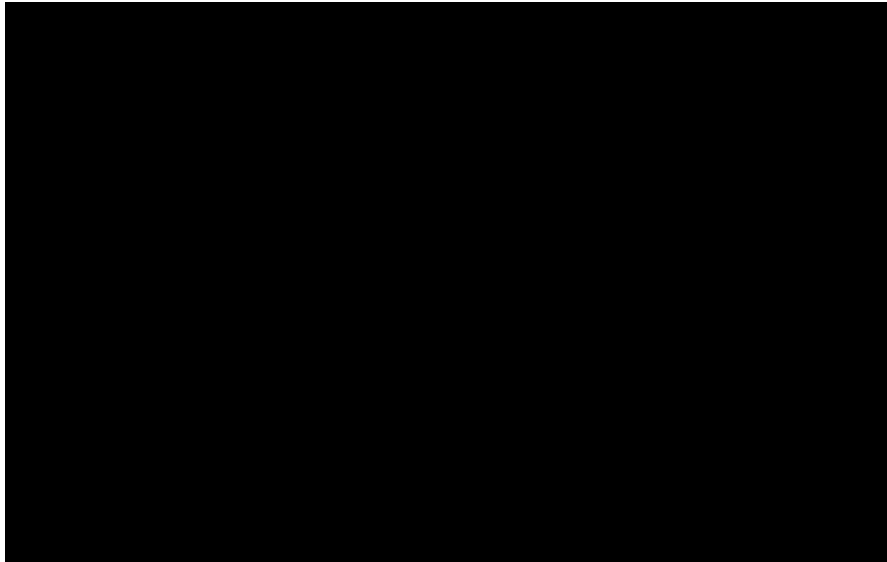


(b) For purposes of this Section 3.4, the following definitions shall apply:

(i) “Determination Period” means each calendar month a part or all of which is within the Delivery Period of a Transaction.

(ii) “Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.





(D) Article Five: Events of Default; Remedies. Amend Article Five as follows

- (1) In Section 5.1(a) change “three (3) Business Days” to “five (5) Business Days”.
- (2) Section 5.1(g) is amended by deleting the phrase “, or becoming capable at such time of being declared,” from the eighth and ninth lines, and deleting the phrase “or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet)”.
- (3) Section 5.2 is amended to (i) add the words “and time of day” in the third line immediately following the first instance of the word “day” and (ii) add the following at the end of the Section:

“The Non-Defaulting Party shall determine its Gains and Losses by determining the Market Quotation Average Price for each Terminated Transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain the Market Quotation Average Price with respect to any Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner by calculating the arithmetic mean of at least three (3) Broker or Index Quotes for transactions substantially similar to each Terminated Transaction. Such Broker or Index Quotes must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts to obtain at least three (3) Broker or Index Quotes with respect to any Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such

information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information; provided, however, that such third parties shall not be Affiliates of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third party information, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner using relevant market data it has available to it internally.”

- (4) Section 5.3 is amended by inserting “plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party Pursuant to Article Eight,” between the words “that are due to the Non-Defaulting Party,” and “plus any and all other amounts” in the sixth line.
- (5) The following is added to the end of Section 5.4: “Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party or any of its Affiliates under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed.”; and
- (6) Section 5.6 is amended by adding the following sentence to the end of the section: The Parties shall be limited to setting off only against the payment of money under transactions between the Parties with respect to the purchase and sale of natural gas and for which such transaction is solely for the purpose of procuring natural gas for the use of Party B’s electric fuels management function, thereby explicitly excluding from set-off: (i) any payments of money which might arise through a transaction between the Parties for the purchase and sale of natural gas for use by Party B’s core natural gas retail function; and (ii) any payments of money which arise out of an instrument relating to borrowed money indebtedness of any kind (whether matured or unmatured or whether or not contingent).

(E) Article Ten: Miscellaneous. Amend Article Ten as follows:

- (1) Section 10.2(i) is amended as follows: the phrase “... and is qualified to conduct its business in each jurisdiction in which it will perform a Transaction.” is added to the end of 10.2(i);
- (2) Section 10.2(vi) is amended by deleting the phrase “or any of its Affiliates”.
- (3) Section 10.2(ix) is amended by adding the phrase “it is an ‘eligible contract participant’ as defined in Section 1(a)(18) of the Commodity Exchange Act, as amended, and it is an ‘eligible commercial entity’ as defined in Section 1(a)(17) of the Commodity Exchange Act, as amended”.
- (4) Section 10.2(x) is amended by replacing “and” in the third line with a comma and adding the following at the end of the section: “and it intends to physically settle each Transaction such that if the ‘commodity option’ (as defined in the Commodity Exchange Act, as amended) associated with a Transaction is exercised, the option would result in the sale of an ‘exempt commodity’ (as

defined in Section 1(a)(20) of the Commodity Exchange Act, as amended) for immediate or deferred delivery.”

- (5) Section 10.5 is amended as follows: (a) the phrase “may be withheld in the exercise of its sole discretion” is deleted and replaced with “which consent may not be unreasonably withheld”; and (b) replace the word “affiliate” with the defined term “Affiliate.”
- (6) Section 10.10 is deleted in its entirety.
- (7) Section 10.11 is deleted in its entirety and replaced with the following:

“10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of this Agreement or any Transaction to a third party other than (i) the Party’s or the Party’s Affiliates’ employees, lenders, counsel, accountants, advisors or ratings agencies who have a need to know such information and have agreed to keep such terms confidential (ii) in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request applicable to such Party or any of its Affiliates, (iii) as Party B deems necessary in order to demonstrate the reasonableness of its actions to duly authorized governmental or regulatory agencies, including, without limitation, the California Public Utilities Commission (“CPUC”) or any division thereof or (iv) to any Governmental Entity, the CPUC, CAISO and the Procurement Review Group, if applicable; provided, however, each Party shall in the cases described in subsections (ii) through (iv), to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this Section 10.11.

Party B acknowledges that Party A is a public entity subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Party A acknowledges that Party B may submit information to Party A that Party B considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) to Party A pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Party A as soon as practical shall notify Party B in writing that such request has been made. Party B shall be solely responsible for taking whatever legal steps are necessary to prevent release of the Requested Confidential Information to the Requestor by Party A. If Party B takes no such action, after receiving the foregoing notice from Party A, Party A shall be permitted to comply with the Requestor’s demand and is not required to defend against it. If Party B does take such action, Party A shall provide timely and reasonable cooperation to Party B if requested by Party B, for which Party B will be responsible for any agreed reasonable expenses incurred by Party A in providing such cooperation.

Regardless of any other provisions of this Agreement, either Party shall have the right to disclose the terms and conditions of a transaction between the parties to index publishers that aggregate and report such data to the public in the form of indices.

- (8) A new Section 10.12 is added as follows:

“10.12 Execution. A signature received via facsimile or email shall have the same legal effect as an original.”

(9) A new Section 10.13 is added as follows:

The Parties agree that Security and Exchange Commission rules for reporting power purchase agreements may require PG&E to collect and possibly consolidate financial information. For any Transaction for which such reporting is required, PG&E is obligated to obtain information from Seller to determine whether or not consolidation is required. If PG&E determines that consolidation is required, PG&E shall require the following during every calendar quarter for the term of such Transaction:

- a) Complete financial statements and notes to financial statements and
- b) Financial schedules underlying the financial statements, all within 15 days of the end of each quarter.
- c) Access to records and personnel, so that PG&E's independent auditor can conduct financial audits (in accordance with generally accepted auditing standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002).

Any information provided to PG&E shall be treated confidentially and only disclosed on an aggregate basis with other similar entities for which PG&E has power-purchase contracts. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

(10) A new Section 10.14 is added as follows:

10.14 Dispute Resolution. Mindful of the high costs of litigation, not only in dollars but time and energy as well, the Parties intend to and do hereby establish a final and binding out-of-court dispute resolution procedure to be followed in the event any controversy should arise out of or concerning the performance of a Transaction. Accordingly, it is agreed as follows:

10.14(a) Negotiation.

(1) Except for disputes arising with respect to a Termination Payment, the Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's designated representative ("Manager"). Either Party may request a meeting (in person or telephonically) to initiate negotiations. Parties will then designate their respective Managers in writing, and the meeting shall be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within 15 Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies, who shall have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

(2) Within 5 Business Days of the Referral Date the Executives shall establish a mutually acceptable location and date, which date shall not be greater than 30 calendar days from the Referral Date, to meet. After the initial meeting date,

the Executives shall meet, as often as they reasonably deem necessary to exchange the relevant information and to attempt to resolve the dispute.

(3) All communication and writing exchanged between the Parties in connection with these negotiations shall be confidential and shall not be used or referred to in any subsequent binding adjudicatory process between the Parties.

(4) If the matter is not resolved within 45 calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to subpart (a) above, refuses or will not meet within 10 Business Days, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 10.14(b).

(5) If a dispute exists with respect to the Termination Payment, and such dispute cannot be resolved by good faith negotiation of the Parties within 10 Business Days of the Non-Defaulting Party's receipt of the detailed basis for the explanation of the dispute then either Party may refer the matter directly to Arbitration, as set forth in Section 10.14(c) below.

10.14(b) Mediation. If the dispute (other than a dispute regarding the Termination Payment) cannot be resolved by negotiation as set forth in Section 1 above, then either Party may initiate mediation, the first-step of a two-step dispute resolution process, which JAMS shall administer. As the first step, the Parties agree to mediate any controversy before a commercial mediator from the JAMS panel, pursuant to JAMS's then-applicable commercial mediation rules, in San Francisco, California. Either Party may initiate such a mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, or as extended by mutual agreement of the Parties, the mediation does not result in resolution of the dispute, then the Parties shall resolve such controversy through Arbitration by one retired judge or justice from the JAMS panel, which Arbitration shall take place in San Francisco, California, and which the arbitrator shall administer by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the Arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an Arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

10.14(c) Arbitration.

(1) At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential

information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(2) The arbitrator, once chosen, shall consider any transaction tapes or any other evidence which the arbitrator deems necessary, as presented by each Party. In deciding the award, the provisions of this Agreement will be binding on the arbitrator. The arbitrator will deliver his or her decision in writing within 30 days after the conclusion of the arbitration hearing. The arbitrator shall specify the basis for his or her decision, the basis for the damages award and a breakdown of the damages awarded, and the basis of any other remedy. Except as provided in the Federal Arbitration Act, the decision of the arbitrator will be binding on and non-appealable by the Parties. Each Party agrees that any arbitration award against it may be enforced in any court of competent jurisdiction and that any Party may authorize any such court to enter judgment on the arbitrator's decision.

(3) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages.

(4) Any expenses incurred in connection with hiring the arbitrators and performing the Arbitration shall be shared and paid equally between the Parties. Each Party shall bear and pay its own expenses incurred by each in connection with the Arbitration, unless otherwise included in a solution chosen by the Arbitration panel. In the event either Party must file a court action to enforce an arbitration award under this Article, the prevailing Party shall be entitled to recover its court costs and reasonable attorney fees.

(5) In the event the Parties choose to litigate any matter hereunder, the Parties hereby waive the right to jury trial.

(6) Except as may be required by Law, the existence, contents or results of any Arbitration hereunder may not be disclosed by a Party or the arbitrator without the prior written consent of both Parties.

(11) A new Section 10.15 is added as follows:

10.15 Mobile Sierra. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting *sua sponte* shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine), as the Mobile-Sierra Doctrine has been clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish* 554 U.S. 527 (2008).

(F) Schedule P: Products and Definitions. Amend Schedule P as follows:

Add the following definitions, in appropriate alphabetical order:

"CAISO Energy" means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of

energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the California Independent System Operator ("CAISO") (as amended from time to time, the "Tariff") for which the only excuse for failure to deliver or receive is an Uncontrollable Force (as defined in the Tariff).

"WECC" means the Western Electricity Coordinating Council.

"WSPP" means the Western Systems Power Pool.

"WSPP Agreement" means the Western Systems Power Pool Agreement as amended from time to time.

"West Firm" or "WSPP Firm" means with respect to a Transaction, a Product that is or will be scheduled as firm energy and consistent with the most recent rules adopted by the WECC for which the only excuses for failure to deliver or receive are if an interruption is (i) due to an Uncontrollable Force as provided in Section 10 of the WSPP Agreement; or (ii) where applicable, to meet Seller's public utility or statutory obligations to its customers. Notwithstanding any other provision in this Master Agreement, if Seller exercises its right to interrupt to meet its public utility or statutory obligations, Seller shall be responsible for payment of damages for failure to deliver firm energy as provided in Article Four of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the last dated signature below.

Party A Orange County Power Authority, a California joint powers authority	Party B PACIFIC GAS AND ELECTRIC COMPANY limited for all purposes hereunder to its Electric Procurement and Electric Fuels Functions
By: _____ Name: _____ Title: _____ Date: _____	By: _____ Name: _____ Title: _____ Date: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting there from. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

PARAGRAPH 10
to the
COLLATERAL ANNEX
to the
EEI MASTER POWER PURCHASE AND SALE AGREEMENT

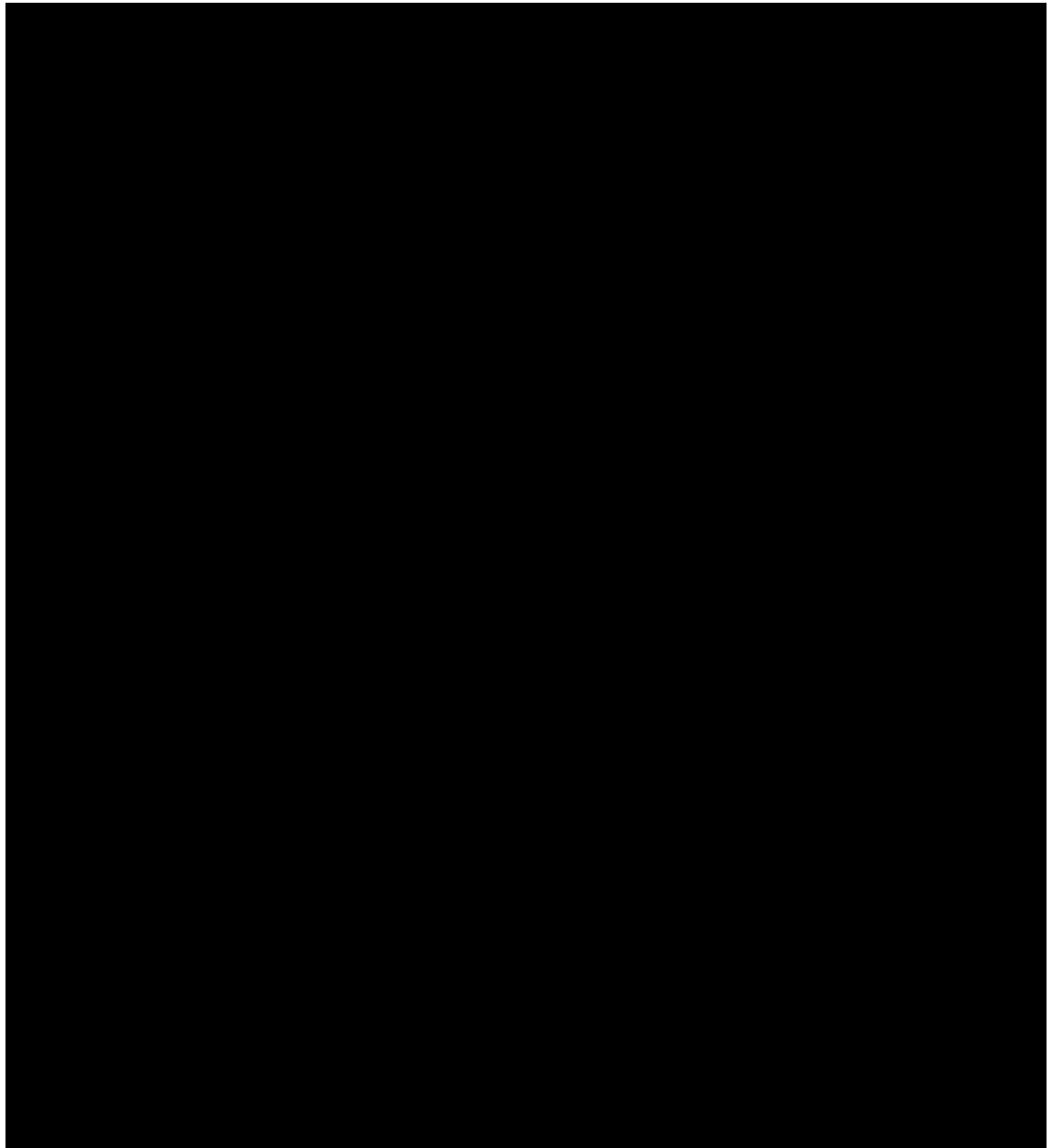
CREDIT ELECTIONS COVER SHEET

Please Note: PG&E is Party B

Paragraph 10. Elections and Variables

I. Collateral Threshold.

A. Party A Collateral Threshold.

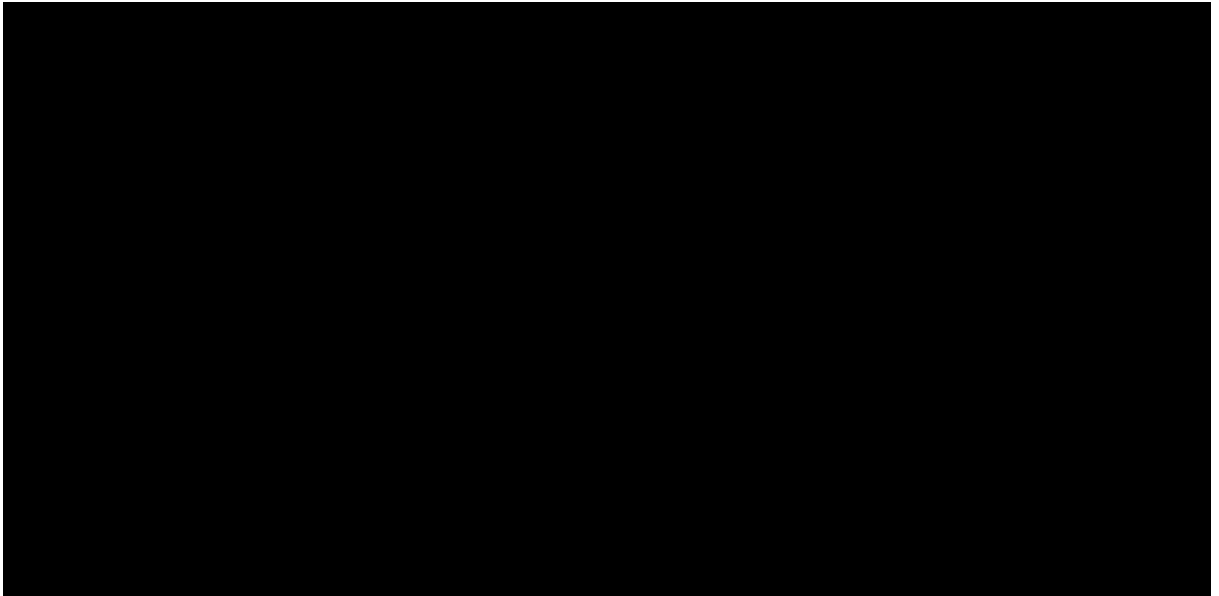


[REDACTED]

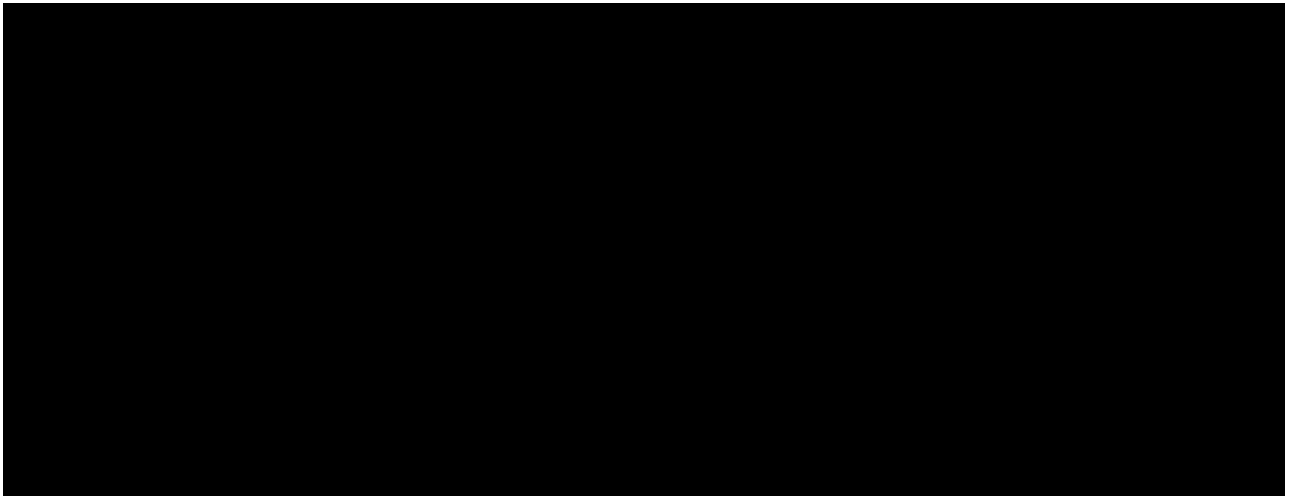
[REDACTED]

B. Party B Collateral Threshold.

[REDACTED]



II. Eligible Collateral and Valuation Percentage.



III. Independent Amount.

A. Party A Independent Amount.

- ☐ Party A shall have a Fixed Independent Amount of \$_____. If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the “Fixed IA Performance Assurance”). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A’s Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- ☐ Party A shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount Option is selected for Party A then for purposes of calculating Party A’s Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party A shall be added by Party B to its Exposure Amount

for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.

- ☐ Party A shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

B. Party B Independent Amount.

- ☐ Party B shall have a Fixed Independent Amount of _____ the Notional Value of all outstanding transactions. If the Fixed Independent Amount Option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- ☐ Party B shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount Option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- ☐ Party B shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party B, then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

IV. Minimum Transfer Amount.

A.

B.

V. Rounding Amount.

A.

B.

VI. **Administration of Cash Collateral.**

A. **Party A Eligibility to Hold Cash.**

- ☐ Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in accordance with a Deposit Account Agreement (“DAA”), substantially in the form as attached hereto as Exhibit A, and in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. The Bank holding the Cash pursuant to the DAA shall at all times meet the requirements for a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex.
- ☐ Party A shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), Party A has a Credit Rating from S&P or Moody’s and the lowest Credit Rating for Party A is at least BBB- from S&P or Baa3 from Moody’s; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

- ☐ Federal Funds Effective Rate - the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest Month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.
- ☐ Other - _____

B. **Party B Eligibility to Hold Cash.**

- ☐ Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in accordance with a Deposit Account Agreement (“DAA”), substantially in the form as attached hereto as Exhibit A and in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. The Bank holding the Cash pursuant to the DAA shall at all times meet the requirements for a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex.
- ☒ Party B shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2) Party B has a Credit Rating from S&P or Moody’s and the lowest Credit Rating for Party B is at least BBB- from S&P or Baa3 from Moody’s; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

Party B Interest Rate.

- ☒ Federal Funds Effective Rate - the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest Month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.
- ☐ Other - _____

VII. **Notification Time.**

- ☒ Other - _____

All demands, specifications and notices to Party A under this Collateral Annex will be made to the person specified under “Credit and Collections” for Party A on the Cover Sheet.

All demands, specifications and notices to Party B under this Annex will be made to the person specified under “Credit and Collections” for Party B on the Cover Sheet.

VIII. General.

If, as part of its obligations under the Agreement, including one or more Confirmations, a Party posts Performance Assurance, which Performance Assurance must be in a form and amount determined in accordance with and as set forth in Paragraph 10 of the Agreement, each Transaction to which the Parties agree shall be supported by this Performance Assurance, so that the counterparty may draw on the Performance Assurance to pay amounts owed and for which the payment period has run under any Confirmation. Further, at the non-defaulting Party’s election, a default under any Confirmation shall be a default under all Confirmations between the Parties, so that all Transactions under the Agreement may be subject to termination by the non-defaulting Party.

[REDACTED]

[REDACTED] In addition, with respect to the “Administration of Cash Collateral” section of this Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex. If a Party is eligible to hold Cash pursuant to a selection in this Paragraph 10 but no Interest Rate is selected, then the Interest Rate for such Party shall be the Federal Funds Effective Rate as defined in Section VI of this Paragraph 10.

IX. Other Changes.

A. No Waiver.

Notwithstanding any other provision in this Agreement to the contrary, no full or partial failure to exercise and no delay in exercising, on the part of Party A (or its Custodian) or Party B (or its Custodian), any right, remedy, power or privilege permitted with respect to transfer timing (or any other deadline) pursuant to Paragraph 4, as modified by the preceding paragraph (or any other applicable provision), regardless of the frequency or constancy of such failure or delay, shall operate in any way as a waiver thereof by such party.

B. Paragraph 1. Definitions.

- a) “**Credit Rating**” is deleted in its entirety and replaced with the following language:

“**Credit Rating**” means, with respect to any entity, (a) the rating then assigned to such entity’s unsecured senior long-term debt obligations (not supported by third party credit enhancements), or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody’s. If the entity is rated by both S&P and Moody’s and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody’s, but not both, then the available rating shall determine the Credit Rating.”

- b) “**Credit Rating Event**” – Replace the words “Paragraph 6(a)(iii)” with “Paragraph 6(a)(ii).”
- c) “**Downgraded Party**” – Replace the words “Paragraph 6(a)(i)” with “Paragraph 6(a)(ii).”
- d) “**Guaranty**” means a guaranty issued in a form substantially as contained in Schedule 2 attached hereto and by an issuer acceptable to the Secured Party.
- e) “**Letter of Credit**” is deleted in its entirety and replaced with the following definition:

“Letter of Credit” means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Schedule 1 attached hereto; provided that, the issuer must be a Qualified Institution.

f) **“Letter of Credit Default”**

(i) In line 3, after the words: “Rating of at least (i)”, delete all language from that line and replace it with: “A-, with a stable outlook designation from S&P and A3, with a stable outlook designation from Moody’s, if such issuer is rated by both S&P and Moody’s.”; and (ii) Add the words, “with a stable outlook designation” after the words “‘A-’ by S&P” and “‘A3’ by Moody’s,” in line 4.

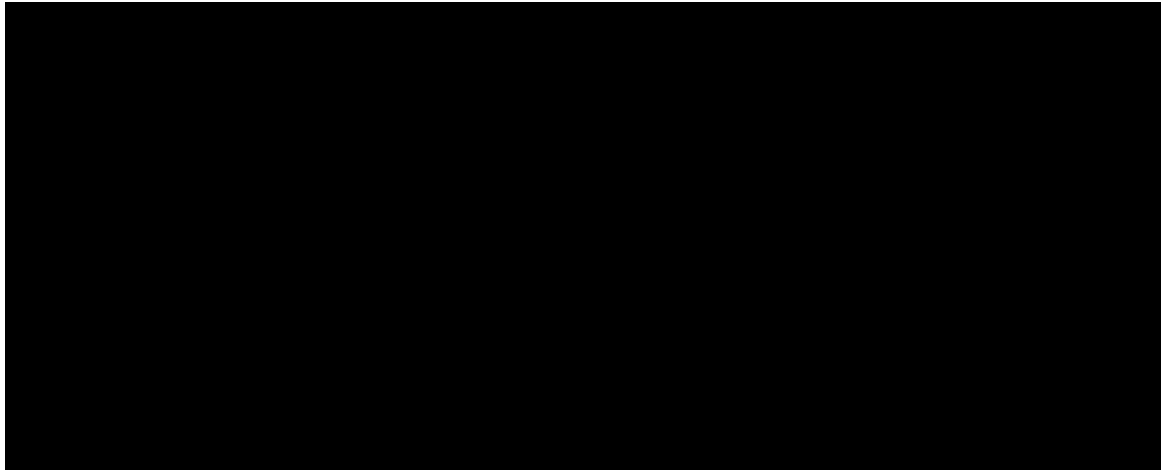
g) **“Performance Assurance”** – Replace the words “Paragraph 6(a)(iv)” with “Paragraph 6(a)(iii)”.

h) **“Qualified Institution”** is deleted in its entirety and replaced with the following definition:

“Qualified Institution” means either a U.S. commercial bank, or a U.S. branch of a foreign bank acceptable to the Beneficiary Party in its sole discretion; and in each case such bank must have a Credit Rating of at least: (a) “A-, with a stable designation” from S&P and “A3, with a stable designation” from Moody’s, if such bank is rated by both S&P and Moody’s; or (b) “A-, with a stable designation” from S&P or “A3, with a stable designation” from Moody’s, if such bank is rated by either S&P or Moody’s, but not both, even if such bank was rated by both S&P and Moody’s as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.

i) **“Secured Party”** – Replace the words “Paragraph 3(b)” with “Paragraph 3(a)”.

C. Paragraph 3. Calculations of Collateral Requirement.



D. Schedule 1 to the Collateral Annex is deleted in its entirety and replaced as noted herein.

IN WITNESS WHEREOF, the parties have executed this Collateral Annex by their duly authorized officers as of the date hereof.

Orange County Power Authority, a California joint powers authority

PACIFIC GAS AND ELECTRIC COMPANY

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: [insert issue date]

Beneficiary: [Insert name and address of
Beneficiary]

Applicant: [Insert name and address
of Applicant]

Letter of Credit Amount: [insert amount]

Expiry Date: [insert date that is one (1) year from offer date]

Ladies and Gentlemen:

By order of **[Insert name of Applicant]** (“Applicant”), we hereby issue in favor of **[Insert name of Beneficiary]** (the “Beneficiary”) our irrevocable standby letter of credit No. **[Insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[Insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[Insert name of issuing or paying bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[Insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents (which may be presented by physical delivery or by facsimile, e-mail or other electronic transmission):

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[Insert number]** and stating the amount of the demand; and

2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. “The amount of the accompanying sight draft under Letter of Credit **[Insert number of letter of credit]** (the “Draft Amount”) is owed to **[Insert name of Beneficiary]** by **[Insert name of Beneficiary’s counterparty under the Master Agreement]** (“Counterparty”) because an Event of Default has occurred under the **[Insert the correct reference to the Master Agreement]**(the “Master Agreement”) dated **[Insert the Master Agreement date]**, or a failure of performance of one or more obligations stated in a Confirmation or

Confirmations issued or agreed to between the Counterparty and **[Insert Beneficiary's name]** under or in connection with the Master Agreement, has occurred, which entitles **[Insert Beneficiary's name]** to draw the Draft Amount under Letter of Credit No. **[Insert number]**;" or

B. "Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of Beneficiary's counterparty under the Master Agreement referred to in subparagraph A above]** has not provided replacement security acceptable to **[Insert name of Beneficiary]**."

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable, and;
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount.
5. The Expiry Date of this Letter of Credit shall be automatically extended without amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to renew this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at **[Insert bank's address for drawings]**.

All demands for payment shall be made by presentation of copies or original documents, or by facsimile, e-mail, or other electronic transmission of documents to **[Insert fax number, email or other electronic transmission]**, Attention: **[Insert name of bank's receiving department] or [Insert e-mail or other electronic transmission address]**. You may contact us at **[Insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a facsimile presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the third (3rd) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit if presented within thirty (30) days after the resumption of our business and will effect payment accordingly.

The electronic copy of this Letter of Credit shall be the operative instrument until such time as the

original is received. This Letter of credit can be amended or terminated by facsimile, e-mail or other electronic transmission.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[Insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____ **[print or type name]**

Title: _____

EXHIBIT A

SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND ELECTRIC
COMPANY THE AMOUNT OF U.S.\$ _____ (U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO.
XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

EXHIBIT__ to contract No.

GUARANTY AGREEMENT

_____, a [corporation ?] organized under the laws of _____ (referred to herein as "Counterparty") and PACIFIC GAS AND ELECTRIC COMPANY (referred to herein as "PG&E") are entering into a Master Power Purchase and Sale Agreement and individual transactions thereunder or related thereto (all collectively and individually referred to herein as "the Contract"). The Counterparty is a [subsidiary??] of _____ organized under the laws of _____, with its principal place of business at _____ (referred to herein as "Guarantor"). To induce PG&E to enter into the Contract with the Counterparty, and for valuable consideration, the Guarantor is entering into this Guaranty Agreement (referred to herein also as the "Guaranty") and hereby agrees as follows:

(a) **Guaranty and Obligations.** The Guarantor, irrevocably and unconditionally guarantees to PG&E, its successors, endorsees and assigns, the due and punctual performance and payment in full of all obligations and amounts owed by the Counterparty to PG&E under the Contract, whether due or to become due, secured or unsecured, absolute or contingent (all referred to herein as "Obligations"). The liability of the Guarantor hereunder is a continuing guaranty of payment and performance when any Obligation is owing or when the Counterparty is in default or breach under the Contract, without regard to whether recovery may be or has become barred by any statute of limitations or otherwise may be unenforceable. In case of the failure of the Counterparty to pay or perform the Obligations punctually, the Guarantor hereby agrees, upon written demand by PG&E, to perform the Obligations or pay or cause to be paid any such amounts punctually when and as the same shall become due and payable. The Guarantor hereby also agrees to reimburse PG&E for any reasonable attorneys' fees and all other costs and expenses incurred by PG&E in enforcing this Guaranty. If at any time during the term of this Guaranty PG&E determines that the creditworthiness of the Guarantor has materially changed, PG&E may declare the Guarantor to be in default under this Guaranty.

(b) **Guaranty of Payment.** The Guarantor hereby agrees that its obligations under this Guaranty constitute a guaranty of payment when due and not of collection.

(c) **Nature of Guaranty.** The Guarantor hereby agrees that its obligations under this Guaranty shall be irrevocable and unconditional, irrespective of the validity, or enforceability of the Contract against the Counterparty (other than as a result of the unenforceability thereof against PG&E), the absence of any action or measure to enforce the Counterparty's Obligations under the Contract, any waiver or consent of PG&E with respect to any provisions thereof, the entry by the Counterparty and PG&E into amendments to the Contract for additional services under the Contract or otherwise, or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor (excluding the defense of payment). The Guarantor agrees that the obligations of the Guarantor under this Guaranty will upon the execution of any such amendment by the Counterparty and PG&E extend to all such amendments without the taking of further action by the Guarantor, the Counterparty, or PG&E. The Guarantor agrees that the Counterparty and PG&E may, without prior written consent of the Guarantor, mutually agree to modify the Obligations or the Contract or any agreement between the Counterparty and PG&E, without in any way impairing or affecting this Guaranty.

(d) **Termination.** This Guaranty may not be terminated by the Guarantor and shall remain in full force and effect until all of the Obligations of the Counterparty under or arising out of the Contract have been fully performed.

(e) **Rescinded Payment; Independent Liability.** The Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time, payment, or any part thereof, of any Obligation or interest thereon is rescinded or must otherwise be restored or returned for any reason

whatsoever, and the Guarantor shall remain liable hereunder in respect of such payments or obligations or interest thereon as if such payment had not been made. PG&E shall not be obligated to file any claim relating to the Obligations owing to it in the event that the Counterparty becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of PG&E to file shall not affect the Guarantor's obligations hereunder. The Guarantor's obligations hereunder are independent of the Obligations of the Counterparty. The liability of the Guarantor hereunder is independent of any security for or other guaranty of payment received by PG&E in connection with the Contract, is not affected or impaired by (a) any voluntary or involuntary liquidation, dissolution, receivership, attachment, injunction, restraint, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, the Counterparty or any of its assets, including but not limited to any rejection or other discharge of the Counterparty's obligations imposed or asserted by any Court, trustee or custodian or any similar official or imposed by any law, statute or regulation in such event, or (b) the extension of time for the payment of any sum, in whole or in part, owing or payable to PG&E under the Contract or this Guaranty or the extension of the time for the performance of any other obligation under or arising out of or on account of the Contract or this Guaranty, or (c) any failure, omission or delay on the part of PG&E to enforce, assert or exercise any right, power or remedy conferred on PG&E in the Contract or this Guaranty or any action on PG&E's part granting indulgence or extension in any form, or (d) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or (e) any payment to PG&E by the Counterparty that PG&E subsequently returns to the Counterparty pursuant to court order in any bankruptcy or other debtor-relief proceeding, or (f) any amendment, modification or other alteration of the Contract, or (g) any indemnity agreement the Counterparty may have from any party, or (h) any insurance that may be available to cover any loss. The Guarantor waives any right to the deferral or modification of the Guarantor's obligations hereunder by virtue of any such debtor-relief proceeding involving the Counterparty.

(f) **Guarantor Waivers.** The Guarantor hereby waives (i) promptness, diligence, presentment, demand of payment, protest, order and, except as set forth in paragraph (a) hereof, notice of any kind in connection with the Contract and this Guaranty; (ii) any requirement that PG&E exhaust any right to take any action against the Counterparty or any other person prior to or contemporaneously with proceeding to exercise any right against the Guarantor under this Guaranty; (iii) to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability under or the enforcement of this Guaranty; (iv) any right to require PG&E to (A) proceed against or exhaust any insurance or security held from the Counterparty or any other party, or (B) pursue any other remedy available to PG&E; (v) any defense based on or arising out of any defense of the Counterparty other than payment in full of the amount(s) owed, including without limitation any defense based on or arising out of the disability of the Counterparty, the unenforceability of the indebtedness from any cause, or the cessation from any cause of the liability of the Counterparty, other than payment in full of the amount(s) owed. The Guarantor agrees that PG&E may, at its election, foreclose on any security held by PG&E, whether or not the means of foreclosure is commercially reasonable, or exercise any other right or remedy available to PG&E without affecting or impairing in any way the liability of the Guarantor under this Guaranty, except to the extent the amount(s) owed to PG&E by the Counterparty have been paid. The Guarantor further agrees that until all amounts owed by the Counterparty to PG&E are paid in full, even though such amounts may in total exceed the Guarantor's liability hereunder, the Guarantor shall have no right of subrogation, waives any right to enforce any remedy that PG&E has or may have against the Counterparty, and waives any benefit of and any right to participation in any security from the Counterparty now or later held by the Guarantor. The Guarantor assumes all responsibility for keeping itself informed of the Counterparty's financial condition and all other factors affecting the risks and liability assumed by the Guarantor hereunder, and PG&E shall have no duty to advise the Guarantor of information known to it regarding such risks.

(g) **No Assignment of Guaranty Obligations Without Consent.** The Guarantor may not assign or otherwise transfer its obligations under this Guaranty to any other party without the prior written consent of PG&E, the exercise of which shall be in PG&E's sole discretion.

(h) **Governing Law.** This Guaranty shall be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine.

(i) **Jurisdiction.** With respect to any suit, action or proceedings (collectively “Proceedings”) relating to this Guaranty Agreement, Guarantor irrevocably: (i) submits to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City; and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, and any claim of inconvenient forum, and any objection to the jurisdiction of any such court.

(j) **Severability.** In the event that any provision of this Guaranty conflicts with the law or if any such provision is held to be invalid, illegal or unenforceable, such provision shall be deemed to be restated to reflect as nearly as possible the original intention of the parties in accordance with applicable law or, if that is not possible, the provision shall be deleted, and the remainder of this Guaranty shall remain in full force and effect.

(k) **Representations and Warranties.** The Guarantor, through its undersigned officer, represents and warrants to PG&E that (i) the Counterparty is a subsidiary or other affiliate of the Guarantor, (ii) the Guarantor is a duly organized and validly existing corporation or other legal entity in good standing under the laws of the jurisdiction of its incorporation or formation, (iii) the Guarantor has the corporate power and legal authority to execute, deliver and perform the terms and provisions of this Guaranty and has taken all necessary corporate and other action to authorize the execution, delivery and performance by it of this Guaranty, (iv) the Guarantor has duly executed and delivered this Guaranty, and (v) this Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms.

(l) **No Amendment; No PG&E Waiver.** This Guaranty shall not be amended without the prior written consent of PG&E. Any amendment to this Guaranty made in violation of this provision shall be null and void. No right, power, remedy or privilege of PG&E under this Guaranty shall be deemed to have been waived by any act or conduct on the part of PG&E, or by any neglect to exercise any right, power, remedy or privilege, or by any delay in doing so, and every right, power, remedy or privilege of PG&E hereunder shall continue in full force and effect until specifically waived or released in a written document executed by PG&E. Any such written waiver or release of a right, power, remedy or privilege on any one occasion shall not be construed as a bar to any right, power, remedy or privilege which PG&E would otherwise have on any future occasion. No single or partial exercise of any right, power, remedy or privilege by PG&E shall preclude any other or further exercise by PG&E of any other right, power, remedy or privilege. The rights and remedies provided in this Guaranty are cumulative and may be exercise singly or concurrently, and are not exclusive of any rights or remedies provided by law.

(m) **Notices.** All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be delivered, mailed, or sent by facsimile transmission to the address and to the individuals indicated below. Either party may periodically change any address to which notice is to be given it by providing notice of such change as provided herein.

If to Guarantor:

If to PG&E: Pacific Gas and Electric Company

Pacific Gas and Electric Company
77 Beale Street, MC B28L
San Francisco, CA 94105
Attention: Credit Risk Management
Fax: (415) 973.7301 _
Email: PGERiskCredit@exchange.pge.com

Any notice provided hereunder shall be effective upon actual receipt, if received during the recipient's normal business hour; or it shall be effective at the beginning of the recipient's next business day after receipt, if received after the recipient's normal business hours. If notice is provided by facsimile, the sender shall be responsible for obtaining facsimile receipt confirmation.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name by its duly authorized officer as of the date set forth below.

By: _____

Name: _____

Title: _____

Date_____

RESOLUTION NO. 2021-06

A RESOLUTION OF THE BOARD OF DIRECTORS OF ORANGE COUNTY POWER AUTHORITY APPROVING A MASTER POWER PURCHASE AND SALE AGREEMENT AND COLLATERAL ANNEX WITH SOUTHERN CALIFORNIA EDISON COMPANY AND AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE THE AGREEMENT AND RELATED DOCUMENTS

A. The Orange County Power Authority (“Authority”) is a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Cal. Gov. Code § 6500 *et seq.*), California Public Utilities Code § 366.2, and a Joint Powers Agreement effective on November 20, 2020.

B. The Authority intends to launch the services of its community choice aggregation program in 2021 consistent with Public Utilities Code § 366.2 and its Implementation Plan and Statement of Intent certified by the California Public Utilities Commission.

C. The Authority will administer competitive solicitations (Request for Offers) to certain energy service providers capable of providing energy, renewable energy, carbon free energy, and/or related products and services at competitive prices.

D. In anticipation of administering competitive solicitations, the Authority is negotiating an Edison Electric Institute (“EEI”) Master Purchase and Sale Agreement (“Master Agreement”) with prospective counter-parties so that the Authority will be enabled to procure energy.

E. The Master Agreement is an industry standard contract that governs the purchase and sale of electricity and other products, and requires a separate written confirmation agreement to execute a specific binding transaction.

F. The Collateral Annex is an annex provision to the standard EEI Master Agreement that sets forth procedures under which the parties to the Master Agreement will provide security, including conditions under which a party will be required to transfer, administer, and release performance assurance.

G. The Authority has negotiated an EEI Master Agreement and Collateral Annex with Southern California Edison Company (“SCE”) that will enable the Authority to enter into future transactions with SCE for the purchase of various energy products.

H. Pursuant to the Authority’s Energy Risk Management Policy, approved on July 13, 2021, the Chief Executive Officer (“CEO”) has the authority to approve transactions based on certain contract limits, and transactions falling outside the prescribed limits require approval by the Board of Directors.

I. Due to the time-sensitive nature of bidding and accepting offers in the trading markets, and the Authority's desire to make competitive offers and enter into agreements, the Master Agreement should be finalized prior to solicitations.

J. The Authority Board of Directors desires to enter into the Master Agreement and Collateral Annex with SCE and authorizes the CEO to execute the Master Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Orange County Power Authority as follows:

Section 1. The Board of Directors hereby approves the Master Agreement, Collateral Annex and Certificate Authority with SCE.

Section 2. The Board of Directors authorizes the CEO to execute the Master Agreement and Collateral Annex and the General Counsel to execute the Certificate of Authority, and any related documents as approved to form by the General Counsel as are necessary and convenient to complete renewable energy transactions with SCE.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of the Orange County Power Authority held on September 14, 2021.

Secretary
Orange County Power Authority

1

Confirmations:

Attn: Kirby Dusel, Pacific Energy Advisors
Phone: 916-834-0684
Email: kirby@pacificea.com

Confirmations:

Attn: Confirmation Coordinator
Phone: (626) 302-3383
Facsimile: (626) 302-3410
Email: SCERiskControl@sce.com

Collateral:

Southern California Edison Company
Attn: Manager of Risk Operations & Collateral
Management
2244 Walnut Grove Avenue, GO1 Quad 2A
Rosemead, CA 91770
Phone: (626) 302-3383
Email: SCECollateral@sce.com

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Ryan Baron, Best Best & Krieger LLP
Address: 18101 Von Karman Ave., Suite 1000
Irvine CA 92612
Phone: (949) 263-6568
Email: ryan.baron@bbklaw.com

With additional Notices of an Event of Default or Potential Event of Default to:

Southern California Edison Company
2244 Walnut Grove Ave., G.O.1, Quad 1C
Rosemead, CA 91770
Attn: Director, Contracts Management and Administration
Phone: (626) 302-3126
Facsimile: (626) 302-8168
Email: Energycontracts@sce.com, and
Attention: Director and Managing Attorney Power
Procurement Section
E-mail: PPLegalNotice@sce.com

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff	Tariff _____	Dated _____	Docket Number _____
Party B Tariff	<u>Tariff Original Vol. No. 8</u>	Dated <u>09/01/2002</u>	Docket Number <u>ER 02-2263-000</u>

Article Two

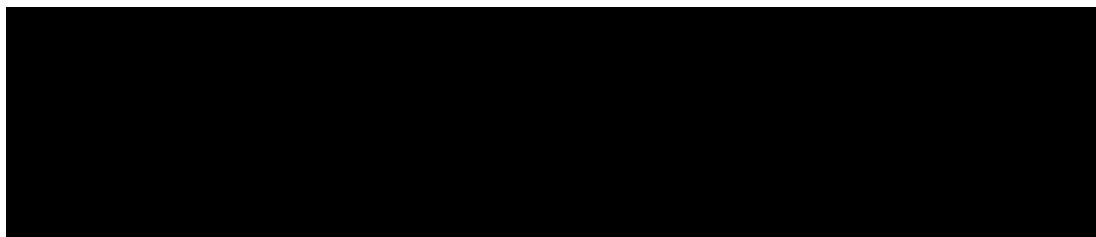
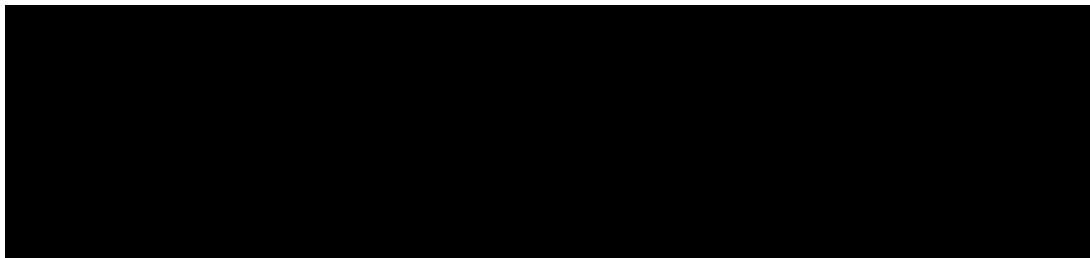
Transaction Terms and Conditions ☒ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive ☒ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default;
Remedies



5.6 Closeout Setoff

- ☒ Option A, as amended.
- ☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____
- ☐ Option C (No Setoff).

Article Eight

Credit and Collateral
Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- ☒ Option A, as amended.
- ☐ Option B Specify: _____
- ☐ Option C Specify: _____

(b) Credit Assurances:

- ☒ Not Applicable.
☐ Applicable.

(c) Collateral Threshold:



(d) Downgrade Event:

- ☒ Not Applicable.
☐ Applicable.

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by any Ratings Agency.
- ☐ Other:
Specify: _____

(e) Guarantor for Party B: Not Applicable.

Guarantee Amount: Not Applicable.

8.2 Party B Credit Protection:

(a) Financial Information:

- ☒ Option A, as amended.
☐ Option B, as amended. Specify: [Guarantor or other party specified, if applicable] _____
☐ Option C Specify: _____

(b) Credit Assurances:

- ☒ Not Applicable.
☐ Applicable.

(c) Collateral Threshold:

- ☐ Not Applicable.
☒ Applicable, as specified in **Paragraph 10 to the EEI Collateral Annex.**

(d) Downgrade Event:

- ☒ Not Applicable.
☐ Applicable.

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below ____ from S&P or ____ from Moody's or if Party A is not rated by any Ratings Agency.

☐ Other:
Specify:

(e) Guarantor for Party A:

Guarantee Amount: \$_____

Article Ten

Confidentiality

☒ Confidentiality Applicable. If not checked, inapplicable.

Schedule M

☒ Party A is a Governmental Entity or Public Power System.

☐ Party B is a Governmental Entity or Public Power System.

☐ Add Section 3.6. If not checked, inapplicable.

☐ Add Section 8.4. If not checked, inapplicable.

Other Changes

The following changes shall be applicable.

ARTICLE ONE: GENERAL DEFINITIONS. Amend Article One as follows:

Section 1.4 is amended by (i) deleting the word “or” in the first line, and (ii) inserting the words “, or the Friday immediately following the U.S. Thanksgiving holiday” immediately after “Bank holiday”.

Section 1.11 is amended by (i) deleting the words “attorneys’ fees and” and (ii) inserting the words “(excluding attorneys’ fees)” after the word “expenses” in the fifth line.

Section 1.12 is amended to read as follows:

“1.12 ‘Credit Rating’ means with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancements) by the Ratings Agencies. If no rating is assigned to such entity’s unsecured, senior long-term debt or deposit obligations the Ratings Agencies, then ‘Credit Rating’ shall mean the general corporate credit rating or long-term issuer rating assigned to such entity by the Ratings Agencies. If any entity is rated by more than one Ratings Agency and the ratings are at different levels, then ‘Credit Rating’ means the lowest such rating.”

Section 1.24 is amended by inserting the words “in accordance with Section 5.2(b)” immediately after “reasonable manner”.

Section 1.27 is amended to read as follows:

“1.27 ‘Letter of Credit’ means an irrevocable, nontransferable standby letter of credit, substantially in the form of Schedule 1 and acceptable to Secured Party, issued by a major U.S. commercial bank, U.S. financial institution, or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least A- by S&P or A3 by Moody’s. If such financial institution or bank is rated by more than one Ratings Agency and the ratings are at different levels, the lowest rating shall be the Credit Rating for this purpose. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.”

Section 1.28 is amended by inserting the words “in accordance with Section 5.2(b)” immediately after “reasonable manner”.

Section 1.50 is amended by replacing the term “Section 2.4” with the term “Section 2.5”.

Section 1.51 is amended by (i) deleting the phrase “at the Delivery Point” and replacing it with “, from an entity that is not an Affiliate of either Party,”; (ii) in clause (ii) inserting after the phrase “at Buyer’s option,” the phrase “absent a purchase from an entity that is not an Affiliate of either Party,”; and (iii) in the last sentence thereof deleting the phrase “at the Delivery Point” and replacing it with “that is not an Affiliate of either Party”.

Section 1.53 is amended by (i) deleting the phrase “at the Delivery Point” and replacing it with “, to an entity that is not an Affiliate of either Party,”; (ii) in clause (ii) inserting after the phrase “at Seller’s option,” the phrase “absent a sale to an entity that is not an Affiliate of either Party,”; and (iii) in the last sentence thereof deleting the phrase “at the Delivery Point” and replacing it with “that is not an Affiliate of either Party”.

New Sections are added to read as follows:



“1.64 ‘Merger Event’ means, with respect to a Party or its Guarantor, that such Party or its Guarantor consolidates or amalgamates with, merges into or with, or transfers substantially all its assets to another entity and (i) the resulting entity fails to assume all the obligations of such Party hereunder or of such Party’s Guarantor under its guaranty, or (ii) the benefits of any credit support provided by such Party pursuant to Article Eight, or any guaranty provided by such Party’s Guarantor, fail to extend to the performance of such resulting, surviving or transferee entity’s obligations hereunder, or (iii) the resulting entity’s creditworthiness is materially weaker than that of such Party or its Guarantor immediately prior to such action. The creditworthiness of the resulting entity shall not be deemed to be ‘materially weaker’ so long as the resulting entity maintains a Credit Rating of at least that of the applicable Party or its Guarantor, as the case may be, immediately prior to the consolidation, merger or transfer.”

“1.65 ‘Ratings Agency’ means any of S&P and Moody’s, and any other ratings agency agreed by the Parties (collectively the ‘Ratings Agencies’).”

“1.66 ‘Reference Market-Maker’ means a leading dealer in the relevant market that is not an Affiliate of either Party and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker.”

“1.67 ‘Specified Energy Transaction’ means any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between Party A and Party B (or any Guarantor of such Party) which is not a Transaction under this Agreement, which is a transaction under the International Swaps and Derivatives Association Master Agreement, the North American Energy Standards Board Base Contract for Purchase and Sale of Natural Gas, the WSPP Agreement, or under any other agreement with respect to the purchase, sale, or transfer of (a) wholesale physical electric energy, capacity, ancillary services or resource adequacy benefits; (b) wholesale physical natural gas; (c) transmission services or capacity, (d)

emissions (including greenhouse gas emissions) related credits, allowances or offsets, or (e) financial derivative products related to any of the foregoing.”

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS. Amend Article Two as follows:

Section 2.1 is amended by adding the following sentence to the end thereof “Any Transaction formed and effectuated pursuant to the foregoing shall be considered a ‘writing’ or ‘in writing’ and to have been ‘signed’ by each Party or otherwise binding on the Parties.”

Section 2.2 is amended to delete the second comma after the words “supplements hereto),” and before “the Party” in the second sentence.

Section 2.4 is amended by (i) deleting the words “either orally or” after the phrase “Section 2.3 unless agreed to” in the second to last line thereof.

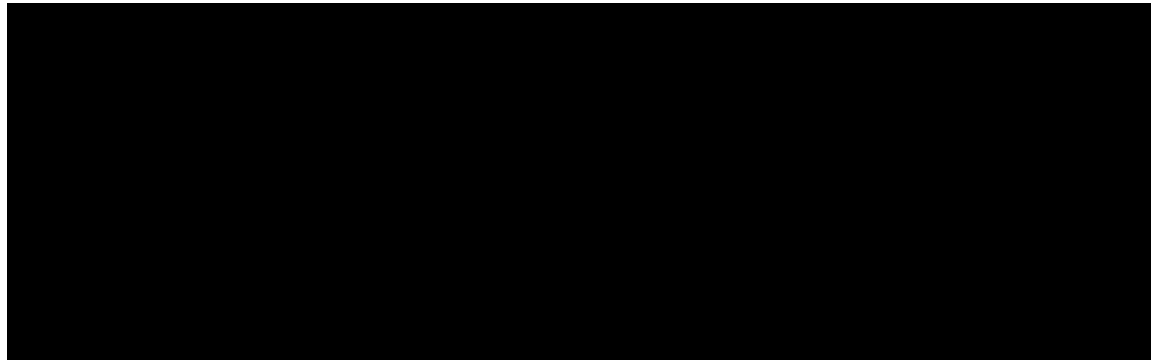
Section 2.5 is amended (i) to delete the phrase “Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation,”; (ii) by capitalizing the word “each” in the first sentence; and (iii) replacing the words “Parties to this Master Agreement” with “Parties’ trading and marketing personnel”.

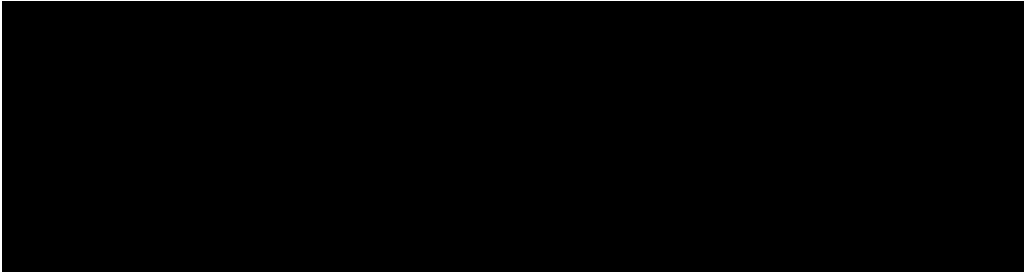
A new Section 2.6 is added to read as follows:

“2.6 Imaged Agreement. Any original executed Master Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the ‘Imaged Agreement’). The Imaged Agreement, if introduced as evidence on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper or into other written format, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation, or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation, or the Imaged Agreement) on the basis that such were not originated or maintained in documentary or written form under either the hearsay rule or the best evidence rule. However, nothing in this Section 2.6 shall preclude a Party from challenging the admissibility of such evidence on some other grounds, including, without limitation, the basis that such evidence has been materially or substantially altered from the original.”

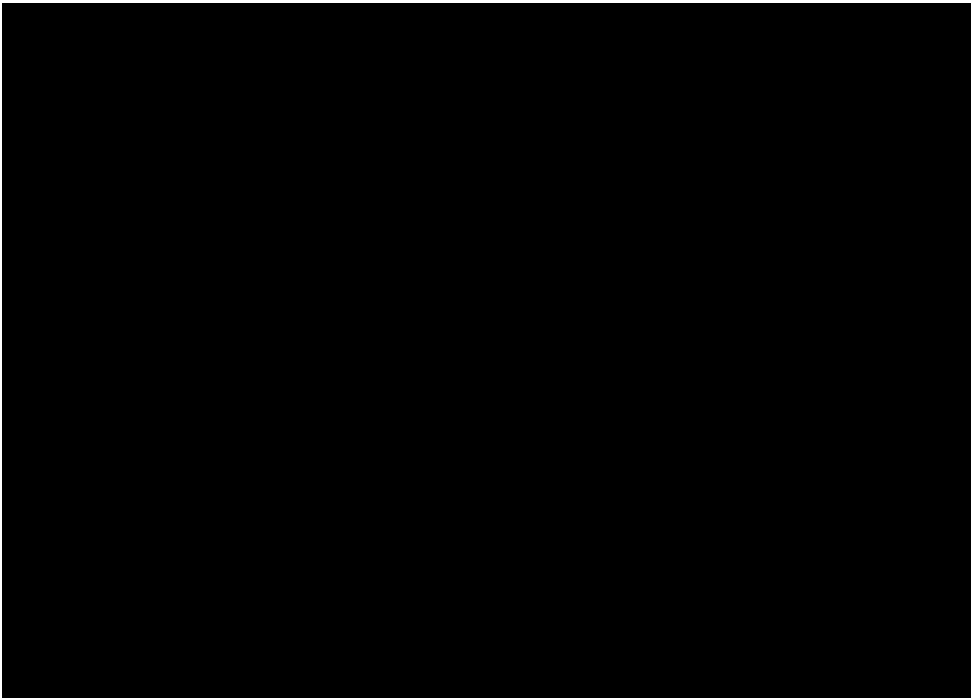
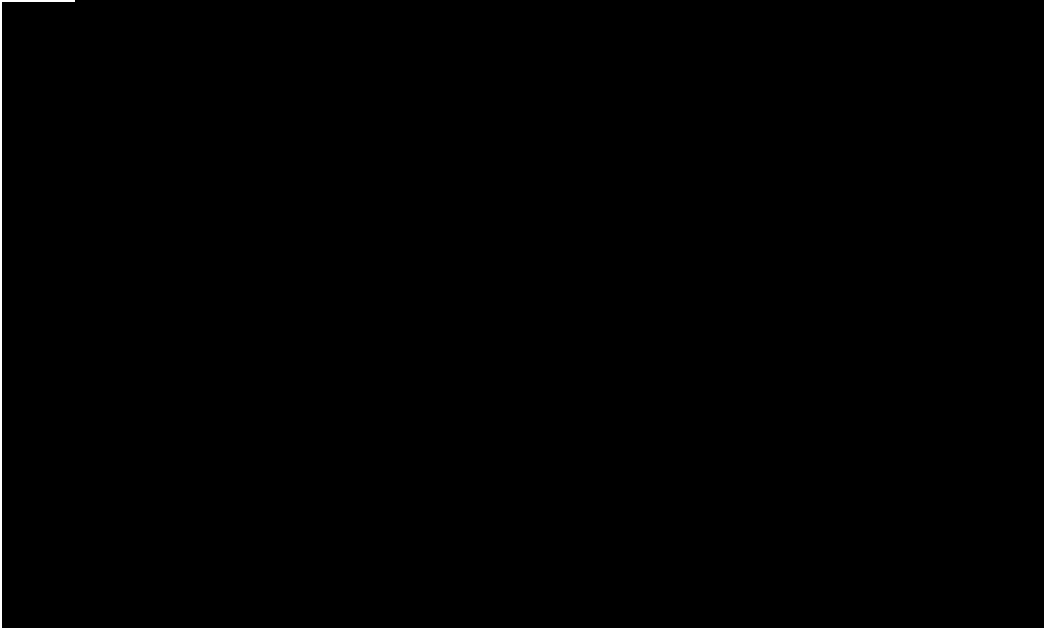
ARTICLE THREE: OBLIGATIONS AND DELIVERIES. Amend Article Three as follows:

A new Section 3.4 is added to read as follows:





(b) For purposes of this Section 3.4, the following definitions shall apply:

- (i) 'Determination Period' means each calendar month a part or all of which is within the Delivery Period of a Transaction.
 - (ii) 'Exchange' means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.
- 
- 

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES. Amend Article Five as follows:

Section 5.1(e) is amended by adding after the word “hereof” the phrase “or any other credit arrangement, including, but not limited to, the Collateral Annex (or any similar agreement) related to this Agreement”.

Section 5.1(f) is amended to read as follows:

“(f) a Merger Event occurs with respect to such Party or its Guarantor, if applicable;”

Section 5.1(h)(iv) is amended by inserting the words “made in connection with this Agreement” after the first instance of the word “guaranty”.

Section 5.1(h)(v) is amended by inserting the words “made in connection with this Agreement” after the word “guaranty”.

Section 5.1 is amended by adding the following at the end thereof:

“(i) an event of default occurs (howsoever determined) under a Specified Energy Transaction with respect to such Party and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of that Specified Energy Transaction; or

(j) the Party disaffirms, disclaims, repudiates, or rejects, in whole or in part, or challenges the validity of, this Master Agreement, any Confirmation executed and delivered by that Party, or any Transaction evidenced by such a Confirmation.”

Section 5.2 is amended by (i) inserting “(a)” at the beginning thereof; (ii) reversing the placement of “(i)” and “to”; (iii) inserting after the words “designate a day” the words “and time of day” in clause (i) thereof; (iv) replacing the phrase “as soon thereafter as is reasonably practicable)” with “, then each such Transaction — individually, an ‘Excluded Transaction’ and collectively, the ‘Excluded Transactions’— shall be terminated as soon thereafter as is reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction) and the Termination Payment payable in connection with all Terminated Transactions shall be calculated in accordance with this Section 5.2 and with Section 5.3 below”; and (v) adding the following paragraph at the end thereof:

markets; provided, however, that the provider of such information shall not be an Affiliate of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third party information, then the Non-Defaulting Party may calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner using relevant market data it has available to it internally.”

Section 5.3 is amended by (i) deleting the “:” in the second line thereof; (ii) replacing the words “Agreement against” with “Agreement, against” immediately before “(b)”; and (iii) inserting the phrase “any cash then available to the Defaulting Party pursuant to Article Eight,” between the words “Non-Defaulting Party,” and “plus any” in the sixth line thereof.

Section 5.4 is amended by inserting the phrase “but in no event more than fifteen (15) Business Days following the Early Termination Date,” after the phrase “liquidation,” in the second line thereof.

Section 5.6 Option A is amended by (i) inserting the following phrase “with respect to the Specified Energy Transactions,” before the words “and/or (ii)” and (ii) adding the following at the end thereof :

“Notwithstanding anything to the contrary contained in this Master Agreement, or in any other agreement, instrument, or undertaking between the Parties with respect to a Specified Energy Transaction, if an Early Termination Date has been designated pursuant to Section 5.2, then, in addition to the other remedies provided in this Master Agreement, the Non-Defaulting Party may accelerate, liquidate and terminate all, but not less than all, Specified Energy Transactions between the Parties.”

Section 5.7 is amended to capitalize the word “early” in line 6 to read “Early”.

ARTICLE SIX: PAYMENT AND NETTING. Amend Article Six as follows:

Section 6.3 is amended to read as follows:

“6.3 Disputes and Adjustments of Invoices. A Party may adjust any invoice rendered by it under this Agreement to correct any arithmetic or computational error or to include additional charges or claims within twenty-four (24) months after the close of the month in which the obligations being invoiced arose. A receiving Party may, in good faith, dispute the correctness of any invoice or of any adjustment to any invoice previously rendered to it by providing notice to the other Party on or before the later of (i) twelve (12) months of the date of receipt of such invoice or adjusted invoice, or (ii) twenty-four (24) months after the close of the month in which the obligation being invoiced arose. Failure to provide such notice within the time frame set forth in the preceding sentence waives the dispute with respect to such invoice. A Party disputing all or any part of an invoice or an adjustment to an invoice previously rendered to it may pay only the undisputed portion of the invoice when due, provided such Party provides notice to the other Party of the basis for and amount of the disputed portion of the invoice that has not been paid. The disputed portion of the invoice must be paid within two (2) Business Days of resolution of the dispute, along with interest accrued at the Interest Rate from and including the original due date of the invoice to but excluding the date the disputed portion of the invoice is actually paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment but excluding the date repaid or deducted by the Party receiving such overpayment. An invoice can only be adjusted or amended after it was originally rendered within the time frames

set forth in this Section 6.3. If an invoice is not rendered within twenty-four (24) months after the close of the month in which the payment obligations arose, the right to payment for that month under this Agreement is waived.”

Section 6.7 is amended to replace the phrase “Section 6.1” with the phrase “Section 6.2”.

ARTICLE SEVEN: LIMITATIONS. Amend Article Seven as follows:

Section 7.1 is amended to (i) delete the phrase “EXCEPT AS SET FORTH HEREIN” in the first sentence; and (ii) in the fifth sentence (a) replace in its entirety the phrase “UNLESS EXPRESSLY HEREIN PROVIDED” with “NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY”; (b) add the following phrase “SET FORTH IN THIS AGREEMENT” after the words “INDEMNITY PROVISION”; and (c) add the following phrase “; PROVIDED, HOWEVER, THAT NOTHING IN THIS PROVISION SHALL AFFECT THE ENFORCEABILITY OF SECTIONS 5.2 AND 5.3 OF THIS AGREEMENT” after the words “OR OTHERWISE”.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS. Amend Article Eight as follows:

Section 8.1(a) Option A is amended to add (i) the following phrase “(income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes) after the words “consolidated financial statements” in the third line; (ii) the phrase “setting forth in each case in comparative form the figures for the previous year” after the words “for such fiscal year,” in the third line; and (iii) the phrase “and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year certified in accordance with all applicable laws and regulations, including without limitation all applicable Securities and Exchange Commission rules and regulations, provided however, for the purposes of this (i) and (ii), if Party B’s financial statements are publicly available electronically on the Securities and Exchange Commission’s website or Party B’s website, then Party B shall be deemed to have met this requirement” after the words “for such fiscal quarter” in the fifth line.

Section 8.2(a) Option A is amended to add (i) the following phrase “(income statement, balance sheet, statement of cash flows and statement of retained earnings and all accompanying notes)” after the words “consolidated financial statements” in the third line; (ii) the phrase “setting forth in each case in comparative form the figures for the previous year” after the words “for such fiscal year,” in the third line; and (iii) the phrase “and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year end audit adjustments), provided however, for the purposes of this (i) and (ii), if Party A’s financial statements are publicly available electronically on the Securities and Exchange Commission’s website or Party A’s website, then Party A shall be deemed to have met this requirement” after the words “for such fiscal quarter” in the fifth line; and (v) at the end thereof the phrase “For purposes of this Section, ‘Responsible Officer’ shall mean the Chief Financial Officer, Treasurer or any Assistant Treasurer of Party A or any employee of Party A designated by any of the foregoing.”

A new Section 8.4 is added to read as follows:

“8.4 California Commercial Code Waiver. This Agreement and the Collateral Annex set forth the entirety of the agreement of the Parties regarding credit, collateral and

adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, in Section 8.3, and in the relevant portions of the Collateral Annex, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, nor

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Section 8 of this Master Agreement and of the relevant provisions of the Collateral Annex;

and all implied rights relating to financial assurances arising from Section 2609 of the California Commercial Code or case law applying similar doctrines, are hereby waived.”

ARTICLE NINE: GOVERNMENTAL CHARGES. Amend Article Nine as follows:

Section 9.2, is amended to add the words “, charges, or fees” after the word “taxes” in the first line thereof.

ARTICLE TEN: MISCELLANEOUS. Amend Article Ten as follows:

Section 10.2(vi) is amended to add the phrase “(for purposes of this Section 10.2(vi), Party B shall be deemed to have no Affiliates)” after the word “Affiliates”.

Section 10.2(x) is amended to read as follows:

“(x) it is an ‘eligible commercial entity’ within the meaning of the Commodity Exchange Act, as otherwise amended, updated or modified from time to time;”

Section 10.2(xi) is amended to read as follows:

“(xi) it is an ‘eligible contract participant’ within the meaning of the Commodity Exchange Act, as otherwise amended, updated or modified from time to time; and ”

Section 10.2(xii) is amended to read as follows:

“(xii) each Transaction that is not executed or traded on a ‘trading facility’, as defined in the Commodity Exchange Act, as otherwise amended, updated or modified from time to time, is subject to individual negotiation by the Parties.”

Section 10.4 is amended by adding the following sentence at the end thereof:

“Neither Party shall be liable with respect to any Claim to the extent that such Claim resulted from the negligence, willful misconduct, or bad faith of the indemnified Party.”

Section 10.5 is amended as follows:

(a) add the following phrase to the end of clause (i) immediately after the word “arrangements” the phrase “to any person or entity whose creditworthiness is equal to or higher than that of such Party”; (b) in clause (ii) replace the words “affiliate” and “affiliate’s” with, respectively “Affiliate” and “Affiliate’s”; and (c) in clause (iii) immediately after the words “substantially all of the assets” insert the words “of such Party and”.

Section 10.6 is amended to read as follows:

“10.6 Governing Law; Venue; Dispute Resolution.

(a) Governing Law and Venue: THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. The Parties hereby consent to conduct all dispute resolution, judicial actions or proceedings arising directly, indirectly or otherwise in conjunction with, out of, related to, or arising from this Agreement in Los Angeles County, California.

(b) Dispute Resolution:

(i) Mediation. The Parties agree that any and all disputes, claims or controversies arising out of, relating to, concerning or pertaining to this Agreement, or to either Party's performance or failure of performance under this Agreement, which disputes, claims, or controversies the Parties have been unable to resolve by informal methods after undertaking a good faith effort to do so, shall first be submitted to Judicial Arbitration and Mediation Services, Inc. ('JAMS'), its successor, or any other mutually agreeable neutral (the 'Mediator') for mediation, and if the matter is not resolved through mediation, then it shall be submitted as provided below for final and binding arbitration.

The Parties agree that there will be no interlocutory appellate relief (such as writs) available. Any dispute resolution process pursuant to this Section 10.6(b) shall be commenced within one (1) year of the date of the occurrence of the facts giving rise to the dispute, without regard to the date such facts are discovered; *provided*, if the facts giving rise to the dispute were not reasonably capable of being discovered at the time of their occurrence, then such one (1) year period shall commence on the earliest date that such facts were reasonably capable of being discovered, and in no event more than four (4) years after the occurrence of the facts giving rise to the dispute. If any dispute resolution process pursuant to this Section 10.06(b) with respect to a dispute is not commenced within such one (1) year time period, such dispute shall be waived and forever barred, without regard to any other limitations period set forth by law or statute.

Either Party may initiate the mediation by providing to the other Party a written request for mediation setting forth the subject of the dispute and the relief requested.

The Parties will cooperate with one another in selecting the Mediator from the JAMS' panel of neutrals, or in selecting a mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation.

Such selection and scheduling will be completed within forty-five (45) days after a Party provides a written request for mediation.

Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one hundred twenty (120) days after a Party provides a written request for mediation.

All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them, *provided*, evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

(ii) Arbitration. Either Party may initiate binding arbitration with respect to the matters first submitted to mediation by making a written demand for binding arbitration before a single, neutral arbitrator (the 'Arbitrator') within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 10.06(b)(i). If a written demand for arbitration is not provided by either Party within sixty (60) days following the unsuccessful conclusion of the mediation provided for in Section 10.06(b)(i), the dispute resolution process shall be deemed complete and further resolution of such dispute shall be barred, without regard to any other limitations period set forth by law or statute.

The Parties will cooperate with one another in promptly selecting the Arbitrator and shall further cooperate in scheduling the arbitration to commence no later than 180 days from the date of the initial written demand for binding arbitration.

If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator shall be appointed as provided for in California Code of Civil Procedure Section 1281.6.

Unless otherwise agreed to by the Parties, the individual acting as the Mediator shall be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator.

Upon a Party's written demand for binding arbitration, such dispute, claim or controversy submitted to arbitration, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regards to principles of conflicts of laws.

Except as provided for herein, the arbitration shall be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated.

Absent the existence of such rules and procedures, the arbitration shall be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq and California procedural law (including

the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration shall be in Los Angeles County, California.

Also, notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, discovery will be limited as follows:

- (1) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (2) The initial disclosure will occur within thirty (30) days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (3) Discovery may commence at any time after the Parties' initial disclosure;
- (4) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (5) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the Dispute or that a Party has improperly withheld documents);
- (6) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (7) Within sixty (60) days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list of all experts upon which they intend to rely at the arbitration proceeding;
- (8) Within thirty (30) days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (9) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (10) Each Party shall make available for cross examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

Subject to Section 7.1, the Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur if certain provisions of this Agreement are not performed in accordance with the terms of the Agreement, that money damages would not be a sufficient remedy for any breach of these provisions of this Agreement, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy for a breach of Section 10.11 of this Agreement.

Judgment on the award may be entered in any court having jurisdiction.

The Arbitrator shall, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs shall be borne by such Party), including the fees of the Arbitrator, against the Party who did not prevail.

Until such award is made, however, the Parties shall share equally in paying the costs of the arbitration.

At the conclusion of the arbitration hearing, the Arbitrator shall prepare in writing and provide to each Party a decision setting forth factual findings, legal analysis, and the reasons on which the Arbitrator's decision is based. The Arbitrator shall also have the authority to resolve claims or issues in advance of the arbitration hearing that would be appropriate for a California superior court judge to resolve in advance of trial. The Arbitrator shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered by a California superior court. The Arbitrator's decision may be vacated or corrected on appeal to a California court of competent jurisdiction for such error. Unless otherwise agreed to by the Parties, all proceedings before the Arbitrator shall be reported and transcribed by a certified court reporter, with each Party bearing one-half of the court reporter's fees."

Section 10.8 is amended to replace in the penultimate sentence thereof the phrase "twelve (12) months" with the phrase "two (2) years".

Section 10.10 is amended to read as follows:

"10.10 Bankruptcy Issues. The Parties intend that (i) all Transactions constitute a 'forward contract' within the meaning of the United States Bankruptcy Code (the 'Bankruptcy Code') or a 'swap agreement' within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute 'settlement payments' within the meaning of the Bankruptcy Code; (iii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute 'margin payments' within the meaning of the Bankruptcy Code; (iv) this Agreement constitutes a 'master netting agreement' within the meaning of the Bankruptcy Code; and (v) each of Party A and Party B are "forward contract merchants" within the meaning of the Bankruptcy Code.

Each Party further agrees that, for purposes of this Agreement, the other Party is not a 'utility' as such term is used in 11 U.S.C. Section 366, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. Section 366 or another provision of 11 U.S.C. Section 101-1532."

Section 10.11 is amended to read as follows:

"10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's or the Party's Affiliates' officers, directors, employees, lenders, counsel, accountants, advisors, or rating agencies who have a need to know such information and have agreed to keep such terms strictly confidential and to take reasonable precautions to

protect against disclosure of such terms) except (i) in order to comply with any applicable law, order, regulation, ruling, summons, subpoena, exchange rule, or accounting disclosure rule or standard, or to make any showing required by any applicable governmental authority; (ii) to the extent necessary for the enforcement of this Agreement or to implement any Transaction; (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party or its Guarantor in making such disclosure; (iv) to the extent such disclosure to a third party is for the sole purpose of calculating a published index, so long as such third party (1) has agreed prior to the disclosure to protect the specific information disclosed from public disclosure and (2) is a party engaged in the business of collecting such information for the purpose of establishing, creating, or formulating a published index; (v) to the extent such information is or becomes generally available to the public prior to such disclosure by a Party; (vi) when required to be released in connection with any regulatory proceeding (provided that the releasing Party makes reasonable efforts to obtain confidential treatment of the information being released); or (vii) with respect to Party B, as may be furnished to its duly authorized regulatory and governmental agencies or entities, including without limitation the California Public Utilities Commission (the "CPUC") and all divisions thereof, and to Party B's Procurement Review Group (the "PRG"), a group of participants including members of the CPUC and other governmental agencies and consumer groups established by the CPUC in D.02-08-071 and D.03-06-071; provided, Party B shall have no liability to Party A in the event of any unauthorized use or disclosure by such entities. The existence of this Agreement is not subject to this confidentiality obligation; provided that neither Party shall make any public announcement relating to this Agreement unless required pursuant to subsection (i) or (vi) of the foregoing sentence of this Section 10.11. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. With respect to information provided in connection with a Transaction, this obligation shall survive for a period of three (3) years following the expiration or termination of such Transaction. With respect to information provided under this Agreement, this obligation shall survive for a period of three (3) years following the expiration or termination of this Agreement. For the purposes of this Section 10.11, "Affiliate" for Party A shall mean _____ and "Affiliate" for Party B shall mean Edison International."

New Sections 10.12, 10.13, 10.14, 10.15, 10.16, and 10.17 shall be added as follows:

"10.12 No Agency. Except as otherwise provided explicitly herein, in performing their respective obligations under this Agreement, neither Party is acting, or is authorized to act, as the other Party's agent."

"10.13 Mobile Sierra Doctrine.

- (a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the 'public interest' standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010) (the 'Mobile Sierra' doctrine).

(b) Notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by applicable laws, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties.”

“10.14 Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF) or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.”

“10.15 Independent Contractors. The Parties are independent contractors. Nothing contained herein shall be deemed to create an association, joint venture, or partnership relationship between the Parties or to impose any partnership obligations or liability on either Party in any way.”

“10.16 Severability. If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.”

“10.17 Rules of Construction.

- (a) The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise.
- (b) Where days are not specifically designated as Business Days, they will be considered as calendar days.
- (c) All references to time shall be in PPT unless stated otherwise.”

SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM.

The following changes shall be made to Schedule M:

The definition of “Act” in Section A of Schedule M shall be deleted and replaced with the following:

“Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.).

The definition of “Governmental Entity or Public Power System” in Section A of Schedule M shall be deleted and replaced with the following:

“Governmental Entity or Public Power System” means Party A.

Section 3.4 in Section D of Schedule M is deleted and replaced with the following:

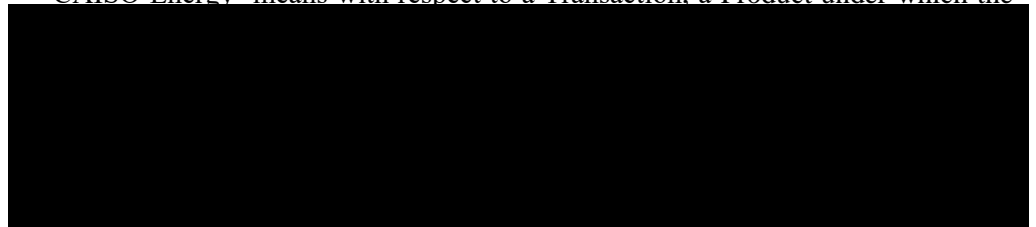
“Section 3.4 Public Power System’s Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement.”

Section G of Schedule M is deleted in its entirety.

SCHEDULE P: PRODUCTS AND DEFINITIONS. Amend Schedule P as follows:

The following definitions are added:

“ ‘CAISO Energy’ means with respect to a Transaction, a Product under which the



The following products are added:

“Other Products and Service Levels.

If the Parties agree to a service level or product defined by a different agreement, set of rules, tariff, or protocol (herein, the ‘agreement’) (i.e., the WSPP Agreement) for a particular Transaction, then, unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply, such reference to a service level or product defined by such other agreement means that the service level or product for that Transaction is subject to the applicable regional independent system operator and/or utility reliability requirements and guidelines as well as the permitted excuses for performance, Force Majeure, Uncontrollable Forces, or other such excuses applicable to performance under such other agreement, to the extent inconsistent with the terms of this Agreement, provided, however, that all other terms and conditions of this Agreement shall and do remain applicable including, without limitation, Section 2.2; and provided, further that with respect to any Transaction for a product or service level defined by such other agreement, the methodology for calculating the payments for failure to deliver or receive shall be in accordance with Sections 4.1 and 4.2 of the Master Agreement; provided, further that the ‘Accelerated Payment of Damages’ addressed in Article Four and agreed to in the Cover Sheet of the Master Agreement shall continue to apply.”

“Into _____ (the ‘Receiving Transmission Provider’), Seller’s Daily Choice” is deleted in its entirety.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A: **ORANGE COUNTY POWER
AUTHORITY**

Party B: **SOUTHERN CALIFORNIA EDISON COMPANY**

By: _____

By: _____

Name: **Brian Probolsky**

Name: _____

Title: **Chief Executive Officer**

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting there from. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

SCHEDULE 1 – Form of Letter of Credit

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT

Bank Reference Number: _____

Issuance Date:

Issuing Bank:
[insert bank name and address]

Applicant:
[insert applicant name and address]

Beneficiary:
[insert beneficiary name and address]

Available Amount: [insert amount and spell out]

Expiration Date: [insert date]

Ladies and Gentlemen:

_____ (the “Bank”) hereby establishes this Irrevocable Nontransferable Standby Letter of Credit (“Letter of Credit”) in favor of Southern California Edison Company, a California corporation (the “Beneficiary”), for the account of _____, a _____ corporation, also known as ID# _____ (the “Applicant”), for the amount stated above (the “Available Amount”), effective immediately.

This Letter of Credit shall be of no further force or effect at 5:00 p.m., California time on the expiration date stated above or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit) (the “Expiration Date”).

For the purpose hereof, “Business Day” shall mean any day other than:

1. A Saturday or a Sunday,
2. A day on which banking institutions in the city of Los Angeles, California, are required or authorized by Law to remain closed, or
3. A day on which the payment system of the Federal Reserve System is not operational.

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 Expiration Date hereof or any future Expiration Date unless at least sixty (60) days prior to such Expiration Date, we send notice to you by certified mail or hand delivered courier, at the address stated below, 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 by complying presentation on or before 5:00 p.m. California time, on or before the Expiration Date of the following:

1. A copy of this Letter of Credit and all amendments;
2. A copy of the Drawing Certificate in the form of Attachment “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 copy of the Sight Draft in the form of Attachment “B” attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary.

Drawings may also be presented by telecopy (“Fax”) to fax number [insert number] under telephone pre-advice to [insert number] or alternatively to [insert number]; provided that such Fax presentation is received on or before the Expiration Date on this instrument in accordance with the terms and conditions of this Letter of Credit. It being understood that any such fax presentation shall be considered the sole operative instrument of drawing. In the event of presentation by fax, the original documents should not also be presented.

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 and any drawings (other than those made by facsimile) hereunder are to be directed to [Bank address/contact].

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: [insert Beneficiary name and address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

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]_____

ATTACHMENT A
Drawing Certificate

TO [ISSUING BANK NAME & ADDRESS]

IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT
REFERENCE NUMBER: _____

DATE: _____

[insert Beneficiary name] (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. An Event of Default (as defined in the Edison Electric Institute Master Power Purchase & Sale Agreement Version 2.1 (modified on 4/25/00) between *[insert Counterparty name]* or its successor (the “Counterparty”) and Beneficiary, dated as of *[Date of Execution]*, as may be amended from time to time, (the “EEI Agreement”), with respect to the Counterparty has occurred and is continuing.

[] B. The Letter of Credit will expire in fewer than twenty (20) Business Days (as defined in the EEI Agreement) from the date hereof, and the Counterparty or its successor has not provided Beneficiary alternative Performance Assurance (as defined in the EEI Agreement) 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:

[insert Beneficiary name]

By:

Name: [print name]

Title: [print title]

ATTACHMENT B
SIGHT DRAFT

[Insert Date]

TO:
[ISSUING BANK NAME & ADDRESS]

PAY AT SIGHT TO THE ORDER OF [INSERT BENEFICIARY NAME] (THE “BENEFICIARY”) THE
AMOUNT OF USD [INSERT AMOUNT] DRAWN UNDER [ISSUING BANK NAME] IRREVOCABLE
NONTRANSFERABLE 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
[INSERT BENEFICIARY NAME]

NAME: [PRINT NAME]

TITLE: [PRINT TITLE]

PARAGRAPH 10
to the
COLLATERAL ANNEX
to the
EEI MASTER POWER PURCHASE AND SALE AGREEMENT

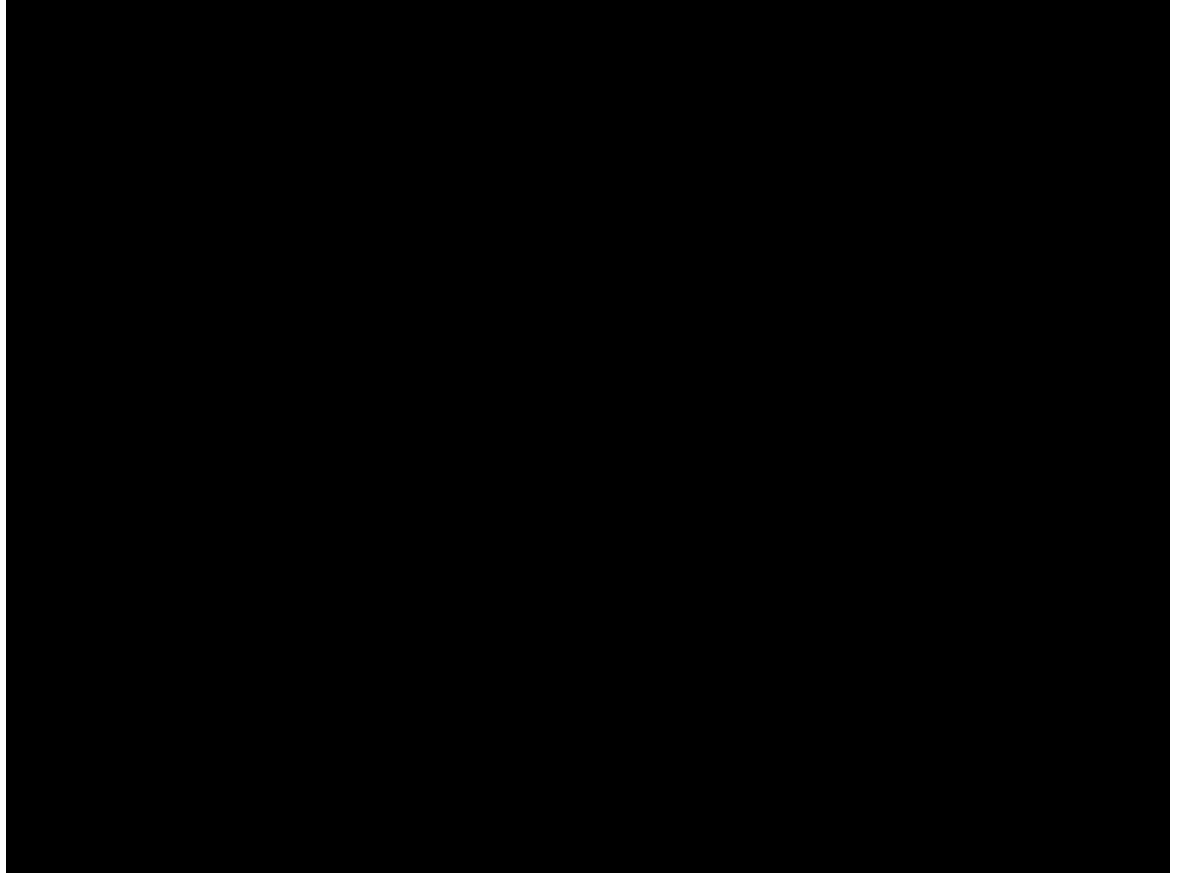
**Between ORANGE COUNTY POWER AUTHORITY (“Party A”) and
Southern California Edison Company (“SCE” or “Party B”)**

CREDIT ELECTIONS COVER SHEET

Paragraph 10. Elections and Variables

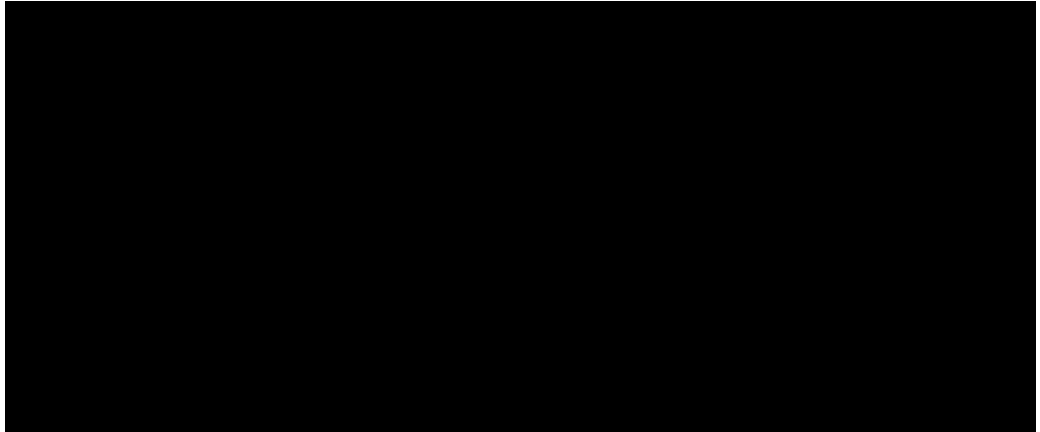
I. Collateral Threshold.

A. Party A Collateral Threshold.



Party A	
<u>Collateral Threshold</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

- ☐ The amount (“Threshold Amount”) which is the lowest of:

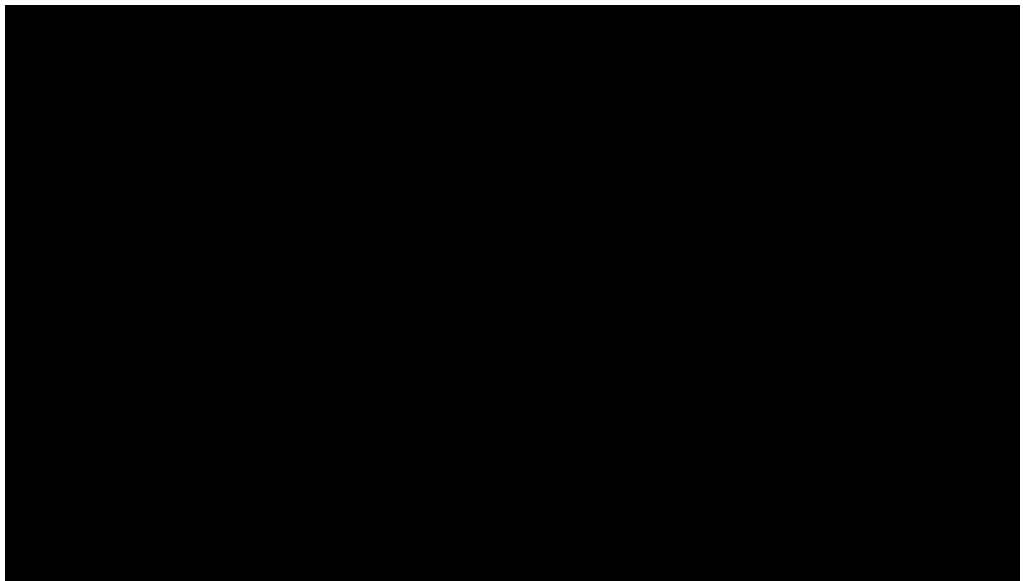


Party A Collateral Threshold	Moody's Credit Rating	S&P Credit Rating
	Aa3 or above	AA- or above
	A1	A+
	A2	A
	A3	A-
	Baa1	BBB+
	Baa2	BBB
	Baa3	BBB-
	Ba1 or below	BB+ or below

- ☐ The amount of the Guaranty Agreement dated _____ from _____, as amended from time to time but in no event shall Party A's Collateral Threshold be greater than \$ _____.
- ☐ Other – see attached threshold terms

B. Party B Collateral Threshold.

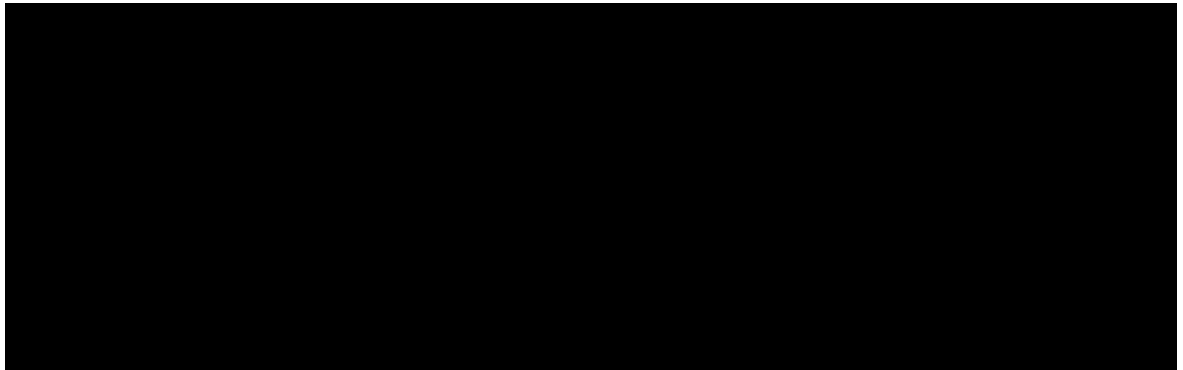
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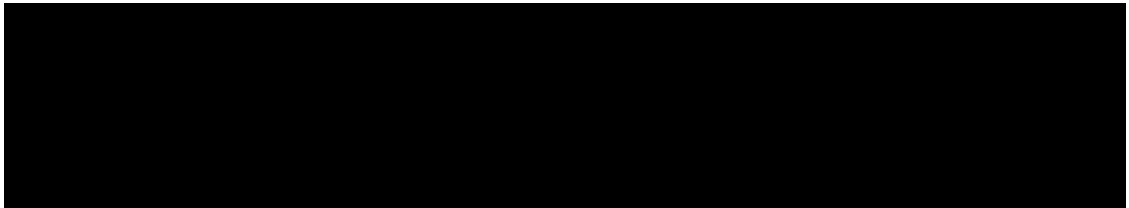
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Party B Collateral Threshold	Credit Rating
\$	(or above)
\$	
\$	
\$	
\$	
\$	Below

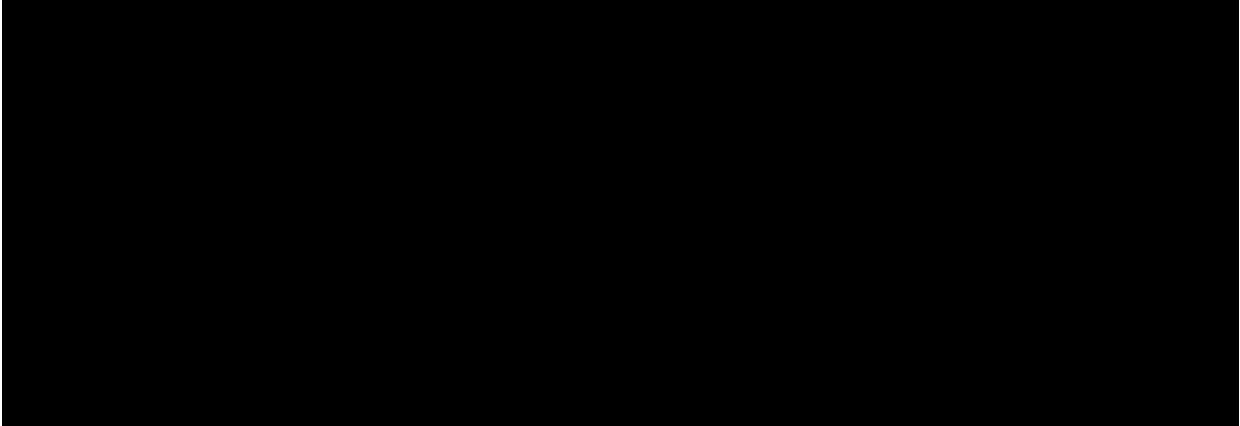


Party B Collateral Threshold	Moody's Credit Rating	S&P Credit Rating
	Aa3 or above	AA- or above
	A1	A+
	A2	A
	A3	A-
	Baa1	BBB+
	Baa2	BBB
	Baa3	BBB-
	Ba1	BB+
	Ba2 or below	BB or below



II. Eligible Collateral and Valuation Percentage.

The following items will qualify as "Eligible Collateral" for the Party specified:



III. Independent Amount.

A. Party A Independent Amount.

- ☐ Party A shall have a Fixed Independent Amount of \$ _____. If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- ☒ Party A shall have a Full Floating Independent Amount of (i) the amount specified in a Transaction or Confirmation, if any; and (ii) if Party A's Credit Rating is lower than BBB- by S&P or Baa3 by Moody's, the amount equal to ten percent (10%) of the market value of all outstanding Transactions (except those for which an alternative Independent Amount is specified in the Confirmation), adjusted by the netting of the market value of purchases with the market value of sales within the same billing cycles. If the Full Floating Independent Amount option is selected for Party A, then for purposes of calculating the Collateral Requirements pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party A shall be added to the Exposure Amount for Party B and subtracted from the Exposure Amount for Party A.
- ☐ Party A shall have a Partial Floating Independent Amount of \$ _____. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating

Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

☐ Not Applicable.

B. Party B Independent Amount.

☐ Party B shall have a Fixed Independent Amount of \$ _____. If the Fixed Independent Amount Option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.

☐ Party B shall have a Full Floating Independent Amount of \$ _____. If the Full Floating Independent Amount Option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.

☐ Party B shall have a Partial Floating Independent Amount of \$ _____. If the Partial Floating Independent Amount option is selected for Party B, then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

☒ Not Applicable.

IV. Minimum Transfer Amount.

A.

B.

V. Rounding Amount.

A.

B.

VI. Administration of Cash Collateral.

A. Party A Eligibility to Hold Cash.

- ☐ Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.
- ☒ Party A shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party; (2) Party A or, if applicable, Party A's Guarantor has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's; provided, if Party A, or, if applicable, Party A's Guarantor has a Credit Rating of BBB- by S&P or Baa3 by Moody's, such entity, in each case, has a "Stable" outlook or above; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

- ☒ Federal Funds Effective Rate – for any given month, the average of the annual interest rates reported for all weekdays in the month opposite the caption "Federal funds (effective)" as set forth in the H.15 release, or any successor publication, published by the Board of Governors of the Federal Reserve System.

- ☐ Other -

To the extent that Party A is not entitled to hold Cash, Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.

B. Party B Eligibility to Hold Cash.

- ☐ Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.
- ☒ Party B shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party; (2) Party B has a Credit Rating of at least BBB- from S&P or Baa3 from Moody's; provided, if Party B has a Credit Rating of BBB- by S&P or Baa3 by Moody's, such entity, in each case, has a "Stable" outlook or above; and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

Party B Interest Rate.

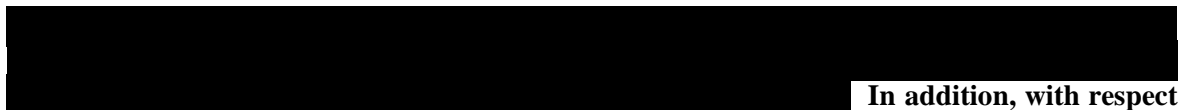
- ☒ Federal Funds Effective Rate – for any given month, the average of the annual interest rates reported for all weekdays in the month opposite the caption "Federal funds (effective)" as set forth in the H.15 release, or any successor publication, published by the Board of Governors of the Federal Reserve System.
- ☐ Other -

To the extent that Party B is not entitled to hold Cash, Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.

VII. Notification Time.

10:00 a.m. Pacific Prevailing Time on a Local Business Day.

VIII. General.

 In addition, with respect to the "Administration of Cash Collateral" section of this Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex. If a Party is eligible to hold Cash pursuant to a selection in this Paragraph 10 but no Interest Rate is selected, then the Interest Rate for such Party shall be the Federal Funds Effective Rate as defined in Section VI of this Paragraph 10.

IX. Other Changes.

The following changes to the Collateral Annex shall be applicable.

A. Introduction. The first paragraph of the introduction is amended to read as follows:

“This Collateral Annex, together with the Paragraph 10 Cover Sheet, (the “Collateral Annex”) supplements, forms a part of, and is subject to the EEI Master Power Purchase and Sale Agreement dated as of _____ between **Orange County Power Authority** (“Party A”) and Southern California Edison Company (“Party B”), including the Cover Sheet and any other annexes thereto (as amended and supplemented from time to time, the “Agreement”). Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given such terms in the Agreement.”

B. Paragraph 1. Definitions. Amend Paragraph 1 as follows:

- i. The definition of “Credit Rating” is deleted from the Collateral Annex and all references shall have the meaning set forth in Section 1.12 of the Master Agreement as modified in the Cover Sheet.
- ii. The definition of “Credit Rating Event” is amended by replacing “6(a)(iii)” with “6(a)(ii)”.
- iii. The definition of “Downgraded Party” is amended by replacing “6(a)(i)” with “6(a)(ii)”.

- iv. The definition of “Interest Amount” is deleted in its entirety and replaced as follows:

“Interest Amount” means the product of the following three factors: (a) the dollar amount of Cash on which an interest payment is based; (b) Interest Rate; and (c) the number of days in the calculation period divided by 360.

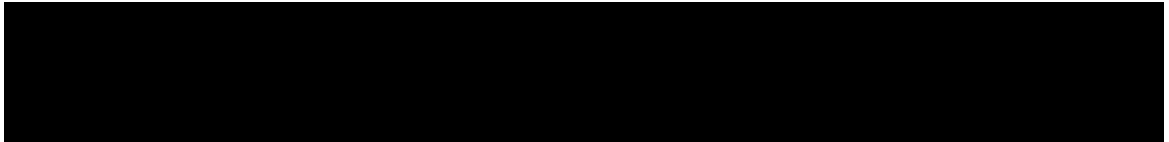
- v. The definition of “Interest Period” is deleted in its entirety.
- vi. The definition of “Letter of Credit” is deleted from the Collateral Annex and all references shall have the meaning set forth in Section 1.27 of the Master Agreement as modified in the Cover Sheet.
- vii. The definition of “Letter of Credit Default” is amended by replacing the word “or” in the third line with the word “and”.
- viii. The definition of “Local Business Day” is amended by replacing the word “day” with “Business Day”.
- ix. The definition of “Notification Time” is amended by replacing “11:00, New York” with “10:00 a.m. Pacific Prevailing.”
- x. The definition of “Performance Assurance” is amended by replacing “6(a)(iv)” with “6(a)(iii)”.
- xi. The definition of “Qualified Institution” is amended to read as follows:

“Qualified Institution” means either (A) a commercial bank or financial institution (that is not an Affiliate or a Guarantor of any party to this Agreement) organized under the laws of the United States or a political subdivision thereof or (B) a U.S. branch office of a foreign bank, and, with respect to both entities identified in clause (A) and (B), having (i) Credit Ratings of at least "A-" by S&P or "A3" by Moody's, and (ii) shareholder equity (determined in accordance with generally accepted accounting principles) of at least \$1,000,000,000.00 (ONE BILLION AND 00/100 DOLLARS).”

xii. The definition of “Reference Market-maker” is deleted from the Collateral Annex and all references shall have the meaning set forth in Section 1.66 of the Master Agreement as modified in the Cover Sheet.

xiii. The definition of “Secured Party” is amended by replacing “3(b)” with “3(a)”.

C.



D. **Paragraph 4. Delivery of Performance Assurance.** In Paragraph 4, the penultimate sentence is amended by replacing the words “next Local Business Day” with “third Local Business Day thereafter” in clause (i), and by replacing the word “second” with fourth” in clause (ii).

E. **Paragraph 5. Reduction and Substitution of Performance Assurance.** Amend Paragraph 5 as follows:

i. Paragraph 5(a) is amended by deleting the parenthetical “(but no more frequently than weekly with respect to Letters of Credit and daily with respect to Cash)” from the first line.

ii. The sixth sentence of Paragraph 5(a) is amended by

1. inserting the word “Local” before “Business Day,” and replacing the words “one (1) Local Business Day” with “three (3) Local Business Days” in clause (i) of that sentence.
2. Replacing the words “two (2) Local Business Days” with “four (4) Local Business Days” in clause (ii) of that sentence.

F. **Paragraph 6. Administration of Performance Assurance. Amend Paragraph 6 as follows:**

iii. Paragraph 6(a)(ii)(A) is amended by inserting “(other than subparagraph (B) below)” after “the provisions of this Paragraph 6(a)(ii)” in the first line thereof.

iv. Paragraph 6(a)(ii)(B) is amended by replacing “Non-Downgraded Party” with “Downgraded Party” in the second sentence of this paragraph.

v. Paragraph 6(a)(iii) is deleted in its entirety and replaced as follows:

Interest Payments on Cash. So long as no Event of Default or Potential Event of Default with respect to the Pledging Party has occurred and is continuing, and no Early

Termination Date for which any unsatisfied payment Obligations of the Pledging Party exist has occurred or been designated as the result of an Event of Default with respect to the Pledging Party, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that the Secured Party or its Custodian is holding Cash, the Secured Party will Transfer (or caused to be Transferred) to the Pledging Party, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by the Secured Party or its Custodian), the Interest Amount, concurrently with the return of such Cash to the Pledging Party in accordance with the terms of the Agreement. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to the Pledging Party or an Early Termination Date as a result of an Event of Default with respect to the Pledging Party, the Secured Party or its Custodian shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of the Pledging Party under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default; provided that, any Interest Amount that is held by the Secured Party as an additional Performance Assurance amount shall not accrue interest in accordance with this paragraph.

- vi. Paragraph 6(b)(iv) is amended by capitalizing the second instance of the word “cash” in the second sentence.
 - vii. Paragraph 6(b)(v) is amended by deleting the parenthetical phrase “(including but not limited to the reasonable costs, expenses, and attorneys’ fees of the Secured Party)”.
- G. Paragraph 7.** Exercise of Rights Against Performance Assurance. Paragraph 7(b) is amended by deleting it in its entirety and inserting the words “Intentionally Omitted.”.
- H. Paragraph 8. Disputed Calculations. Amend Paragraph 8 as follows:**
- viii. Paragraph 8(a) is amended by adding in the third sentence the phrase “and, provided further, that if no quotations can be obtained, then the Secured Party’s original calculation shall be used” immediately after the words “then that quotation shall be used” and before the “)”.
 - ix. Paragraph 8(b) is amended by (1) adding the words “requested by the Pledging Party” between the word “Assurance” and the phrase “to be reduced”, and (2) adding in the third sentence the phrase “and, provided further that, if no quotations can be obtained, then the Secured Party’s original calculation shall be used” immediately after the words “then that quotation shall be used” and before the “)”.
- I. Paragraph 9. Covenants; Representations and Warranties; Miscellaneous.** Section 9(d) is amended by deleting (i) the parenthetical phrase at the end of the first sentence, which reads, “(including, without limitation costs and reasonable fees and disbursements of counsel)” and (ii) the entire second sentence.
- J. Schedule 1 to Collateral Annex:** Schedule 1 to the Collateral Annex is deleted in its entirety.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused this Paragraph 10 to the Collateral Annex to be duly executed as of the Effective Date of the Agreement.

Party A: **ORANGE COUNTY POWER
AUTHORITY** _____

Party B: **SOUTHERN CALIFORNIA EDISON
COMPANY** _____

By: _____

By: _____

Name: **Brian Probolsky** _____

Name: _____

Title: **Chief Executive Officer** _____

Title: _____

**CERTIFICATE OF THE GENERAL COUNSEL OF THE
ORANGE COUNTY POWER AUTHORITY**

The undersigned, Ryan Baron, hereby certifies that he is the duly appointed and acting General Counsel of the Orange County Power Authority and further certifies as follows:

1. Attached hereto as Exhibit A is a true and correct copy of the July 13, 2021 meeting minutes reflecting the adoption of the Energy Risk Management Policy, which minutes were approved by the Orange County Power Authority Board of Directors on August 10, 2021.
2. Attached hereto as Exhibit B is a true and correct copy of the Energy Risk Management Policy, dated July 13, 2021. Such Energy Risk Management Policy remains in full force and effect as of the date hereof and has not been amended or rescinded in whole or in part in any respect.
3. Brian Probolsky is the duly appointed, qualified, and acting Chief Executive Officer of the Orange County Power Authority and is duly authorized to enter into a Master Power Purchase and Sale Agreement and related Confirmation Letters (collectively, the "Transaction Documents") with Southern California Edison Company on behalf of the Orange County Power Authority pursuant to Section 6.5 of the attached Energy Risk Management Policy. The signature appearing below is a true and correct facsimile signature of said officer.

Brian Probolsky, Chief Executive Officer

[Signature]

4. The Transaction Documents to be entered into on or about the date hereof conform to the product type, tenor, volume and national values set forth in the delegation of authority set forth in Section 6.5 of the attached Energy Risk Management Policy.

IN WITNESS WHEREOF, the undersigned has duly executed this certificate in his capacity as General Counsel of the Orange County Power Authority as of _____, 2021.

Name: Ryan Baron
Title: General Counsel

EXHIBIT A

Meeting Minutes

[*See attached.*]

EXHIBIT B

Energy Risk Management Policy

[See attached.]

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

MINUTES

July 13, 2021

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 10:01 a.m.

2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Director Sonne

3. ROLL CALL

Present: 5 Members

Director Khan (Irvine)
Director Posey (Huntington Beach)
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 Director Posey, second by Director Khan, to approve the Consent Calendar as submitted.

Director Posey inquired regarding the collaboration efforts of the OCPA and potential volunteer sources. COO Graham stated that Staff would be working with the various colleges and universities in the area to develop and intern program and that they would be conducted significant outreach.

MOTION CARRIED BY THE FOLLOWING VOTE:

Ayes: Director Khan, Director Posey, Director Sonne, Vice Chair Jung, Chair Carroll

Noes: None

Abstained: None

Absent: None

**4.1 MINUTES FOR THE REGULAR BOARD MEETING OF MAY 11, 2021,
AND THE SPECIAL BOARD MEETING OF JUNE 9, 2021**

Action: Approved as amended.

**4.2 CONSIDERATION OF ADMINISTRATIVE POLICY NUMBER 010:
VOLUNTEER POLICY**

Action: Adopted Administrative Policy Number 010: Volunteer Policy

5. REGULAR CALENDAR

The following items called 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 was so inclined.

5.1. RISK MANAGEMENT POLICY

CEO Brian Probolsky provided introductory remarks and introduced John Dalessi and Kirby Dusel from Pacific Energy Advisors, who presented the Staff report. Mr. Dalessi and Mr. Dusel explained the relationship between energy market risk, credit risk, load generation risk, operational risk, and liquidity risk. Mr. Dalessi stated the policy will provide the framework around which the OCPA will manage the various risks.

Mr. Dalessi further reported the key elements of the Risk Policy as 1. Definition of risk management goals and principles; 2. Internal control principles; 3. Risk management business practices; and 4. Risk management governance. He discussed the Risk Oversight Committee and reviewed the members of the Risk Oversight Committee. He emphasized the importance of delegation of procurement authority to allow for the acquisition of power resources quickly.

Chair Carroll asked about the timeline for finalizing some of the services necessary to begin operation. Mr. Dusel responded that the timeline depended on the service, and noted that Staff will begin procuring resource adequacy the following week, as it was the first priority, and that 90% of other required needs would be in place by October.

Mr. Dusel stated that system power would likely be addressed closer to launch, as it was important to quantify current needs, and that short term renewable energy would be procured in the next 4-6 weeks. He noted that long term renewables would be solicited annually.

Responding to Board inquiry, Mr. Dusel reviewed the various reports that would be generated and provided to the Board and the public.

Board Member Posey inquired about the possibility of selling excess power back for a higher price than purchased, what was the formula for purchasing various types of power resources, and could a Board Member sit on the Risk Oversight Committee. Mr. Dalessi and Mr. Dusel responded that selling excess power back for a greater profit was a 50/50 proposition, just like any commodity at the time of sale. They reported the formula for procuring resources starts with historical data usage and making some assumptions. Lastly Mr. Dusel stated that yes, a Board Member could sit on the Risk Oversight Committee but Staff is cognizant of the Board's time. Board Member Posey stated his belief that Board Members should be invited and encouraged to participation in the Committee at the request of the CEO.

The following members of the public offered comment:

Ayn Craciun, Irvine, Climate Action Campaign representative, expressed support for the policy.

Ed Maurer, Mission Viejo, Sierra Club, expressed support for the policy.

Kathleen Treseder, Irvine, UCI, expressed appreciation for the agenda item, noting the importance of reliable energy rates.

Branda Lin, Irvine, supported Board Member Posey's request to have Board Members sit on the Risk Oversight Committee.

Craig Preston, Costa Mesa, expressed his desire for Costa Mesa to join the CCA.

Board Member Khan inquired about Board Member Posey's question, regarding Members attending the Risk Oversight Committee and her belief that Board Members already have access to that Committee and information. CEO Probolsky confirmed the policy does not need to be amended and that less than a quorum of Board Members is always allowed at a Committee meeting.

MOTION: It was moved by Director Posey, second by Director Sonne, to approve proposed Energy Risk Management Policy, including referenced delegations of authority for energy contracts.

MOTION CARRIED BY THE FOLLOWING VOTE:

Ayes: Director Khan, Director Posey, Director Sonne, Vice Chair Jung, Chair Carroll

Noes: None

Abstained: None

Absent: None

5.2 UPDATE ON CALIFORNIA PUBLIC UTILITIES COMMISSION ENERGY EFFICIENCY PROGRAM FUNDING AND DEVELOPMENT

Antonia Graham, Chief Operating Officer, presented the report with Laurel Rothschild, The Energy Coalition. Ms. Graham reviewed the two funding programs offered by the Public Utilities Commission and noted Staff had conducted stakeholder meetings and was in the process of scheduling more. Ms. Rothschild explained the key differences between the Elect to Administer Program and the Apply to Administer Program.

Ms. Graham indicated Staff would return to the Board in September with an update on the stakeholder meetings and input received, as well as to request direction from the Board regarding which programs the Authority should apply for and participate. She indicated applications should be ready for submittal in October, 2021.

Board discussion ensued.

The following members of the public offered comments:

Ed Maurer, Mission Viejo, thanked Staff for the presentation and noted it was helpful for marketing the CCA to other communities.

Steven Geer, Orange County resident, asked if the programs applied to non-city County residents.

Pam and Doug, Laguna Niguel, inquired about the process for questions asked during Public Comment.

General Counsel Baron explained the limitations of the Brown Act regarding providing detailed responses on non-agendized item.

Senait Forthal, Irvine, expressed appreciation for Staff and was very excited about the funding opportunities.

ACTION: The report was received and filed. Board discussion ensued.

6. PUBLIC COMMENTS

The following members of the public offered comment:

Kathleen Treseder, Irvine, UCI, spoke regarding Staff qualifications.

Ayn Craciun, Irvine, Climate Action Campaign representative, remote meetings and administrative matters.

Branda Lin, Irvine, spoke regarding a recent blog article and transparency.

Danny Gray, Laguna Beach, expressed support for renewable energy.

Karen Smith, expressed concern about coordinated misinformation provided by a San Diego County non-profit Climate Action Campaign.

7. DIRECTOR COMMENTS

Board Member Sonne thanked COO Graham for her presentation on PUC funding and asked for a brief update on the Citizens Advisory Committee. Ms. Graham stated that the Committee had held its first meeting and that future meetings are to be held on the first Thursday of the month at 5:30 p.m.

Director Khan provided clarification to the public as to why they could not respond from the dais to questions. She stated members of the public can always email their questions to Board Members or Staff and they can be answered that way.

Chair Carroll reviewed the various actions taken by the Board since formation and what tasks remained to be accomplished before launch.

8. REPORT BY CHIEF EXECUTIVE OFFICER

CEO Probolsky reported Staff was working diligently and looking forward to the spring, 2022 launch. He stated he was currently working with the bank on credit and would return to the Board in September with more detailed information. He stated the request for proposal for long term renewable energy was being circulated and that he would return in November. He reported interviews for the Director of Power Resources were occurring and that the position of Chief Financial Officer would be open for recruitment soon. He stated Staff was nearly completion of the "branding process" with a revised website and community outreach support. He acknowledged that grid reliability is not within the Authority's control and stated Southern California Edison and the California Independent System Operator is in charge of grid reliability. He concluded his remarks by stating Staff is always available to engage the public and answer questions.

COO Graham provided additional information on the Community Advisory Committee and stated she is planning to conduct additional outreach and stakeholder meetings in both English and Spanish.

9. REPORT BY GENERAL COUNSEL

General Counsel Baron had nothing to report.

10. ADJOURNMENT

On a motion by Director Khan, second by Director Sonne, Chair Carroll adjourned the meeting at 11:47 a.m.



Brian Probolsky, Authority Secretary

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 5.1

To: Orange County Power Authority Board of Directors

From: John Dalessi and Kirby Dusel, Pacific Energy Advisors

Cc: Brian Probolsky, Chief Executive Officer

Subject: APPROVE ENERGY RISK MANAGEMENT POLICY

Date: July 13, 2021

RECOMMENDED ACTION

Approve the Orange County Power Authority's (OCPA) Energy Risk Management Policy, including referenced delegations of authority for energy product contract approvals.

BACKGROUND

During its normal course of business, OCPA will be required to manage risks associated with its participation in California's wholesale energy markets – as a retail seller of electricity, OCPA will maintain an ongoing obligation to procure sufficient quantities of various energy products to fulfill customer needs and pertinent compliance obligations, negotiate related contracts, validate supplier invoices, issue payments for delivered products, pursue dispute resolution (as necessary) and manage credit concerns associated with its various supplier relationships. A key component of effectively managing procurement and portfolio risk is being able to identify, measure and control the potentially adverse consequences of inevitable market volatility and credit exposure. The Energy Risk Management Policy (Policy) provides a framework and related guidance, which are intended to facilitate OCPA's administration of the tasks and responsibilities related to risk management, including identification of necessary roles and responsibilities assigned to those individuals and groups who will be involved in risk management activities.

In terms of anticipated energy market risks, the Policy is intended to assist OCPA in addressing the following concerns, each of which is further defined in the Policy:

- Market Price Risk
- Counterparty Credit and Performance Risk
- Load and Generation Volumetric Risk
- Operational Risk
- Liquidity Risk
- Regulatory/Legislative Risk

Management of such risks is achieved through diligent, ongoing application of the structure, practices and principles outlined in OCPA's Policy, which are predicated on the following internal control principles: (1) segregation of duties; (2) imposition of checks and balances between functional areas of the organization; (3) delegation of authority commensurate with responsibility, experience and capability; and (4) limitation of market-related activities to defined products and transactions that are necessary to support the successful operation of OCPA.

While energy market risk can never be eliminated, administration of the Policy is intended to achieve the following goals:

- Assist in achieving the business objectives of retail rate competitiveness and stability;
- Avoid losses and excessive costs, which would materially impact the financial condition of OCPA;
- Establish the parameters for energy procurement and sales activity to minimize costs while ensuring compliance with approved risk limits and policy objectives;
- Assist in assuring that market activities and transactions are undertaken in compliance with established procurement authorities, applicable laws, regulations and orders; and
- Encourage the development and maintenance of a corporate culture at OCPA in which the proper balance is struck between control and facilitation and in which professionalism, discipline, technical skills, and analytical rigor come together to achieve OCPA's intended objectives.

The OCPA Board of Directors will administer the Policy. A Risk Oversight Committee (ROC) will also be established. The ROC will meet quarterly and receive updates regarding key informational items as set forth in the Policy – the initial meeting of OCPA's ROC is expected to occur in Q3 2021, prior to OCPA's execution of any power supply transactions. OCPA's Board of Directors will oversee the ROC and will receive periodic updates regarding key areas of interest/concern, including instances involving non-conformance with the Policy. Additional information regarding the ROC and its responsibilities is provided in the Policy.

The Policy also addresses certain delegations of authority, which are intended to streamline the completion of shorter-term procurement activities that are determined to be consistent with OCPA's resource planning objectives – your Board may be aware that many prospective transactions within the electric utility industry are very time-sensitive (markets are dynamic, with prices changing from moment to moment), so best practice suggests that the establishment of pre-determined delegations of authority is critically important to accommodate the short turnaround time that may be required to confirm/close certain transactions. More specifically, certain wholesale energy transactions will provide the prospective buyer with a limited window of time, often 1-2 hours, to confirm the proposed transaction before pricing must be refreshed/revised (which could result in unexpected, adverse pricing changes based on then-current market dynamics). To the extent that OCPA has not predetermined certain delegations of authority for such transactions, it would be virtually impossible to secure necessary components of its anticipated supply portfolio. The delegations of authority reflected in the Policy are intended to strike an appropriate balance between efficiency and control, requiring Board approval for longer term and higher cost transactions while delegating authority to the Chief Executive Officer for more routine, time sensitive transactions that have lower notional values.

Analysis and Discussion

As OCPA begins the process of contracting for requisite energy products, establishment of the Policy is important in managing inevitable risks while facilitating transaction completion. A number of upcoming transactions, including reserve capacity (or Resource Adequacy) purchases, short-term renewable energy purchases and short-term system energy purchases may all require time-sensitive decision making by OCPA, and the Policy establishes parameters under which such procurement opportunities could be executed by the Chief Executive Officer or, alternatively, when such opportunities would require Board approval. Long-term renewable energy commitments, for example, would require Board approval due to the lasting planning and financial implications of such transactions. Shorter-term supply commitments, however, wouldn't necessarily require Board approval, unless the overall cost of such transactions would exceed

specified thresholds identified under OCPA's delegation of authorities or if such purchases were not deemed consistent with agreed upon portfolio planning principles of the organization. In all cases, the Board would be kept informed of OCPA procurement activities, even for transactions not requiring Board approval. Information regarding all procurement activities would be provided during regularly scheduled Board meetings.

Approving the Policy at this time will complement OCPA's upcoming procurement efforts by providing necessary guidance to staff during the administration of such activities and general risk mitigation for the organization.

FISCAL IMPACT

There is no fiscal impact associated with adopting this Policy.

ATTACHMENT

1. Energy Risk Management Policy

Energy Risk Management Policy of the Orange County Power Authority

Version: 1.0
Approval Date: [TBD]

Energy Risk Management Policy
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Energy Risk Management Policy

1.0 General Provisions

1.1 Background and Purpose of Policy

The Orange County Power Authority (OCPA) participates in energy markets for purposes of fulfilling its role as a Community Choice Aggregator that will serve retail electricity customers within the cities of Buena Park, Fullerton, Huntington Beach, Irvine, and other jurisdictions that may become OCPA members (OCPA's "service territory"). Service commencement to end use customers is expected to occur in April 2022. This Policy defines OCPA's general energy risk management framework and provides management with the authority to establish processes for monitoring, measuring, reporting, and controlling market and credit risks to which OCPA is exposed in its normal course of business.

1.2 Scope of Business and Related Market Risks

OCPA's retail electric provider operations encompass the following business activities covered within the scope of this policy: bilateral purchases and sales of electricity under short-, medium- and long-term contracts; scheduling of electric load and generation into California Independent System Operator (CAISO) markets; retail marketing of electricity to consumers within its service territory; compliance with voluntary objectives and regulatory requirements that relate to Renewables Portfolio Standard (RPS) energy acquisition and carbon-free energy supply; participation in the CAISO-administered Congestion Revenue Rights (CRRs) market; management of the balance between load and generation over the short-, medium- and long-term planning horizons; and compliance with applicable Resource Adequacy (RA) requirements. Participation in such activities exposes OCPA to certain risks, which include, but are not limited to, the following:

- Market Price Risk
- Counterparty Credit and Performance Risk
- Load and Generation Volumetric Risk
- Operational Risk
- Liquidity Risk
- Regulatory/Legislative Risk

Unless individually addressed, the aforementioned risks shall be collectively referred to as "market risks" within this Policy. OCPA's framework for mitigating exposure to such risks includes the following elements:

- Specification of Risk Management Goals and Principles
- Definitions of Risks
- Internal Control Principles
- Risk Management Business Practices
- Risk Management Governance

This Policy does not address the following types of general business risk, which should be treated separately in other policies, ordinances and regulations pertaining to OCPA: fire, accident and casualty; health, safety, and workers' compensation; general liability; and other typically insurable perils.

1.3 Policy Administration

This version of the Energy Risk Management Policy was adopted by the OCPA Board of Directors on July 13, 2021. This Policy may be amended as needed by OCPA's Board.

1.4 Policy Distribution and Acknowledgment

This Policy shall be distributed to all OCPA employees and third-party contractors engaged in the planning, procurement, sale and scheduling of electricity and related products on OCPA's behalf and/or in other OCPA departments, which may provide oversight and support for these activities. All such employees and contractors are required to annually confirm, in writing, that they:

- Have read OCPA's Risk Management Policy
- Understand pertinent terms and requirements of the Policy
- Affirm their intent to comply with the Policy
- Understand that any violation of the Policy shall subject the employee to disciplinary action, which may include termination of employment.

1.5 Policy Interpretation

Questions related to interpretation of the Policy should be referred to the Risk Oversight Committee (ROC) or, if the ROC has not yet been formed, OCPA's Board. All legal matters stemming from this Policy will be referred to OCPA's General Counsel.

2.0 Risk Management Goals

The goals of OCPA's energy risk management practices are to:

- [1] assist in achieving the business objectives of retail rate stability and competitiveness;
- [2] avoid losses and excessive costs, which would materially impact the financial condition of OCPA;
- [3] establish the parameters for energy procurement and sales activity to minimize costs while ensuring compliance with approved risk limits and policy objectives;
- [4] assist in assuring that market activities and transactions are undertaken in compliance with established procurement authorities, applicable laws, regulations and orders; and
- [5] encourage the development and maintenance of a corporate culture at OCPA that strikes the proper balance between control and facilitation and in which professionalism, discipline, technical skills, and analytical rigor are applied and cultivated to achieve OCPA's objectives.

3.0 Risk Management Principles

3.1 General Risk Management Principles

OCPA manages its energy resources and transactions with the objectives of providing customers with stable and competitive electric rates, achieving applicable compliance mandates and supporting local economic development while contemporaneously minimizing risks. OCPA's risk management principles are focused on the identification of relevant risks, systematic risk measurement and reporting, and strict adherence to established risk policies. OCPA will not engage in transactions without proper authorization or if such transactions are determined to be inconsistent with this Policy.

It is the policy of OCPA that all personnel, including the Board, management, and agents, adhere to standards of integrity, ethics, conflicts of interest, compliance with statutory law and regulations and other applicable OCPA standards of personal conduct while employed by or affiliated with OCPA.

3.2 Conflicts of Interest

All OCPA directors, managers, employees, consultants, and agents participating in any transaction or activity within the coverage of this Policy are obligated to advise OCPA in writing of any financial interest in any counterparty seeking to do business with OCPA. Such directors, managers, employees, consultants, and agents must also identify any real or potential conflict of interest related to any existing or potential contract/transaction with OCPA. To the extent that a financial interest or conflict is identified by one or more of the aforementioned individuals, any such person shall be prohibited from personally participating in a related transaction or similar activity that is within the coverage of this Policy or prohibited by California Government Code § 1090.

If there is any doubt as to whether a prohibited condition or conflict exists, it shall be the responsibility of the potentially affected director, manager, employee, consultant or agent to discuss the prospective issue with her/his manager or supervisor before further participating in related procurement/transactional activities.

3.3 Adherence to Statutory Requirements

Compliance shall be required with all applicable rules promulgated by the state of California, the California Public Utilities Commission, the California Energy Commission, the Federal Energy Regulatory Commission (FERC), the Commodity Futures Trading Commission (CFTC), and other regulatory agencies.

Congress, the FERC and the CFTC have enacted laws, regulations, and rules that prohibit, amongst other things, any action or course of conduct that actually or potentially operates as a fraud or deceit upon any person in connection with the purchase or sale of electric energy or transmission services. These laws also prohibit any person or entity from making an untrue statement or factual omission where such an omission would result in a statement being misleading. Violation of these laws can lead to both civil and criminal actions against the individual involved as well as OCPA. This Policy is intended to promote compliance with such laws, regulations and rules and to avoid improper conduct on the part of anyone employed by or working on behalf of OCPA. These procedures may be modified from time to time by legal requirements, auditor recommendations, requests from OCPA's CEO and/or ROC, and other considerations.

In the event of an investigation or inquiry by a regulatory agency, OCPA will provide legal counsel to employees. However, OCPA will not appoint legal counsel to an employee if OCPA's General Counsel and

Chief Executive Officer determine that the employee was not acting in good faith within its scope of employment. OCPA employees are prohibited from working for another power supplier, CCA or utility in a related position while they are simultaneously employed by OCPA unless an exception is authorized by the Board. For clarity, this prohibition is not intended to prevent OCPA staff from performing non-CCA activities on behalf of OCPA in the normal course of its business.

3.4 System of Records

OCPA will maintain a set of records for all transactions executed in association with OCPA's procurement activities. The records will be maintained in US dollars and transactions will be separately recorded and categorized by type of transaction. This system of record shall be auditable.

4.0 Definitions of Market Risks

The term "market risks," as used herein, refers specifically to those categories of risk which relate to OCPA's participation in wholesale and retail markets as a Load Serving Entity (LSE) as well as OCPA's interests in certain long-term contracting opportunities. Market risks include market price risk, counterparty credit and performance risk, load and generation volumetric risk, operational risk and liquidity risk, as well as regulatory and legislative risk. These categories are defined and explained as follows.

4.1 Market Price Risk

Market price risk is defined as exposure to changes in wholesale energy prices. Market price risk is a function of price volatility and the volume of energy that is contracted at fixed prices over a defined period of time. Prices in electricity markets exhibit high volatility, and appropriate forward procurement and hedging are generally necessary to manage such exposure.

Market price risk is also impacted by market liquidity, which may be an issue for certain energy or capacity products that OCPA intends to procure. Illiquid markets are characterized by relatively few buyers or sellers, which makes it more difficult to buy or sell a commodity and often results in higher price premiums (on purchases) or deeper discounts (on sales).

Another dimension of market price risk is congestion or "basis" risk. Congestion risks arise from locational differences in pricing between the point of contracted supply and the related point of delivery (meaning, the point at which procured power is received by OCPA on the bulk electric system).

For OCPA, market price risk manifests in two types of exposure. The first type of market price risk exposure is the potential for variations in power costs that are related to OCPA's "open positions", meaning the volume of energy that will ultimately be required for delivery to OCPA customers but has not yet been placed under contract. Increases in market prices will impose increased costs on OCPA when those open positions are eventually filled at such higher prices. To the extent that power costs are higher than anticipated, anticipated OCPA fund balances (such as those designated for financial reserves, program administration or other complementary uses) may be lower than expected, necessitating customer rate increases. Market price risk exposure related to open positions are monitored through net open position valuations and value at risk metrics, as described in Section 6.1 of this Policy.

The second type of market price risk exposure is the potential for wholesale trading positions, long-term supply contracts and generation resources to move "out of the money," that is, become less valuable when compared to similar positions, contracts or resources obtainable at present prices. These same positions can also be "in the money" if such positions become more valuable when compared to similar positions, contracts or resources obtainable at present market prices. This valuation methodology is

commonly referred to as “Mark to Market.” Transaction valuation and reporting of positions shall be based on objective, market-observed prices. If OCPA is “out of the money” on a substantial portion of its contracts, it may have to charge higher retail rates relative to competitors. Such a situation could erode OCPA’s competitive position and market share if other market participants (e.g., Direct Access providers or the incumbent utility) are able to procure power at a lower cost and offer lower retail electric rates.

4.2 Counterparty Credit and Performance Risk

Performance and credit risk refer to the inability or unwillingness of a counterparty to perform according to its contractual obligations. Failure to perform may arise if an energy supplier fails to deliver energy as agreed. There are four general performance and credit risk scenarios:

[1] counterparties and wholesale suppliers may fail to deliver energy or environmental attributes, requiring OCPA to purchase replacement products elsewhere, possibly at higher costs;

[2] counterparties may fail to take delivery of energy or environmental attributes sold to them, necessitating an unexpected and expeditious resale of the product to another buyer, possibly at a lower price;

[3] counterparties may fail to pay for delivered energy or environmental attributes; or

[4] counterparties and suppliers may refuse to extend credit to OCPA, possibly resulting in higher collateral posting costs, which could impact OCPA’s cash position and/or bank lines of credit.

An important subcategory of credit risk is concentration risk. When a portfolio of positions and resources is concentrated with one or a very small number of counterparties, generating resources, or geographic locations, it becomes more likely that major losses will be sustained in the event of non-performance by a counterparty/supplier or as a result of unexpected price fluctuations at one location.

4.3 Load and Generation Volumetric Risk

Energy deliveries must be planned in consideration of forecasted load. OCPA forecasts load over the long and short term and enters into long- and short-term fixed price energy contracts to hedge its load consistent with the provisions of its resource plan.

Load forecasting risk arises from inaccurate load forecasts and may result in the over- or under-procurement of energy and/or customer rate revenues that deviate from approved budgets. Energy delivery risk occurs if a generator fails to deliver expected or forecasted energy volumes. Variations in wind speed and cloud cover, for example, can also impact the respective amount of electricity generated by wind and solar resources. Furthermore, the occasional oversupply of power on California’s electric grid can lead to curtailment of energy deliveries or reduced revenue resulting from low or negative prices at certain energy delivery points. In general, weather is an important variable that can result in higher or lower electricity usage due to its impact on customer electricity usage (heating and cooling needs, for example) as well as energy production (by generators that are commonly impacted by ambient weather conditions).

In the CAISO markets, this situation can result from both the oversupply and undersupply of electricity relative to OCPA’s load as well as the over- or under-scheduling of generation or load into the day-ahead market (relative to actual energy consumed or delivered in the real-time market). Load and generation volumetric risk may result in unanticipated open positions and imbalance energy costs, which are assessed

when actual and scheduled loads do not align. More specifically, imbalance energy costs result from temporal pricing differences that often exist in the day-ahead and real-time energy markets during discrete scheduling intervals. For example, if OCPA's actual load is higher than scheduled in the day-ahead market, and real-time prices are comparatively high during such instances, then OCPA bears the risk of higher-than-anticipated energy costs due to such variation.

4.4 Operational Risk

Operational risk consists of the potential for failure to execute and control business activities relative to plan. Operational risk includes the potential for:

- [1] organizational structure that proves to be ineffective in addressing risk, i.e., the lack of sufficient authority to make and execute decisions, inadequate supervision, ineffective internal checks and balances, incomplete, inaccurate and untimely forecasts or reporting, failure to separate incompatible functions, etc.;
- [2] absence, shortage or loss of key personnel or lack of cross-functional training;
- [3] lack or failure of facilities, equipment, systems and tools, such as computers, software, communications links and data services;
- [4] exposure to litigation or sanctions resulting from violating laws and regulations, not meeting contractual obligations, failure to address legal issues and/or receive competent legal advice, not drafting and analyzing contracts effectively, etc.; and
- [5] errors or omissions in the conduct of business, including failure to execute transactions, violation of guidelines and directives, etc.

4.5 Liquidity Risk

Liquidity Risk is the risk that OCPA will be unable to meet its financial obligations. This can be caused by unexpected financial events and/or inaccurate pro forma calculations, rate analyses, and debt analyses. Some unexpected financial events impacting liquidity could include:

- [1] breach of OCPA credit covenants or thresholds – OCPA has credit covenants included in its banking agreements and may, eventually, have similar covenants within its energy contracts. Breach of credit covenants or thresholds could result in the withdrawal of OCPA's line of credit or may trigger the requirement to post collateral;
- [2] contractual requirements to post collateral (with counterparties) due to a decline in market prices below the contract price; and
- [3] from time-to-time OCPA may be the subject of legal or other claims arising from the normal course of business. Payment of a claim by OCPA could reduce OCPA's liquidity if the cause of loss is not covered by OCPA's insurance policies.

4.6 Regulatory/Legislative Risk

Regulatory risk encompasses market structure and operational risks associated with shifting state and federal regulatory policies, rules, and requirements that could negatively impact OCPA. An example is the potential increase in exit fees for customers served by Community Choice Aggregators that could result in higher overall electricity costs for OCPA customers (relative to the incumbent utility or DA service options).

Legislative risk is associated with actions by federal and state legislative bodies, which may impose adverse changes or requirements that could infringe upon OCPA's autonomy, increase its costs, or otherwise negatively impact OCPA's ability to fulfill its goals and objectives.

5.0 Internal Control Principles

Internal controls are based on proven principles that meet or exceed the requirements of financial institutions and credit rating agencies while also being considerate of good utility practice. The required controls shall include all customary business practices designed to prevent errors and improprieties, ensure accurate and timely reporting of results of operations as well as information pertinent to management, and facilitate attainment of business objectives. These controls shall remain fully integrated in all activities of the business and shall be consistent with stated objectives. There shall be active participation and oversight by senior management in such processes.

The required controls include the following:

[1] Segregation of duties and functions between front-, middle-, and back-office activities. In general terms, the designation of responsibilities shall be organized as follows:

- Front office is responsible for planning (e.g. preparation of OCPA's resource plan and other planning activities) and procurement (e.g. solicitation management, contract negotiation, structuring and pricing as well as contract execution), contract management, compliance and oversight of scheduling coordinator functions with the CAISO;
- Middle office is responsible for controls and reporting (e.g., risk monitoring, risk measurement, risk reporting, procurement compliance, counterparty credit review, approval and monitoring); and
- Back office is responsible for settlements and processing (e.g., verification, validation, reconciliation and analysis of transactions, tracking, processing and settlement of transactions).

[2] Delegation of authority, as defined in section 6.5 (below), that is commensurate with responsibility and capability as well as relevant training to ensure compliance with applicable rules within the markets in which such personnel may transact (e.g., CAISO). Contract origination, commercial approval, legal review, invoice validation, and transaction auditing shall be performed by separate staff or contractors for each transaction. No individual staff member shall perform all of these functions related to a single transaction.

[3] Defining authorized products and transactions. In general terms, authorized and prohibited transactions are defined as follows:

- Authorized transactions are those transactions directly related to the procurement and/or administration of electric energy, reserve capacity, transmission and distribution service, ancillary services, congestion revenue rights, renewable energy, renewable energy credits, scheduling activities, tolling agreements, and bilateral purchases of energy products. All transactions must be consistent with this Policy and the Board approved resource plan.
- It is the expressed intent of this Policy to prohibit the acquisition of risk beyond that encountered in the efficient optimization of OCPA's generation portfolio and execution of procurement strategies. Prohibited transactions are those transactions that are not related to serving retail electric load and/or reducing financial exposure. Speculative buying and selling of energy products or maintenance of open positions that do not conform with agreed upon thresholds is prohibited. Speculation is defined as buying energy in excess of forecasted load plus reasonable planning reserves, intentionally under procuring energy relative to minimum load hedging targets or selling energy or environmental attributes that are not yet owned by OCPA. In no event shall speculative transactions be permitted. If any questions arise as to whether a proposed transaction constitutes speculation, OCPA shall conduct an analysis of the transaction and the Board shall review such transaction to determine whether the transaction would constitute speculation and document its finding in the meeting minutes.

[4] Defining proper process for executing power supply contracts. OCPA will ensure power supply contracts are approved by pertinent technical personnel. Legal review will be required of various forms of agreement used by OCPA.

[5] Accurately capturing transactions and other data, with standardization of electronic and hard copy documentation.

[6] Summarizing and reporting of transactions and other activity at regular intervals.

[7] Measuring risk and performance in a timely manner and at regular intervals.

[8] Regularly reviewing compliance to ensure that this Policy and related risk management guidelines are adhered to, with specific guidelines for resolving instances of noncompliance.

[9] Ensuring active participation by senior management in risk management processes.

6.0 Risk Management Business Practices

6.1 Risk Measurement Metrics and Reporting

A vital element of this Policy is the regular identification, measurement and communication of risk. To effectively communicate risk, all risk management activities must be monitored on a frequent basis using risk measurement methodologies that quantify the risks associated with OCPA's procurement-related business activities and performance relative to stated goals.

OCPA measures and updates its risks using a variety of tools that model programmatic financial projections, market exposure and risk metrics, as well as through short-term budget updates. The following items are measured, monitored and reported:

[1] Mark-to-Market Valuation – marking to market is the process of determining the current value of contracted supply relative to current market conditions. A mark-to-market valuation shall be performed at least once per quarter.

[2] Exposure Reporting – calculates the notional dollar risk exposure and value at risk of open portfolio positions at current market prices. The exposure risk calculations shall be performed at least once per quarter.

[3] Open Position Monitoring – on a monthly basis, OCPA shall calculate/monitor its open positions for all energy and capacity products. If energy open positions for the month following the then current month (prompt month) exceed 10% of load, OCPA will solicit market energy to close open positions and shall make a commercial decision to close the position. Open positions for terms beyond the prompt month will be monitored monthly and addressed in accordance with OCPA's planning models and related policies.

[4] Counterparty Credit Exposure – calculates the notional and mark-to-market exposure to each OCPA counterparty: 1) by deal; and 2) in aggregate. Counterparty credit exposure shall be reported on a quarterly basis. Counterparty exposure reporting includes contingent collateral posting risks arising from changes in market prices and other factors.

[5] Reserve Requirement Targets – no less than once per year, OCPA staff will monitor OCPA's reserves to ensure that they meet targeted thresholds.

Consistent with the above, the Middle Office will develop reports and provide feedback to the Risk Oversight Committee. If a limit or control established by this Policy is violated, the Middle Office will send notification to the responsible party and the Risk Oversight Committee. The Risk Oversight Committee will discuss the cause and potential remediation of any violation to determine next steps for curing the violation.

Risk measurement methodologies shall be re-evaluated on a periodic basis to ensure OCPA adjusts its methods to reflect the evolving competitive landscape and its unique needs.

6.2 Market Price Risk

OCA manages market price risk using its planning models, which define forecasted load, energy under contract and OCA's open positions across various energy product types, including renewable energy (Portfolio Content Category I, II and III), carbon-free energy (if needed to support any portfolio emissions metrics adopted by OCA), system power and resource adequacy capacity. Such positions will be measured and monitored relative to OCA's procurement targets.

OCA determines the annual quantity of energy it intends to place under contract through the use of its planning models and in consideration of stated procurement targets. The planning models include an outline of the delivery term and quantity of each energy product that OCA intends to fill in the upcoming year. The planning models inform OCA's solicitation planning, including solicitation timing and strategy as well as the person/team responsible for such efforts.

In general, OCA will seek to purchase some long-term renewable energy each year for purposes of promoting compliance with applicable requirements of California's Renewables Portfolio Standard program. Long-term renewable energy purchases may also serve to diversify market exposure. Regularly administered, recurring procurement efforts focused on long-term renewable energy should also

minimize exposure to “planning cliffs”, which can occur when a significant portion of long-term contracts expire at or near the same point in time.

For products generally purchased through short- and medium-term contracts, OCPA follows a similar temporal diversification strategy, with multiple procurement cycles occurring throughout the year.

Congestion risk is managed through the contracting process with a preference for day-ahead energy delivery at the SP 15 trading hub. Once energy is procured, OCPA manages congestion risks through the application of CRRs consistent with its Congestion Revenue Rights Risk Management Guidelines – OCPA anticipates that its scheduling coordinator or another qualified contractor will be primarily responsible for the management of CRRs. Presently, OCPA uses a third-party scheduling coordinator to manage its CRR portfolio. CRRs are financial instruments used to hedge against transmission congestion costs encountered in the CAISO day-ahead market. OCPA primarily uses CRRs to reduce its exposure to congestion charges.

6.3 Counterparty Credit and Performance Risk

OCA shall evaluate and monitor the financial strength of its suppliers in consideration of adopted Credit Guidelines. Generally, OCPA manages its exposure to energy suppliers by exhibiting a preference for counterparties with Investment Grade Credit ratings as determined by Moody’s or Standard & Poor’s and through the use of security requirements in the form of cash and letters of credit. OCPA measures its mark-to-market counterparty credit exposure consistent with industry best practices.

6.4 Load and Generation Volumetric Risk

OCA manages energy delivery risks by ensuring that contracts include appropriate contractual penalties for non-delivery, acquiring energy from a geographically and technologically diverse portfolio of generating assets (with a range of generation profiles that are generally complementary to the manner in which OCPA’s customers use electric power). Due to known production variability and supply uncertainty related to renewable and other carbon-free energy products, OCPA includes planning margins in its procurement of such products to ensure that related targets/mandates are achieved.

OCA manages load forecasting and related weather risks by contracting with qualified data management and scheduling coordinators, which independently or jointly provide the systems and data necessary to forecast and schedule load using good utility practice. Load variability is also considered in establishing appropriate planning margins for renewable and other carbon free energy sources.

OCA’s load scheduling strategy, as executed by its scheduling coordinator, shall be in accordance with adopted Load Bidding/Scheduling Guidelines. This strategy shall ensure that price risk in the day-ahead and real-time CAISO markets is managed effectively and is consistent with good utility practice.

6.5 Operational Risk

Operational risks are managed through:

- Adherence to this Policy, and oversight of procurement activity including delegation of authority;
- Conformance with applicable human resources policies and guidelines;
- Staff resources, expertise and/or training reinforcing a culture of compliance;
- Use of qualified, highly experienced contractors on an as-needed basis in the event that necessary expertise does not exist within OCPA’s own organization;
- Ongoing and timely internal and external audits; and

- Cross-training amongst staff

To ensure proper controls for executing energy transactions and to facilitate the efficient operation of OCPA in its ordinary course of business, the Board delegates transactional authority that is commensurate with responsibility and capability. Accordingly, by approving this Policy, the Board delegates the following energy procurement authorities by product type, tenor, volume and notional value to its Chief Executive Officer and the ROC:

Delegation of Authority: Title/Governing Body	Product Type	Tenor Limit	Volumetric Limit	Notional Value Limit
Chief Executive Officer	System Power	Up to 3 years	2,000 GWh	\$ 75 M
	Resource Adequacy	Up to 3 years	3,000 MW	\$ 30 M
	Renewables	Up to 3 years	1,500 GWh	\$ 25 M
	GHG-free	Up to 3 years	1,000 GWh	\$ 10 M
OCPA Board	All Products	Any	Unlimited	Unlimited

Any changes to the delegation of authority will require Board approval.

6.6 Liquidity Risk

OCPA manages liquidity risk through adherence to its loan and power purchase agreement credit covenants; limiting commitments to provide security consistent with adopted Credit Guidelines; ensuring it has adequate loan facilities, prudent cash and investment management; and adherence to any applicable reserve policies. OCPA monitors its liquidity (defined as unrestricted cash, investments, and unused bank lines of credit) no less than weekly. OCPA utilizes scenario and sensitivity analyses while preparing budget, rate, and pro forma analyses to identify potential financial outcomes and ensure sufficient liquidity under adverse conditions.

6.7 Regulatory/Legislative Risk

OCPA manages its regulatory and legislative risk through active participation in working groups and advocacy coalitions. OCPA regularly monitors and participates in, as necessary, regulatory rulemaking proceedings and legislative affairs to protect OCPA's interests.

7.0 Risk Management Policy Governance

7.1 OCPA Board of Directors

The OCPA Board is responsible for adopting this Policy. The Board also approves OCPA's annual budget, contracting authorities and delegated responsibilities for the management of OCPA's operations to its Chief Executive Officer and staff. The Board is responsible for reviewing and recommending approval of substantive changes to this Policy, as needed, and for initiating and overseeing a review of the implementation of this Policy as it deems necessary. The Chief Executive Officer and Risk Oversight Committee (described below) may make reports and seek approval for any substantive changes to this Policy, and any such changes would be subject to Board approval.

7.2 Risk Oversight Committee (ROC)

To ensure the implementation of and compliance with this Policy, the Board will establish a Risk Oversight Committee prior to the commencement of retail electric service by OCPA. Members of the ROC will be selected by the Chief Executive Officer, who will serve as the ROC's Chair. The ROC will have authority to:

- Meet at least once per quarter, or as otherwise called to order by the ROC's Chair.
- No less than once per quarter, provide a report to the Board regarding its meetings, deliberations and any other areas of concern.
- From time to time, adopt and/or adapt risk management guidelines defining internal controls, strategies and processes for managing market risks incurred through or attendant upon wholesale trading, retail marketing, long-term contracting, CRR trading and load and generation scheduling.
- Specify the categories of permitted transactions and set risk limits for wholesale trading. The ROC will receive and review information and reports regarding risk management, wholesale trading transactions, and the administration of supply contracts.
- Have direct responsibility for enforcing compliance with this Policy. Any material violations of this Policy, as determined by the ROC, shall be reported to the Board for appropriate action.

RESOLUTION NO. 2021-07

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF ORANGE COUNTY POWER AUTHORITY
APPROVING A MASTER POWER PURCHASE
AND SALE AGREEMENT WITH
MORGAN STANLEY CAPITAL GROUP AND
AUTHORIZING THE CHIEF EXECUTIVE OFFICER
TO EXECUTE THE AGREEMENT**

A. The Orange County Power Authority (“Authority”) is a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Cal. Gov. Code § 6500 *et seq.*), California Public Utilities Code § 366.2, and a Joint Powers Agreement effective on November 20, 2020.

B. The Authority intends to launch the services of its community choice aggregation program in 2021 consistent with Public Utilities Code § 366.2 and its Implementation Plan and Statement of Intent certified by the California Public Utilities Commission.

C. The Authority will administer competitive solicitations (Request for Offers) to certain energy service providers capable of providing energy, renewable energy, carbon free energy, and/or related products and services at competitive prices.

D. In anticipation of administering competitive solicitations, the Authority is negotiating an Edison Electric Institute (“EEI”) Master Purchase and Sale Agreement (“Master Agreement”) with prospective counter-parties so that the Authority will be enabled to procure energy.

E. The Master Agreement is an industry standard contract that governs the purchase and sale of electricity and other products, and requires a separate written confirmation agreement to execute a specific binding transaction.

F. The Authority has negotiated an EEI Master Agreement with Morgan Stanley Capital Group (“MSCG”) that will enable the Authority to enter into future transactions with MSCG for the purchase of various energy products.

G. Pursuant to the Authority’s Energy Risk Management Policy, approved on July 13, 2021, the Chief Executive Officer (“CEO”) has the authority to approve transactions based on certain contract limits, and transactions falling outside the prescribed limits require approval by the Board of Directors.

H. Due to the time-sensitive nature of bidding and accepting offers in the trading markets, and the Authority’s desire to make competitive offers and enter into agreements, the Master Agreement should be finalized prior to solicitations.

I. The Authority Board of Directors desires to enter into the Master Agreement with MSCG and authorizes the CEO to negotiate and execute the Master Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Orange County Power Authority as follows:

Section 1. The Board of Directors hereby approves the Master Agreement with MSCG.

Section 2. The Board of Directors authorizes the CEO to execute the Master Agreement and Collateral Annex, and any related documents as approved to form by the General Counsel as are necessary and convenient to complete renewable energy transactions with MSCG.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of Orange County Power Authority held on September 14, 2021.

Secretary
Orange County Power Authority

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: _____, 2021 (“Effective Date”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “Agreement.” The Parties to this *Master Agreement* are the following:

Morgan Stanley Capital Group Inc. (“MSCG” or “Party A”)

All Notices:

Street: 1585 Broadway

City: New York, NY Zip: 10036

Attn: Commodities Department – 3rd Floor

Phone: _____

Facsimile: _____

Invoices:

Attn: Manager, Power Ops.

Phone: _____

Facsimile: (914) 225-9306

Scheduling:

Attn: 24 Hour Scheduling

Phone: 24 Hour Scheduling: (914) 225-1500

Western Pre-Scheduling: (914) 225-1496

Eastern Pre-Scheduling: (914) 225-1509

Facsimile: (914) 225-1390

Confirmations:

Attn: Operations – Confirmations

Phone: (914) 225-4800

Facsimile: (914) 750-0408

E-mail: Commodconfsny@morganstanley.com

Options Exercise Line:

Phone: (914) 225-1501

Payments:

Attn: Manager, Power Ops.

Phone: (914) 225-4379

Facsimile: (914) 225-9306

Orange County Power Authority, a California joint powers authority (“Counterparty” or “Party B”)

All Notices:

Street: P. O. Box 54283

City: Irvine, CA Zip: 92619

Attn: Brian Probolsky, Chief Executive Officer

Phone: (949) 767-8700

Email: brian@ocpower.org

Invoices:

Attn: Michael Maher

Phone: (415) 526-3020

Email: mmaher@maher CPA.com

Scheduling:

Name: TEA CAISO Scheduling Coordinator

Address: 405 114th Ave SE #100, Bellevue, WA 98004

Phone: (425) 460-1118

Email: group-corp-tradingcaiso@teainc.org

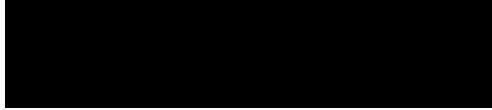
Payments:

Attn: Michael Maher

Phone: (415) 526-3020

Email: mmaher@maher CPA.com

Wire Transfer:



Credit and Collections:

Attn: Credit Manager - Collections
Phone: (212) 762-2680
Facsimile: (212) 762-0344
E-mail: Commodity@morganstanley.com

With additional Notices of an Event of Default to:

Morgan Stanley Capital Group Inc.
Address: 1585 Broadway
New York, NY 10036-8293

Attn: Close-out Notices
E-mail: msdoc-termination-
notices@morganstanley.com
Phone: _____
Facsimile: _____

Wire Transfer:



Credit and Collections:

Attn: Michael Maher
Phone: (415) 526-3020
Email: mmaher@mahercpa.com

With additional Notices of an Event of Default to:

Attn: Ryan Baron, Best Best & Krieger LLP
Address: 18101 Von Karman Ave., Suite 1000
Irvine CA 92612
Phone: (949) 263-6568
Email: ryan.baron@bbklaw.com

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff Market-Based Rate Tariff Dated 11-08-1994 Docket Number ER94-1384-000

Party B Tariff Tariff Not Applicable - Party B makes the following representation: Party B does not have a Tariff. Party B is a California joint powers authority. As a governmental entity it is not required to have a MBR tariff.

Article Two

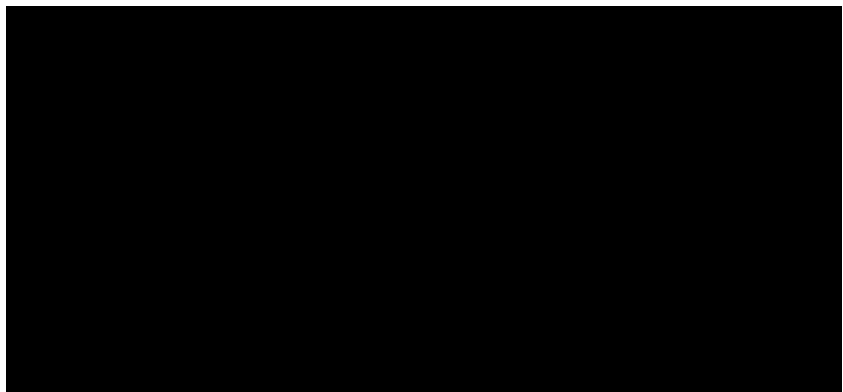
Transaction Terms and Conditions ☒ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive ☐ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies



5.6 Closeout Setoff

☒ Option A (Applicable if no other selection is made.)

☐ Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____

☐ Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

☐ Option A

☐ Option B Specify: _____

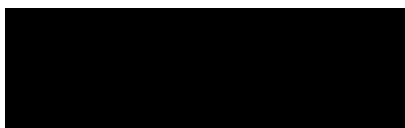
☒ Option C Specify: (1) The annual report containing audited consolidated financial statements for such fiscal year of Party B as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at <http://ocpower.org>, and (2) quarterly unaudited financial statements for Party B as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting

principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30.

(b) Credit Assurances:

☒ Not Applicable

☐ Applicable



If applicable, complete the following:

Party B Collateral Threshold: \$ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

☐ Other:

Specify: _____

(e) Guarantor for Party B: N/A

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

☐ Option A

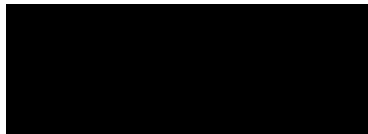
☐ Option B Specify: _____

☒ Option C Specify: The annual report containing audited consolidated financial statements for such fiscal year of Morgan Stanley, a Delaware Corporation, as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Morgan Stanley and quarterly financials within 90 days after the end of each

quarter of Morgan Stanley, and such request will be deemed to have been filled if such financial statements are available at www.morganstanley.com or www.sec.gov. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances:

☒ Not Applicable
☐ Applicable



If applicable, complete the following:

Party A Collateral Threshold: \$ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

☒ Not Applicable
☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

☐ Other:
Specify: _____

(e) Guarantor for Party A: N/A

Guarantee Amount: _____

Article 10

Confidentiality

☒ Confidentiality Applicable

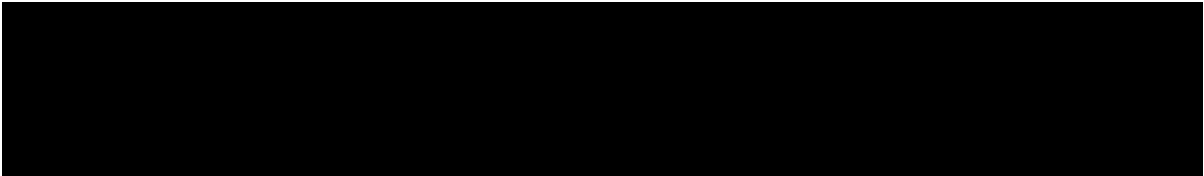
If not checked, inapplicable.

Schedule M

- ☐ Party A is a Governmental Entity or Public Power System
☒ Party B is a Governmental Entity or Public Power System
☒ Add Section 3.6. If not checked, inapplicable
☒ Add Section 8.6. If not checked, inapplicable

Other Changes

Specify, if any: This Master Power Purchase and Sale Agreement and the associated Collateral Annex incorporate, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

1. Section 1.1 is amended by adding the following sentence at the end of the definition of “Affiliate”:
“Notwithstanding the foregoing, the Parties hereby agree and acknowledge that the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith.”
2. Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.”
3. Section 1.23(ii) is amended in the second sentence by inserting the following text after the word “hereunder”: “or to obtain the Product at a more advantageous price or under more advantageous terms and conditions.”
4. Section 1.23(iv) is amended by inserting the following text after the phrase “Contract Price”: “or under more advantageous terms to a third party purchaser.”
5. Section 1.23 is amended by inserting in the thirteenth line of this section before the phrase “foregoing factors” the word “two.”
6. Section 1.24 is amended by adding “in accordance with Section 5.2” before the period at the end of such section.
7. Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”
8. Section 1.30 – “Moody’s” is amended by deleting “Investor Services” and replacing it with “Investors Service”.
9. Section 1.51 is amended by: (i) inserting “for delivery” in the second line after the text “at the Delivery Point”; and (ii) deleting “at Buyer’s option” in the fifth line and replacing it with “absent a purchase”.
10. Section 1.52 is amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”
11. 

12. Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”
13. Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”.
14. Section 1.62: The following shall be added as a new Section 1.62:

“1.62 “Minimum Transfer Amount” means with respect to a Party, the amount, if any, set forth in the EEI Cover Sheet for such Party.
15. The following definitions are added to Section 1:

“Joint Powers Agreement” means the Joint Powers Agreement effective as of [____], as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.

“Member” means the city, county or joint powers authority which is a member of Party B.
16. Section 2.1 is amended by deleting the first sentence in its entirety and replacing it with the following: “Subject to Section 2.3, a Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”
17. Section 2.1 is amended by deleting the last sentence in its entirety and replacing it with the following: “Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”
18. The following is added as a separate second paragraph of Section 2.2:

"Party A and Party B confirm that this Master Agreement shall supersede and replace all prior power purchase and sale agreements between the Parties hereto with respect to the subject matter hereof, including but not limited to the Western Systems Power Pool Agreement (as amended from time to time). Party A and Party B further agree that any Transaction for the purchase or sale of electric energy, capacity or other related products that is in effect as of the Effective Date or that has delivery obligations that start on or after the Effective Date of this Master Agreement shall be governed by this Master Agreement, but only to the extent delivery occurs on or after the Effective Date, and is part of this single integrated agreement between the Parties consistent with the first paragraph of this Section 2.2."
19. Section 2.4 is amended to delete the phrase “either orally or” from the seventh line.
20. Section 2.5 is amended by adding the following at the end of such Section: “In the event that there is a dispute as to one or more details of the trade economics of the relevant Transaction, each Party will make available to the other Party the relevant portion of the recorded conversation in a reasonable format (provided that the requesting Party shall pay any costs associated with transmittal of the recording) within ten (10) Business Days of such request; provided that such recorded conversation (X) has been solely between personnel or representatives of the Parties or their Affiliates, and (Y) is subject to appropriate confidentiality protections reasonably acceptable to the recording Party.”
21. Section 3.2 shall be amended by adding the following at the end thereof:

“Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region.”

22. Section 3.3 is amended by adding “The non-Claiming Party shall have until the end of the next Business Day to notify the Claiming Party that it objects to or disputes the existence of Force Majeure.” at the end of such Section.
23. Insert the following as new Section 4.3

“Section 4.3 Mitigation. Each Party has a duty to mitigate damages under this Agreement and will use commercially reasonable efforts to minimize any damages it may incur resulting from the other Party’s performance or nonperformance hereunder.”
24. Section 5.1(a) is amended by changing “three (3) Business Days” to “five (5) Business Days”.
25. Section 5.1(b) is amended by deleting the words ‘or repeated’ at the end of that section.
26. Section 5.1(c) is amended by changing “three (3) Business Days” to “ten (10) days”.

Section 5.1(g)(i) is amended: (i) on line 8, by deleting the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section; (ii) by adding “under such agreements or instruments” after “payments” in the eleventh line; , and (iii) adding “after giving effect to any applicable notice requirement or grace period” after “(as specified in the Cover Sheet)” in the thirteenth line.”
27. Section 5.1(g) is amended by adding the following as Section 5.1(g)(iii): “(iii) Upon an Event of Default by Party A, if Party B elects to terminate this Agreement then all Transactions subject to this Agreement will terminate.”
28. Section 5.1(h)(ii) is amended by deleting the phrase “and such failure shall not be remedied within three (3) Business Days after written notice” in the third and fourth line thereof
29. Section 5.1(h)(v) is amended by adding "made in connection with this Agreement" after "any guaranty".
30. Section 5.1 is further amended by replacing the period at the end of Section 5.1(h) with a semicolon and the following new subsections:

“(i) with respect to Party B only, it: (i) commits an Event of Default under or otherwise defaults under one or more of the Security Documents (as defined below) and such Event of Default or default continues after giving effect to any applicable notice requirement or cure or grace period; or (ii) disaffirms, disclaims or repudiates any Security Document; or

(k) A Party suffering or being the subject of a default, event of default, termination event, breach or other similar condition or event (howsoever expressed) that has not been remedied within the applicable grace periods under any other agreement or instrument (including, without limitation, commodity and financial derivative agreements or transactions) between a Party or one of its Affiliates and the other Party or one of its Affiliates, where the result of such event has been the termination and liquidation of transactions and the acceleration of amounts due thereunder.”
31. The following shall be added to the end of Section 5.2:

“If the Non-Defaulting Party’s aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Settlement Amount shall be zero, provided, however, that if the Non-Defaulting Party has declared an Early Termination Date under (i) Section 5.1 (d), (ii) Section 5.1 (g), or (iii) Section 5.1 (h) (each such event, a “Defaulting Party Credit Event”) the Settlement Amount shall not be deemed to be zero dollars (\$0.00) and shall be equal to the amount originally calculated by the Non-Defaulting Party. If the Non-Defaulting Party owes the Defaulting Party a Settlement Amount with respect

to a Transaction that is terminated due to a Defaulting Party Credit Event, then, notwithstanding the usual payment schedule for that Transaction and the terms of Section 5.4, the Non-Defaulting Party may elect to pay the Defaulting Party such Settlement Amount in equal monthly installments over the remaining term of the Terminated Transaction by providing written notice to the Defaulting Party. The Non-Defaulting Party shall provide the Defaulting Party with a written explanation of the method for payment of the Termination Payment and the method shall ensure that the Defaulting Party receives a payment each month through the end of the term of each Terminated Transaction in a manner reasonably designed to replicate as closely as possible the payment streams under each such Terminated Transaction.”

32. Section 5.3 is amended by: (i) adding “A Party shall determine the Settlement Amount for each Terminated Transaction as of the relevant Early Termination Date, or if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable.” as the new first sentence of such Section; and (ii) “plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party pursuant to Article Eight,” between “Non-Defaulting Party,” and “plus” in the sixth line.
33. The following shall be added to the end of Section 5.4:

“Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article Five until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party and any of its Affiliates to make any payments to the Non-Defaulting Party or any of its Affiliates under this Agreement or otherwise have been fully and finally performed.”
34. Section 5.7 shall be amended by deleting from line 5 “ten (10)” and replacing it with “twenty (20)”.
35. The following shall be added as Section 5.8:

“5.8 Replacement Transactions. It is expressly agreed that neither Party shall be required to enter into a replacement transaction in order to determine the market price.”
36. Section 6.3, in the first, seventh and eighth sentences, delete the words, “twelve (12) months” and insert “two (2) years”.
37. Section 6.3, in the fifth sentence, delete the words “two (2)” and insert the words “five (5)”.
38. Section 7.1 is amended by: (i) deleting in the fifteenth line the words “UNLESS EXPRESSLY HEREIN PROVIDED,”;
- (ii) Adding “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence; and

(iii) Adding in the nineteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3.” immediately after the words “ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE”; and

(iv) Adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”
39. The following is added as Section 8.5:

“Section 8.5: Section 8 and Schedule M of the Agreement and the Security Documents set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, and in Schedule M and in the Security Documents, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever;

(b) or will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Section 8 of this Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived.”

40. Section 10.2(viii) is amended by adding the following after “(including any Confirmation accepted in accordance with Section 2.3)”:

“; it is understood that information and explanations of the terms and conditions of each such Transaction shall not be considered investment or trading advice or a recommendation to enter into that Transaction, and the other Party is not acting with respect to any communication (written or oral) as a “municipal advisor,” as such term is defined in Section 975 of the U.S. Dodd-Frank Wall Street Reform & Consumer Protection Act; no communication (written or oral) received from the other Party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction; and the other Party is not acting as a fiduciary for or an adviser to it in respect of that Transaction;”

41. Section 10.2 is further amended by adding the following as Sections 10.2(xiii), 10.2(xiv) and 10.2(v):

“(xiii) It continuously represents that it is not (i) an employee benefit plan (hereinafter an “ERISA Plan”), as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), subject to Title I of ERISA or a plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended, or subject to any other statute, regulation, procedure or restriction that is materially similar to Section 406 of ERISA or Section 4975 of the Code (together with ERISA Plans, “Plans”), (ii) a person any of the assets of whom constitute assets of a Plan, or (iii) in connection with any Transaction under this Agreement, a person acting on behalf of a Plan, or using the assets of a Plan. It will provide notice to the other party in the event that it is aware that it is in breach of any aspect of this representation or is aware that with the passing of time, giving of notice or expiry of any applicable grace period it will breach this representation;

(xiv) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”); and

(xv) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act;”

42. Section 10.6: (i) change “NEW YORK” to “CALIFORNIA”; and (ii) . delete the last sentence, which states, “EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”; and replace it with “EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING

WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION”.

43. Section 10.7 is amended by deleting “at the close of business” in the sixth line.
44. Section 10.8 Change the words “parties” and “party” to “Parties” and “Party” in the third sentence and add the following at the end of the second last sentence: and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11, (iv) Waiver of Jury Trial provisions, if applicable, (v) the obligation of either Party to make payments hereunder, (vi) Section 10.6, (vii) Section 10.13 and (viii) Section 10.4 shall also survive the termination of the Agreement or any Transaction.”.
45. In Section 10.9, delete the words, “twelve (12) months” and insert “two (2) years”.
46. Section 10.11 is deleted and replaced with the following:

“10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement or the completed Cover Sheet to, or any annex to, this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors, or any such representatives of a Party’s Affiliates (all collectively referred to as “Representatives”) who have a need to know such information and who the Party is satisfied will keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request by a regulatory authority and in the event that any disclosure is requested or required by the regulatory authority or a government body by interrogatory, request for information or documents, subpoena, deposition, civil investigative demand or applicable law, the Party subject to such request or requirement may disclose to the extent so requested or required but shall promptly notify the other Party, prior to such disclosure, if such Party’s counsel determines that such notice is permitted by law, so that the other Party may seek an appropriate protective order or waive compliance with the provisions of this Section 10.11. Failing the entry of a protective order or the receipt of a waiver hereunder, that Party may disclose that portion of the Confidential Information as requested or required. In any event, a Party will not oppose action by the other to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. Each Party shall be liable for breach of any confidentiality obligation pursuant to this Master Agreement by such Representatives. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index. The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction to a credit rating agency provided that such rating agency has agreed to maintain the confidentiality of the commercial terms disclosed. Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Cal. Government Code § 6250 *et seq.*). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code § 3426 *et seq.*), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Cal. Government Code §§ 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand

of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “Disclosing Party”), the Party receiving such request (the “Receiving Party”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.”

47. The following provision is added as Section 10.12:

“10.12 Utility Disclaimer. Each Party agrees that the other Party is not a “utility” as such term is used in 11 U.S.C. § 366, and each Party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding involving such Party, and further agrees that the other Party is not a provider of last resort.”

48. The following provision shall be added as Section 10.13:

“10.13 Imaged Documents. Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically (“Imaged Documents”). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.”

49. FERC Standard of Review; Certain Covenants and Waivers. The following provision is added as Section 10.14:

“10.14 FERC Standard of Review; Certain Covenants and Waivers

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 128 S. Ct. 2733 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 130 S. Ct. 693 (2010) (“Mobile-Sierra doctrine”).

(c) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC or PUC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC or PUC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC or PUC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may

occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing subsection (a).

(d) The Parties agree that in the event that any portion of this Section 10.14 is determined to be invalid, illegal or unenforceable for any reason, the provisions of subsections (a) and (b) shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by applicable law."

50. The following shall be added as Section 10.15:

"10.15 Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers."

51. Section 10.17, Counterparts, shall be added to Article Ten as follows:

"10.17 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument. Without limiting the foregoing, a facsimile copy of this Agreement or copy of this Agreement sent via electronic mail in a portable document format ("PDF") will be considered an original.

52. Section 10.18, No Recourse Against Members of Party B, shall be added to Article Ten as follows:

"10.18 No Recourse Against Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Cal. Government Code § 6500, *et seq.*) and is a public entity separate from its Members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with, and subject to, the terms and conditions of each Transaction. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B's Members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B's Members, in connection with this Agreement. The Parties agree that Party B's obligations to make payments with respect to this Master Agreement and each Transaction, are to be made solely from Party B, and not from the individual Members of Party B."

53. The following is added as Section 10.19:

"Section 10.19 Generally Accepted Accounting Principles. Any reference to "generally accepted accounting principles" shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement. Party A acknowledges that Party B is governed by the Governmental Accounting Standards Board with respect to generally accepted accounting principles."

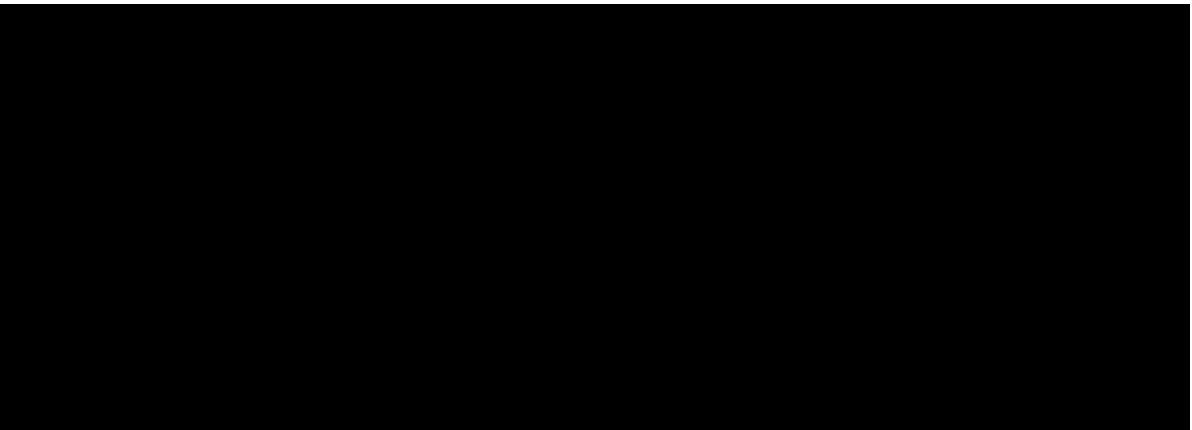
54. The following is added as Section 10.20:

"Section 10.20 U.S. Resolution Stay. The Parties agree that (i) to the extent that prior to the date hereof the Parties hereto have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the "Protocol"), the terms of the Protocol are incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a Protocol Covered Agreement and each party shall be deemed to have the same status as Regulated Entity or Adhering Party as applicable to it under the Protocol; (ii) to the extent that prior to the date hereof the Parties have executed a separate agreement the effect of which is to amend

the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the “Bilateral Agreement”), the terms of the Bilateral Agreement are incorporated into and form a part of this Agreement and for such purposes each party shall be deemed to have the same status as “Covered Entity”, “Counterparty Entity” or “Client Entity” (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the “Bilateral Terms”) of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)” or the “Agency Version of Omnibus Agreement (for use with U.S. G-SIBs)”, as applicable, published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org)), the effect of which is to amend the qualified financial contracts between the Parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Agreement, and for such purposes this Agreement shall be deemed a “Covered Agreement,” Party A shall be deemed a “Covered Entity” and Party B shall be deemed a “Counterparty Entity” (or “Client Entity” for the Agency version, as applicable). In the event that, after the date of this Contract, all Parties hereto become adhering Parties to the Protocol, the terms of the Protocol will replace the terms of this section. In the event of any inconsistencies between this Agreement and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the “QFC Stay Terms”), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to “this Agreement” include any related credit enhancements entered into between the Parties, directly or indirectly through an agent, or provided by one to the other. In addition, the Parties agree that the terms of this paragraph shall be incorporated into any related covered affiliate credit enhancements, as applicable, with all references to Party A replaced by references to the covered affiliate support provider.

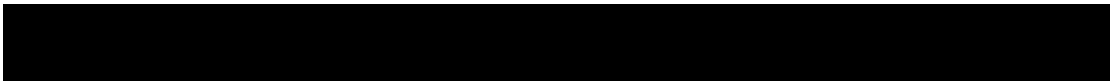
“QFC Stay Rules” means the regulations codified at 12 C.F.R. 252.2, 252.81–8, 12 C.F.R. 382.1-7 and 12 C.F.R. 47.1-8, which, subject to limited exceptions, require an express recognition of the stay-and-transfer powers of the FDIC under the Federal Deposit Insurance Act and the Orderly Liquidation Authority under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act and the override of default rights related directly or indirectly to the entry of an affiliate into certain insolvency proceedings and any restrictions on the transfer of any covered affiliate credit enhancements.”

55. The following is added as Section 10.21:



“Determination Period” means each calendar month, a part or all of which, is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.



The following is added as Section 10.22:

“10.22 Dispute Resolution.

(a) Judicial Reference.

Any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of limitation period) (each, a “Dispute”) shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure (“CCP”), or their successor sections (a “Reference Proceeding”), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 12.3(b).

(b) Notice of Dispute.

Prior to initiating the Reference Proceeding, a Party (the “Disputing Party”) shall provide the other Party (the “Responding Party”) with a written Notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the “Notice of Dispute”). Within ten (10) Days after receiving the Notice of Dispute, the Responding Party shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the “Dispute Response”). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within sixty (60) Days after receipt of the Dispute Response, (the “Negotiation Period”), then either Party

may provide to the other Party written Notice of intent for judicial reference (the “Impasse Notice”) in accordance with the further provisions of this Section 12.3.

(c) Applicability; Selection of Referees.

(i) The Party that provides the Impasse Notice shall nominate one (1) referee at the same time it provides the Impasse Notice. The other Party shall nominate one (1) referee within ten (10) Days of receiving the Impasse Notice. The two (2) referees (the “Party-Appointed Referees”) shall appoint a third referee (the “Third Referee”). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of either Party and of the other referees and not employed by any of the Parties in any prior matter.

(ii) If the Party-Appointed Referees are unable to agree on the Third Referee within forty-five (45) Days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the “Court”), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each Party shall have one (1) peremptory challenge to the referee selected by the Court.

(d) Discovery; Proceedings.

The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within twenty (20) days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within one hundred eighty (180) days after the date of the conference, and (iii) report a statement of decision within twenty (20) days after the matter has been submitted for decision.

Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

Any matter before the Referee shall be governed by the substantive law of California, its Code of Civil Procedure, Rules of Court, and Evidence Code, except as otherwise specifically agreed by the parties and approved by the Referee. Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

SCHEDULE M

56) Schedule M is amended, with respect to Party A, as follows:

- (a) Paragraph A is amended by deleting the term “Act” and replacing it with the following:

“Act” means the Joint Exercise of Powers Act of California (Government Code § 6500 *et seq.*).”

- (b) The text of Section 3.4 within Section D of Schedule M shall be deleted in its entirety and replaced with the following:

“Section 3.4 Reserved.”

- (c) The following definitions will be added to Schedule M:

“Account Control Agreement” means the Account Control Agreement among the Collateral Agent, Depositary Bank, and Party B, dated [REDACTED], 2021.

“Collateral Agent” has the meaning given it in the Security Documents.

“Depositary Bank” has the meaning given it in the Security Documents.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, dated [REDACTED], 2021, among the Collateral Agent, Party B and the PPA Providers party thereto from time to time. Party A has joined the Intercreditor and Collateral Agency Agreement as a PPA Provider.

“Minimum Credit Rating” has the meaning given it in Section 3.6.

“PPA Providers” has the meaning given it in the Security Documents.

“Secured Account” means the Lockbox Account (as that term is defined in the Security Agreement).

“Secured Creditors” has the meaning given it in the Security Documents.

“Security Agreement” means the Security Agreement, dated [REDACTED], 2021, among Party B and the Collateral Agent.

“Security Documents” means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement and the Account Control Agreement.

- (d) The “Special Fund” definition in Schedule M shall be deleted in its entirety and replaced with:

“Special Fund” means the Secured Account.

- (e) In paragraph E of Schedule M, the text of Section 3.6 shall be deleted in its entirety and replaced with the following:

“Section 3.6 Party B Security. Party B has created and set aside a Special Fund as required by the Security Documents, and the Parties have entered into the Intercreditor and Collateral Agency Agreement. The Parties agree that Party B’s obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund.”

- (f) In Paragraph F of Schedule M, the text of Section 8.4 shall be deleted in its entirety and replaced with the following:

“Section 8.4 Party B Security. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B have entered into the Security Documents, and such Security Documents have been duly executed and delivered by the Parties and by all third party signatories as contemplated therein and shall be in full force and effect. Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein.”

(g) In Paragraph G, the text following the colon shall be deleted in its entirety and replaced with the following:

“NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY.”

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

57) The following shall be added at the end of Schedule P:

“If the Parties agree to a service level/product defined by reference to a different agreement (*e.g.*, the MAPP Restated Agreement, the WSPP Agreement, ERCOT Guides) for a particular Transaction, then, unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply, such reference to a service level/product shall be as defined by such other agreement, including if applicable, the regional reliability requirements and guidelines as well as the specific excuses for performance, Force Majeure, Uncontrollable Forces, or other such excuses applicable to such other agreement, to the extent inconsistent with the terms of this Agreement, but all other terms and conditions of this Agreement remain applicable.”

58) The following shall be added at the end of Schedule P:



59) The following shall be added at the end of Schedule P:

““West Firm” or “WSPPC-Firm” means with respect to a Transaction, a Product defined by the WSPP Agreement as amended, in Service Schedule C as Firm Capacity/Energy Sale or Exchange Service.”

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name

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

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 6.5

To: Orange County Power Authority Board of Directors

From: Antonia Graham, Chief Operating Officer

Subject: REVIEW AND APPROVE FISCAL YEAR 2021 FINANCIAL AUDIT
PREPARATION

Date: September 14, 2021

RECOMMENDED ACTION

Approve the Professional Services Agreement with auditor Pisenti & Brinker, LLP for \$7,500 and authorize the Chief Executive Officer to execute the agreement.

BACKGROUNDS

In July, Staff released a Request for Proposals for Financial Audit Services from qualified consultants or firms to provide auditing services of our financial statements for the period from November 20, 2020 (Joint Powers Authority inception date) through June 30, 2021. On August 13, 2021, Staff received one qualified proposal from Pisenti & Brinker, LLP to conduct these services.

Pisenti & Brinker currently provides audit services for San Diego Community Power, Redwood Coast Energy, 3CE, Silicon Valley Clean Energy Authority, East Bay Community Energy Authority, in addition to municipalities and special districts.

The firm will perform an audit of the basic financial statements of the Authority for the period of June 30, 2021. The following reports will be prepared as part of their Scope of Work:

- Report on the fair presentation of the financial statements of the Authority.
- Management letter of comments.
- Report on significant deficiencies or material weaknesses in internal control if any are identified.
- Other communications to those charged with governance as required by professional standards.

FISCAL IMPACT

Audit services are budgeted in the Fiscal Year 2021/22 budget.

ATTACHMENT

- A. Professional Services Agreement with Pisenti & Brinker, LLP

The Objective and Scope of the Audit of the Financial Statements

You have requested that we audit the financial statements for the period ended June 30, 2021, of Orange County Power Authority (the Organization), which comprise the statements of net position, the related statements of changes in net position, and cash flows for the periods then ended, and the related notes to the financial statements. Our audit will be conducted with the objective of our expressing an opinion on the financial statements.

The Responsibilities of the Auditor

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS. Also, an audit is not designed to detect errors or fraud that are immaterial to the financial statements.

In making our risk assessments, we consider internal control relevant to the Organization's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of the Organization's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit.

We will also communicate to the Board of Directors (a) any fraud involving senior management and fraud (whether caused by senior management or other employees) that causes a material misstatement of the financial statements that becomes known to us during the audit, and (b) any instances of noncompliance with laws and regulations that we become aware of during the audits (unless they are clearly inconsequential).

The Responsibilities of Management and Identification of the Applicable Financial Reporting Framework

Our audit will be conducted on the basis that management and, when appropriate, those charged with governance acknowledge and understand that they have responsibility:

1. For the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America;
2. To evaluate subsequent events through the date the financial statements are issued or available to be issued. Management also agrees that it will not evaluate subsequent events earlier than the date of the management representation letter referred to below;

3. For the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; and
4. To provide us with:
 - a. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation and other matters;
 - b. Additional information that we may request from management for the purpose of the audit; and
 - c. Unrestricted access to persons within the Organization from whom we determine it necessary to obtain audit evidence.

As part of our audit process, we will request from management written confirmation concerning representations made to us in connection with the audit, including among other items:

1. That management has fulfilled its responsibilities as set out in the terms of this letter; and
2. That it believes the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Management is responsible for identifying and ensuring that the Organization complies with the laws and regulations applicable to its activities, and for informing us about all known material violations of such laws or regulations. In addition, management is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Organization involving management, employees who have significant roles in internal control, and others where the fraud could have a material effect on the financial statements. Management is also responsible for informing us of its knowledge of any allegations of fraud or suspected fraud affecting the Organization received in communications from employees, former employees, analysts, regulators, or others.

Management is responsible for the preparation of the required supplementary information (RSI) in accordance with accounting principles generally accepted in the United States of America. Management agrees to include the auditor's report on the RSI in any document that contains the supplementary information and indicates that the auditor has reported on such RSI. Management also agrees to present the supplementary information with the audited financial statements or, if the supplementary information will not be presented with audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information no later than the date of issuance of the supplementary information and the auditor's report thereon.

The Board of Directors is responsible for informing us of its views about the risks of fraud within the Organization, and its knowledge of any fraud or suspected fraud affecting the Organization.

Records and Assistance

If circumstances arise relating to the condition of the Organization's records, the availability of appropriate audit evidence or indications of a significant risk of material misstatement of the financial statements because of error, fraudulent financial reporting or misappropriation of assets which, in our professional judgment, prevent us from completing the audit or forming an opinion, we retain the unilateral right to take

any course of action permitted by professional standards, including declining to express an opinion or issue a report, or withdrawing from the engagement.

If, in connection with our audit, you request us to perform accounting services necessary for the preparation of the financial statements (such as maintaining depreciation schedules, drafting the financial statements, etc.), you agree to designate an appropriate individual to oversee the services, make all management decisions involved in those services, evaluate the adequacy and results of the services, and accept responsibility for the results of the services.

Reporting

We will issue a written report upon completion of our audit of the Organization's financial statements. Our report will be addressed to the Board of Directors of the Organization. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other-matter paragraph(s), or withdraw from the engagement.