

AGENDA

ORANGE COUNTY POWER AUTHORITY SPECIAL MEETING OF THE BOARD OF DIRECTORS

**Tuesday, July 26, 2022
2:00 p.m.**

This meeting will proceed as a teleconference meeting in compliance with waivers to certain provisions of the Ralph M. Brown Act provided for under California Government Code section 54953(e)(1)(A) in relation to the Covid-19 state of emergency and recommended social distancing measures. 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 open session agenda items by requesting to speak during Item 4. 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:

To provide comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. Before or during Item 4, the Chair or Clerk will ask members of the public to join the queue to provide public comment. The queue will remain open for a reasonable amount of time to allow members of the public sufficient time to request to speak and inform the Board of the number of speakers. After such time, the queue will be closed and the members of the public who have joined the queue to speak will be recognized at the appropriate time may speak through Zoom video conference or telephonically. To join the queue on Zoom video conference by computer or mobile phone, use the “Raise Hand” feature. If joining the meeting using the Zoom dial-in number, you can raise your hand and join the queue by pressing *9. Members of the public will not be shown on video but will be able to speak when called upon.

Comments shall generally be limited to three minutes when speaking, provided that the Chair may equally reduce each speaker’s time to accommodate a large number of speakers or a large number of agenda items. 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 WEBINAR

Please click the link below to join the webinar:

[Launch Meeting - Zoom](#)

Dial-in: 1-669-900-6833

Webinar ID: 898 1167 3027

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **PLEDGE OF ALLEGIANCE**

4. **PUBLIC COMMENTS ON AGENDA ITEMS**

Opportunity for members of the public to address the Board on any open session items on the agenda.

5. **REGULAR CALENDAR**

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

1. **FINDINGS NECESSARY FOR REMOTE PARTICIPATION IN PUBLIC MEETINGS**

Recommended Action:

Declare that the findings made in Resolution No. 2022-02, “Resolution of the Orange County Board of Directors Making Findings Necessary for Remote Participation in Public Meetings” remain valid and applicable, so as to allow remote participation in public meetings for the next 30 days.

2. **AUTHORIZE EXECUTION OF AGREEMENTS WITH SOUTHERN CALIFORNIA EDISON AND SAN DIEGO GAS AND ELECTRIC FOR RENEWABLE ENERGY THROUGH THE VOLUNTARY ALLOCATION MARKET OFFER PROCESS**

Recommended Action:

1. Approve a voluntary allocation to OCPA of Southern California Edison’s Power Charge Indifference Adjustment short and long-term renewable energy portfolio through the CPUC’s Voluntary Allocation process.
2. Approve Voluntary Allocation Agreements with Southern California Edison for short and long-term renewable energy and authorize the Chief Executive Officer to execute the agreement and related documents.
3. Approve a voluntary allocation to OCPA of San Diego Gas and Electric’s Power Charge Indifference Adjustment short and long-term renewable energy portfolio through the CPUC’s Voluntary Allocation process.
4. Approve Voluntary Allocation Agreements with San Diego Gas and Electric for short and long-term renewable energy and authorize the Chief Executive Officer to execute the agreements and related documents.

6. **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
Staff Report – Item 5.1

To: Orange County Power Authority Board of Directors

From: Ryan Baron, General Counsel

Subject: Findings Necessary For Remote Participation in Public Meetings

Date: July 26, 2022

RECOMMENDED ACTION

Declare that the findings made in Resolution No. 2022-02, “Resolution of the Orange County Board of Directors Making Findings Necessary for Remote Participation in Public Meetings” remain valid and applicable, so as to allow remote participation in public meetings for the next 30 days.

BACKGROUND

AB 361 allows public agencies to hold fully or partially virtual meetings under certain circumstances, without being required to follow certain standard Ralph M. Brown Act teleconferencing requirements.

Under AB 361, a legislative body holding virtual meetings pursuant to AB 361 must make certain findings at least every thirty (30) days. Specifically, the legislative body must find that it has reconsidered the circumstances of the state of emergency and either of the following: (1) state or local officials continue to impose or recommend measures to promote social distancing, or (2) as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

Based on current COVID-19-related circumstances, the Board can continue to make the required findings. Staff therefore recommends that the Board of Directors declare that the findings made in Resolution 2022-02 remain valid and applicable, so as to allow the Board of Directors and its subordinate legislative bodies to continue to exercise remote participation options under AB 361.

FISCAL IMPACT

There is no fiscal impact.

ATTACHMENT

Resolution No. 2022-02 a Resolution of the Orange County Board of Directors Making Findings Necessary for Remote Participation in Public Meetings.

RESOLUTION NO. 2022-02

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ORANGE COUNTY POWER AUTHORITY MAKING FINDINGS NECESSARY FOR REMOTE PARTICIPATION IN PUBLIC MEETINGS

A. The Ralph M. Brown Act (“Brown Act”) requires, with specified exceptions, that all meetings of the governing body and all subordinate legislative bodies be open and public and that all persons be permitted to attend and participate.

B. The Brown Act contains provisions for remote participation in meetings by members of a legislative body subject to the existence of certain conditions and requirements.

C. Government Code section 54953(e) requirements include, but are not limited to, (1) the existence of a state of emergency declared by the California Governor pursuant to Government Code section 8625, and (2) state or local officials have imposed or recommended measures to promote social distancing.

D. On March 4, 2020, the Governor issued a Proclamation of State of Emergency in response to the COVID-19 pandemic and as of the date of this Resolution, the proclaimed state of emergency remains in effect.

E. On March 17, 2020, the Governor issued Executive Order N-29-20, which suspended and modified the remote participation requirements under the Brown Act to allow local legislative bodies to hold public meetings via teleconference.

F. On June 11, 2021, the Governor issued Executive Order N-08-21, which extended the provisions of N-29-20 concerning the conduct of public meetings through September 30, 2021. The Governor subsequently signed Assembly Bill 361 (Rivas, 2021) revising requirements for remote public meetings (“AB 361”).

G. In order to preserve public health and safety, the State Public Health Officer and Orange County Health Officer have issued various orders and guidance, as they may be amended from time to time, regarding COVID-19 prevention measures, which include references and a statement of support for social distancing recommendations. (*See, e.g., Guidance for Use of Face Coverings*, revised January 5, 2022; *COVID-19 Public Health Recommendations for Fully Vaccinated People*, dated October 28, 2021; *County of Orange Health Officer’s Orders and Strong Recommendations*, revised January 14, 2022).

H. In light of the foregoing, the Board of Directors desires to continue to have the flexibility to meet via remote participation for public meetings, as long as the state of emergency and social distancing recommendations continue, and that it and its legislative bodies shall be permitted to conduct their meetings by remote participation in accordance with Government Code section 54953(e), and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed by that section therein.

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

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Orange County Power Authority Board of Directors finds and declares for itself and each of its subordinate legislative bodies, as follows:

- a. A continued state of emergency, as declared by the State of California, continues to exist.
- b. The Board of Directors has reconsidered the circumstances of the state of emergency.
- c. State and local officials continue to impose or recommend measures to promote social distancing.
- d. The Orange County Power Authority promotes social distancing measures, including, without limitation, promoting and utilizing remote attendance options at Board of Directors meetings.

Section 3. The Board of Directors and any of its legislative bodies are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act or executive order, as such may be amended or promulgated from time to time.

Section 4. This resolution shall take effect immediately upon its adoption and apply to all Orange County Power Authority public meetings of its legislative bodies including those held during the state of emergency since the passage of and governed by AB 361.

PASSED AND ADOPTED at a meeting of the Orange County Power Authority Board of Directors held on February 8, 2022.



Secretary

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 5.2

To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer

Subject: Authorize Execution of Agreements with Southern California Edison and San Diego Gas and Electric for Renewable Energy through the Voluntary Allocation Market Offer Process

Date: July 26, 2022

RECOMMENDED ACTION

1. Approve a voluntary allocation to OCPA of Southern California Edison's Power Charge Indifference Adjustment short and long-term renewable energy portfolio through the CPUC's Voluntary Allocation process.
2. Approve Voluntary Allocation Agreements with Southern California Edison for short and long-term renewable energy and authorize the Chief Executive Officer to execute the agreement and related documents.
3. Approve a voluntary allocation to OCPA of San Diego Gas and Electric's Power Charge Indifference Adjustment short and long-term renewable energy portfolio through the CPUC's Voluntary Allocation process.
4. Approve Voluntary Allocation Agreements with San Diego Gas and Electric for short and long-term renewable energy and authorize the Chief Executive Officer to execute the agreements and related documents.

BACKGROUND

In 2018, the California Public Utilities Commission issued Decision (D.) 1810019 clarifying and establishing the current framework and calculation of the Power Charge Indifference Adjustment (PCIA), which is the formal name for the "exit fees" customers pay for leaving IOU service for a community choice aggregator (CCA). The PCIA or exit fee represents stranded costs from power purchase agreements and generation that would no longer serve the customer that has left for CCA service. As a result of the 2017 decision, the IOUs have been authorized to calculate their "exit fees" based on the current market price of the energy product (i.e., brown power, renewable energy, resource adequacy), commonly referred to as the "market price benchmark", which has historically been high. Based on a comprehensive annual review of all IOU, CCA, and direct access contracts, the CPUC sets the market price benchmark in November of each year, which sets customer exit fees.

In order to counter-balance the high exit fees IOUs charge CCA customers, CalCCA has been advocating at the CPUC for IOUs to not just charge CCA customer exit fees but allocate the stranded assets and products to CCAs directly. Historically, there has not been a regulatory mechanism for CCAs to buy down the PCIA or be allocated or buy the actual energy products CCA customers pay for in exit fees, which significantly undervalues renewable energy in the

IOUs portfolio. An allocation would provide a fairer method of cost recovery for these resource commitments.

(CPUC) Decision 21-05-030 requires Southern California Edison (SCE) and San Diego Gas & Electric (SDG&E) to offer voluntary allocations of its renewable energy resources to CCAs that are serving SCE's and SDG&E's departed customers. Voluntary allocation deliveries of renewable energy are expected to begin January 1, 2023.

This process requires the IOUs to offer PCIA-paying load serving entities (LSEs) like OCPA voluntary allocations of PCIA-eligible renewable resources, and then sell any unallocated resources through an annual Market Offer process. The Voluntary Allocation and Market Offer process is known as VAMO. This allocation election is beneficial for OCPA customers, as it allows for future procurement of new resources and helps ensure OCPA meets its SB 350 long-term contracting requirements in the 2021-2024 Renewables Portfolio Standard (RPS) Compliance Period. SB 350 requires all LSEs to procure 65% of renewable energy from long-term contracts of 10 years or more in order to encourage the in-state development of renewable generation in California.

As an LSE, OCPA is required to meet the CPUC's minimum renewable energy standards for both short-term and long-term renewable energy procurements. A significant advantage of participating in VAMO is the ability to receive an allocation of long-term renewable energy. SB 350's long-term contracting requirement can be a significant hurdle for new LSEs due to credit and resource limitations, particularly during the initial compliance period during which the LSE commences operations. Participating in the VAMO process positions OCPA to meet its requirements since the facilities are already online and delivering energy, greatly reducing risk from potential delays in contracting and resource development. Further, the VAMO allocations will help OCPA meet its voluntary renewable energy requirements that exceed the RPS minimum requirements.

The voluntary allocation process must follow a rather compressed schedule as determined by the CPUC, which is outlined below.

VOLUNTARY ALLOCATION ACTIVITIES	DUE DATES
Meet and Confer(s)	Ongoing as needed
LSE notifies IOU of its intent to take a Voluntary Allocation	No later than July 1, 2022
Contracting for Voluntary Allocation commences	July 1, 2022
LSE's notify IOU of Voluntary Allocation Election percentage	July 15 – 22, 2022
Deadline for LSEs to execute and return Voluntary Allocation Agreement	July 29, 2022

OCPA enrolled in SCE's and SDG&E's Voluntary Allocation process by providing Voluntary Allocation Election Forms prior to SCE and SDG&E deadlines. OCPA must now enter into a Voluntary Allocation Agreement (Agreement) to be executed by OCPA and SCE and OCPA and SDG&E. SCE and SDG&E have requested LSEs execute and return giving enough time for each

to countersign the Agreements by the July 29, 2022, deadline set by the CPUC for the IOUs to complete the Voluntary Allocation process.

The CPUC has approved SCE's Voluntary Allocation Pro Forma Contract, which is attached. On July 8, SCE provided the execution version of the Agreement, which is the pro forma contract completed with certain confidential information on OCPA's voluntary allocation and other confidential terms.

The CPUC has approved SDG&E's Voluntary Allocation Pro Forma Contract, which is attached. On July 21, SDG&E provided the execution version of the Agreement, which is the pro forma contract completed with certain confidential information on OCPA's voluntary allocation and other confidential terms.

OCPA's legal counsel and its portfolio manager (PEA) have reviewed the Agreements. The Agreements are largely similar to the contracts that OCPA has executed in the past to buy short-term renewable energy products.

OCPA's allocation quantities were determined in coordination with PEA, and the CPUC decision requires that pricing will be set based on current market pricing, which will be updated each year as part of the PCIA calculation process. The price charged to OCPA for deliveries under the agreements will be the same as that used in the PCIA calculation for valuing SCE's and SDG&E's renewable energy portfolio. This is expected to maintain neutrality with respect to the PCIA calculations. OCPA's actual allocation of renewable energy will depend on the actual production from the facilities included in SCE's and SDG&E's renewable portfolios. The term of the VAMO agreements will continue until there are no remaining contracts delivering to SCE and SDG&E from the pool of allocated resources, which is projected to be around 2040.

Staff recommends the Board authorize the Chief Executive Officer to execute the agreement with SCE and the agreement with SDG&E.

FISCAL IMPACT

OCPA expects the costs of the SCE procurement to average \$10 million per annum. Given the nature of the product being contracted for, this cost will be a subset of currently expected renewable energy procurement costs.

OCPA expects the costs of the SDG&E procurement to average \$600,000 per annum. Given the nature of the product being contracted for, this cost will be a subset of currently expected renewable energy procurement costs.

ATTACHMENT

Attachment A - VA Agreement with SCE

Attachment B - VA Agreement Short Term Unbundled with SDG&E

Attachment C - VA Agreement Long Term Unbundled with SDG&E

Attachment D - VA Agreement Short Term Bundled with SDG&E

Attachment E - VA Agreement Long Term Bundled with SDG&E

**VOLUNTARY ALLOCATION
AGREEMENT***between***ORANGE COUNTY POWER AUTHORITY***and***SOUTHERN CALIFORNIA EDISON COMPANY**

(Contract ID #88080)

This Voluntary Allocation Agreement, including all appendices, exhibits, schedules, attachments, and any supplements hereto (the “**Agreement**”) is entered into as of _____ (the “**Effective Date**”), between Orange County Power Authority, a California joint powers authority (“**Counterparty**”) and Southern California Edison Company, a California corporation (“**SCE**”), each individually a “**Party**” and together the “**Parties**”. Capitalized terms used but not otherwise defined in this Agreement have the meanings ascribed to them in the CAISO Tariff as of the date hereof.

RECITALS

WHEREAS, the CPUC adopted the power charge indifference adjustment (“**PCIA**”) in order for customers (“**Departed Load Customers**”) of investor-owned utilities (“**IOUs**”) who later depart IOU service to remain responsible for costs incurred by IOUs on their behalf;

WHEREAS, the IOUs have a portfolio of contracts with third parties for the procurement of California RPS-Eligible Electric Energy which is subject to the PCIA (the “**RPS PCIA Portfolio**”);

WHEREAS, the CPUC in CPUC Decision 21-05-030 provides for the allocation of the California RPS-Eligible Electric Energy and associated Green Attributes generated from an IOU’s RPS PCIA Portfolio to certain Load Serving Entities (“**LSE**”) whose customers include the IOU’s Departed Load Customers (“**PCIA-Eligible LSEs**”), with the exception of certain California RPS-Eligible Electric Energy and associated Green Attributes that cannot be allocated due to: (a) there being no associated Renewable Energy Credits created pursuant to Sections 399.21(a)(4) – (5) of the California Public Utilities Code, or (b) the requirement that an electrical corporation utilize certain procured California RPS-Eligible Electric Energy and associated Green Attributes to meet its own renewables portfolio standard annual procurement target pursuant to Section 399.20 of the California Public Utilities Code, such as under contracts signed pursuant to the Public Utility Regulatory Policies Act and the Renewable Market Adjusting Tariff (“**Eligible RPS PCIA Portfolio**”);

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WHEREAS, Counterparty is a PCIA-Eligible LSE that provides electric services to some of SCE's Departed Load Customers and desires to receive certain percentages, as elected in this Agreement, of its Load Share Percentage of the Product from SCE's Eligible RPS PCIA Portfolio; and

WHEREAS, SCE and the Counterparty desire to enter into this Agreement for the transfer of the Product from SCE's Eligible RPS PCIA Portfolio in accordance with the terms and conditions of this Agreement; and

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1. TERM AND VOLUNTARY ALLOCATION TERMS

1.1 Term

The “**Term**” of this Agreement shall commence upon the Effective Date and shall continue until all the obligations of the Parties under this Agreement have been satisfied, unless terminated earlier due to an Event of Default; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination.

1.2 Voluntary Allocation Terms

Product	The “ Product ” is the Contract Quantity of California RPS-Eligible Electric Energy and associated Green Attributes from the Projects.
Project	Each of the generating facilities listed in <u>Appendix B</u> shall be a “ Project ” subject to the generating facility no longer being a Project upon: (a) the Project being removed from SCE's Eligible RPS PCIA Portfolio in accordance with <u>Section 2.5</u> ; (b) the conclusion of the applicable Delivery Period for the Projects [designated as “Short-Term” on <u>Appendix B</u> , or (c) the conclusion of the delivery term for a Project designated as “Long-Term” on <u>Appendix B</u> .
Contract Quantity	The “Contract Quantity” shall be the sum of the Project Contract Quantities. For each Project, the “Project Contract Quantity” shall equal the total California RPS-Eligible Electric Energy generated by such Project and measured at the CAISO revenue meter, multiplied by Counterparty's Load Share Percentage in the PCIA Vintage Year which the Project is a part of, and further multiplied by: (a) for the Projects designated as “Long-Term” on <u>Appendix B</u>, until the End of the Compliance Period, the sum of the

SCE – Orange County Power Authority

	Long-Term Election Percentage and the Long-Term Election Percentage for Compliance Period, and after the End of the Compliance Period, the Long-Term Election Percentage, or (b) for the Projects designated as “Short-Term” on <u>Appendix B</u> , the Short-Term Election Percentage.
Load Share Percentage	Counterparty’s Load Share Percentage shall be the same for each Project in the same PCIA Vintage Year and will be as noted in <u>Appendix B</u> . Counterparty’s Load Share Percentage may be updated after the Parties annual Meet and Confer Process in accordance with <u>Section 2.6</u> .
Percentage Election of Counterparty’s Load Share	<u>Long-Term Election Percentage:</u> [REDACTED] <u>Long-Term Election Percentage for Compliance Period:</u> [REDACTED] <u>Short-Term Election Percentage:</u> [REDACTED]
Delivery Period	The “ Delivery Period ” shall be the period commencing on the later of (a) CPUC Approval of this Agreement, if required, and (b) January 1, 2023 and continuing through: (x) for the Projects designated as “Long-Term” on <u>Appendix B</u> , the end of the longest delivery term of the Projects, as shown in <u>Appendix B</u> , but excluding Projects without an end to the delivery term (i.e., subject to evergreen contracts) and Projects owned by IOUs; and (y) for the Projects designated as “Short-Term” on <u>Appendix B</u> , December 31, 2024 (the “ End of the Compliance Period ”).
Delivery Point	The “ Delivery Point ” shall be the Pricing Node applicable to each Project.
Contract Price	The “ Contract Price ” shall be the sum of the Energy Price and the REC Price.

ARTICLE 2. DELIVERY OBLIGATIONS**2.1 SCE’s Conveyance of Electric Energy and Green Attributes**

- (a) Beginning on the first day of the Delivery Period and throughout all applicable months of the Delivery Period, SCE shall deliver, or cause to be delivered, and Counterparty shall receive, or cause to be received, at the Delivery Point, the Contract Quantity of the California RPS-Eligible Electric Energy associated with the Product, for the Contract Price and subject to the terms and conditions of this Agreement. SCE shall be responsible for any costs or charges imposed on or associated with the California RPS-Eligible Electric Energy or its delivery up to the Delivery Point. Counterparty shall be responsible for any costs or charges imposed on or associated with the California RPS-Eligible Electric Energy or its receipt at and from the Delivery Point.

SCE – Orange County Power Authority

- (b) SCE, or a qualified third party designated or otherwise agreed to by SCE, shall act as Scheduling Coordinator for the Projects. Counterparty authorizes SCE, or its third party Scheduling Coordinator designee, to deliver the California RPS-Eligible Electric Energy associated with the Product to the CAISO at the Delivery Point as an agent on Counterparty's behalf.
- (c) Title to and risk of loss related to the California RPS-Eligible Electric Energy shall transfer from SCE to Counterparty upon satisfaction of the delivery obligations in this Article 2. SCE warrants that it will deliver to Counterparty the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to delivering such Product in accordance with this Article 2.
- (d) During the Delivery Period, SCE, at its own cost and expense, shall maintain its registration with WREGIS. All Green Attributes transferred by Seller hereunder shall be California RPS-compliant, subject to confirmation by the CEC. SCE shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of Green Attributes to Counterparty in accordance with WREGIS reporting protocols and WREGIS Operating Rules.
- (e) For each applicable month of the Delivery Period, SCE shall deliver and convey the Green Attributes associated with the California RPS-Eligible Electric Energy delivered pursuant to Section 2.1(a) above within thirty (30) days: (a) of the creation of the WREGIS Certificates for the Green Attributes for the Projects where SCE is the WREGIS Account Holder or (b) of SCE's receipt of the WREGIS Certificates for the Projects for which SCE is not the WREGIS Account Holder. SCE shall deliver and convey such Green Attributes by properly transferring such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, equivalent to the quantity of Green Attributes, to Counterparty into Counterparty's WREGIS account such that all right, title and interest in and to the WREGIS Certificates shall transfer from SCE to Counterparty; provided further, that if SCE fails to properly transfer such WREGIS Certificates to Counterparty in accordance with the above due to an error or omission of an administrative or clerical nature and if such failure can be cured with no harm to Counterparty, then SCE may cure such failure within thirty (30) days after notice of such failure.
- (f) In addition to its other obligations under this Section 2.1, SCE shall convey to Counterparty WREGIS Certificates from the Projects that are of the same Vintage Year as the California RPS-Eligible Electric Energy that was provided under Section 2.1(a) of this Agreement.

2.2 **Mutual Indemnification**

Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under this Agreement. 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.

2.3 **Force Majeure**

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “**Claiming Party**”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

2.4 **Remedy for Failure to Make Timely Payment**

- (a) **Stopping Deliveries.** If Counterparty fails to make timely payment for the Product in accordance with the terms of this Agreement, and regardless of whether such failure is an Event of Default or SCE has designated an Early Termination Date, SCE shall immediately stop all deliveries of Product to Counterparty and shall have no obligation to restart deliveries of the Product until Counterparty has made all outstanding payments to SCE. Further, SCE shall have no obligation to provide Counterparty additional Product to make-up for Product not delivered pursuant to this Section 2.4(a) and the amount of Contract Quantity of Product to be delivered to the Counterparty shall be deemed reduced by the amount of Product not delivered pursuant to this Section 2.4(a).
- (b) **Retention of WREGIS Certificates.** For avoidance of doubt, SCE shall have the right to retain and sell any WREGIS Certificates associated with California RPS-Eligible Electric Energy previously delivered to the Counterparty and not paid for by Counterparty.

2.5 **Removal of Project from SCE’s Eligible RPS PCIA Portfolio**

The Parties acknowledge and agree that SCE has the right, at any time and in its sole discretion, to optimize its Eligible RPS PCIA Portfolio by modifying, including, but not limited to, reducing any purchases of energy or capacity, terminating, or assigning to a third party any contract in its Eligible RPS PCIA Portfolio. If a contract in SCE’s Eligible RPS PCIA Portfolio is terminated or assigned to a third party, the Project corresponding to such contract shall cease to be a Project under this Agreement. SCE shall provide notice to Counterparty as soon as practicable of any modification, termination, or assignment of any contract after such modification, termination or assignment has occurred.

2.6 **Load Share Percentage**

The Parties acknowledge that at the conclusion of each annual Meet and Confer Process there may be updates (“**Revised Load Share Percentages**”) to the Load Share Percentages for the PCIA Vintage Years shown in Appendix B. The Parties agree that upon SCE sending a letter to the Counterparty with the Revised Load Share Percentages, in accordance with the notice provisions of Section 9.3, the Load Share Percentages will be deemed updated to the Revised Load Share Percentages, as stated in the letter, as of January 1st of each year following the annual Meet and Confer Process, and that the Contract Quantity of Product to be delivered by SCE to Counterparty will be updated accordingly.

ARTICLE 3. PAYMENT

3.1 **Monthly Payment**

Counterparty shall pay SCE the “Monthly Cash Settlement Amount”, in arrears, for each Calculation Period in the amount equal to the sum, of (A) plus (B) minus (C), where:

- A = the sum, over all hours of the Calculation Period, of (i) the applicable Energy Price for each hour of Delivered Energy within the applicable CAISO market (i.e. integrated forward market, fifteen minute, and/or Real-Time Market) multiplied by (ii) the quantity of Delivered Energy during the time interval in each respective market; and
- B = the REC Price multiplied by the quantity of Green Attributes (in MWhs) that will be conveyed as described in Section 2.1 and that are associated with the Delivered Energy in the Calculation Period; and
- C = the sum, over all hours of the Calculation Period, of (i) the applicable Energy Price for each hour of Delivered Energy within

SCE – Orange County Power Authority

the applicable CAISO market (i.e. integrated forward market, fifteen minute, and/or Real-Time Market) multiplied by (ii) the quantity of Delivered Energy during the time interval in each respective market.

Such Monthly Cash Settlement Amount constitutes payment for the Product, including the Green Attributes, for such applicable Calculation Period. Counterparty shall be obligated to make such payments with respect to each applicable Calculation Period notwithstanding the fact that the Green Attributes associated with a particular Calculation Period may be delivered or credited to SCE's WREGIS account subsequent to the conclusion of the applicable Calculation Period in accordance with Section 2.1(e), provided that if SCE fails to comply with the provisions of Section 2.1(e), Counterparty shall be entitled to exercise all rights and remedies available to Counterparty under this Agreement for SCE's failure to deliver the Product.

3.2 True-up of REC Price

If the CPUC publishes the "Calculation of the Market Price Benchmarks for the Power Charge Indifferent Adjustment Forecast and True Up" which has a final "RPS Adder" for a calendar year that differs from the REC Price invoiced to and paid by the Counterparty for the Product for that same calendar year, SCE will adjust future invoices to account for such differences. Subject to the other terms of this Agreement, no interest shall be paid on the amount of any adjustments due to the publishing of a final "RPS Adder." If this Agreement has terminated and a final "RPS Adder" is published that results in a Party owing a payment to the other Party, then the Party shall make such payment in accordance with Section 3.4.

3.3 Billing Period

The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and as otherwise specified in this Agreement). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, determined hereunder for the preceding month.

3.4 Timeliness of Payment

All invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to

be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

3.5 **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. 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.

3.6 **Netting**

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other as of the same date through netting, in which case all amounts owed by each Party to the other Party during the monthly billing period under this Agreement, including damages, payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it. If the Parties enter into additional agreements for an allocation from SCE's Eligible RPS PCIA Portfolio ("**New Voluntary Allocation Agreements**"), SCE may, in its sole discretion, net any payment owed to Counterparty under this Agreement against any amount owed to SCE by Counterparty arising out of, or related to, such New Voluntary Allocation Agreements.

3.7 **Payment**

All amounts paid hereunder shall be rendered in the form of immediately available dollars. Payment, as applicable, shall be made by ACH, or in other form reasonably requested, to the following accounts:

SCE:

Bank: JPMorgan Chase New York, NY 10004

ABA: [REDACTED]

ACCT: [REDACTED]

Counterparty:

Bank: MUFG Union Bank, N.A.

ABA no: [REDACTED]

Account: [REDACTED]

ARTICLE 4. OTHER SCE AND COUNTERPARTY REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 **Mutual Representations and Warranties**

On the Effective Date, each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any equitable defenses;
- (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates (for purposes of this Section, SCE shall be deemed to have no

SCE – Orange County Power Authority

Affiliates) any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

- (g) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;
- (i) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;
- (j) it is an “eligible commercial entity” within the meaning of the Commodity Exchange Act, as otherwise amended, updated or modified from time to time;
- (k) it is an “eligible contract participant” within the meaning of the Commodity Exchange Act, as otherwise amended, updated or modified from time to time;
- (l) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Agreement;
- (m) it is a producer, processor, commercial user or merchant handling the Product, and it is entering into the Agreement for purposes related to its business as such; and
- (n) the Agreement 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, and is subject to individual negotiation by the Parties.

4.2 SCE’s Representations, Warranties and Covenants

- (a) SCE, and, if applicable, its successors, represents and warrants that throughout the Term of this Agreement:
 - (i) a Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16;

SCE – Orange County Power Authority

- (ii) a Project's output delivered to Counterparty qualifies under the requirements of RPS;
 - (iii) all necessary steps to allow the Renewable Energy Credits transferred to Counterparty to be tracked in the WREGIS will be taken prior to the first delivery under this Agreement;
 - (iv) it has the right to sell all right, title, and interest in the Product agreed to be delivered hereunder;
 - (v) SCE has not sold the Product to be delivered under this Agreement to any other person or entity;
 - (vi) at the time of delivery, all rights, title, and interest in the Product to be delivered under this Agreement are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever;
 - (vii) the electric energy generated with the Green Attributes delivered under this Agreement was not and will not be separately sold, marketed, reported, or otherwise represented as renewable energy, renewable electricity, clean energy, zero-emission energy, or in any similar manner; and
 - (viii) a Project either (A) has a first point of interconnection with a California balancing authority, or a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area; or (B) has an agreement to dynamically transfer electricity to a California balancing authority; or, if (A) or (B) are not applicable, a Project and the agreement executed by SCE for such Project meet the conditions in California Public Utilities Code Section 399.16(d).
- (b) SCE and, if applicable, its successors, represents and warrant that throughout the Delivery Period the Renewable Energy Credits transferred to Counterparty conform to the definition and attributes required for compliance with RPS, as set forth in CPUC Decision 08-08-28, and as may be modified by subsequent decision of the CPUC or by subsequent legislation.

SCE makes no representation, warranty or covenant with respect to any portfolio content category designation pursuant to California Public Utilities Code Section 399.16 nor any eligibility of the Product to qualify as excess procurement pursuant to California Public Utilities Code Section 399.13(a)(4)(B).

To the extent a change in law occurs after execution of this Agreement that causes SCE's representation and warranty in Sections 4.2(a)(i)-(ii) and Section 4.2(b) to be materially

false or misleading, it shall not be an Event of Default if SCE has used commercially reasonable efforts to comply with such change in law. “Commercially reasonable efforts” shall not require SCE to incur out-of-pocket expenses in excess of \$25,000 in the aggregate in any one calendar year.

4.3 Counterparty’s Representations, Warranties and Covenants if Governmental Entity or Public Power System

- (a) On the Effective Date and as a condition to the obligations of SCE under this Agreement, Counterparty shall provide SCE certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Counterparty of this Agreement.
- (b) As of the Effective Date and continuing through the Term, with respect to this Agreement, Counterparty represents and warrants to the SCE: (i) all acts necessary to the valid execution, delivery and performance of this Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Counterparty’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of the Counterparty are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Agreement by Counterparty are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the Term of this Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Counterparty’s obligations to make payments hereunder are unsubordinated obligations and such payments are (A) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (B) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Counterparty’s obligations hereunder or (C) are to be made solely from a Special Fund, (vi) entry into and performance of this Agreement and by the Counterparty will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Counterparty otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Counterparty or create any kind of lien on, or security interest in, any property or revenues of Counterparty

SCE – Orange County Power Authority

which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

- (c) Counterparty warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (i) suit, (ii) jurisdiction of court (including a court located outside the jurisdiction of its organization), (iii) relief by way of injunction, order for specific performance or recovery of property, (iv) attachment of assets, or (v) execution or enforcement of any judgment.
- (d) With respect to the transactions contemplated under this Agreement, Counterparty shall either: (i) have created and set aside a Special Fund or (ii) upon execution of this Agreement and prior to the commencement of each subsequent fiscal year of Counterparty during any Delivery Period, Counterparty shall have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Agreement for such fiscal year. Any breach of this provision shall be deemed to have arisen during a fiscal period of Counterparty for which budgetary approval or certification of its obligations under this Agreement is in effect and, notwithstanding anything to the contrary in this Agreement, an Early Termination Date shall automatically and without further notice occur hereunder as of such date and Counterparty shall be treated as the Defaulting Party. Counterparty shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Counterparty's payment obligations hereunder throughout the entire Delivery Period.

4.4 **CPUC Approval**

- (a) Within ninety (90) days after the Effective Date, if CPUC Approval of this Agreement is required by the CPUC, SCE shall file with the CPUC the appropriate request for CPUC Approval of this Agreement. SCE shall expeditiously seek CPUC Approval, including promptly responding to any requests for information related to the request for CPUC Approval. As requested by SCE, Counterparty shall use commercially reasonable efforts to support SCE in obtaining CPUC Approval. SCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to provide CPUC Approval of this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to SCE.
- (b) Either Party, in its sole discretion, on or before the ninetieth (90th) day after SCE files the request for CPUC Approval, has the right to terminate this Agreement upon notice in accordance with Section 9.3 of this Agreement,

which such notice will be effective one (1) Business Day after such notice is given, if: (i) the CPUC issues a final and non-appealable order regarding this Agreement which contains conditions or modifications unacceptable to either Party, or (ii) CPUC Approval of this Agreement has not been obtained on or before the date that is sixty (60) days after the date that SCE files the request for CPUC Approval.

- (c) Notwithstanding any other provision in this Agreement, SCE will have no obligation to transfer Product to Counterparty and Counterparty shall have no obligation to receive or pay for the Product unless and until SCE and Counterparty have obtained or waived, in their sole discretion, if required by the CPUC, CPUC Approval of this Agreement.
- (d) Failure to obtain CPUC Approval in accordance with this provision will not be deemed to be or cause an Event of Default by either Party. No Termination Payment will be due or owing by either Party upon termination of this Agreement due solely to failure to obtain CPUC Approval.

ARTICLE 5. EVENTS OF DEFAULT, REMEDIES

5.1 Events of Default

An “**Event of Default**” shall mean, with respect to a Party (a “**Defaulting Party**”), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default,) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article 7 hereof or any other credit arrangement related to this Agreement;
- (f) a Merger Event occurs with respect to such Party;
- (g) the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party, under one or more agreements or instruments, individually or collectively, relating to

SCE – Orange County Power Authority

indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount, which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by 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.

Counterparty's Cross Default Amount shall be [REDACTED]

[REDACTED] SCE's Cross Default Amount shall be [REDACTED]

[REDACTED];

- (h) 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
- (i) the Party disaffirms, disclaims, repudiates, or rejects, in whole or in part, or challenges the validity of, this Agreement executed and delivered by that Party.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts

- (a) If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “**Non-Defaulting Party**”) shall have the right to (i) designate a day and time of day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date (“**Early Termination Date**”) to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for this Agreement as of the Early Termination Date and the Termination Payment payable in connection with this Terminated Agreement shall be calculated in accordance with this Section 5.2 and with Section 5.3 below.
- (b) The Non-Defaulting Party shall determine its Gains and Losses by determining the Market Quotation Average Price for the transactions under this Agreement. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain the Market Quotation Average Price, then the Non-Defaulting Party shall calculate its Gains and Losses for the transactions under this Agreement in a commercially reasonable manner by calculating the arithmetic mean of at least three (3) Forward Price Assessments for transactions substantially similar to the transactions contemplated under this Agreement. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts to obtain at least three (3)

Forward Price Assessments, then the Non-Defaulting Party shall calculate its Gains and Losses 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; 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 in a commercially reasonable manner using relevant market data it has available to it internally.

5.3 **Termination Payment**

The Non-Defaulting Party shall net out (a) the Settlement Amount due to the Defaulting Party, if any, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 7, plus any or all other amounts due to the Defaulting Party under this Agreement, against (b) the Settlement Amount due to the Non-Defaulting Party, if any, any cash then available to the Defaulting Party pursuant to Article 7, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “**Termination Payment**”) payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 **Notice of Payment of Termination Payment**

As soon as practicable after a liquidation, but in no event more than fifteen (15) Business Days following the Early Termination Date, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 **Disputes With Respect to Termination Payment**

If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall

first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to set-off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party with respect to the Specified Energy Transactions. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise). Notwithstanding anything to the contrary contained in this 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 Agreement, the Non-Defaulting Party may accelerate, liquidate and terminate all, but not less than all, Specified Energy Transactions between the Parties.

5.7 Suspension of Performance

Notwithstanding any other provision of this Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless an Early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE 6. LIMITATIONS

THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S

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. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION SET FORTH IN THIS AGREEMENT OR OTHERWISE; PROVIDED, HOWEVER, THAT NOTHING IN THIS PROVISION SHALL AFFECT THE ENFORCEABILITY OF SECTIONS 5.2 AND 5.3 OF THIS AGREEMENT. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. 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.

ARTICLE 7. CREDIT AND COLLATERAL REQUIREMENTS

7.1 Financial Information

If requested by SCE, the Counterparty shall deliver:

- (a) Annual Reports. Within one hundred twenty (120) days following the end of each fiscal year, a copy of its annual report containing audited consolidated financial statements for such fiscal year. If only unaudited financial statements are available, they must include a Responsible Officer certification attesting to the accuracy of such statements.
- (b) Quarterly Reports. Within sixty (60) days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter.
- (c) Reports. In all cases the reports shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, 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 producing Party diligently pursues the preparation, certification and delivery of the statements.

7.2 Counterparty's Collateral Requirements

Counterparty will not be required to post collateral at the execution of this Agreement. If there is an Event of Default under this Agreement due to Counterparty's failure to make timely payments for the Product, SCE may require that, in addition to paying all outstanding amounts owed to SCE, and in consideration for SCE not exercising its rights to terminate this Agreement, Counterparty post collateral in an amount and form acceptable to SCE in its sole discretion.

7.3 SCE's Collateral Requirements

Under no circumstances shall SCE be required to post collateral under this Agreement.

7.4 Uniform Commercial Code Waiver.

This Agreement sets forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth herein, 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 Article 7 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.

ARTICLE 8. MARKET BASED RATE AUTHORITY AND GOVERNMENTAL CHARGES**8.1 Cooperation**

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

8.2 Governmental Charges

SCE shall pay or cause to be paid all taxes, charges, or fees imposed by any government authority ("**Governmental Charges**") on or with respect to the Product arising prior to the Delivery Point. Counterparty shall pay or cause to be

paid all Governmental Charges on or with respect to the Product at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the SCE). In the event SCE is required by law or regulation to remit or pay Governmental Charges which are Counterparty's responsibility hereunder, Counterparty shall promptly reimburse SCE for such Governmental Charges. If Counterparty is required by law or regulation to remit or pay Governmental Charges which are SCE's responsibility hereunder, Counterparty may deduct the amount of any such Governmental Charges from the sums due to SCE under Article 3 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE 9. MISCELLANEOUS

9.1 Assignment

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion.

9.2 Governing Law; 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. NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY.

(b) Dispute Resolution:

(1) 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.

SCE – Orange County Power Authority

(“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 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 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.

The Parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs (other than each Party’s individual attorneys’ fees and costs related to the Party’s participation in the mediation, which fees and costs will be borne by such Party).

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.

- (2) 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 (ii) above. 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 (i) above, 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 one hundred eighty (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;

SCE – Orange County Power Authority

- (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 Article 6 (Limitations), 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 9.9 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.

9.3 Notices

All notices, requests, statements or payments shall be made as specified in this Appendix C. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

9.4 General

This Agreement constitutes the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “**Regulatory Event**”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for two (2) years. This Agreement shall be binding on each Party’s successors and permitted assigns.

9.5 Audit

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

9.6 Bankruptcy Issues

The Parties intend that (i) this Agreement constitutes 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 SCE and Counterparty 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.

9.7 Confidentiality

- (a) 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

SCE – Orange County Power Authority

necessary for the enforcement of this Agreement; (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 in making such disclosure; (iv) to the extent such information is or becomes generally available to the public prior to such disclosure by a Party; (v) 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); (vi) with respect to SCE, as may be furnished to its duly authorized regulatory and governmental agencies or entities, including without limitation the CPUC and all divisions thereof, and to SCE's Procurement Review Group, 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, SCE shall have no liability to Counterparty in the event of any unauthorized use or disclosure by such entities; or (vii) each Party may disclose the terms of this Agreement to WREGIS. 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. 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.

- (b) 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.

9.8 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.

9.9 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.

9.10 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.

9.11 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.

9.12 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.

9.13 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.
- (d) Headings are included for convenience only and are not to be considered in interpretation.
- (e) References in the singular include references to the plural and vice versa, pronouns having masculine or feminine gender include the other, and words denoting natural persons include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities, whether or not having a separate legal personality.
- (f) Other grammatical forms of defined words or phrases have corresponding meanings.
- (g) Unless otherwise specified herein, where the consent of a Party is required, such consent may not be unreasonably withheld, conditioned or delayed.
- (h) References to any natural person, Governmental Authority, publication, website, market price index, regulatory proceeding, corporation, partnership or other legal entity include successors and lawful assigns.
- (i) All references to money or dollars are to U.S. dollars.
- (j) Examples are for purposes of illustration of the applicable concept only and are not intended to constitute a representation, warranty or covenant concerning the example itself or the matters assumed for purposes of such example.
- (k) If there is a conflict between an example and the text hereof, the text will govern.
- (l) Each term hereof is to be construed simply according to its fair meaning and not strictly for or against either Party.
- (m) No term hereof is to be construed against a Party on the ground that the Party is the author or drafter of that provision.
- (n) Each Party expressly agrees to not utilize in any dispute hereunder any rule of construction that resolves the interpretation of any provision against the drafting Party.

[Remainder of Page Intentionally Left Blank]

In WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date first written:

**ORANGE COUNTY POWER
AUTHORITY,**

a California joint power authority.

By: _____

Name: _____

Title: _____

Date: _____

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

a California corporation.

By: _____

Name: William Walsh

Title: Vice President, Energy Procurement
& Management

Date: _____

**APPENDIX A
DEFINED TERMS**

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

“Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Agreement” has the meaning specified in the introductory paragraph hereof.

“Arbitrator” has the meaning provided in Section 9.2(b)(2).

“Automated Clearing House”, or “ACH” means that specific electronic network for financial transactions and fund transfers managed by the Automated Clearing House Network.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Bankruptcy Code” has the meaning provided in Section 9.6.

“Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday immediately following the U.S. Thanksgiving holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

“CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.

“CAISO Tariff” means the California Independent System Operator Corporation Tariff, Business Practice Manuals (BPMs), Operating Agreements, and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC, if applicable.

Appendix A – Defined Terms

SCE – Orange County Power Authority

“Calculation Period” means each calendar month during the Delivery Period.

“California RPS-Eligible Electric Energy” means electric energy from an Eligible Renewable Energy Resource, as such term is defined in Public Utilities Code Section 399.12 and 399.16.

“CEC” means the California Energy Commission or its regulatory successor.

“Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

“Claiming Party” has the meaning provided in Section 2.3.

“Contract Price” shall have the meaning provided in Section 1.2.

“Contract Quantity” shall have the meaning provided in Section 1.2.

“Energy Price” shall be Index.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the transactions contemplated under the Agreement; and all reasonable expenses (excluding attorneys’ fees) incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

“CPUC” means the California Public Utilities Commission.

“CPUC Approval” means a decision of the CPUC that (i) is final and no longer subject to appeal, which approves the Agreement in full and in the form presented on terms and conditions acceptable to SCE in its sole discretion, including without limitation terms and conditions related to cost recovery and cost allocation of amounts paid to SCE or to Counterparty under the Agreement; and (ii) does not contain conditions or modifications unacceptable to SCE, in SCE’s sole discretion.

“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.

Appendix A – Defined Terms

SCE – Orange County Power Authority

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Defaulting Party” has the meaning provided in Section 5.1.

“Delivered Energy” means the California RPS-Eligible Electric Energy from a Project that is delivered and scheduled into either the Real Time-Market and/or Day-Ahead Market by SCE on behalf of Counterparty at the Delivery Point.

“Delivery Point” has the meaning provided in Section 1.2.

“Delivery Period” has the meaning provided in Section 1.2.

“Departed Load Customers” has the meaning provided in the Recitals.

“Early Termination Date” has the meaning provided in Section 5.2.

“Effective Date” has the meaning provided in the introductory paragraph of this Agreement.

“Eligible RPS PCIA Portfolio” has the meaning provided in the Recitals.

“End of the Compliance Period” has the meaning provided in Section 1.2.

“Event of Default” has the meaning set forth in Section 5.1.

“Federal Funds Effective Rate” means, 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.

“Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Counterparty’s markets; (ii) Counterparty’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of SCE’s supply; or (iv) SCE’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors

Appendix A – Defined Terms

SCE – Orange County Power Authority

establish that a Force Majeure as defined in the first sentence hereof has occurred. If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

“Forward Price Assessments” means quotations solicited or obtained in good faith from regularly published and widely-distributed forward price assessments from a broker that is not an Affiliate of either Party and who is actively participating in markets for the relevant Products.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner in accordance with Section 5.2.

“Governmental Authority” means any: (a) federal, state, local, municipal or other government; (b) governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (c) court or governmental tribunal.

“Governmental Charges” shall have the meaning provided in Section 8.3(b).

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from a Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (2) Any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

Appendix A – Defined Terms

SCE – Orange County Power Authority

- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

Green Attributes do not include:

- (i) Any energy, capacity, reliability or other power attributes from a Project,
- (ii) Production tax credits associated with the construction or operation of a Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) Fuel-related subsidies or “tipping fees” that may be paid to SCE to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) Emission reduction credits encumbered or used by a Project for compliance with local, state, or federal operating and/or air quality permits.

If a Project is a biomass or biogas facility and SCE receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Counterparty with sufficient Green Attributes to ensure that there are zero (0) net emissions associated with the production of electricity from such Project.

“Index” means, for each Scheduling Period, the applicable CAISO market price for the CAISO Pricing Node for the applicable portion of a Project for each applicable period as published by the CAISO on the CAISO website; or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“IOUs” has the meaning provided in the Recitals.

“JAMS” has the meaning provided in Section 9.2(b)(1).

Appendix A – Defined Terms

SCE – Orange County Power Authority

“Load Share Percentage” means a percentage which reflects a Counterparty’s forecasted annual load share, as has been determined through the annual Meet and Confer Process for each PCIA Vintage Year.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of the Agreement, determined in a commercially reasonable manner in accordance with Section 5.2.

“LSE” has the meaning provided in the Recitals.

“Market Quotation Average Price” means the arithmetic mean of the quotations solicited in good faith from not less than three (3) Reference Market-Makers; provided, however, that the Party obtaining the quotes shall use reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-Makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined by disregarding the highest and lowest quotations and taking the arithmetic mean of the remaining quotations. The quotations shall be based on the offers to sell or bids to buy, as applicable, obtained for transactions substantially similar to those contemplated under this Agreement. The quote must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. Each quotation shall be obtained in good faith by such Party, to the extent reasonably practicable, as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date, such day and time as of which those quotations will be selected shall be specified in accordance with Section 5.2. If fewer than three (3) quotations are obtained, it will be deemed that the Market Quotation Average Price in respect of this terminated Agreement cannot be determined.

“Mediator” has the meaning provided in Section 9.2(b)(1).

“Meet and Confer Process” shall mean the annual meetings between the Counterparty and SCE where the Parties determine the Load Share Percentage for each PCIA Vintage Year among other things.

“Merger Event” means, with respect to a Party, that such Party 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 (ii) the benefits of any credit support provided by such Party pursuant to Article 7, 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 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, as the case may be, immediately prior to the consolidation, merger or transfer.

“Monthly Cash Settlement Amount” has the meaning provided in Section 3.1.

Appendix A – Defined Terms

SCE – Orange County Power Authority

“Moody’s” means Moody’s Investor Services, Inc. or its successor.

“MW” means megawatt (or 1,000 kilowatts) of alternating current electric energy generating capacity.

“New Voluntary Allocation Agreements” has the meaning provided in Section 3.6.

“Non-Defaulting Party” has the meaning provided in Section 5.2.

“PCIA” has the meaning provided in the Recitals.

“PCIA-Eligible LSEs” has the meaning provided in the Recitals.

“PCIA Vintage Year” means the calendar year that the contracts in SCE’s RPS PCIA Portfolio are executed.

“Performance Assurance” means all collateral that is provided by one Party to another Party, whether in the form of cash, letters of credit, or combination thereof.

“Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

“Pricing Node” has the meaning set forth in the CAISO Tariff.

“Product” has the meaning provided in Section 1.2.

“Project” has the meaning provided in Section 1.2.

“Project Contract Quantity” has the meaning provided in Section 1.2.

“Ratings Agency” means any of S&P and Moody’s, and any other ratings agency agreed by the Parties (collectively the “Rating Agencies”).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“REC Price” means the “RPS Adder” for the calendar year in which the RECs are generated, published by the Energy Division of the CPUC as the “Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up”, which may be revised in future publications by the CPUC as the final “RPS Adder.”

“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.

Appendix A – Defined Terms

SCE – Orange County Power Authority

“Regulatory Event” has the meaning provided in Section 9.4.

“Renewable Energy Credit” or “REC” has the meaning set forth in CPUC Decision 08-08-028, as such definition may be modified by the CPUC or applicable law from time to time.

“Responsible Officer” shall mean the Chief Financial Officer, Treasurer or any Assistant Treasurer.

“Revised Load Share Percentages” has the meaning provided in Section 2.6.

“RPS” means the California Renewables Portfolio Standard Program as codified at California Public Utilities Code Section 399.11 *et seq.*, and any decisions by the CPUC related thereto.

“RPS PCIA Portfolio” has the meaning provided in the Recitals.

“S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

“Scheduling Period” means each hour of the Delivery Period for a Project.

“Settlement Amount” means, with respect to this Agreement and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of the Agreement pursuant to Section 5.2.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Governmental Entity’s or Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Governmental Entity’s or Public Power System’s obligations under this Agreement for the entire Delivery Period.

“Specified Energy Transaction” means any transaction (including an agreement with respect to any such transaction) or agreement now existing or hereafter entered into between SCE and Counterparty, which is a transaction under the Edison Electric Institute Master Power Purchase and Sale Agreement, 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.

“Term” has the meaning specified in Section 1.1.

Appendix A – Defined Terms

SCE – Orange County Power Authority

“Termination Payment” has the meaning provided in Section 5.3.

“Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of SCE to the Delivery Point under this Agreement.

“Vintage Year” means the calendar year the WREGIS Certificate is associated with through the generation of electric energy.

“WREGIS” means the Western Renewable Energy Generation Information System or other process recognized under applicable laws for the registration, transfer or ownership of Green Attributes.

“WREGIS Account Holder” means “Account Holder” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS, as amended, supplemented or replaced from time to time.

**APPENDIX B
PROJECTS**

[Attached.]

[illegible]

APPENDIX C
NOTICES

Orange County Power Authority	Southern California Edison Company
All Notices: P.O. Box 54283 Irvine, California 92619	All Notices: 2244 Walnut Grove Ave., G.O.1, Quad 1C Rosemead, CA 91770
Attn: Brian Probolsky, Chief Executive Officer Phone: (949) 767-8700 Email: brian@ocpower.org Duns: 117918392 Federal Tax ID Number: 86-1191848	Attn: Director, Energy Contracts Management Phone: (707) 595-0451 Electronic Facsimile: (732) 289-9854 Email: Energycontracts@sce.com Duns: 006908818 Federal Tax ID Number: 95-1240335
Invoices: Attn: Tiffany law Phone: (949) 767-8708 Email: tlaw@ocpower.org	Invoices Attn: EPM & Contract Settlements Phone: (626) 302-8908 Email: PPFDPowerSettle@sce.com
Trading: N/A	Trading: Attn: Manager of Trading Operations Phone: (626) 307-4487 (Day Ahead) or (626) 307-4453 (Real Time) E-mail: ps-tradinggroup@sce.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	Scheduling: Attn: Manager or Day Ahead Operations Phone: (626) 307-4425 (Day Ahead) or (626) 307-4453 (Real Time) Facsimile: (626) 307-4413 E-mail: presched@sce.com
Payments: Attn: Tiffany law Phone: (949) 767-8708 Email: tlaw@ocpower.org	Payments: Attn: EPM & Contract Settlements Phone: 626-302-8908 E-mail: PPFDPowerSettle@sce.com
Credit and Collections: Attn: Tiffany law Phone: (949) 767-8708 Email: tlaw@ocpower.org	Credit: Attn: Manager of Credit Risk Phone: (626) 302-3672

SCE – Orange County Power Authority

	Collateral: Southern California Edison Company Attn: Manager of Risk Operations & Collateral Management 2244 Walnut Grove Avenue, GO1 Quad 2B Rosemead, CA 91770 Phone: (626) 302-0023 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: Attn: Director and Managing Attorney Power Procurement Section E-mail: PPLegalNotice@sce.com

**EEI AGREEMENT
LONG-FORM CONFIRMATION FOR THE SHORT-TERM
ALLOCATION OF RENEWABLE ENERGY CREDITS
BETWEEN
SAN DIEGO GAS & ELECTRIC COMPANY
AND
ORANGE COUNTY POWER AUTHORITY**

This confirmation letter ("Confirmation") confirms the allocation of Renewable Portfolio Standard ("RPS") Energy as mandated pursuant to Decision (D.)21-05-030 ("Transaction") between **SAN DIEGO GAS & ELECTRIC COMPANY** ("Party B") and **ORANGE COUNTY POWER AUTHORITY** ("Party A"), each individually a "Party" and together the "Parties", effective as of July [], 2022 (the "Confirmation Effective Date"). This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement"), along with any amendments and annexes executed between the Parties thereto (the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement." Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement, Tariff or RPS (as defined below). If any term in this Confirmation conflicts with the Master Agreement, the definitions set forth in this Confirmation shall supersede.

[For Long-form Confirmations only: CONTACT INFORMATION]

Contact Information:	Name: ORANGE COUNTY POWER AUTHORITY ("Party A")	Name: San Diego Gas & Electric Company ("Party B")
	All Notices: Attn: Brian Probolsky Phone: 949-767-8700 Facsimile: n/a Duns: 117918392 Federal Tax ID Number: 86-1191848	All Notices: San Diego Gas & Electric Company 8315 Century Park Court, CP21D San Diego, CA 92123 Attn: Electric & Fuel Procurement Contract Administration Phone: (858) 650-5536 Facsimile: (858) 650-6190 Duns: 006911457 Federal Tax ID Number: 95-1184800
	Invoices: Orange County Power Authority P.O. Box 54283 Irvine, CA 92619 Attn: Accounts Payable (949) 767-8700	Invoices: San Diego Gas & Electric Company 8315 Century Park Court, CP 21D San Diego, California 92123-1593 Attn: Energy Accounting Manager Phone: (858) 650-6177 Facsimile: (858) 650-6190
	Wire Transfer:	Wire Transfer: BNK: Union Bank of California for: San Diego Gas & Electric Company ABA: Routing # [REDACTED] ACCT: # [REDACTED] Confirmation: SDG&E, Major Markets FAX: (858) 650-6190 Email: SDGE_MMCCredit@sdge.com

ARTICLE 1. COMMERCIAL TERMS

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:

Product:	The “Product” is Green Attributes generated from the Project. During the Delivery Period, Party B shall allocate and deliver, and Party A shall pay for and receive, the Allocation Quantity of this Product, subject to the terms and conditions of this Confirmation. Party B shall not substitute or purchase any Green Attributes from any generating resource other than the Project for delivery hereunder.
Project:	All Product allocated from Party B to Party A hereunder shall be from one or more of the facilities listed in <u>Exhibit A</u>, each meeting the requirement of 6.1(a) (the “Project”). Party B may add a facility to, or remove a facility from, the list of facilities in <u>Exhibit A</u> from time to time by giving Party A fifteen (15) Business Days prior written notice of any change. Party B may remove a facility from Exhibit A for the following reasons: (i) if Party B’s power purchase agreement corresponding to the facility has been modified, terminated, or assigned to a third party, (ii) if the facility is no longer in Party B’s PCIA-eligible portfolio due to an order or direction from a Governmental Authority, or (iii) if the facility is owned by Party B but ceases operation for Party B. Party B shall retain the sole and absolute discretion to modify, enforce, or terminate its power purchase agreements with the facilities listed in <u>Exhibit A</u> during the Delivery Period. Party A shall not have any right to or discretion to request changes to the list of facilities in <u>Exhibit A</u> during the Delivery Period.
Contract Capacity	In any hour throughout the Delivery Term, the “Contract Capacity” shall be, in MW, as determined by Seller in accordance with the Contract Quantity section of this Confirmation.
Allocation Quantity:	Commencing on the Allocation Start Date and continuing through the remainder of the Delivery Period, the quantity to be delivered in any calendar year, or pro rata portion of a calendar year, shall be the Allocation Quantity, as defined below unless excused pursuant to the Delivery Obligation section below. Party B in its sole discretion shall determine the hourly Contract Quantity during the Delivery Period. “Allocation Quantity” means the quantity of Product to be delivered from the Project during the applicable calendar year in an amount equal to the product of: [REDACTED] which is Party A’s short term Voluntary Allocation election of Party B’s PCIA-eligible RPS Energy Portfolio; times (ii) the proportion of Party A’s vintaged, forecasted annual load to the forecasted annual load in Party B’s service territory, as both amounts are determined in Party B’s annual RPS Plan and approved by the CPUC; times (iii) the quantity of generation from the Project within Party B’s PCIA-eligible RPS Energy Portfolio.
Green Attributes Price:	The Green Attributes Price applicable to the Product delivered to Party A in each calendar year during the Delivery Term shall be the then-applicable Forecast Adder for RPS (in \$/MWh) for deliveries for the applicable calendar year, subject to the true-up set forth in Section 5.4 of this Confirmation.

Term:	The “Term” of this Transaction shall commence upon the Confirmation Effective Date and shall continue until delivery by Party B to Party A of the Allocation Quantity of the Product has been completed and all other obligations of the Parties under this Agreement have been satisfied, unless terminated earlier due to failure to satisfy the Condition Precedent or as otherwise provided for in the Agreement.
Delivery Period:	The “Delivery Period” of this Transaction shall commence on the later of January 1, 2023, and the first day of the month following the month in which the Condition Precedent Satisfaction Date occurs (the “Start Date”), and shall continue until midnight on December 31, 2024. For purposes of this Confirmation, the “Delivery Period” shall be the duration upon which the Product is delivered.
Delivery Point:	Party A’s WREGIS Account
Delivery Obligation:	The obligation to provide the Allocation Quantity is a firm obligation in that Party B shall deliver the quantity of the Product from the Project, instantaneously with its receipt of such Product, consistent with the terms of this Confirmation without excuse other than Force Majeure. If a failure by Party B to deliver the quantity from the Project is not excused by Force Majeure, Party B shall make up such failure in accordance with the “Allocation Quantity” Section.
WREGIS Delivery	Party A hereby authorizes Party B, or its third-party designee, to deliver the Product, or cause the Product to be delivered, into Party A’s WREGIS account in the quantity(ies) and timeline(s) set forth in the “Allocation Quantity” Section.
Condition Precedent:	The commencement of the Delivery Period in accordance with Section 3 below shall be contingent upon Party B satisfying or waiving CPUC approval as described in Section 4.2 of this Confirmation. Either Party has the right to terminate this Confirmation upon notice in accordance with Section 10.7 of the Master Agreement, which will be effective five (5) Business Days after such notice is given, if: (i) the CPUC does not issue a final and non-appealable order approving this Agreement or the requested relief contained in the related advice letter filing, both in their entirety, (ii) the CPUC issues a final and non-appealable order which contains conditions or modifications unacceptable to either Party, or (iii) the final and non-appealable CPUC approval has not been obtained by Party B, on or before December 31, 2022. Any termination made by a Party under this section shall be without liability or obligation to the other Party. The date on which CPUC approval of this Confirmation has been satisfied or waived, by Party B, in its sole discretion, shall hereinafter be the “Condition Precedent Satisfaction Date.” Notwithstanding any other provision in this Confirmation, Party B will have no obligation to transfer Green Attributes to Party A unless the Condition Precedent Satisfaction Date has occurred.

ARTICLE 2. DEFINITIONS

“Allocation Quantity” has the meaning set forth above in the Allocation Quantity section of this Confirmation.

“Alternate Monthly REC Market Price” shall be the Platts California Bundled REC (Bucket 1) Midpoint Price (in \$/MWh) published in the last week of the month prior to the applicable month that the Product is delivered.

“Annual True-Up” has the meaning set forth in Section 5.4(a), below.

“Party A” means “Purchaser”.

“Party B” means “Seller”.

“CAISO” means the California Independent System Operator.

“CAISO Energy” means “Energy” as defined in the Tariff.

“Calculation Period” has the meaning set forth in Section 5.1, below.

“California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1078, X1 - 2 and 350, codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Contract Capacity” means the amount determined by Seller in accordance with the Scheduling Obligations section of this Confirmation.

“CEC” means the California Energy Commission, or its regulatory successor.

“CPUC” means the California Public Utilities Commission or its regulatory successor.

“Delivery Period” means “Delivery Term”.

“Final Adder for RPS” means the PCIA Market Price Benchmark Final Adder, established by the CPUC, as published in the *Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up*, and originally implemented by D.19-10-001.

“Forecast Adder for RPS” means the PCIA Market Price Benchmark Forecast Adder for RPS, established by the CPUC, as published in the *Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up*, and originally implemented by D.19-10-001.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (i) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹
- (iii) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy.

Green Attributes do not include;

- (i) any energy, capacity, reliability or other power attributes from the Project,
- (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project. **[STC 2 – GREEN ATTRIBUTES, NON-MODIFIABLE]**

"Market Disruption Event" has the meaning set forth in Section 5.5(c).

"Monthly Cash Settlement Amount" has the meaning set forth in Section 5.2, below.

"Monthly REC Market Price" has the meaning set forth above in the in the Green Attributes Price.

"PCIA" means the Power Charge Indifference Adjustment in D.18-10-019 and subsequent decisions.

"PCIA-eligible RPS Energy Portfolio" means the portion of Party B's energy supply portfolio determined to be eligible for allocation pursuant to the final and non-appealable CPUC D.21-05-030 or other Governmental Authority action.

"Tariff" means the tariff and protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," as amended or supplemented from time to time, of the CAISO.

"True-Up Payment" has the meaning set forth in Section 5.4(a), below.

"Vintage" means the calendar year and month during the Delivery Period in which the WREGIS Certificate is created through the generation of the Product.

"WREGIS" means the Western Renewable Energy Generation Information System or other process recognized under applicable laws for the registration, transfer or ownership of Green Attributes.

"WREGIS Certificate" means "Certificate" as defined by WREGIS in the WREGIS Operating Rules.

"WREGIS Operating Rules" means the operating rules and requirements adopted by WREGIS.

ARTICLE 3. CONVEYANCE OF RENEWABLE ENERGY

3.1. Conveyance of Green Attributes

Except as stated in this Section 3.1, Party B shall deliver and sell, and Party A shall purchase and receive, the Product, subject to the terms and conditions of this Confirmation. Party B will not be obligated to sell or replace any Product that is not or cannot be delivered as a result of Force Majeure.

Should any Green Attributes provided by Party B under this Confirmation be determined to have originated from a resource other than the Project, Party B shall remedy such failure in a manner reasonably acceptable to Party A within a reasonable period of time after written notice of such failure is given to the Party B by the Party A.

3.2. WREGIS Transfers

The Green Attributes are delivered and conveyed upon completion of all actions described in Section 3.2(b) below.

(a) During the Delivery Period, Party B, at its own cost and expense, shall maintain its registration with WREGIS. All Green Attributes transferred by Party B hereunder shall be designated California RPS-compliant with WREGIS. Party B shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of Green Attributes to Party A in accordance with WREGIS reporting protocols and WREGIS Operating Rules.

(b) For each applicable month of the Delivery Period, Party B shall deliver and convey the Allocation Quantity of Green Attributes, rounded down to the nearest whole number, within five (5) Business Days after the later of (i) the end of the month in which the WREGIS Certificates for the Green Attributes are created and (ii) the date in which Party B receives payment pursuant to Section 5.3 below for the invoice for the applicable Calculation Period to which the Monthly Cash Settlement Amount pertains, by properly transferring such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, equivalent to the quantity of Green Attributes to Party A into Party A's WREGIS account such that all right, title and interest in and to the WREGIS Certificates shall transfer from Party B to Party A.

(c) In addition to its other obligations under this Section 3.2, Party B shall convey to Buyer WREGIS Certificates from the Project that are of the same Vintage as the Product that was provided under Section 3.1 of this Confirmation.

ARTICLE 4. PERFORMANCE ASSURANCE; CPUC FILING AND APPROVAL

4.1. Performance Assurance

Notwithstanding anything in the Master Agreement to the contrary, neither Party shall be required to post Performance Assurance, collateral or other security for this Transaction.

4.2. CPUC Filing and Approval

Within sixty (60) days after the Confirmation Effective Date, Party B shall file with the CPUC the appropriate request for CPUC approval of this Agreement and possibly other RPS sales agreements. Party B shall seek CPUC approval of the filing, including promptly responding to any requests for information related to the request for CPUC approval. Party A shall use commercially reasonable efforts to support Party B in obtaining CPUC approval. Party B and Party A have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement, or which fails to meet the requirements contained in the Condition Precedent section. Notwithstanding anything to the contrary in the Confirmation, Party B shall not have any obligation or liability to Party A or any third party for any action or inaction of the CPUC or other Governmental Authority affecting the approval or

status of this Confirmation as a transaction eligible for portfolio content category, as defined in California Public Utilities Code Section 399.16(b)(1).

ARTICLE 5. COMPENSATION

5.1. Calculation Period

The "Calculation Period" shall be each calendar month, or portion thereof, during the Delivery Period.

5.2. Monthly Cash Settlement Amount

Party A shall pay Party B the "Monthly Cash Settlement Amount," in arrears, for each Calculation Period in the amount equal to the Green Attributes Price multiplied by the Allocation Quantity (in MWhs) to be delivered or credited to Party A's WREGIS account pursuant to Section 3.2 for the applicable Calculation Period.

5.3. Payment Date

Notwithstanding any provision to the contrary in Article 6 of the Master Agreement, payments of each Monthly Cash Settlement Amount by Party A to Party B under this Confirmation shall be made in arrears and due and payable on or before the later of (i) the twentieth (20th) day of the month in which Party A receives from Party B an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, and (ii) ten (10) Business Days following Party A's receipt of an invoice issued by Party B for the applicable Calculation Period, provided that, if such day is not a Business Day, then on the next Business Day. The invoice shall include a statement detailing the quantity of Product to be delivered to Party A for the applicable Calculation Period from each generating facility in the Project. Parties acknowledge that, due to the timing of their creation in WREGIS, Green Attributes may not have been delivered to Party A at the time of invoice or payment for the Calculation Period with which they are associated.

Invoices to Party A will be sent by Excel/PDF format via email to Party A's Invoice Contact set forth above in Contact Information, and for purposes of this Confirmation, Party A shall be deemed to have received an invoice upon the receipt of the Excel/PDF format of the invoice. Payment to Party B shall be made by electronic funds transfer pursuant to the Wire Transfer instructions set forth above in Contract Information.

5.4. Annual True-Up

(a) Monthly Cash Settlement Amount Annual True-Up. Party B shall calculate a true-up ("Annual True-Up") for each Calculation Period in which the Forecast Adder for RPS was used to calculate the Monthly Cash Settlement Amount as an amount equal to (i) the Forecast Adder for RPS less the Final Adder for RPS, multiplied by (ii) the quantity of Product (in MWhs) that Party B delivered to Party A and for which Party B has already issued an invoice to Party A (the "True-Up Payment"). If the True-Up Payment is a positive amount, such amount is owed by Party B to Party A, and if the True-Up Payment is a negative amount, such amount is owed by Party A to Party B.

(b) True-up Invoices and Payments. Within thirty (30) Business Days after the Final Adder for RPS is issued in each calendar year, Party B shall issue an invoice to Party A for amounts owed by, or due to, Party B, as applicable, resulting from the Annual True-Up. Payment for the Annual true-up shall be due and payable by the owing party on or before the later of (i) the twentieth (20th) day of the month in which Party B issues a True-Up Payment invoice and (ii) ten (10) Business Days following Party A's receipt of the invoice issued by Party B for the True-Up Payment, provided that, if such day is not a Business Day, then on the next Business Day.

5.5. Market Disruption

(a) Market Disruption Event. If a Market Disruption Event occurs and is continuing during a Calculation Period, the applicable Floating Price for the affected hours shall be determined by reference to the applicable Floating Price for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the applicable Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties agree that the applicable Floating Price for the duration of the Market Disruption Event shall be, with respect to a Market Disruption Event to the Green Attributes Price, the Alternate Monthly REC Market Price. Notwithstanding the foregoing and subject to time limitations set forth in Section 5.5(b) below, if the Parties have determined the applicable Floating Price pursuant to this Section 5.5(a) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Section 5.5(b) below.

(b) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(c) For purposes of this Transaction:

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

"Floating Price" means the Price Source upon which the Green Attributes Price is based.

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

ARTICLE 6. PARTY B'S REPRESENTATIONS, WARRANTIES AND COVENANTS

(a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that:

- (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12

or Section 399.16; and

- (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC 6, NON-MODIFIABLE]**

(b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC REC-1, NON-MODIFIABLE]**

(c) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. **[STC REC-2, NON-MODIFIABLE]**

(d) For the avoidance of doubt, the term "contract" as used in the immediately preceding paragraph means this Confirmation.

(e) The term "commercially reasonable efforts" as set forth in this Article 6 shall not require Party B to incur out-of-pocket expenses in excess of twenty-five thousand dollars (\$25,000) in the aggregate in any one calendar year between the Confirmation Effective Date and the last day of the Delivery Period.

(f) In addition to the foregoing, Party B warrants, represents and covenants, as of the Confirmation Effective Date and throughout the Delivery Period, that:

- (i) Party B has the contractual rights to sell all right, title, and interest in the Product agreed to be delivered hereunder;
- (ii) Party B has not sold the Product to be delivered under this Confirmation to any other person or entity; and
- (iii) At the time of delivery, all rights, title, and interest in the Product to be delivered under this Confirmation are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever.

ARTICLE 7. GENERAL PROVISIONS

7.1. Facility Identification

Upon Party A's reasonable request, within ten (10) Business Days after the end of each month during the Delivery Period, Party B shall provide indicative identification, based on preliminary meter data, of the facility(ies) that the Product was delivered from for that month.

7.2. Audit

Party A may, at its sole expense and during normal working hours, examine the records of Party B to the extent reasonably necessary to verify the accuracy of any statement or charge, including aggregated amounts of Delivered Energy or Scheduled Energy; however such audit rights will not apply to the output or other confidential or proprietary information of individual generation facilities.

7.3. Governing Law

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 LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

7.4. Dispute Resolution

(a) Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Section 10.17. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of the dispute resolution procedure set forth in this Section 10.17.

(b) Management Negotiations.

- (i) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "Manager"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (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 that 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 Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.
- (ii) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) 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 relevant information and to attempt to resolve the dispute.
- (iii) 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.
- (iv) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 10.17(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 10.17(a) above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

(b) Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 10.17(b) above shall be resolved through binding arbitration by a retired judge or justice from the AAA panel conducted in San Diego, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration").

- (i) Any arbitrator 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. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for 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 AAA's Commercial Arbitration Rules.

- (ii) 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.
- (iii) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.
- (iv) The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.
- (v) The arbitrator's award shall be made within nine (9) months of the filing of the Notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.
- (vi) Judgment on the award may be entered in any court having jurisdiction.
- (vii) The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.
- (viii) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before the arbitrator.
- (ix) The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.
- (x) The existence, content, and results of any Arbitration hereunder is Confidential Information that is subject to the provisions of Section 10.11.

(d) WAIVER OF JURY TRIAL. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING UNDER THIS AGREEMENT TO THE EXTENT SUCH WAIVER IS CONSISTENT WITH APPLICABLE LAW.

7.5. SOVEREIGN IMMUNITY

Party A warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue permitted under the Agreement), or (c) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.)

7.6. Confidentiality Amendment to Master Agreement.

Changes to the Master Agreement shall apply to this Confirmation only. For purposes of this Confirmation, Section 10.11 is deleted in its entirety and replaced with the following:

“10.11 Confidentiality.

(a) 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 this Master Agreement to a third party other than (i) the Party's Affiliates and its and their officers, directors, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Party B's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) at any time on or after the date on which Party A makes its filing seeking CPUC approval of a Transaction, as necessary, either Party shall be permitted to disclose: Party names, resource type, Delivery Term, project location, Contract Capacity, Allocation Quantity, and Delivery Point; (v) in order to comply with any applicable law, regulation, including, but not limited to, the California Public Records Act and/or the California Ralph M Brown Act, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 10.11(a) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts within its sole and absolute discretion to pursue rights under such applicable laws, regulations, rules or orders which allow for the prevention or limitation of such disclosure. The Disclosing Party's determination of what efforts might be reasonable shall not be subject to challenge by the other Party. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, 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.

(b) Party A and Party B acknowledge and agree that this Agreement is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). 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 hereto to Party B pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("Requested Confidential Information"), Party B will as soon as practical notify Party A in writing via email that such request has been made. Party A will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Party B. If Party A takes no such action after receiving the foregoing notice from Party B, Party B shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Party A does take or attempt to take such action, Party B shall provide timely and reasonable cooperation to Party A."

7.7. Terminated Transaction

(a) For purposes of this Transaction, the definition of "Losses" in Section 1.28 of the Master Agreement is modified by adding to the end thereof:

"Notwithstanding the foregoing, each Party's economic loss shall be determined using the then current Index Price plus the then current Green Attributes Price, so the Non-Defaulting Party's Losses shall be deemed to be zero (0); provided, however, that if Party B is the Defaulting Party, Party B shall be obligated to disgorge to Party A any profits obtained from the resale of the Allocation Quantity, unless resale is required under applicable law."

(b) For purposes of this Transaction, Section 5.2 of the Master Agreement shall be modified to delete the following sentence: "The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction."

7.8. Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

7.9. Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

SAN DIEGO GAS & ELECTRIC COMPANY

ORANGE COUNTY POWER AUTHORITY

BY: _____

BY: _____

NAME:

NAME:

TITLE:

TITLE:

_____ APPROVED AS TO LEGAL FORM

EXHIBIT A

**TO THE CONFIRMATION BETWEEN ORANGE COUNTY POWER AUTHORITY
AND SAN DIEGO GAS & ELECTRIC COMPANY**

DATED: JULY [], 2022

PROJECT FACILITIES – SHORT TERM UNBUNDLED

PROJECT NAME	TECH- NOLOGY	DATE SIGNED	START DATE	TERM (YRS)	CAPACITY (MW)	RESOURCE ID	CEC RPS ID	WREGIS GU ID	EIA ID	LOCATION
██████████	WIND	05/16/08	12/29/08	15	██████	N/A	██████			MT
██████████	WIND	05/23/08	10/16/09	15	██████	N/A	██████			MT

**EEI AGREEMENT
LONG-FORM CONFIRMATION FOR THE LONG-TERM
ALLOCATION OF RENEWABLE ENERGY CREDITS
BETWEEN
SAN DIEGO GAS & ELECTRIC COMPANY
AND
ORANGE COUNTY POWER AUTHORITY**

This confirmation letter ("Confirmation") confirms the allocation of Renewable Portfolio Standard ("RPS") Energy as mandated pursuant to Decision (D.)21-05-030 ("Transaction") between **SAN DIEGO GAS & ELECTRIC COMPANY** ("Party B") and **ORANGE COUNTY POWER AUTHORITY** ("Party A"), each individually a "Party" and together the "Parties", effective as of July [], 2022 (the "Confirmation Effective Date"). This Transaction shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement"), along with any amendments and annexes executed between the Parties thereto (the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement." Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement, Tariff or RPS (as defined below). If any term in this Confirmation conflicts with the Master Agreement, the definitions set forth in this Confirmation shall supersede.

[For Long-form Confirmations only: CONTACT INFORMATION]

Contact Information:	Name: ORANGE COUNTY POWER AUTHORITY ("Party A")	Name: San Diego Gas & Electric Company ("Party B")
	All Notices: Attn: Brian Probolsky Phone: 949-767-8700 Facsimile: n/a Duns: 117918392 Federal Tax ID Number: 86-1191848	All Notices: San Diego Gas & Electric Company 8315 Century Park Court, CP21D San Diego, CA 92123 Attn: Electric & Fuel Procurement Contract Administration Phone: (858) 650-5536 Facsimile: (858) 650-6190 Duns: 006911457 Federal Tax ID Number: 95-1184800
	Invoices: Orange County Power Authority P.O. Box 54283 Irvine, CA 92619 Attn: Accounts Payable (949) 767-8700	Invoices: San Diego Gas & Electric Company 8315 Century Park Court, CP 21D San Diego, California 92123-1593 Attn: Energy Accounting Manager Phone: (858) 650-6177 Facsimile: (858) 650-6190
	Wire Transfer:	Wire Transfer: BNK: Union Bank of California for: San Diego Gas & Electric Company ABA: Routing # [REDACTED] ACCT: # [REDACTED] Confirmation: SDG&E, Major Markets FAX: (858) 650-6190 Email: SDGE_MMCCredit@sdge.com

	Credit and Collections:	Credit and Collections: San Diego Gas & Electric Company, Major Markets 8315 Century Park Court, CP21C San Diego, CA 92123-1593 Attn: Energy Risk Manager Telephone: (858) 654-6484 Facsimile: (858) 650-6190
	Defaults: With additional Notices of an Event of Default or Potential Event of Default to:	Defaults: With additional Notices of an Event of Default or Potential Event of Default to: San Diego Gas & Electric Company 8330 Century Park Court San Diego, California 92123 Attn: General Counsel Phone: (858) 650-6141 Facsimile: (858) 650-6106

ARTICLE 1. COMMERCIAL TERMS

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:

Product:	The “Product” is Green Attributes generated from the Project. During the Delivery Period, Party B shall allocate and deliver, and Party A shall pay for and receive, the Allocation Quantity of this Product, subject to the terms and conditions of this Confirmation. Party B shall not substitute or purchase any Green Attributes from any generating resource other than the Project for delivery hereunder.
Project:	All Product allocated from Party B to Party A hereunder shall be from one or more of the facilities listed in <u>Exhibit A</u>, each meeting the requirement of 6.1(a) and with Long-Term Contracts (the “Project”). Party B may add a facility to, or remove a facility from, the list of facilities in <u>Exhibit A</u> from time to time by giving Party A fifteen (15) Business Days prior written notice of any change. Party B may remove a facility from Exhibit A for the following reasons: (i) if Party B’s power purchase agreement corresponding to the facility has been modified, terminated, or assigned to a third party, (ii) if the facility is no longer in Party B’s PCIA-eligible portfolio due to an order or direction from a Governmental Authority, or (iii) if the facility is owned by Party B but ceases operation for Party B. Party B shall retain the sole and absolute discretion to modify, enforce, or terminate its power purchase agreements with the facilities listed in <u>Exhibit A</u> during the Delivery Period. Party A shall not have any right to or discretion to request changes to the list of facilities in <u>Exhibit A</u> during the Delivery Period.
Contract Capacity	In any hour throughout the Delivery Term, the “Contract Capacity” shall be, in MW, as determined by Seller in accordance with the Contract Quantity section of this Confirmation.
Allocation Quantity:	Commencing on the Allocation Start Date and continuing through the remainder of the Delivery Period, the quantity to be delivered in any calendar year, or pro rata portion of a calendar year, shall be the Allocation Quantity, as defined below unless excused pursuant to the Delivery Obligation section below. Party B in its sole discretion shall determine the hourly Contract Quantity during the Delivery Period. “Allocation Quantity” means the quantity of Product to be delivered from the Project during the applicable calendar year in an amount equal to the product of: [REDACTED], which is Party A’s long-term Voluntary Allocation election of Party B’s PCIA-eligible RPS Energy Portfolio; times (ii) the proportion of Party A’s vintaged, forecasted annual load to the forecasted annual load in Party B’s service territory, as both amounts are determined in Party B’s annual RPS Plan and approved by the CPUC; times (iii) the quantity of generation from the Project within Party B’s PCIA-eligible RPS Energy Portfolio.
Green Attributes Price:	The Green Attributes Price applicable to the Product delivered to Party A in each calendar year during the Delivery Term shall be the then-applicable Forecast Adder for RPS (in \$/MWh) for deliveries for the applicable calendar year, subject to the true-up set forth in Section 5.4 of this Confirmation.

Term:	The “Term” of this Transaction shall commence upon the Confirmation Effective Date and shall continue until delivery by Party B to Party A of the Allocation Quantity of the Product has been completed and all other obligations of the Parties under this Agreement have been satisfied, unless terminated earlier due to failure to satisfy the Condition Precedent or as otherwise provided for in the Agreement.
Delivery Period:	The “Delivery Period” of this Transaction shall commence on the later of January 1, 2023, and the first day of the month following the month in which the Condition Precedent Satisfaction Date occurs (the “Start Date”), and shall continue until the date Party B no longer receives Product from any of the contracts in the Project, as such contracts are listed in Appendix A, unless this Agreement is terminated earlier in accordance with the terms of this Agreement.
Delivery Point:	Party A’s WREGIS Account
Delivery Obligation:	The obligation to provide the Allocation Quantity is a firm obligation in that Party B shall deliver the quantity of the Product from the Project, instantaneously with its receipt of such Product, consistent with the terms of this Confirmation without excuse other than Force Majeure. If a failure by Party B to deliver the quantity from the Project is not excused by Force Majeure, Party B shall make up such failure in accordance with the “Allocation Quantity” Section.
WREGIS Delivery	Party A hereby authorizes Party B, or its third-party designee, to deliver the Product, or cause the Product to be delivered, into Party A’s WREGIS account in the quantity(ies) and timeline(s) set forth in the “Allocation Quantity” Section.
Condition Precedent:	The commencement of the Delivery Period in accordance with Section 3 below shall be contingent upon Party B satisfying or waiving CPUC approval as described in Section 4.2 of this Confirmation. Either Party has the right to terminate this Confirmation upon notice in accordance with Section 10.7 of the Master Agreement, which will be effective five (5) Business Days after such notice is given, if: (i) the CPUC does not issue a final and non-appealable order approving this Agreement or the requested relief contained in the related advice letter filing, both in their entirety, (ii) the CPUC issues a final and non-appealable order which contains conditions or modifications unacceptable to either Party, or (iii) the final and non-appealable CPUC approval has not been obtained by Party B, on or before December 31, 2022. Any termination made by a Party under this section shall be without liability or obligation to the other Party. The date on which CPUC approval of this Confirmation has been satisfied or waived, by Party B, in its sole discretion, shall hereinafter be the “Condition Precedent Satisfaction Date.” Notwithstanding any other provision in this Confirmation, Party B will have no obligation to transfer Green Attributes to Party A unless the Condition Precedent Satisfaction Date has occurred.

ARTICLE 2. DEFINITIONS

“Allocation Quantity” has the meaning set forth above in the Allocation Quantity section of this Confirmation.

“Alternate Monthly REC Market Price” shall be the Platts California Bundled REC (Bucket 1) Midpoint Price (in \$/MWh) published in the last week of the month prior to the applicable month that the Product is delivered.

“Annual True-Up” has the meaning set forth in Section 5.4(a), below.

“Party A” means “Purchaser”.

“Party B” means “Seller”.

“CAISO” means the California Independent System Operator.

“CAISO Energy” means “Energy” as defined in the Tariff.

“Calculation Period” has the meaning set forth in Section 5.1, below.

“California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1078, X1 - 2 and 350, codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Condition Precedent Satisfaction Date” means the date on which CPUC approval, as fully described in the “Condition Precedent” provision, has been satisfied or waived, by Party B, in its sole discretion.

“Contract Capacity” means the amount determined by Seller in accordance with the Scheduling Obligations section of this Confirmation.

“CEC” means the California Energy Commission, or its regulatory successor.

“CPUC” means the California Public Utilities Commission or its regulatory successor.

“Delivery Period” means “Delivery Term”.

“Final Adder for RPS” means the PCIA Market Price Benchmark Final Adder, established by the CPUC, as published in the *Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up*, and originally implemented by D.19-10-001.

“Forecast Adder for RPS” means the PCIA Market Price Benchmark Forecast Adder for RPS, established by the CPUC, as published in the *Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up*, and originally implemented by D.19-10-001.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (i) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are

- (iii) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy.

Green Attributes do not include;

- (i) any energy, capacity, reliability or other power attributes from the Project,
- (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project. **[STC 2 – GREEN ATTRIBUTES, NON-MODIFIABLE]**

"Long-Term Contract" means any RPS power purchase and sale agreement (i) pursuant to which Party B purchases renewable energy from a third party generator, (ii) which has at least ten (10) years remaining in its original delivery term as of the Start Date or, for facilities added to Exhibit A after the Start Date, as of the date when its generation facilities are added to Exhibit A from which Party B shall allocate Product to Party A under this Agreement, and (iii) which otherwise meets Party B's representations and warranties set forth in Article 6 of this Agreement.

"Market Disruption Event" has the meaning set forth in Section 5.5(c).

"Monthly Cash Settlement Amount" has the meaning set forth in Section 5.2, below.

"Monthly REC Market Price" has the meaning set forth above in the in the Green Attributes Price.

"PCIA" means the Power Charge Indifference Adjustment in D.18-10-019 and subsequent decisions.

"PCIA-eligible RPS Energy Portfolio" means the portion of Party B's energy supply portfolio determined to be eligible for allocation pursuant to the final and non-appealable CPUC D.21-05-030 or other Governmental Authority action.

"Tariff" means the tariff and protocol provisions, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," as amended or supplemented from time to time, of the CAISO.

"True-Up Payment" has the meaning set forth in Section 5.4(a), below.

"Vintage" means the calendar year and month during the Delivery Period in which the WREGIS Certificate is created through the generation of the Product.

"WREGIS" means the Western Renewable Energy Generation Information System or other process recognized under applicable laws for the registration, transfer or ownership of Green Attributes.

included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

ARTICLE 3. CONVEYANCE OF RENEWABLE ENERGY

3.1. Conveyance of Green Attributes

Except as stated in this Section 3.1, Party B shall deliver and sell, and Party A shall purchase and receive, the Product, subject to the terms and conditions of this Confirmation. Party B will not be obligated to sell or replace any Product that is not or cannot be delivered as a result of Force Majeure.

Should any Green Attributes provided by Party B under this Confirmation be determined to have originated from a resource other than the Project, Party B shall remedy such failure in a manner reasonably acceptable to Party A within a reasonable period of time after written notice of such failure is given to the Party B by the Party A.

3.2. WREGIS Transfers

The Green Attributes are delivered and conveyed upon completion of all actions described in Section 3.2(b) below.

(a) During the Delivery Period, Party B, at its own cost and expense, shall maintain its registration with WREGIS. All Green Attributes transferred by Party B hereunder shall be designated California RPS-compliant with WREGIS. Party B shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of Green Attributes to Party A in accordance with WREGIS reporting protocols and WREGIS Operating Rules.

(b) For each applicable month of the Delivery Period, Party B shall deliver and convey the Allocation Quantity of Green Attributes, rounded down to the nearest whole number, within five (5) Business Days after the later of (i) the end of the month in which the WREGIS Certificates for the Green Attributes are created and (ii) the date in which Party B receives payment pursuant to Section 5.3 below for the invoice for the applicable Calculation Period to which the Monthly Cash Settlement Amount pertains, by properly transferring such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, equivalent to the quantity of Green Attributes to Party A into Party A's WREGIS account such that all right, title and interest in and to the WREGIS Certificates shall transfer from Party B to Party A.

(c) In addition to its other obligations under this Section 3.2, Party B shall convey to Buyer WREGIS Certificates from the Project that are of the same Vintage as the Product that was provided under Section 3.1 of this Confirmation.

ARTICLE 4. PERFORMANCE ASSURANCE; CPUC FILING AND APPROVAL

4.1. Performance Assurance

Notwithstanding anything in the Master Agreement to the contrary, neither Party shall be required to post Performance Assurance, collateral or other security for this Transaction.

4.2. CPUC Filing and Approval

Within sixty (60) days after the Confirmation Effective Date, Party B shall file with the CPUC the appropriate request for CPUC approval of this Agreement and possibly other RPS sales agreements. Party B shall seek CPUC approval of the filing, including promptly responding to any requests for information related to the request for CPUC approval. Party A shall use commercially reasonable efforts to support Party B in obtaining CPUC approval. Party B and Party A have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement, or which fails to meet

the requirements contained in the Condition Precedent section. Notwithstanding anything to the contrary in the Confirmation, Party B shall not have any obligation or liability to Party A or any third party for any action or inaction of the CPUC or other Governmental Authority affecting the approval or status of this Confirmation as a transaction eligible for portfolio content category, as defined in California Public Utilities Code Section 399.16(b)(1).

ARTICLE 5. COMPENSATION

5.1. Calculation Period

The "Calculation Period" shall be each calendar month, or portion thereof, during the Delivery Period.

5.2. Monthly Cash Settlement Amount

Party A shall pay Party B the "Monthly Cash Settlement Amount," in arrears, for each Calculation Period in the amount equal to the Green Attributes Price multiplied by the Allocation Quantity (in MWs) to be delivered or credited to Party A's WREGIS account pursuant to Section 3.2 for the applicable Calculation Period.

5.3. Payment Date

Notwithstanding any provision to the contrary in Article 6 of the Master Agreement, payments of each Monthly Cash Settlement Amount by Party A to Party B under this Confirmation shall be made in arrears and due and payable on or before the later of (i) the twentieth (20th) day of the month in which Party A receives from Party B an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, and (ii) ten (10) Business Days following Party A's receipt of an invoice issued by Party B for the applicable Calculation Period, provided that, if such day is not a Business Day, then on the next Business Day. The invoice shall include a statement detailing the quantity of Product to be delivered to Party A for the applicable Calculation Period from each generating facility in the Project. Parties acknowledge that, due to the timing of their creation in WREGIS, Green Attributes may not have been delivered to Party A at the time of invoice or payment for the Calculation Period with which they are associated.

Invoices to Party A will be sent by Excel/PDF format via email to Party A's Invoice Contact set forth above in Contact Information, and for purposes of this Confirmation, Party A shall be deemed to have received an invoice upon the receipt of the Excel/PDF format of the invoice. Payment to Party B shall be made by electronic funds transfer pursuant to the Wire Transfer instructions set forth above in Contract Information.

5.4. Annual True-Up

(a) Monthly Cash Settlement Amount Annual True-Up. Party B shall calculate a true-up ("Annual True-Up") for each Calculation Period in which the Forecast Adder for RPS was used to calculate the Monthly Cash Settlement Amount as an amount equal to (i) the Forecast Adder for RPS less the Final Adder for RPS, multiplied by (ii) the quantity of Product (in MWs) that Party B delivered to Party A and for which Party B has already issued an invoice to Party A (the "True-Up Payment"). If the True-Up Payment is a positive amount, such amount is owed by Party B to Party A, and if the True-Up Payment is a negative amount, such amount is owed by Party A to Party B.

(b) True-up Invoices and Payments. Within thirty (30) Business Days after the Final Adder for RPS is issued in each calendar year, Party B shall issue an invoice to Party A for amounts owed by, or due to, Party B, as applicable, resulting from the Annual True-Up. Payment for the Annual true-up shall be due and payable by the owing party on or before the later of (i) the twentieth (20th) day of the month in which Party B issues a True-Up Payment invoice and (ii) ten (10) Business Days following Party A's receipt of the invoice issued by Party B for the True-Up Payment, provided that, if such day is not a Business Day, then on the next Business Day.

5.5. Market Disruption

(a) Market Disruption Event. If a Market Disruption Event occurs and is continuing during a Calculation Period, the applicable Floating Price for the affected hours shall be determined by reference to the applicable Floating Price for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the applicable Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties agree that the applicable Floating Price for the duration of the Market Disruption Event shall be, with respect to a Market Disruption Event to the Green Attributes Price, the Alternate Monthly REC Market Price. Notwithstanding the foregoing and subject to time limitations set forth in Section 5.5(b) below, if the Parties have determined the applicable Floating Price pursuant to this Section 5.5(a) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Section 5.5(b) below.

(b) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(c) For purposes of this Transaction:

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

"Floating Price" means the Price Source upon which the Green Attributes Price is based.

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

ARTICLE 6. PARTY B'S REPRESENTATIONS, WARRANTIES AND COVENANTS

(a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that:

- (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and
- (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC 6, NON-MODIFIABLE]**

(b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC REC-1, NON-MODIFIABLE]**

(c) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. **[STC REC-2, NON-MODIFIABLE]**

(d) For the avoidance of doubt, the term "contract" as used in the immediately preceding paragraph means this Confirmation.

(e) The term "commercially reasonable efforts" as set forth in this Article 6 shall not require Party B to incur out-of-pocket expenses in excess of twenty-five thousand dollars (\$25,000) in the aggregate in any one calendar year between the Confirmation Effective Date and the last day of the Delivery Period.

(f) In addition to the foregoing, Party B warrants, represents and covenants, as of the Confirmation Effective Date and throughout the Delivery Period, that:

- (i) Party B has the contractual rights to sell all right, title, and interest in the Product agreed to be delivered hereunder;
- (ii) Party B has not sold the Product to be delivered under this Confirmation to any other person or entity; and
- (iii) At the time of delivery, all rights, title, and interest in the Product to be delivered under this Confirmation are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever.

ARTICLE 7. GENERAL PROVISIONS

7.1. Facility Identification

Upon Party A's reasonable request, within ten (10) Business Days after the end of each month during the Delivery Period, Party B shall provide indicative identification, based on preliminary meter data, of the facility(ies) that the Product was delivered from for that month.

7.2. Audit

Party A may, at its sole expense and during normal working hours, examine the records of Party B to the extent reasonably necessary to verify the accuracy of any statement or charge, including aggregated amounts of Delivered Energy or Scheduled Energy; however such audit rights will not apply to the output or other confidential or proprietary information of individual generation facilities.

7.3. Governing Law

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 LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

7.4. Dispute Resolution

(a) Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Section 10.17. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of the dispute resolution procedure set forth in this Section 10.17.

(b) Management Negotiations.

- (i) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "Manager"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (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 that 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 Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.
- (ii) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) 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 relevant information and to attempt to resolve the dispute.
- (iii) 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.
- (iv) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 10.17(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 10.17(a) above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

(b) Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 10.17(b) above shall be resolved through binding arbitration by a retired judge or justice from the AAA panel conducted in San Diego, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration").

- (i) Any arbitrator 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. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for 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 AAA's Commercial Arbitration Rules.

- (ii) 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.
- (iii) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.
- (iv) The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.
- (v) The arbitrator's award shall be made within nine (9) months of the filing of the Notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.
- (vi) Judgment on the award may be entered in any court having jurisdiction.
- (vii) The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.
- (viii) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before the arbitrator.
- (ix) The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.
- (x) The existence, content, and results of any Arbitration hereunder is Confidential Information that is subject to the provisions of Section 10.11.

(d) WAIVER OF JURY TRIAL. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING UNDER THIS AGREEMENT TO THE EXTENT SUCH WAIVER IS CONSISTENT WITH APPLICABLE LAW.

7.5. SOVEREIGN IMMUNITY

Party A warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue permitted under the Agreement), or (c) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.)

7.6. Confidentiality Amendment to Master Agreement.

Changes to the Master Agreement shall apply to this Confirmation only. For purposes of this Confirmation, Section 10.11 is deleted in its entirety and replaced with the following:

“10.11 Confidentiality.

(a) 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 this Master Agreement to a third party other than (i) the Party's Affiliates and its and their officers, directors, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Party B's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) at any time on or after the date on which Party A makes its filing seeking CPUC approval of a Transaction, as necessary, either Party shall be permitted to disclose: Party names, resource type, Delivery Term, project location, Contract Capacity, Allocation Quantity, and Delivery Point; (v) in order to comply with any applicable law, regulation, including, but not limited to, the California Public Records Act and/or the California Ralph M Brown Act, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 10.11(a) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts within its sole and absolute discretion to pursue rights under such applicable laws, regulations, rules or orders which allow for the prevention or limitation of such disclosure. The Disclosing Party's determination of what efforts might be reasonable shall not be subject to challenge by the other Party. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, 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.

(b) Party A and Party B acknowledge and agree that this Agreement is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). 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 hereto to Party B pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("Requested Confidential Information"), Party B will as soon as practical notify Party A in writing via email that such request has been made. Party A will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Party B. If Party A takes no such action after receiving the foregoing notice from Party B, Party B shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Party A does take or attempt to take such action, Party B shall provide timely and reasonable cooperation to Party A."

7.7. Terminated Transaction

(a) For purposes of this Transaction, the definition of "Losses" in Section 1.28 of the Master Agreement is modified by adding to the end thereof:

"Notwithstanding the foregoing, each Party's economic loss shall be determined using the then current Index Price plus the then current Green Attributes Price, so the Non-Defaulting Party's Losses shall be deemed to be zero (0); provided, however, that if Party B is the Defaulting Party, Party B shall be obligated to disgorge to Party A any profits obtained from the resale of the Allocation Quantity, unless resale is required under applicable law."

(b) For purposes of this Transaction, Section 5.2 of the Master Agreement shall be modified to delete the following sentence: "The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction."

7.8. Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

7.9. Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

SAN DIEGO GAS & ELECTRIC COMPANY

ORANGE COUNTY POWER AUTHORITY

BY: _____

BY: _____

NAME:

NAME:

TITLE:

TITLE:

_____ APPROVED AS TO LEGAL FORM

EXHIBIT A

**TO THE CONFIRMATION BETWEEN ORANGE COUNTY POWER AUTHORITY
AND SAN DIEGO GAS & ELECTRIC COMPANY**

DATED: JULY [], 2022

PROJECT FACILITIES – LONG TERM UNBUNDLED

PROJECT NAME	TECH- NOLOGY	DATE SIGNED	START DATE	TERM (YRS)	CAPACITY (MW)	RESOURCE ID	CEC RPS ID	WREGIS GU ID	EIA ID	LOCATION
██████████	WIND	05/05/09	10/15/13	20	██████████	N/A				MT

**EEI MASTER AGREEMENT
LONG-FORM CONFIRMATION FOR THE LONG-TERM
ALLOCATION OF BUNDLED ENERGY AND RENEWABLE ENERGY CREDITS
BETWEEN
SAN DIEGO GAS & ELECTRIC COMPANY
AND
ORANGE COUNTY POWER AUTHORITY**

This confirmation letter ("Confirmation") confirms the allocation of Renewable Portfolio Standard ("RPS") Energy mandated pursuant to Decision (D.)21-05-030 ("Transaction") between **ORANGE COUNTY POWER AUTHORITY** ("Party A") and **SAN DIEGO GAS & ELECTRIC COMPANY** ("Party B"), each individually a "Party" and together the "Parties", effective as of July [], 2022 (the "Confirmation Effective Date"). This Allocation shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") along with any amendments and annexes executed between the Parties thereto (the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement." Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement, Tariff or RPS (as defined below). If any term in this Confirmation conflicts with the Master Agreement, the definitions set forth in this Confirmation shall supersede.

CONTACT INFORMATION

Contact Information:	Name: ORANGE COUNTY POWER AUTHORITY ("Party A")	Name: San Diego Gas & Electric Company ("Party B")
	All Notices: Attn: Brian Probolsky Phone: 949-767-8700 Facsimile: n/a Duns: 117918392 Federal Tax ID Number: 86-1191848	All Notices: San Diego Gas & Electric Company 8315 Century Park Court, CP 21D San Diego, CA 92123 Attn: Electric & Fuel Procurement Contract Administration Phone: (858) 650-5536 Facsimile: (858) 650-6190 Duns: 006911457 Federal Tax ID Number: 95-1184800
	Invoices: Orange County Power Authority P.O. Box 54283 Irvine, CA 92619 Attn: Accounts Payable (949) 767-8700	Invoices: San Diego Gas & Electric Company 8315 Century Park Court, CP 21D San Diego, California 92123-1593 Attn: Energy Accounting Manager Phone: (858) 650-6177 Facsimile: (858) 650-6190
	Wire Transfer:	Wire Transfer: BNK: Union Bank of California for: San Diego Gas & Electric Company ABA: Routing # [REDACTED] ACCT: # [REDACTED] Confirmation: SDG&E, Major Markets FAX: (858) 650-6190 Email: SDGE_MMCCredit@sdge.com

ARTICLE 1. COMMERCIAL TERMS

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:

Product:	The “Product” is electric energy and associated Green Attributes generated from the Project. During the Delivery Period, Party B shall allocate and deliver, and Party A shall pay for and receive, the Allocation Quantity of this Product, subject to the terms and conditions of this Confirmation. Seller shall not substitute or purchase any Green Attributes from any generating resource other than the Project for delivery hereunder.
Project:	All Product allocated from Party B to Party A hereunder shall be from one or more of the facilities listed in <u>Exhibit A</u>, with Long-Term Contracts that (I) meet the representations in Article 6 herein; and, (II): (a) have a first point of interconnection with a California balancing authority, or (b) have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or (c) are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source (the “Project”). Party B may add a facility to, or remove a facility from, the list of facilities in <u>Exhibit A</u> from time to time by giving Party A fifteen (15) Business Days prior written notice of any change. Party B may remove a facility from Exhibit A for the following reasons: (i) if Party B’s power purchase agreement corresponding to the facility has been modified, terminated, or assigned to a third party, (ii) if the facility is no longer in Party B’s PCIA-eligible portfolio due to an order or direction from a Governmental Authority, or (iii) if the facility is owned by Party B but ceases operation for Party B. Party B shall retain the sole and absolute discretion to modify, enforce, or terminate its power purchase agreements with the facilities listed in <u>Exhibit A</u> during the Delivery Period. Party A shall not have any right to or discretion to request changes to the list of facilities in <u>Exhibit A</u> during the Delivery Period.
Allocation Capacity	In any hour throughout the Delivery Term, the “Allocation Capacity” shall be, in MW, as determined by Party B in accordance with the Allocation Quantity section of this Confirmation.
Allocation Quantity:	The quantity to be delivered in any calendar year, or pro rata portion of a calendar year, shall be the Allocation Quantity, as defined below. “Allocation Quantity” means the quantity of Product to be delivered from the Project during the applicable calendar year in an amount equal to the product of: [REDACTED] which is Party A’s of long-term Voluntary Allocation election of Party B’s PCIA-eligible RPS Energy Portfolio; times (ii) the proportion of Party A’s vintaged, forecasted annual load to the forecasted annual load in Party B’s service territory, as both amounts are determined in Party B’s annual RPS Plan and approved by the CPUC; times (iii) the quantity of generation from the Project within Party B’s PCIA-eligible RPS Energy Portfolio.
Allocation Price:	Index Price plus Green Attributes Price.

Index Price:	“Index Price” means the CAISO Integrated Forward Market Day-Ahead price (as such term is defined in the Tariff) for SP15 for each applicable hour as published by the CAISO on the CAISO website; or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties.
Green Attributes Price:	The Green Attributes Price applicable to the Product delivered to Party A in each calendar year during the Delivery Term shall be the then-applicable Forecast Adder for RPS (in \$/MWh) for deliveries for the applicable calendar year, subject to the true-up set forth in Section 5.4 of this Confirmation.
Term:	The “Term” of this Transaction shall commence upon the Confirmation Effective Date and shall continue until delivery by Party B to Party A of the Allocation Quantity of the Product has been completed and all other obligations of the Parties under this Agreement have been satisfied, unless terminated earlier due to failure to satisfy the Condition Precedent or as otherwise provided for in the Agreement.
Delivery Period:	The “Delivery Period” of this Transaction shall commence on the later of January 1, 2023, and the first day of the month following the month in which the Condition Precedent Satisfaction Date occurs (the “Start Date”) and shall continue until midnight on the date Party B no longer receives Product from any of the contracts in the Project, as such contracts are listed in Appendix A, unless this Agreement is terminated earlier in accordance with the terms of this Agreement.
Delivery Point:	The “Delivery Point” shall be TH_SP15_GEN-APND.
Delivery Obligation:	The obligation to provide the Allocation Quantity is a firm obligation in that Party B shall deliver the quantity of the Product from the Project, instantaneously with its receipt of such Product, consistent with the terms of this Confirmation without excuse other than Force Majeure.
Scheduling Obligations:	Party B, or a qualified third party designated by Party B, shall act as Scheduling Coordinator. Party A hereby authorizes Party B, or Party B’s third-party Scheduling Coordinator designee, to deliver the Product, or cause the Product to be delivered, to the CAISO at the Delivery Point.
Condition Precedent:	The commencement of the Delivery Period in accordance with Section 3 below shall be contingent upon Party B satisfying or waiving CPUC approval as described in Section 4.2 of this Confirmation. Either Party has the right to terminate this Confirmation upon notice in accordance with Section 10.7 of the Master Agreement, which will be effective five (5) Business Days after such notice is given, if: (i) the CPUC does not issue a final and non-appealable order approving this Agreement or the requested relief contained in the related advice letter filing, both in their entirety, (ii) the CPUC issues a final and non-appealable order which contains conditions or modifications unacceptable to either Party, or (iii) the final and non-appealable CPUC approval has not been obtained by Party B, on or before December 31, 2022. Any termination made by a Party under this section shall be without liability or obligation to the other Party. The date on which CPUC approval of this Confirmation has been satisfied or waived, by Party B, in its sole discretion, shall hereinafter be the “Condition Precedent Satisfaction Date.”

	Notwithstanding any other provision in this Confirmation, Party B will have no obligation to transfer Product to Party A unless the Condition Precedent Satisfaction Date has occurred.
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ARTICLE 2. DEFINITIONS

“Allocation Capacity” means the amount determined by Party B in accordance with the Allocation Quantity section of this Confirmation.

“Allocation Quantity” has the meaning set forth above in the Allocation Quantity section of this Confirmation.

“Alternate Market Index Price” shall be the PCIA Market Price Benchmark Forecast Adder for Energy specific to the SDG&E service territory (in \$/MWh), as published in the Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up, and originally implemented pursuant to D.19-10-001.

“Alternate Monthly REC Market Price” shall be the Platts California Bundled REC (Bucket 1) Midpoint Price (in \$/MWh) published in the last week of the month prior to the applicable month that the Product is delivered.

“Annual True-Up” has the meaning set forth in Section 5.4(a), below.

“Party A” means “Buyer” or “Purchaser”.

“Party B” means “Seller”.

“CAISO” means the California Independent System Operator.

“CAISO Energy” means “Energy” as defined in the Tariff.

“Calculation Period” has the meaning set forth in Section 5.1, below.

“California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1078, X1 - 2 and 350, codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Condition Precedent Satisfaction Date” means the date on which CPUC approval, as fully described in the “Condition Precedent” provision, has been satisfied or waived, by Party B, in its sole discretion.

“CEC” means the California Energy Commission, or its regulatory successor.

“CPUC” means the California Public Utilities Commission, or its regulatory successor.

“Day-Ahead” has the meaning set forth in the Tariff.

“Delivery Period” means “Delivery Term”.

“Final Adder for RPS” means the PCIA Market Price Benchmark Final Adder, established by the CPUC, as published in the *Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up*, and originally implemented pursuant to D.19-10-001.

“Floating Price” has the meaning set forth in Section 5.5(b), below.

“Forecast Adder for RPS” means the PCIA Market Price Benchmark Forecast Adder for RPS, established by the CPUC, as published in the *Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up*, and originally implemented by D.19-10-001.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (i) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;¹
- (iii) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy.

Green Attributes do not include;

- (i) any energy, capacity, reliability or other power attributes from the Project,
- (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project. **[STC 2 – GREEN ATTRIBUTES, NON-MODIFIABLE]**

"Integrated Forward Market" has the meaning set forth in the Tariff.

"Long-Term Contract" means any RPS power purchase and sale agreement pursuant to which Party B purchases renewable energy from a third party generator, which has at least ten (10) years remaining in its original delivery term as of the Start Date or, for facilities added to Exhibit A after the Start Date, as of the date when its generation facilities are added to Exhibit A from which Party B shall allocate Product to Party A under this Agreement, and (iii) which otherwise meets Party B's representations and warranties set forth in Article 6 of this Agreement.

"Market Disruption Event" has the meaning set forth in Section 5.5(c)a.

"Monthly Cash Settlement Amount" has the meaning set forth in Section 5.2, below.

"Monthly REC Market Price" has the meaning set forth above in the in the Green Attributes Price.

"PCIA" means the Power Charge Indifference Adjustment in D.18-10-019 and subsequent decisions.

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

“PCIA-eligible RPS Energy Portfolio” means the portion of Party B’s energy supply portfolio determined to be eligible for allocation pursuant to the final and non-appealable CPUC D.21-05-030 or other Governmental Authority action.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.

“True-Up Payment” has the meaning set forth in Section 5.4(a), below.

“Vintage” means the calendar year and month during the Delivery Period in which the WREGIS Certificate is created through the generation of the Product.

“WREGIS” means the Western Renewable Energy Generation Information System or other process recognized under applicable laws for the registration, transfer or ownership of Green Attributes.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

ARTICLE 3. CONVEYANCE OF RENEWABLE ENERGY

3.1. Party B’s Conveyance of Electric Energy

Except as stated in this Section 3.1 and beginning on the first day of the Delivery Period and throughout all applicable months of the Delivery Period, Party B shall deliver and sell, and Party A shall purchase and receive, the Product, subject to the terms and conditions of this Confirmation. Party B will not be obligated to sell or replace any Product that is not or cannot be delivered as a result of Force Majeure. The Parties recognize that a schedule of energy to the CAISO balancing authority area is a delivery to the CAISO and not directly to Party A. Scheduling Energy to the CAISO balancing authority area shall constitute delivery of the Product to Party A, provided the WREGIS Certificates evidencing the RECs comprised in the Product are delivered to Party A as provided in this Confirmation.

Should any electric energy provided by Party B under this Confirmation be determined to have originated from a resource other than the Project, Party B shall remedy such failure in a manner reasonably acceptable to Party A within a reasonable period of time after written notice of such failure is given to Party B by Party A.

3.2. Party B’s Conveyance of Green Attributes

(a) Green Attributes. Party B hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Party A as part of the Product being delivered. Party B represents and warrants that Party B holds the rights to all Green Attributes from the Project, and Party B agrees to convey and hereby conveys all such Green Attributes to Party A as included in the delivery of the Product from the Project. The Green Attributes are delivered and conveyed upon completion of all actions described in Section 3.2(b) below.

(b) Green Attributes Initially Credited to Party B’s WREGIS Account

- (i) During the Delivery Period, Party B, at its own cost and expense, shall maintain its registration with WREGIS. All Green Attributes transferred by Party B hereunder shall be designated California RPS-compliant with WREGIS. Party B shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of Green Attributes to Party A in accordance with WREGIS reporting protocols and WREGIS Operating Rules.
- (ii) For each applicable month of the Delivery Period, Party B shall deliver and convey the Green Attributes associated with the electric energy delivered in

Section 3.1, rounded down to the nearest whole number, within five (5) Business Days after the later of (i) the end of the month in which the WREGIS Certificates for the Green Attributes are created and (ii) the date in which Party B receives payment pursuant to Section 5.3 below for the invoice for the applicable Calculation Period to which the Monthly Cash Settlement Amount pertains, by properly transferring such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, equivalent to the quantity of Green Attributes to Party A into Party A's WREGIS account such that all right, title and interest in and to the WREGIS Certificates shall transfer from Party B to Party A.

- (iii) In addition to its other obligations under this Section 3.2, Party B shall convey to Party A WREGIS Certificates from the Project that are of the same Vintage as the Product that was provided under Section 3.1 of this Confirmation.

ARTICLE 4. PERFORMANCE ASSURANCE; CPUC FILING AND APPROVAL

4.1. Performance Assurance

Notwithstanding anything in the Master Agreement to the contrary, neither Party shall be required to post Performance Assurance, collateral or other security for this Transaction.

4.2. CPUC Filing and Approval

Within sixty (60) days after the Confirmation Effective Date, Party B shall file with the CPUC the appropriate request for CPUC approval of this Agreement and possibly other RPS sales agreements. Party B shall seek CPUC approval of the filing, including promptly responding to any requests for information related to the request for CPUC approval. Party A shall use commercially reasonable efforts to support Party B in obtaining CPUC approval. Party B and Party A have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement, or which fails to meet the requirements contained in the Condition Precedent section. Notwithstanding anything to the contrary in the Confirmation, Party B shall not have any obligation or liability to Party A or any third party for any action or inaction of the CPUC or other Governmental Authority affecting the approval or status of this Confirmation as a transaction eligible for portfolio content category, as defined in California Public Utilities Code Section 399.16(b)(1).

ARTICLE 5. COMPENSATION

5.1. Calculation Period

The "Calculation Period" shall be each calendar month, or portion thereof, during the Delivery Period.

5.2. Monthly Cash Settlement Amount

Party A shall pay Party B the "Monthly Cash Settlement Amount," in arrears, for each Calculation Period in the amount equal to the sum of (a) plus (b) minus (c), where:

(a) equals the sum, over all hours of the Calculation Period, of the applicable Index Price for each hour, multiplied by the quantity of CAISO Energy scheduled, delivered and received by Party A pursuant to Section 3.1 during that hour;

(b) equals the product of the Green Attributes Price multiplied by the lesser of (i) the CAISO Energy scheduled, delivered and received by Party A pursuant to Section 3.1 during that hour, and (ii) the quantity of Green Attributes (in MWhs) Party B expects to deliver or credit to Party A's WREGIS account pursuant to Section 3.2 during the applicable Calculation Period; and,

(c) equals the sum, over all hours of the Calculation Period, of the applicable Index Price for each hour, multiplied by the quantity of CAISO Energy scheduled, delivered and received by Party

A pursuant to Section 3.1 during that hour.

5.3. Payment Date

Notwithstanding any provision to the contrary in Article 6 of the Master Agreement, payments of each Monthly Cash Settlement Amount by Party A to Party B under this Confirmation shall be made in arrears and due and payable on or before the later of (i) the twentieth (20th) day of the month in which Party A receives from Party B an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, and (ii) ten (10) Business Days following Party A's receipt of an invoice issued by Party B for the applicable Calculation Period, provided that, if such day is not a Business Day, then on the next Business Day. The invoice shall include a statement detailing the quantity of Product delivered to Party A during the applicable Calculation Period from each generating facility in the Project. Parties acknowledge that, due to the timing of their creation in WREGIS, Green Attributes may not have been delivered to Party A at the time of invoice or payment for the Calculation Period with which they are associated. Party B shall timely transfer Green Attributes to Party A after their creation in WREGIS in accordance with Section 3.2.

Invoices to Party A will be sent by Excel/PDF format via email to Party A's Invoice Contact set forth above in Contact Information, and for purposes of this Confirmation, Party A shall be deemed to have received an invoice upon the receipt of the Excel/PDF format of the invoice. Payment to Party B shall be made by electronic funds transfer pursuant to the Wire Transfer instructions set forth above in Contact Information.

5.4. Annual True-Up

(a) Monthly Cash Settlement Amount Annual True-Up. Party B shall calculate a true-up ("Annual True-Up") for each Calculation Period in which the Forecast Adder for RPS was used to calculate the Monthly Cash Settlement Amount as an amount equal to (i) the Forecast Adder for RPS less the Final Adder for RPS, multiplied by (ii) the quantity of Product (in MWhs) that Party B delivered to Party A and for which Party B has already issued an invoice to Party A (the "True-Up Payment"). If the True-Up Payment is a positive amount, such amount is owed by Party B to Party A, and if the True-Up Payment is a negative amount, such amount is owed by Party A to Party B.

(b) True-up Invoices and Payments. Within thirty (30) Business Days after the Final Adder for RPS is issued in each calendar year, Party B shall issue an invoice to Party A for amounts owed by, or due to, Party B, as applicable, resulting from the Annual True-Up. Payment for the Annual true-up shall be due and payable by the owing party on or before the later of (i) the twentieth (20th) day of the month in which Party B issues a True-Up Payment invoice and (ii) ten (10) Business Days following Party A's receipt of the invoice issued by Party B for the True-Up Payment, provided that, if such day is not a Business Day, then on the next Business Day.

5.5 Market Disruption

(a) Market Disruption Event. If a Market Disruption Event occurs and is continuing during a Calculation Period, the applicable Floating Price for the affected hours shall be determined by reference to the applicable Floating Price for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the applicable Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties agree that the applicable Floating Price for the duration of the Market Disruption Event shall be, with respect to a Market Disruption Event to the Green Attributes Price, the Alternate Monthly REC Market Price and, with respect to the Index Price, the Alternate Market Index Price. Notwithstanding the foregoing and subject to time limitations set forth in Section 10.16(c) below, if the Parties have determined the applicable Floating Price pursuant to this Section 10.16(a) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Section 10.16(c) below."

(b) Corrections to Published Prices. For purposes of determining a Floating Price for

any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(c) For purposes of this Transaction:

"Exchange" means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

"Floating Price" means the Price Source upon which the Index Price or Green Attributes Price is based.

"Market Disruption Event" means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

ARTICLE 6. PARTY B'S REPRESENTATIONS, WARRANTIES AND COVENANTS

(a) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that:

- (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and
- (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC 6, NON-MODIFIABLE]**

(b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the

extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC REC-1, NON-MODIFIABLE]**

(c) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. **[STC REC-2, NON-MODIFIABLE]**

(d) For the avoidance of doubt, the term “contract” as used in the immediately preceding paragraph means this Agreement.

(e) The term “commercially reasonable efforts” as set forth in this Article 6 shall not require Party B to incur out-of-pocket expenses in excess of twenty-five thousand dollars (\$25,000) in the aggregate in any one calendar year between the Confirmation Effective Date and the last day of the Delivery Period.

(f) In addition to the foregoing, Party B warrants, represents and covenants, as of the Confirmation Effective Date and throughout the Delivery Period, that:

- (i) Party B has the contractual rights to sell all right, title, and interest in the Product agreed to be delivered hereunder;
- (ii) Party B has not sold or allocated the Product to be delivered under this Confirmation to any other person or entity;
- (iii) at the time of delivery, all rights, title, and interest in the Product to be delivered under this Confirmation are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever; and
- (iv) this Agreement transfers only bundled Energy and Green Attributes that have been generated on or after the commencement of the Delivery Period; and

ARTICLE 7. GENERAL PROVISIONS

7.1. Facility Identification

Upon Buyer’s reasonable request, within ten (10) Business Days after the end of each month during the Delivery Period, Seller shall provide indicative identification, based on preliminary meter data, of the facility(ies) that the Product was delivered from for that month.

7.2. Audit.

Party A may, at its sole expense and during normal working hours, examine the records of Party B to the extent reasonably necessary to verify the accuracy of any statement or charge, including aggregated amounts of Delivered Energy or Scheduled Energy; however such audit rights will not apply to the output or other confidential or proprietary information of individual generation facilities.

7.3. Governing Law

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 LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. **[STC 17 – APPLICABLE LAW, NON-MODIFIABLE]**

7.4. Dispute Resolution

(a) Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute

resolution procedure set forth in this Section 10.17. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of the dispute resolution procedure set forth in this Section 10.17.

(b) Management Negotiations.

- (i) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "Manager"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (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 that 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 Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.
- (ii) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) 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 relevant information and to attempt to resolve the dispute.
- (iii) 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.
- (iv) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 10.17(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 10.17(a) above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

(c) Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 10.17(b) above shall be resolved through binding arbitration by a retired judge or justice from the AAA panel conducted in San Diego, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration").

- (i) Any arbitrator 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. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for 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 AAA's Commercial Arbitration Rules.
- (ii) 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.

- (iii) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.
- (iv) The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.
- (v) The arbitrator's award shall be made within nine (9) months of the filing of the Notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.
- (vi) Judgment on the award may be entered in any court having jurisdiction.
- (vii) The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.
- (viii) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before the arbitrator.
- (ix) The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.
- (x) The existence, content, and results of any Arbitration hereunder is Confidential Information that is subject to the provisions of Section 10.11.

(d) WAIVER OF JURY TRIAL. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING UNDER THIS AGREEMENT TO THE EXTENT SUCH WAIVER IS CONSISTENT WITH APPLICABLE LAW.

7.5. Sovereign Immunity

Party A warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue permitted under the Agreement), or (c) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).

7.6. Confidentiality Amendment to Master Agreement.

Changes to the Master Agreement shall apply to this Confirmation only. For purposes of this Confirmation, Section 10.11 (Confidentiality) of the Master Agreement is deleted in its entirety and replaced with the following:

“10.11 Confidentiality.

(a) 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 this Master Agreement to a third party other than (i) the Party's Affiliates and its and their officers, directors, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Party B's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) at any time on or after the date on which Party A makes its filing seeking CPUC approval of a Transaction, as necessary, either Party shall be permitted to disclose: Party names, resource

type, Delivery Term, project location, Allocation Capacity, Allocation Quantity, and Delivery Point; (v) in order to comply with any applicable law, regulation, including, but not limited to, the California Public Records Act and/or the California Ralph M Brown Act, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 10.11(a) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts within its sole and absolute discretion to pursue rights under such applicable laws, regulations, rules or orders which allow for the prevention or limitation of such disclosure. The Disclosing Party's determination of what efforts might be reasonable shall not be subject to challenge by the other Party. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, 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.

(b) 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 (Government Code Section 6250 et seq.). 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.

(c) Upon request or demand of any third person or entity not a Party hereto to Party B pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("Requested Confidential Information"), Party B will as soon as practical notify Party A in writing via email that such request has been made. Party A will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Party B. If Party A takes no such action after receiving the foregoing notice from Party B, Party B shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Party A does take or attempt to take such action, Party B shall provide timely and reasonable cooperation to Party A."

7.7. Termination of Allocation Confirmation.

(a) For purposes of this Allocation, the definition of "Losses" in Section 1.28 of the Master Agreement is modified by adding to the end thereof:

"Notwithstanding the foregoing, each Party's economic loss shall be determined using the then current Index Price plus the then current Green Attributes Price, so the Non-Defaulting Party's Losses shall be deemed to be zero (\$0)."

(b) For purposes of this Transaction, Section 5.2 of the Master Agreement shall be modified to delete the following sentence: "The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction."

7.8. Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

7.9. Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Allocation into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Allocation may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

SAN DIEGO GAS & ELECTRIC COMPANY

ORANGE COUNTY POWER AUTHORITY

BY: _____

BY: _____

NAME:

NAME:

TITLE:

TITLE:

_____ APPROVED AS TO LEGAL FORM

EXHIBIT A

**TO THE CONFIRMATION BETWEEN ORANGE COUNTY POWER AUTHORITY
AND SAN DIEGO GAS & ELECTRIC COMPANY**

DATED: JULY [], 2022

PROJECT FACILITIES – LONG TERM BUNDLED

PROJECT NAME	TECH-NOLOGY	DATE SIGNED	START DATE	TERM (YRS)	CAPACITY (MW)	RESOURCE ID	CEC RPS ID	WREGIS GU ID	EIA ID	LOCATION
[REDACTED]	SOLAR PV	06/03/11	11/05/13	25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	ARLINGTON, AZ
[REDACTED]	SOLAR PV	12/13/12	02/11/16	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CALIPATRIA, CA
[REDACTED]	SOLAR PV	10/31/06	10/25/13	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	IMPERIAL VALLEY, CA
[REDACTED]	SOLAR PV	10/19/12	12/24/13	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	SUN FAIR, CA
[REDACTED]	SOLAR PV	06/03/11	11/27/13	25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	MOJAVE, CA
[REDACTED] RGY LLC	SOLAR PV	05/10/10	08/15/14	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CALEXICO, CA
[REDACTED]	SOLAR PV	07/29/10	08/01/14	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CALEXICO, CA
[REDACTED]	SOLAR PV	11/10/10	11/01/13	25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CALEXICO, CA
[REDACTED]	SOLAR PV	03/08/11	04/12/16	25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	IMPERIAL VALLEY, CA
[REDACTED]	SOLAR PV	03/31/11	11/26/14	25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	BORREGO SPRINGS, CA
[REDACTED]	WIND	04/06/11	06/05/15	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	LA RUMOROSA, BCN
[REDACTED]	WIND	11/16/17	06/01/22	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	LA RUMOROSA, BCN

[REDACTED]	SOLAR PV	02/03/12	10/10/13	25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	IMPERIAL VALLEY, CA
[REDACTED]	WIND	02/14/12	12/31/12	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	TEHACHAPI, CA
[REDACTED]	WIND	02/01/11	12/27/12	21	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	IMPERIAL VALLEY, CA
[REDACTED]	SOLAR PV	06/24/11	11/25/14	25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	IMPERIAL VALLEY, CA
[REDACTED]	SOLAR PV	04/11/11	12/31/13	25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	RAMONA, CA
[REDACTED]	SOLAR PV	04/11/11	12/31/13	25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	RAMONA, CA
[REDACTED]	SOLAR PV	04/11/11	12/31/13	25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	VALLEY CENTER, CA
[REDACTED]	SOLAR PV	04/11/11	12/31/13	25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	VALLEY CENTER, CA
[REDACTED]	SOLAR PV	01/25/11	02/12/13	25	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	BORREGO SPRINGS, CA
[REDACTED]	SOLAR PV	12/13/12	12/30/15	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	IMPERIAL COUNTY, CA
[REDACTED]	SOLAR PV	07/15/22	07/14/42	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	IMPERIAL COUNTY, CA

**EEI MASTER AGREEMENT
LONG-FORM CONFIRMATION FOR THE SHORT-TERM
ALLOCATION OF BUNDLED ENERGY AND RENEWABLE ENERGY CREDITS
BETWEEN
SAN DIEGO GAS & ELECTRIC COMPANY
AND
ORANGE COUNTY POWER AUTHORITY**

This confirmation letter ("Confirmation") confirms the allocation of Renewable Portfolio Standard ("RPS") Energy mandated pursuant to Decision (D.)21-05-030 ("Transaction") between **ORANGE COUNTY POWER AUTHORITY** ("Party A") and **SAN DIEGO GAS & ELECTRIC COMPANY** ("Party B"), each individually a "Party" and together the "Parties", effective as of July [], 2022 (the "Confirmation Effective Date"). This Allocation shall be deemed to have been entered into pursuant to, and shall supplement, form a part of, and be governed by the terms and conditions of the form of Master Power Purchase and Sale Agreement published by the Edison Electric Institute and the National Energy Marketers Association (version 2.1 dated 4/25/00) (the "EEI Agreement") along with any amendments and annexes executed between the Parties thereto (the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement." Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement, Tariff or RPS (as defined below). If any term in this Confirmation conflicts with the Master Agreement, the definitions set forth in this Confirmation shall supersede.

CONTACT INFORMATION

Contact Information:	Name: ORANGE COUNTY POWER AUTHORITY ("Party A")	Name: San Diego Gas & Electric Company ("Party B")
	All Notices: Attn: Brian Probolsky Phone: 949-767-8700 Facsimile: n/a Duns: 117918392 Federal Tax ID Number: 86-1191848	All Notices: San Diego Gas & Electric Company 8315 Century Park Court, CP 21D San Diego, CA 92123 Attn: Electric & Fuel Procurement Contract Administration Phone: (858) 650-5536 Facsimile: (858) 650-6190 Duns: 006911457 Federal Tax ID Number: 95-1184800
	Invoices: Orange County Power Authority P.O. Box 54283 Irvine, CA 92619 Attn: Accounts Payable (949) 767-8700	Invoices: San Diego Gas & Electric Company 8315 Century Park Court, CP 21D San Diego, California 92123-1593 Attn: Energy Accounting Manager Phone: (858) 650-6177 Facsimile: (858) 650-6190
	Wire Transfer:	Wire Transfer: BNK: Union Bank of California for: San Diego Gas & Electric Company ABA: Routing # [REDACTED] ACCT: # [REDACTED] Confirmation: SDG&E, Major Markets FAX: (858) 650-6190 Email: SDGE_MMCCredit@sdge.com

	Credit and Collections:	Credit and Collections: San Diego Gas & Electric Company, Major Markets 8315 Century Park Court, CP21C San Diego, CA 92123-1593 Attn: Energy Risk Manager Telephone: (858) 654-6484 Facsimile: (858) 650-6190
	Defaults: With additional Notices of an Event of Default or Potential Event of Default to:	Defaults: With additional Notices of an Event of Default or Potential Event of Default to: San Diego Gas & Electric Company 8330 Century Park Court San Diego, California 92123 Attn: General Counsel Phone: (858) 650-6141 Facsimile: (858) 650-6106

ARTICLE 1. COMMERCIAL TERMS

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:

Product:	The “Product” is electric energy and associated Green Attributes generated from the Project. During the Delivery Period, Party B shall allocate and deliver, and Party A shall pay for and receive, the Allocation Quantity of this Product, subject to the terms and conditions of this Confirmation. Seller shall not substitute or purchase any Green Attributes from any generating resource other than the Project for delivery hereunder.
Project:	All Product allocated from Party B to Party A hereunder shall be from one or more of the facilities listed in <u>Exhibit A</u>, that (I) meet the representations in Article 6 herein; and, (II): (a) have a first point of interconnection with a California balancing authority, or (b) have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or (c) are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source (the “Project”). Party B may add a facility to, or remove a facility from, the list of facilities in <u>Exhibit A</u> from time to time by giving Party A fifteen (15) Business Days prior written notice of any change. Party B may remove a facility from Exhibit A for the following reasons: (i) if Party B’s power purchase agreement corresponding to the facility has been modified, terminated, or assigned to a third party, (ii) if the facility is no longer in Party B’s PCIA-eligible portfolio due to an order or direction from a Governmental Authority, or (iii) if the facility is owned by Party B but ceases operation for Party B. Party B shall retain the sole and absolute discretion to modify, enforce, or terminate its power purchase agreements with the facilities listed in <u>Exhibit A</u> during the Delivery Period. Party A shall not have any right to or discretion to request changes to the list of facilities in <u>Exhibit A</u> during the Delivery Period.
Allocation Capacity	In any hour throughout the Delivery Term, the “Allocation Capacity” shall be, in MW, as determined by Party B in accordance with the Allocation Quantity section of this Confirmation.
Allocation Quantity:	The quantity to be delivered in any calendar year, or pro rata portion of a calendar year, shall be the Allocation Quantity, as defined below. “Allocation Quantity” means the quantity of Product to be delivered from the Project during the applicable calendar year in an amount equal to the product of: [REDACTED] which is Party A’s of short term Voluntary Allocation election of Party B’s PCIA-eligible RPS Energy Portfolio; times (ii) the proportion of Party A’s vintaged, forecasted annual load to the forecasted annual load in Party B’s service territory, as both amounts are determined in Party B’s annual RPS Plan and approved by the CPUC; times (iii) the quantity of generation from the Project within Party B’s PCIA-eligible RPS Energy Portfolio.
Allocation Price:	Index Price plus Green Attributes Price.

Index Price:	“Index Price” means the CAISO Integrated Forward Market Day-Ahead price (as such term is defined in the Tariff) for SP15 for each applicable hour as published by the CAISO on the CAISO website; or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties.
Green Attributes Price:	The Green Attributes Price applicable to the Product delivered to Party A in each calendar year during the Delivery Term shall be the then-applicable Forecast Adder for RPS (in \$/MWh) for deliveries for the applicable calendar year, subject to the true-up set forth in Section 5.4 of this Confirmation.
Term:	The “Term” of this Transaction shall commence upon the Confirmation Effective Date and shall continue until delivery by Party B to Party A of the Allocation Quantity of the Product has been completed and all other obligations of the Parties under this Agreement have been satisfied, unless terminated earlier due to failure to satisfy the Condition Precedent or as otherwise provided for in the Agreement.
Delivery Period:	The “Delivery Period” of this Transaction shall commence on the later of January 1, 2023, and the first day of the month following the month in which the Condition Precedent Satisfaction Date occurs (the “Start Date”) and shall continue until midnight on December 31, 2024.
Delivery Point:	The “Delivery Point” shall be TH_SP15_GEN-APND.
Delivery Obligation:	The obligation to provide the Allocation Quantity is a firm obligation in that Party B shall deliver the quantity of the Product from the Project, instantaneously with its receipt of such Product, consistent with the terms of this Confirmation without excuse other than Force Majeure.
Scheduling Obligations:	Party B, or a qualified third party designated by Party B, shall act as Scheduling Coordinator. Party A hereby authorizes Party B, or Party B’s third-party Scheduling Coordinator designee, to deliver the Product, or cause the Product to be delivered, to the CAISO at the Delivery Point.
Condition Precedent:	The commencement of the Delivery Period in accordance with Section 3 below shall be contingent upon Party B satisfying or waiving CPUC approval as described in Section 4.2 of this Confirmation. Either Party has the right to terminate this Confirmation upon notice in accordance with Section 10.7 of the Master Agreement, which will be effective five (5) Business Days after such notice is given, if: (i) the CPUC does not issue a final and non-appealable order approving this Agreement or the requested relief contained in the related advice letter filing, both in their entirety, (ii) the CPUC issues a final and non-appealable order which contains conditions or modifications unacceptable to either Party, or (iii) the final and non-appealable CPUC approval has not been obtained by Party B, on or before December 31, 2022. Any termination made by a Party under this section shall be without liability or obligation to the other Party. The date on which CPUC approval of this Confirmation has been satisfied or waived, by Party B, in its sole discretion, shall hereinafter be the “Condition Precedent Satisfaction Date.”

	Notwithstanding any other provision in this Confirmation, Party B will have no obligation to transfer Product to Party A unless the Condition Precedent Satisfaction Date has occurred.
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ARTICLE 2. DEFINITIONS

“Allocation Capacity” means the amount determined by Party B in accordance with the Allocation Quantity section of this Confirmation.

“Allocation Quantity” has the meaning set forth above in the Allocation Quantity section of this Confirmation.

“Alternate Market Index Price” shall be the PCIA Market Price Benchmark Forecast Adder for Energy specific to the SDG&E service territory (in \$/MWh), as published in the Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up, and originally implemented pursuant to D.19-10-001.

“Alternate Monthly REC Market Price” shall be the Platts California Bundled REC (Bucket 1) Midpoint Price (in \$/MWh) published in the last week of the month prior to the applicable month that the Product is delivered.

“Annual True-Up” has the meaning set forth in Section 5.4(a), below.

“Party A” means “Buyer” or “Purchaser”.

“Party B” means “Seller”.

“CAISO” means the California Independent System Operator.

“CAISO Energy” means “Energy” as defined in the Tariff.

“Calculation Period” has the meaning set forth in Section 5.1, below.

“California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1078, X1 - 2 and 350, codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Condition Precedent Satisfaction Date” means the date on which CPUC approval, as fully described in the “Condition Precedent” provision, has been satisfied or waived, by Party B, in its sole discretion.

“CEC” means the California Energy Commission, or its regulatory successor.

“CPUC” means the California Public Utilities Commission, or its regulatory successor.

“Day-Ahead” has the meaning set forth in the Tariff.

“Delivery Period” means “Delivery Term”.

“Final Adder for RPS” means the PCIA Market Price Benchmark Final Adder, established by the CPUC, as published in the *Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up*, and originally implemented pursuant to D.19-10-001.

“Floating Price” has the meaning set forth in Section 5.5(b), below.

“Forecast Adder for RPS” means the PCIA Market Price Benchmark Forecast Adder for RPS, established by the CPUC, as published in the *Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up*, and originally implemented by D.19-10-001.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

- (i) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;
- (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;¹
- (iii) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy.

Green Attributes do not include;

- (i) any energy, capacity, reliability or other power attributes from the Project,
- (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,
- (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or
- (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project. **[STC 2 – GREEN ATTRIBUTES, NON-MODIFIABLE]**

"Integrated Forward Market" has the meaning set forth in the Tariff.

"Market Disruption Event" has the meaning set forth in Section 5.5(c).

"Monthly Cash Settlement Amount" has the meaning set forth in Section 5.2, below.

"Monthly REC Market Price" has the meaning set forth above in the in the Green Attributes Price.

"PCIA" means the Power Charge Indifference Adjustment in D.18-10-019 and subsequent decisions.

"PCIA-eligible RPS Energy Portfolio" means the portion of Party B's energy supply portfolio determined to be eligible for allocation pursuant to the final and non-appealable CPUC D.21-05-030 or other Governmental Authority action.

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.

“True-Up Payment” has the meaning set forth in Section 5.4(a), below.

“Vintage” means the calendar year and month during the Delivery Period in which the WREGIS Certificate is created through the generation of the Product.

“WREGIS” means the Western Renewable Energy Generation Information System or other process recognized under applicable laws for the registration, transfer or ownership of Green Attributes.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

ARTICLE 3. CONVEYANCE OF RENEWABLE ENERGY

3.1. Party B’s Conveyance of Electric Energy

Except as stated in this Section 3.1 and beginning on the first day of the Delivery Period and throughout all applicable months of the Delivery Period, Party B shall deliver and sell, and Party A shall purchase and receive, the Product, subject to the terms and conditions of this Confirmation. Party B will not be obligated to sell or replace any Product that is not or cannot be delivered as a result of Force Majeure. The Parties recognize that a schedule of energy to the CAISO balancing authority area is a delivery to the CAISO and not directly to Party A. Scheduling Energy to the CAISO balancing authority area shall constitute delivery of the Product to Party A, provided the WREGIS Certificates evidencing the RECs comprised in the Product are delivered to Party A as provided in this Confirmation.

Should any electric energy provided by Party B under this Confirmation be determined to have originated from a resource other than the Project, Party B shall remedy such failure in a manner reasonably acceptable to Party A within a reasonable period of time after written notice of such failure is given to Party B by Party A.

3.2. Party B’s Conveyance of Green Attributes

(a) Green Attributes. Party B hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Party A as part of the Product being delivered. Party B represents and warrants that Party B holds the rights to all Green Attributes from the Project, and Party B agrees to convey and hereby conveys all such Green Attributes to Party A as included in the delivery of the Product from the Project. The Green Attributes are delivered and conveyed upon completion of all actions described in Section 3.2(b) below.

(b) Green Attributes Initially Credited to Party B’s WREGIS Account

- (i) During the Delivery Period, Party B, at its own cost and expense, shall maintain its registration with WREGIS. All Green Attributes transferred by Party B hereunder shall be designated California RPS-compliant with WREGIS. Party B shall, at its sole expense, use WREGIS as required pursuant to the WREGIS Operating Rules to effectuate the transfer of Green Attributes to Party A in accordance with WREGIS reporting protocols and WREGIS Operating Rules.
- (ii) For each applicable month of the Delivery Period, Party B shall deliver and convey the Green Attributes associated with the electric energy delivered in Section 3.1, rounded down to the nearest whole number, within five (5) Business Days after the later of (i) the end of the month in which the WREGIS Certificates for the Green Attributes are created and (ii) the date in which Party B receives

payment pursuant to Section 5.3 below for the invoice for the applicable Calculation Period to which the Monthly Cash Settlement Amount pertains, by properly transferring such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, equivalent to the quantity of Green Attributes to Party A into Party A's WREGIS account such that all right, title and interest in and to the WREGIS Certificates shall transfer from Party B to Party A.

- (iii) In addition to its other obligations under this Section 3.2, Party B shall convey to Party A WREGIS Certificates from the Project that are of the same Vintage as the Product that was provided under Section 3.1 of this Confirmation.

ARTICLE 4. PERFORMANCE ASSURANCE; CPUC FILING AND APPROVAL

4.1. Performance Assurance

Notwithstanding anything in the Master Agreement to the contrary, neither Party shall be required to post Performance Assurance, collateral or other security for this Transaction.

4.2. CPUC Filing and Approval

Within sixty (60) days after the Confirmation Effective Date, Party B shall file with the CPUC the appropriate request for CPUC approval of this Agreement and possibly other RPS sales agreements. Party B shall seek CPUC approval of the filing, including promptly responding to any requests for information related to the request for CPUC approval. Party A shall use commercially reasonable efforts to support Party B in obtaining CPUC approval. Party B and Party A have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement, or which fails to meet the requirements contained in the Condition Precedent section. Notwithstanding anything to the contrary in the Confirmation, Party B shall not have any obligation or liability to Party A or any third party for any action or inaction of the CPUC or other Governmental Authority affecting the approval or status of this Confirmation as a transaction eligible for portfolio content category, as defined in California Public Utilities Code Section 399.16(b)(1).

ARTICLE 5. COMPENSATION

5.1. Calculation Period

The "Calculation Period" shall be each calendar month, or portion thereof, during the Delivery Period.

5.2. Monthly Cash Settlement Amount

Party A shall pay Party B the "Monthly Cash Settlement Amount," in arrears, for each Calculation Period in the amount equal to the sum of (a) plus (b) minus (c), where:

(a) equals the sum, over all hours of the Calculation Period, of the applicable Index Price for each hour, multiplied by the quantity of CAISO Energy scheduled, delivered and received by Party A pursuant to Section 3.1 during that hour;

(b) equals the product of the Green Attributes Price multiplied by the lesser of (i) the CAISO Energy scheduled, delivered and received by Party A pursuant to Section 3.1 during that hour, and (ii) the quantity of Green Attributes (in MWhs) Party B expects to deliver or credit to Party A's WREGIS account pursuant to Section 3.2 during the applicable Calculation Period; and,

(c) equals the sum, over all hours of the Calculation Period, of the applicable Index Price for each hour, multiplied by the quantity of CAISO Energy scheduled, delivered and received by Party A pursuant to Section 3.1 during that hour.

5.3. Payment Date

Notwithstanding any provision to the contrary in Article 6 of the Master Agreement, payments of each Monthly Cash Settlement Amount by Party A to Party B under this Confirmation shall be made in arrears and due and payable on or before the later of (i) the twentieth (20th) day of the month in which Party A receives from Party B an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, and (ii) ten (10) Business Days following Party A's receipt of an invoice issued by Party B for the applicable Calculation Period, provided that, if such day is not a Business Day, then on the next Business Day. The invoice shall include a statement detailing the quantity of Product delivered to Party A during the applicable Calculation Period from each generating facility in the Project. Parties acknowledge that, due to the timing of their creation in WREGIS, Green Attributes may not have been delivered to Party A at the time of invoice or payment for the Calculation Period with which they are associated. Party B shall timely transfer Green Attributes to Party A after their creation in WREGIS in accordance with Section 3.2.

Invoices to Party A will be sent by Excel/PDF format via email to Party A's Invoice Contact set forth above in Contact Information, and for purposes of this Confirmation, Party A shall be deemed to have received an invoice upon the receipt of the Excel/PDF format of the invoice. Payment to Party B shall be made by electronic funds transfer pursuant to the Wire Transfer instructions set forth above in Contact Information.

5.4. Annual True-Up

(a) Monthly Cash Settlement Amount Annual True-Up. Party B shall calculate a true-up ("Annual True-Up") for each Calculation Period in which the Forecast Adder for RPS was used to calculate the Monthly Cash Settlement Amount as an amount equal to (i) the Forecast Adder for RPS less the Final Adder for RPS, multiplied by (ii) the quantity of Product (in MWhs) that Party B delivered to Party A and for which Party B has already issued an invoice to Party A (the "True-Up Payment"). If the True-Up Payment is a positive amount, such amount is owed by Party B to Party A, and if the True-Up Payment is a negative amount, such amount is owed by Party A to Party B.

(b) True-up Invoices and Payments. Within thirty (30) Business Days after the Final Adder for RPS is issued in each calendar year, Party B shall issue an invoice to Party A for amounts owed by, or due to, Party B, as applicable, resulting from the Annual True-Up. Payment for the Annual true-up shall be due and payable by the owing party on or before the later of (i) the twentieth (20th) day of the month in which Party B issues a True-Up Payment invoice and (ii) ten (10) Business Days following Party A's receipt of the invoice issued by Party B for the True-Up Payment, provided that, if such day is not a Business Day, then on the next Business Day.

5.5 Market Disruption

(a) Market Disruption Events. If a Market Disruption Event occurs and is continuing during a Calculation Period, the applicable Floating Price for the affected hours shall be determined by reference to the applicable Floating Price for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the applicable Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties agree that the applicable Floating Price for the duration of the Market Disruption Event shall be, with respect to a Market Disruption Event to the Green Attributes Price, the Alternate Monthly REC Market Price and, with respect to the Index Price, the Alternate Market Index Price. Notwithstanding the foregoing and subject to time limitations set forth in Section 5.5(b) below, if the Parties have determined the applicable Floating Price pursuant to this Section 5.5(a) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Section 5.5(b) below.

(b) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a

relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(c) For purposes of this Transaction:

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

“Floating Price” means the Price Source upon which the Index Price or Green Attributes Price is based.”

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“Trading Day” means a day in respect of which the relevant Price Source published the Floating Price.

ARTICLE 6. PARTY B’S REPRESENTATIONS, WARRANTIES AND COVENANTS

(a) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that:

- (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and
- (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. **[STC 6, NON-MODIFIABLE]**

(b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used

commercially reasonable efforts to comply with such change in law. **[STC REC-1, NON-MODIFIABLE]**

(c) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. **[STC REC-2, NON-MODIFIABLE]**

(d) For the avoidance of doubt, the term "contract" as used in the immediately preceding paragraph means this Agreement.

(e) The term "commercially reasonable efforts" as set forth in this Article 6 shall not require Party B to incur out-of-pocket expenses in excess of twenty-five thousand dollars (\$25,000) in the aggregate in any one calendar year between the Confirmation Effective Date and the last day of the Delivery Period.

(f) In addition to the foregoing, Party B warrants, represents and covenants, as of the Confirmation Effective Date and throughout the Delivery Period, that:

- (i) Party B has the contractual rights to sell all right, title, and interest in the Product agreed to be delivered hereunder;
- (ii) Party B has not sold or allocated the Product to be delivered under this Confirmation to any other person or entity;
- (iii) at the time of delivery, all rights, title, and interest in the Product to be delivered under this Confirmation are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever; and
- (iv) this Agreement transfers only bundled Energy and Green Attributes that have been generated on or after the commencement of the Delivery Period; and

ARTICLE 7. GENERAL PROVISIONS

7.1. Facility Identification

Upon Buyer's reasonable request, within ten (10) Business Days after the end of each month during the Delivery Period, Seller shall provide indicative identification, based on preliminary meter data, of the facility(ies) that the Product was delivered from for that month.

7.2. Audit.

Party A may, at its sole expense and during normal working hours, examine the records of Party B to the extent reasonably necessary to verify the accuracy of any statement or charge, including aggregated amounts of Delivered Energy or Scheduled Energy; however such audit rights will not apply to the output or other confidential or proprietary information of individual generation facilities.

7.3. Governing Law

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 LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. **[STC 17 – APPLICABLE LAW, NON-MODIFIABLE]**

7.4. Dispute Resolution

(a) Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement or any related agreement is the dispute resolution procedure set forth in this Section 10.17. Either Party may seek a preliminary injunction or

other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of the dispute resolution procedure set forth in this Section 10.17.

(b) Management Negotiations.

- (i) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's authorized representative designated in writing as a representative of the Party (each a "Manager"). Either Manager may, by Notice to the other Party, request a meeting to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place (either in person or telephonically). If the matter is not resolved within fifteen (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 that 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 Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.
- (ii) Within five (5) Business Days of the Referral Date, the Executives shall establish a mutually acceptable location and date, which date shall not be greater than thirty (30) 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 relevant information and to attempt to resolve the dispute.
- (iii) 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.
- (iv) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the Notice to meet, pursuant to Section 10.17(a) above, refuses or does not meet within the ten (10) Business Day period specified in Section 10.17(a) above, either Party may initiate arbitration of the controversy or claim by providing Notice of a demand for binding arbitration at any time thereafter.

(c) Arbitration. Any dispute that cannot be resolved by management negotiations as set forth in Section 10.17(b) above shall be resolved through binding arbitration by a retired judge or justice from the AAA panel conducted in San Diego, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("Arbitration").

- (i) Any arbitrator 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. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after Notice of the demand for 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 AAA's Commercial Arbitration Rules.
- (ii) 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.

- (iii) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.
- (iv) The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.
- (v) The arbitrator's award shall be made within nine (9) months of the filing of the Notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.
- (vi) Judgment on the award may be entered in any court having jurisdiction.
- (vii) The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.
- (viii) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before the arbitrator.
- (ix) The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.
- (x) The existence, content, and results of any Arbitration hereunder is Confidential Information that is subject to the provisions of Section 10.11.

(d) WAIVER OF JURY TRIAL. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING UNDER THIS AGREEMENT TO THE EXTENT SUCH WAIVER IS CONSISTENT WITH APPLICABLE LAW.

7.5. Sovereign Immunity

Party A warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue permitted under the Agreement), or (c) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).

7.6. Confidentiality Amendment to Master Agreement.

Changes to the Master Agreement shall apply to this Confirmation only. For purposes of this Confirmation, Section 10.11 (Confidentiality) of the Master Agreement is deleted in its entirety and replaced with the following:

“10.11 Confidentiality.

(a) 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 this Master Agreement to a third party other than (i) the Party's Affiliates and its and their officers, directors, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to the Party B's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) at any time on or after the date on which Party A makes its filing seeking CPUC approval of a Transaction, as necessary, either Party shall be permitted to disclose: Party names, resource type, Delivery Term, project location, Allocation Capacity, Allocation Quantity, and Delivery

Point; (v) in order to comply with any applicable law, regulation, including, but not limited to, the California Public Records Act and/or the California Ralph M Brown Act, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 10.11(a) ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts within its sole and absolute discretion to pursue rights under such applicable laws, regulations, rules or orders which allow for the prevention or limitation of such disclosure. The Disclosing Party's determination of what efforts might be reasonable shall not be subject to challenge by the other Party. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, 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.

(b) 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 (Government Code Section 6250 et seq.). 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.

(c) Upon request or demand of any third person or entity not a Party hereto to Party B pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("Requested Confidential Information"), Party B will as soon as practical notify Party A in writing via email that such request has been made. Party A will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Party B. If Party A takes no such action after receiving the foregoing notice from Party B, Party B shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Party A does take or attempt to take such action, Party B shall provide timely and reasonable cooperation to Party A."

7.7. Termination of Allocation Confirmation.

(a) For purposes of this Allocation, the definition of "Losses" in Section 1.28 of the Master Agreement is modified by adding to the end thereof:

"Notwithstanding the foregoing, each Party's economic loss shall be determined using the then current Index Price plus the then current Green Attributes Price, so the Non-Defaulting Party's Losses shall be deemed to be zero (\$0)."

(b) For purposes of this Transaction, Section 5.2 of the Master Agreement shall be modified to delete the following sentence: "The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction."

7.8. Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic or

scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

7.9. Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Allocation into which the Parties have entered and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Allocation may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

SAN DIEGO GAS & ELECTRIC COMPANY

ORANGE COUNTY POWER AUTHORITY

BY: _____

BY: _____

NAME:

NAME:

TITLE:

TITLE:

_____ APPROVED AS TO LEGAL FORM

EXHIBIT A

**TO THE CONFIRMATION BETWEEN ORANGE COUNTY POWER AUTHORITY
AND SAN DIEGO GAS & ELECTRIC COMPANY**

DATED: JULY [], 2022

PROJECT FACILITIES – SHORT TERM BUNDLED

PROJECT NAME	TECH-NOLOGY	DATE SIGNED	START DATE	TERM (YRS)	CAPACITY (MW)	RESOURCE ID	CEC RPS ID	WREGIS GU ID	EIA ID	LOCATION
[REDACTED]	BIOGAS	11/09/12	05/20/13	10	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CA
[REDACTED]	WIND	05/16/08	12/29/08	15	[REDACTED]	[REDACTED]	[REDACTED]			MT
[REDACTED]	WIND	04/16/13	01/26/14	10	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CA
[REDACTED]	WIND	05/23/08	10/16/09	15	[REDACTED]	[REDACTED]	[REDACTED]			MT
[REDACTED]	WIND	04/16/13	01/20/15	10	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CA
[REDACTED]	WIND	05/31/04	03/21/06	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CA
[REDACTED]	WIND	07/12/10	03/01/11	15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CA
[REDACTED]	WIND	04/16/13	12/15/15	15	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CA
[REDACTED]	BIOGAS	11/20/09	05/16/11	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CA
[REDACTED]	BIOGAS	11/20/09	05/18/11	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CA
[REDACTED]	WIND	10/12/05	08/16/12	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CA
[REDACTED]	WIND	02/14/12	12/31/12	20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	CA