AGENDA (revised)

ORANGE COUNTY POWER AUTHORITY
MEETING OF THE BOARD OF DIRECTORS

Tuesday, September 6, 2022
10:00 a.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 the closed session prior to Item 10, on any open session agenda items by requesting to speak during Item 4, or on any matter not appearing on the agenda but within the jurisdiction of the Board by requesting to speak during Item 5. 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 Items 4, 5, and 10 (for providing comments on open session agenda items, non-agenda items, and on closed session items, respectively), 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: 893 3981 5964

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PUBLIC COMMENTS ON AGENDA ITEMS

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

5. PUBLIC COMMENTS ON NON-AGENDA ITEMS

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

6. DIRECTOR ANNOUNCEMENTS

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

7. STAFF REPORT

Staff may briefly provide information to the Board and the public. The Board may engage in discussion if the specific subject matter of the report is identified, but the Board may not take any action. There is to be no other discussion or action taken unless authorized by law.

8. CONSENT CALENDAR

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

1. 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. MINUTES FOR THE REGULAR BOARD MEETING OF JULY 12, 2022

Recommended Action:
Approve as submitted.

3. MINUTES FOR THE SPECIAL BOARD MEETING OF JULY 26, 2022

Recommended Action:
Approve as submitted.

4. TREASURER'S REPORT – FISCAL YEAR ENDED JUNE 30 AND MAY 31, 2022

Recommended Action:
Receive and file.

5. 2022 BIENNIAL CONFLICT OF INTEREST CODE REVIEW

Recommended Action:

1. Adopt a resolution updating the Orange County Power Authority ("OCPA") Conflict of Interest Code to account for the addition, deletion, and modification of positions listed as "designated filers" entitled: a Resolution of the Board of Directors of Orange County Power Authority adopting a revised Conflict of Interest Code pursuant to the Political Reform Act of 1974

2. Authorize staff to execute the appropriate documents and submit the adopted Code to the Board of Supervisors of Orange County as OCPA's code-reviewing body and request approval of the Code pursuant to Government Code Section 87303

9. 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. COMMUNITY ADVISORY COMMITTEE UPDATE

Recommended Action:
Receive and file.

2. MASTER PURCHASE AND SALE AGREEMENT CONFIRMATION LETTER WITH SOUTHERN CALIFORNIA EDISON

Recommended Action:

1. Approve Master Purchase and Sale Agreement Confirmation Letter with Southern California Edison for Modified Cost Allocation Mechanism (MCAM) procurement obligations.

2. Authorize Chief Executive Officer to execute the Confirmation Letter in substantially similar form with approval as to form by the General Counsel.

3. LONG-TERM AGREEMENT FOR PURCHASE OF PORTFOLIO CONTENT CATEGORY 1 RENEWABLE ENERGY AND MULTI-YEAR AGREEMENT FOR RESOURCE ADEQUACY CAPACITY WITH SHELL ENERGY NORTH AMERICA, L.P.

Recommended Action:

1. Approve long-term renewable energy purchase agreement and a multi-year resource adequacy capacity purchase agreement with Shell Energy North America, L.P. ("SENA").

2. Authorize Chief Executive Officer to enter into the agreements with SENA.

4. PROPOSED RESPONSE TO FISCAL YEAR 2021-22 GRAND JURY REPORT

Recommended Action:

1. Approve proposed response to Fiscal Year 2021-22 Grand Jury Report

2. Direct the Chief Executive Office to forward the staff report with attachments to the Presiding Judge of the Superior Court and the Fiscal Year 2021-22 Grand Jury no later than September 23, 2022.

5. PROPOSED RESPONSE TO COUNTY OF ORANGE REQUEST FOR AUDIT

Recommended Action:

Direct the Chief Executive Officer to (i) draft and forward a response to the County of Orange with respect to certain actions that the County has requested OCPA to take consistent with the recommended responses set forth herein; and (ii) take such steps as are necessary to implement such actions, including the hiring of a consultant for a performance audit. The response letter should be sent no later than September 9, 2022, in accordance with the request of the County.

6. POLICY NO. 009: NEW CUSTOMER COMMUNITIES POLICY (Consideration of a Request by Director Khan)

Recommended Action:

Adopt Policy No. 009: New Customer Communities Policy replacing former Policy 009: New Member Policy.

7. CONSIDER SECOND AMENDMENT TO OCPA JOINT POWERS AGREEMENT (Consideration of a Request by Director Khan)

Recommended Action:

1. Discuss draft Second Amendment to OCPA Joint Powers Agreement ("Second Amendment").

2. Consider directing OCPA staff to notify the OCPA member agencies of the Second Amendment and place the Second Amendment on a future OCPA agenda for consideration and approval.

10. CLOSED SESSION

Prior to entering closed session, the Board will provide an opportunity for members of the public to provide public comment regarding the closed session item(s).

1. [Canceled]

2. [Canceled]

3. [Canceled]

11. 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 8.1

To: Orange County Power Authority Board of Directors

From: Ryan Baron, General Counsel

Subject: Findings Necessary For Remote Participation in Public Meetings

Date: September 6, 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

MINUTES
REGULAR MEETING
BOARD OF DIRECTORS
ORANGE COUNTY POWER AUTHORITY
Tuesday, July 12, 2022

1. CALL TO ORDER

Chair Carroll called to order the Regular Meeting of the Orange County Power Authority Board of Directors at 10:00 a.m. on Tuesday, July 12, 2022.

The meeting was conducted using teleconference and electronic means consistent with public health orders and guidelines in California and in accordance with the Governor's Executive Orders. There was no location for in-person attendance. Due to the nature of the teleconference, all votes were cast via roll call. In an effort to protect public health, members of the public were able to provide live comments on agenda items using Zoom.

2. ROLL CALL

Present	Director Wagner	Orange County Board of Supervisors
	Director Susan Sonne	City of Buena Park
	Director Farrah N. Khan	City of Irvine
	Director Dan Kalmick	City of Huntington Beach
	Vice Chair Fred Jung	City of Fullerton
	Chair Mike Carroll	City of Irvine
	Absent:	None

3. PLEDGE OF ALLEGIANCE

Director Khan led the Pledge of Allegiance.

4. PUBLIC COMMENTS ON AGENDA ITEMS

The following people spoke in Public Comments

Ayn Craciun and Branda Lin

5. PUBLIC COMMENTS ON NON-AGENDA ITEMS

The following speakers commented on non-agenda items

Dee Fox, Danny Gray, and Linda Kraemer

6. DIRECTOR ANNOUNCEMENTS

Director Kalmick spoke about the Grand Jury report.

7. STAFF REPORT

None

8. CONSENT CALENDAR

Director Sonne pulled item 8.3 from the Consent Calendar and Director Kalmick pulled item 8.2.

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.

ACTION

Vice Chair Jung made a motion, seconded by Director Kalmick, and unanimously carried to approve Item 8.1.

2. MINUTES FOR THE REGULAR BOARD MEETING OF JUNE 29, 2022

ACTION

Director Kalmick made a motion, seconded by Chair Carroll, and unanimously carried to approve the June 29, 2022, minutes with changes as submitted, and to include one or two lines in future minutes indicating the concerns voiced by public speakers during public comments

3. CREATION OF LEGAL AD HOC COMMITTEE

Establish a temporary ad hoc committee related to OCPA's legal needs

ACTION

Director Kalmick made a motion, seconded by Director Khan, and unanimously carried, to move forward with the temporary ad-hoc committee on OCPA's legal needs and appoint the following members: Directors Sonne, Wagner, and Kalmick.

9. REGULAR CALENDAR

1. COMMUNITY ADVISORY COMMITTEE UPDATE

Jose Trinidad Castaneda III gave the Community Advisory Committee Update and answered questions.

The item was received and filed by consensus of the Board.

2. APPROVE ELECT TO ADMINISTER ENERGY EFFICIENCY PROGRAM PLAN

Recommended Action:

Steven Halligan, OCPA Management Analyst, introduced the item and those present from The Energy Coalition (TEC).

Laurel Rothschild, Vice President of Programs, and Julie Castro, Program Manager, gave a detailed presentation on the proposed Energy Efficiency Program Plan

ACTION

Chair Carroll made a motion, seconded by Board Member Wagner, and unanimously carried to approve the Elect to Administer Energy Efficiency Program Plan.

10. ADJOURNMENT

At 11:39 a.m. Chair Carroll adjourned the July 12, 2022, Regular Meeting of the OCPA Board of Directors.

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Brian S. Probolsky, Secretary

MINUTES
SPECIAL MEETING
BOARD OF DIRECTORS
ORANGE COUNTY POWER AUTHORITY
Tuesday, July 26, 2022

1. CALL TO ORDER

Chair Carroll called to order the Special Meeting of the Orange County Power Authority Board of Directors at 2:01 p.m. on Tuesday, July 26, 2022.

The meeting was conducted using teleconference and electronic means consistent with public health orders and guidelines in California and in accordance with the Governor's Executive Orders. There was no location for in-person attendance. Due to the nature of the teleconference, all votes were cast via roll call. In an effort to protect public health, members of the public were able to provide live comments on agenda items using Zoom.

2. ROLL CALL

Present	Director Wagner	Orange County Board of Supervisors
	Director Susan Sonne	City of Buena Park
	Director Farrah N. Khan	City of Irvine
	Director Dan Kalmick	City of Huntington Beach
	Vice Chair Fred Jung	City of Fullerton
	Chair Mike Carroll	City of Irvine
	Absent:	None

3. PLEDGE OF ALLEGIANCE

Director Wagner led the Pledge of Allegiance.

4. PUBLIC COMMENTS ON AGENDA ITEMS

The following people spoke in Public Comments

No Public Comments

5. REGULAR CALENDAR

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.

ACTION

Director Kalmick made a motion, seconded by Director Wagner, and unanimously carried to approve Item 5.1.

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.

Brian Probolsky, OCPA Chief Executive Officer, introduced the item and those present from Pacific Energy Advisors (PEA).

Kirby Dusel gave a detailed presentation on the voluntary allocation market offer

ACTION
Director Wagner made a motion, seconded by Director Kalmick, and unanimously carried to approve all four (4) recommended actions.

10. ADJOURNMENT

At 2:23 p.m. Chair Carroll adjourned the July 26, 2022, Special Meeting of the OCPA Board of Directors.

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Brian S. Probolsky, Secretary

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 8.4

To: Orange County Power Authority Board of Directors

From: Tiffany Law, Chief Financial Officer

Subject: Treasurer's Report – Fiscal Year Ended June 30 And May 31, 2022

Date: September 6, 2022

RECOMMENDED ACTION

Receive and file.

BACKGROUND

Orange County Power Authority prepares its financial statements in accordance with Generally Accepted Accounting Principles (GAAP). Accordingly, OCPA's financial statements are presented as a governmental enterprise fund and are reported using the full accrual basis of accounting.

OCPA has prepared draft financial statements for the year-to-date July 1, 2021, through June 30, 2022, along with budgetary comparisons. The financial statements ending June 30, 2022, are considered a draft until the annual audit has been completed.

ANALYSIS AND DISCUSSION

OCPA remains in its start-up phase as it just launched the electrical service to its customers since April 1, 2022. Below are the financial highlights for the fiscal year ended June 30, 2022:

- OCPA started recognizing operating revenues in April 2022. Year-to-date energy sales are lower than budget by approx. $6.1mil or 13.7%. In order to prepare FY2021/22 budget projections from April to June 2022, OCPA was required to utilize an outdated SCE 2019 dataset to calculate the load projections (Note: 2020 dataset was deemed unreliable due to the usage anomalies caused by global pandemic). Despite continued requests, SCE has been unable to generate a correct 2021 dataset for OCPA. Lower energy sales are primarily the result of the actual enrolled customer mix being weighted more heavily within the smallest commercial GS-1 category than expected. Additionally, the actual load consumption from our industrial TOU-8 customers has been lower than the forecast derived from SCE's 2019 historical dataset. The change in customer usage patterns since the 2019 period resulted in actual revenues being lower than projected. However, the lower-than-expected sales have not negatively impacted bottom line results as the power supply costs are below budget by approx. $8.2mil or 20% accordingly (the net position as of June 2022 is approx. $2.3mil or 333.3% higher than budget). For its upcoming FY2022/23 budget, staff will update projections and related financial impacts utilizing actual enrollment data and seek further Board approvals necessary.
- Corresponding to the lower-than-expected energy sales, power supply costs are below budget by approx. $8.2mil or 20%. In addition to the lower projected volume used by customers, the variance is typically due to timing difference between projected and actual Renewable Energy Certificates (RECs) deliveries as well as fluctuating market prices.

- Operating costs other than cost of energy resulted in a savings over budgeted projections by approx. $0.3mil or 7.2%.
- OCPA has borrowed $7.65mil from MUFG Union Bank's Revolving Credit Facility, of which $1mil was used as a reserve for the lockbox account. MUFG has also issued approx. $6.2mil letters of credit to various investor-owned utilities as collateral posting (~$5.5mil) and the California ISO (~$703k) for the CRR Holder Minimum Participation Requirements and de minimis CRR auction collateral posting, of which $500k will be waived by the California ISO as OCPA successful met the $10mil total assets requirement. The remaining balance on the RLOC is approx. $21.2mil.
- As a result, the year-end net position as of June 30, 2022 is in the black of $1.6mil or 333.3% higher than budget of ($0.7mil).

There were no unusual transactions of note during this period of reporting.

FISCAL IMPACT

There is no fiscal impact associated with approving this item. It is presented for informational purposes only.

ATTACHMENT

1. Financial Statements as of June 30 (draft) and May 31, 2022 (Statement of Net Position; Statement of Revenues, Expenses and Changes in Net Position; Statement of Cash Flows)
2. Draft Budgetary Comparison Report as of June 30 (draft) and May 31, 2022
3. Schedule of Outstanding Debt as of June 30 and May 31, 2022

MAHER
ACCOUNTANCY

ACCOUNTANTS' COMPILATION REPORT

Management
Orange County Power Authority

Management is responsible for the accompanying financial statements of Orange County Power Authority (a California Joint Powers Authority) which comprise the statement of net position as of June 30, 2022, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. Orange County Power Authority's annual audited financial statements include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
August 10, 2022

DRAFT

1101 Fifth Avenue, Suite 200 San Rafael, CA 94901 415 459 1249 mahercpa.com

ORANGE COUNTY POWER AUTHORITY
STATEMENT OF NET POSITION
As of June 30, 2022

ASSETS	
Current assets	
Cash	$ 8,092,407
Restricted cash	6,000,000
Investments	147,587
Accounts receivable, net of allowance	11,001,319
Accrued revenue	13,010,152
Other receivables	1,872,916
Prepaid expenses	5,803,900
Deposits	224,576
Total current assets	46,152,857
LIABILITIES	
Current liabilities	
Accrued cost of energy	28,601,167
Accounts payable	583,751
Other accrued liabilities	237,519
User taxes and energy surcharges due to other governments	594,784
Accrued interest and financing costs	31,627
Total current liabilities	30,048,848
Noncurrent liabilities	
Note payable	7,650,000
Loan payable	7,652,380
Accrued interest and financing costs	91,927
Total noncurrent liabilities	15,394,307
Total liabilities	45,443,155
NET POSITION	
Unrestricted	709,702
Total net position	$ 709,702

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ORANGE COUNTY POWER AUTHORITY
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
Twelve Months Ended June 30, 2022

OPERATING REVENUES	
Electricity sales, net	$ 38,289,664
OPERATING EXPENSES	
Cost of energy	32,635,024
Contract services	2,572,456
Staff compensation	1,038,151
General and administration	200,695
Total operating expenses	36,446,326
Operating income (loss)	1,843,338
NONOPERATING REVENUES (EXPENSES)	
Investment income	852
Interest and financing expense	(199,424)
Nonoperating revenues (expenses), net	(198,572)
CHANGE IN NET POSITION	1,644,766
Net position at beginning of period	(935,064)
Net position at end of period	$ 709,702

DRAFT

ORANGE COUNTY POWER AUTHORITY
STATEMENT OF CASH FLOWS
Twelve Months Ended June 30, 2022

CASH FLOWS FROM OPERATING ACTIVITIES	
Receipts from customers	$ 14,872,977
Receipts from market settlements	913,054
Other operating receipts	4,815
Payments to suppliers for electricity	(12,794,428)
Payments for goods and services	(2,347,288)
Payments to employees for services	(969,641)
Net cash used by operating activities	(320,511)
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES	
Proceeds from note payable	11,450,000
Proceeds from loan payable	5,000,000
Principal payments on note payable	(3,800,000)
Interest and related expense payments	(92,617)
Net cash provided by non-capital financing activities	12,557,383
CASH FLOWS FROM INVESTING ACTIVITIES	
Interest income received	348
Net cash provided (used) by investing activities	348
Net change in cash	12,237,220
Cash at beginning of period	1,855,187
Cash at end of period	$ 14,092,407
Reconciliation to the Statement of Net Position	
Cash (unrestricted)	$ 8,092,407
Restricted cash	6,000,000
Cash and cash equivalents	$ 14,092,407

DRAFT

ORANGE COUNTY POWER AUTHORITY
STATEMENT OF CASH FLOWS (continued)
Twelve Months Ended June 30, 2022

RECONCILIATION OF OPERATING LOSS TO NET CASH USED BY OPERATING ACTIVITIES

Operating income (loss)	$	1,843,338
Adjustments to reconcile operating loss to net cash used by operating activities		
Revenue adjusted for allowance for uncollectible accounts		484,679
(Increase) decrease in:		
Accounts receivable		(11,485,998)
Other receivables		(1,872,916)
Accrued revenue		(13,010,152)
Prepaid expenses		(5,803,900)
Deposits		(219,761)
Increase (decrease) in:		
Accrued cost of electricity		28,601,167
Accounts payable		408,382
Other accrued liabilities		139,866
User taxes and energy surcharges due to other governments		594,784
Net cash used by operating activities	$	(320,511)

DRAFT

MAHER
ACCOUNTANCY

ACCOUNTANTS' COMPILATION REPORT

Board of Directors
Orange County Power Authority

Management is responsible for the accompanying special purpose statement of Orange County Power Authority (OCPA), a California Joint Powers Authority, which comprise the budgetary comparison schedule for the period ended June 30, 2022, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of OCPA.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. OCPA's annual audited financial statements include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to OCPA because we performed certain accounting services that impaired our independence.

Maher Accountancy
San Rafael, CA
August 10, 2022

DRAFT

1101 Fifth Avenue, Suite 200 San Rafael, CA 94901 415 459 1249 mahercpa.com

ORANGE COUNTY POWER AUTHORITY
BUDGETARY COMPARISON REPORT
Twelve Months Ended June 30, 2022

	YTD Actual	YTD Amended Budget	YTD Amended Budget Variance (under) Over	YTD Actual as a Percent of Amended Budget	Annual Amended Budget	Amended Budget Variance (under) Over
OPERATING REVENUES						
Electricity Sales, net	$ 38,289,664	$ 44,367,000	$ (6,077,336)	86.3%	$ 44,367,000	$ (6,077,336)
OPERATING EXPENSES						
Cost of Electricity	32,635,024	40,816,000	(8,180,976)	80.0%	40,816,000	(8,180,976)
Service Fees - SCE	92,748	14,000	78,748	662.5%	14,000	78,748
Personnel	1,038,153	1,522,000	(483,847)	68.2%	1,522,000	(483,847)
Professional Services	1,074,899	1,137,000	(62,101)	94.5%	1,137,000	(62,101)
Legal	893,136	800,000	93,136	111.6%	800,000	93,136
Communications & Outreach	511,670	433,000	78,670	118.2%	433,000	78,670
General and administration	200,695	201,000	(305)	99.8%	201,000	(305)
Total operating expenses	36,446,325	44,923,000	(8,476,675)		44,923,000	(8,476,675)
Operating income (loss)	1,843,338	(556,000)	2,399,338		(556,000)	2,399,338
NONOPERATING REVENUES (EXPENSES)						
Investment income	852	-	852	N/A	-	852
Interest and financing expense	(199,424)	(149,000)	(50,424)	133.8%	(149,000)	(50,424)
Nonoperating revenues (expenses), net	(198,572)	(149,000)	(49,572)		(149,000)	(49,572)
CHANGE IN NET POSITION	$ 1,644,766	$ (705,000)	$ 2,349,766		$ (705,000)	$ 2,349,766

DRAFT

ORANGE COUNTY POWER AUTHORITY
BUDGETARY COMPARISON REPORT
Twelve Months Ended June 30, 2022

Budget Item	Actual / Budget %	Comment
Electric Sales Revenue	86.3%	Year-to-date energy sales are lower than budget by approx. $6.1mil. The preparation of the budget required the use of outdated SCE 2019 dataset to calculate the load projections (Note: 2020 dataset was deemed unreliable due to the usage anomalies caused by global pandemic). Despite continued requests, SCE has been unable to generate a correct 2021 dataset for OCPA. Lower energy sales are primarily the result of the actual enrolled customer mix being weighted more heavily within the smallest commercial GS-1 category than expected. Additionally, the actual load consumption from our industrial TOU-8 customers has been lower than the forecast derived from SCE's 2019 historical dataset. The change in customer usage patterns since the 2019 period resulted in actual revenues being lower than projected. However, the lower-than-expected sales have not negatively impacted bottom line results as the power supply costs are below budget as well. For its upcoming FY2022/23 budget, staff will update projections and related financial impacts utilizing actual enrollment data and seek the board approval on the FY2022/23 budget projections in Q4 2022.
Cost of Energy	80.0%	Variances in this category are typically due to (1) timing difference between projected and actual REC deliveries, (2) variance from actual to anticipated market prices, and (3) variance from actual to expected volume used by customers.
Service Fees - SCE	662.5%	Actual costs exceeded budget due to unexpected Phase 1 enrollment fee and new project management fees.
Personnel	68.2%	Staffing expenses are under budget due to the timing delay of new hires.
Professional Services	94.5%	This category includes accounting, IT, technical and other consultants.
Legal Costs	111.6%	This category includes outside legal costs for regulatory and energy procurement needs. Actual costs exceeded budget primarily due to unexpected legal expenses over the board directed investigations and SCE financial security requirement (FSR) appeals.
Marketing and customer enrollment	118.2%	This category includes customer noticing, advertising and other customer communications. Actual costs exceeded budget primarily due to larger than expected communications consulting fees.
Other General & Administrative	99.8%	This category includes occupancy costs, industry membership dues, and other general and administrative costs.
Interest and financing expenses	133.8%	This category includes interest and fees related to debt. Variance predominately due to the timing of loan draws and letters of credit posted for collateral for energy supply.

DRAFT

ORANGE COUNTY POWER AUTHORITY
SCHEDULE OF OUTSTANDING DEBT
AS OF JUNE 30, 2022

CITY OF IRVINE

On January 2021, OCPA borrowed $2,500,000 from the City of Irvine for working capital costs associated with OCPA's pre-launch. On September 2021, OCPA borrowed $5,000,000 from the City of Irvine for cash collateral in the credit facility associated with OCPA's launch.The loan repayment date for the above is January 1, 2027. Interest is due on the loan in an amount based on the gross earnings for the respective quarter as reported in the City Treasurer's pooled investment portfolio report.

Also included as a loan payable are formation related costs - $152,380 paid directly from the City to the vendors. OCPA will reimburse the City no later than January 1, 2027. Interest does not accrue on the formation costs advanced by the City.

Principal	Maturity	Interest Rate	Payments	Outstanding Principal
$ 152,380	January 2027	0.00%	$ -	$ 152,380
$ 7,500,000	January 2027	Variable - City Treasurer's report	$ -	$ 7,500,000

MUFG UNION BANK, N.A. CREDIT FACILITY

On September 2021, OCPA and MUFG Union Bank, N.A. entered into a Revolving Credit Agreement for a $35 million credit facility OCPA has borrowed $7,650,000 as of June 30, 2022, of which $1,000,000 was used as a reserve for the lockbox account.

MUFG, N.A. has also issued a $2,611,947.50 Letter of Credit to Pacific Gas & Electric; a $2,870,000.00 Letter of Credit to Southern California Edison Company and a $703,000 Letter of Credit to California ISO. This leaves an unused credit balance of $21,165,053

Credit Facility	Letter of Credit	Borrowing	Unused Credit
$ 35,000,000	$ 6,184,948	$ 7,650,000	$ 21,165,053

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 8.5

To: Orange County Power Authority Board of Directors

From: Ryan Baron, General Counsel
Nicholaus Norvell, Assistant General Counsel

Subject: 2022 Biennial Conflict of Interest Code Review

Date: September 6, 2022

RECOMMENDED ACTION

1. Adopt a resolution updating the Orange County Power Authority ("OCPA") Conflict of Interest Code to account for the addition, deletion, and modification of positions listed as "designated filers" entitled: a Resolution of the Board of Directors of Orange County Power Authority adopting a revised Conflict of Interest Code pursuant to the Political Reform Act of 1974

2. Authorize staff to execute the appropriate documents and submit the adopted Code to the Board of Supervisors of Orange County as OCPA's code-reviewing body and request approval of the Code pursuant to Government Code Section 87303

BACKGROUND

The Political Reform Act of 1974 (the "Act") requires, among other things, that all state and local government agencies adopt, maintain, and promulgate a conflict of interest code establishing the rules for reporting financial assets by certain agency officers, employees, and consultants. A conflict of interest code must specifically designate all agency positions, except those listed in Government Code Section 87200, that make or participate in making agency decisions which may foreseeably have an effect on any financial interest of that person, and assign specific types of financial assets to be disclosed that may be affected by the exercise of the powers and duties of that position.

To ensure the code reflects the organization's current staffing the Act requires agencies to review their code on at least a biennial basis to be conducted each even numbered year. This review process determines if new positions have been created, eliminated, titles updated, or whether the duties of positions designated in the code changed sufficiently enough to warrant adjusting their disclosure obligations.

Discussion And Analysis

Orange County Power Authority first adopted its Conflict of Interest Code ("Code") on February 9, 2021, by Resolution 2021-04. The Code, which was later approved on August 24, 2022, by the

Orange County Board of Supervisors as OCPA's code-reviewing body, incorporates by reference Section 18730 of the regulations of the Fair Political Practices Commission ("FPPC") as the provisions of the Code. This is commonly referred to as the FPPC Standard Code. The Code also contains an Appendix designating all OCPA positions that, at the time, were anticipated to make or participate in making decisions of the agency, as well as assigned appropriate disclosure categories to those positions based on the list of available categories, also referenced in the Appendix.

On August 10, 2021, the OCPA Board of Directors adopted Resolution 2021-06, revising the original code to include several consultant and employee positions not considered in the initial Code filing.

On June 20, 2022, OCPA received the 2022 Biennial Notice from the Orange County Clerk's office with instructions to conduct the Biennial Review of the Conflict of Interest Code. If amendments to Code are not necessary, OCPA must file the appropriate Biennial Review documents by October 3, 2022. Conversely, if amendments to the Code are necessary, OCPA must file the appropriate Biennial Review documents by December 31, 2022, making changes to the Code following approval by the governing body .

After conducting a review of the current Code, it was determined that revisions to the Appendix of designated employees are needed to account for the addition of positions that make or participate in making agency decisions which may foreseeably have an effect on any financial interest of that person, the removal of positions that do not make or participate in making such decisions, and changes in listed position titles. The Appendix attached to the resolution included with this report reflects these changes.

FISCAL IMPACT

None

Attachments:
1. Resolution No. 2022-XX: Resolution of the Board of Directors of Orange County Power Authority Adopting a Revised Conflict of Interest Code Pursuant to the Political Reform Act of 1974
2. Draft 2022 Orange County Power Authority Revised Conflict of Interest Code (redlined)
3. 2022 Biennial Notice from the Orange County Clerk's office

RESOLUTION NO. 2022-__

A RESOLUTION OF THE BOARD OF DIRECTORS OF ORANGE COUNTY POWER AUTHORITY ADOPTING A REVISED CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974

A. The State of California enacted the Political Reform Act of 1974, Government Code Section 81000 et seq. (the "Act"), which contains provisions relating to conflicts of interest that potentially affect all officers, employees, and consultants of the Orange County Power Authority ("OCPA") Board of Directors, and requires all public agencies to adopt and promulgate a conflict of interest code.

B. The potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in OCPA being restrained or prevented from acting in cases where the provisions of the Act may have been violated.

C. The Board of Directors initially adopted a Conflict of Interest Code on February 9, 2021 by Resolution 2021-04.

D. The Board of Directors adopted a revised Conflict of Interest Code on August 10, 2021 by Resolution 2021-06, and now desires to amend said Code.

E. Notice of the time and place of a public meeting on, and of consideration by the Board of Directors, the proposed Conflict of Interest Code was provided each designated position and publicly posted for review at the offices of OCPA.

F. A public meeting was held upon the proposed Conflict of Interest Code at a regular meeting of the Board of Directors on September 6, 2022 at which all present were given an opportunity to be heard on the proposed Conflict of Interest Code.

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

Section 1. The Board of Directors does hereby adopt the proposed Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Chief Executive Officer, and available to the public for inspection and copying during regular business hours.

Section 2. Said Conflict of Interest Code shall be submitted to the Board of Supervisors of the County of Orange for approval and said Code shall become effective 30 days after the Board of Supervisors approves the proposed Conflict of Interest Code as submitted.

Section 3. This resolution shall take effect immediately upon adoption.

APPROVED AND ADOPTED this 6th day of September, 2022.

_____
Chair, Board of Directors
Orange County Power Authority

ATTEST:

_____
Clerk, Board of Directors
Orange County Power Authority

CONFLICT OF INTEREST CODE

OF

ORANGE COUNTY POWER AUTHORITY

BBK – August 2022

CONFLICT OF INTEREST CODE
OF
ORANGE COUNTY POWER AUTHORITY

(Adopted , 2022)

The Political Reform Act (Gov. Code § 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. § 18730) that contains the terms of a standard conflict of interest code which can be incorporated by reference in an agency's code. After public notice and hearing Section 18730 may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation (attached) and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code of **Orange County Power Authority (Authority).**

All officials and designated positions required to submit a statement of economic interests shall file their statements with the Board Secretary as the Authority's Filing Officer. The Board Secretary shall make and retain a copy of all statements filed by the Board of Directors and Chief Executive Officer, and forward the originals of such statements to the Clerk of the Board of Supervisors of the County of Orange. The Chief Executive Officer shall retain the original statements filed by all other officials and designated positions and will make all retained statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

APPENDIX

CONFLICT OF INTEREST CODE

OF

ORANGE COUNTY POWER AUTHORITY

(Adopted _____, 2022)

PART "A"

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

Officials who manage public investments, as defined by 2 Cal. Code of Regs. §18700.3(b), are NOT subject to the Authority's Code but must file disclosure statements under Government Code Section 87200 et seq. [Regs. § 18730(b)(3)]

It has been determined that the positions listed below are Officials who manage public investments[1]. These positions are listed here for informational purposes only.

Board of Directors

Board of Directors, Alternate(s)

Chief Executive Officer

Chief Financial Officer

Treasurer/Auditor

Investment Consultant

---

1 Individuals holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by § 87200.

DESIGNATED POSITIONS

GOVERNED BY THE CONFLICT OF INTEREST CODE

DESIGNATED POSITIONS' TITLE OR FUNCTION	DISCLOSURE CATEGORIES ASSIGNED	
Analyst (various departments/divisions)	4	
Chief Operating Officer	1,	2
Controller	1,	2
General Counsel	1,	2
Director of Power, Planning and Procurement	1,	2
Director of Human Resources	4	
Director of Communications and Outreach	4	
Director of Customer Programs	4	
Director of Information Technology	4	
Director of Legislative and Regulatory Affairs	4	
Consultant – Power Procurement, Risk Management	3,	4
Consultant – Scheduling	3,	4
Consultant – Data Management and Customer Call Center	3,	4
Consultant – Customer Outreach and Education	3,	4
Power Resources Director	1,	2

Consultants and New Positions[2]

Individuals serving as a consultant as defined in FPPC Reg. 18700.3(a) or in a new position created since this Code was last approved that makes or participates in making decisions must file under the broadest disclosure set forth in this Code subject to the following limitation: The Chief Executive Officer may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code Sec. 82019; FPPC Regulations 18219 and 18734.). The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Sec. 81008.)

PART "B"

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of economic interests that the designated position must disclose for each disclosure category to which he or she is assigned. [3] "Investment" means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in, doing business in, planning to do business in, or have done business during the previous two years in the jurisdiction of the Authority.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the boundaries of the Authority.

Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of the Authority.

Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the Authority.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the designated position's department, unit or division.

[3] This Conflict of Interest Code does not require the reporting of gifts from outside this agency's jurisdiction ~~if the source does not have some~~ connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

Clerk of the Board of Supervisors
333 W. Santa Ana Blvd., Room 465
Santa Ana, CA 92701
(714) 834-2206 ** FAX (714) 834-4439

Robin Stieler
Clerk of the Board of Supervisors

6/17/2022 5:52:49 PM

Jennifer Ransom
Conflict of Interest Contact Person for Orange County Power Authority
,
,

SUBJECT: 2022 Biennial Review Notice for Conflict of Interest Code

The Political Reform Act requires every local government agency to review its conflict of interest code biennially and to submit a notice to its code reviewing body that specifies if the code is accurate, or alternatively, that the code must be amended.

The County of Orange Board of Supervisors, is your agency's code reviewing body so therefore we must receive the enclosed biennial notice **no later than October 3, 2022.** Return the biennial notice to our office regardless of how recently the agency's code has been approved.

If amendments are necessary, forward the revised code to our department for approval within **90 days** from the date the biennial notice is filed. For example, if an agency files its notice on October 3, 2022, indicating that an amendment is necessary, the amendment is due to our office by December 31, 2022. Amendments to an agency's code are not effective until they are approved by the Board of Supervisors.

Attached are copies of your agencies Exhibits A and B, listing the designated positions and disclosure categories for your department. In addition, a "Code Amendment Checklist" is attached which lists the various documents you must provide to our office when amending your designated filers exhibits.

If you have any questions regarding updates to your code, please contact your agency's counsel. If you have any questions regarding the Conflict of Interest process, please contact me at (714) 834-7044.

Sincerely,
Sonia Acuna, Deputy Clerk
Clerk of the Board of Supervisors

Enclosures

CONFLICT OF INTEREST CODE AMENDMENT CHECKLIST FOR CODE *WITH UPDATES*

Please send the following documents to the Clerk of the Board's office for submission to the Board of Supervisors for approval.

☐ **COVER MEMO**

Provide a written explanation describing changes to your Agency's code. This will allow the Board of Supervisors to quickly view the changes being made to your Agency's designated filer exhibits.

Include the following:

- Adding a new position/category
- Renaming a position
- Revising an existing disclosure category
- Deleting a position/category

☐ **PROVIDE YOUR AGENCY'S EXHIBITS A AND B IN TWO (2) FORMATS**

1. **Strikeout/Underscore Exhibits**

   Show amendments to your designated filer exhibits in ~~strikeout~~ and <u>underscore</u>

   - **Strikeout**

     Strike out old language to be deleted
   - **Underscore**

     Underline new language to be added

2. **Proposed final Exhibits**

   Exhibits displaying the final exhibits once they will be approved by the Board of Supervisors (without the strikeout/underscore)

☐ **REVISED DESIGNATED FILERS LIST (2 FORMATS)**

1. **Strikeout/Underscore of current Designated Filers list**
   - **Strikeout**

     Strikeout information for deletions to your Agency's Designated Filers list
   - **Underscore**

     Underscore information for additions to your Agency's Designated Filers list
2. **Final Designated Filer list**

   "Final" designated filers list (without strikeout/underscore)

☐ **COPY OF YOUR AGENCY'S RESOLUTION OR MINUTE ORDER APPROVING AMENDED CODE AND ATTACHED DECLARATION PAGE**

Send a copy of your agencies adopted resolution or minute order approving your Authorities code amendment only if you have had updates.

Amendments to an agency's code are not effective until they are approved by the Board of Supervisors.

Please return documents to:

Sonia Acuña, Deputy Clerk
Clerk of the Board of Supervisors
333 W. Santa Ana Blvd.
Santa Ana, California 92701

2022 BIENNIAL REVIEW NOTICE

NAME OF AGENCY: _____

AGENCY MAILING ADDRESS: _____

_____

CITY: _____ ZIP: _____ PHONE NO.: _____

PRIMARY CONTACT PERSON:	SECONDARY CONTACT PERSON:
Name: _____	Name: _____
Mailing Address:	Mailing Address:
_____	_____
_____	_____
_____	_____
Email Address: _____	Email Address: _____
Office Phone No: _____	Office Phone No: _____
Fax Number: _____	Fax Number: _____

Accurate disclosure is essential to monitor whether officials have conflicts of interest and to help ensure public trust in government.

This agency has reviewed its conflict-of-interest code and has determined that *(Check one box):*

☐ **An amendment is required. The following amendments are necessary:**
(Mark all that apply.)
- ☐ Add new positions (including consultants) that must be designated.
- ☐ Delete positions from the list of designated positions.
- ☐ Revise the titles of existing positions.
- ☐ Revise disclosure categories.
- ☐ Other *(describe)*_____

☐ **No amendment is necessary.**

Verification (*Please sign in Blue Ink*)
The agency's code accurately designates all positions that make or participate in the making of governmental decisions; the disclosure categories assigned to those positions accurately require the disclosure of all investments, business positions, interests in real property, and sources of income that may foreseeably be affected materially by the decisions made by those holding the designated positions; and the code includes all other provisions required by Government Code Section 87302.

_____ _____
Signature of Agency Department Head/Chief Executive Officer Date

You must complete this notice regardless of how recently your code was approved or amended.

Please return this notice no later than **October 3, 2022**, to:

Sonia Acuña, Deputy Clerk
Clerk of the Board of Supervisors
333 W. Santa Ana Blvd. Suite 465
Santa Ana, California 92701

PLEASE DO NOT RETURN THIS FORM TO THE FPPC

Declaration for Non-County Local Agencies

I have been designated as the appropriate official to submit this agency's proposed conflict of interest code or code amendment.

I certify that this agency's conflict of interest code accurately designates all positions that make or participate in the making of governmental decisions, and that the disclosure categories assigned to those positions accurately require the disclosure of all investments, business positions, interests in real property, and sources of income that may foreseeably be affected materially by the decisions made by those holding designated positions. I further certify that the code includes all other provisions required by Government Code section 87302.

I certify that the proposed code or code amendment has been reviewed and approved by the agency's governing body and its highest official (chief executive officer, general manager, superintendent, chair, etc.).

I declare that the above is true and correct.

_____

Signature

_____

Title

_____

Agency

_____

Date

(Redline)
Attachment A

CONFLICT OF INTEREST CODE
OF
ORANGE COUNTY POWER AUTHORITY

(Adopted August 10, 2021)

The Political Reform Act (Gov. Code § 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. § 18730) that contains the terms of a standard conflict of interest code which can be incorporated by reference in an agency's code. After public notice and hearing Section 18730 may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation (attached) and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code of **Orange County Power Authority (Authority).**

All officials and designated positions required to submit a statement of economic interests shall file their statements with the Board Secretary as the Authority's Filing Officer. The Board Secretary shall make and retain a copy of all statements filed by the Board of Directors and Chief Executive Officer, and forward the originals of such statements to the Clerk of the Board of Supervisors of the County of Orange. The Chief Executive Officer shall retain the original statements filed by all other officials and designated positions and will make all retained statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

(Redline)
Attachment A

APPENDIX

CONFLICT OF INTEREST CODE

OF

ORANGE COUNTY POWER AUTHORITY

(Adopted August 10, 2021)

PART "A"

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

Officials who manage public investments, as defined by 2 Cal. Code of Regs. §18700.3(b), are NOT subject to the Authority's Code but must file disclosure statements under Government Code Section 87200 et seq. [Regs. § 18730(b)(3)]

It has been determined that the positions listed below are Officials who manage public investments[1]. These positions are listed here for informational purposes only.

Board of Directors

Board of Directors, Alternate(s)

Chief Executive Officer

Chief Financial Officer

Treasurer/Auditor

Investment Consultant

[1] Individuals holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by § 87200.

(Redline)
Attachment A

DESIGNATED POSITIONS

GOVERNED BY THE CONFLICT OF INTEREST CODE

DESIGNATED POSITIONS' TITLE OR FUNCTION	DISCLOSURE CATEGORIES ASSIGNED
Chief Operating Officer	1, 2
General Counsel	1, 2
Director of Power, Planning and Procurement	1, 2
Director of Human Resources	4
Director of Communications and Outreach	4
Director of Customer Programs	4
Director of Information Technology	4
Director of Legislative and Regulatory Affairs	4
Consultant – Power Procurement, Risk Management	3, 4
Consultant – Scheduling	3, 4
Consultant – Data Management and Customer Call Center	3, 4
Consultant – Customer Outreach and Education	3, 4

Consultants and New Positions[2]

2

---

2 Individuals serving as a consultant as defined in FPPC Reg. 18700.3(a) or in a new position created since this Code was last approved that makes or participates in making decisions must file under the broadest disclosure set forth in this Code subject to the following limitation:

The Chief Executive Officer may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code Sec. 82019; FPPC Regulations 18219 and 18734.). The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Sec. 81008.)

PART "B"

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of economic interests that the designated position must disclose for each disclosure category to which he or she is assigned. [3] "Investment" means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in, doing business in, planning to do business in, or have done business during the previous two years in the jurisdiction of the Authority.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the boundaries of the Authority.

Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of the Authority.

Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the Authority.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the designated position's department, unit or division.

[3] This Conflict of Interest Code does not require the reporting of gifts from outside this agency's jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

(Redline)
Attachment B

RESOLUTION NO. 2020-06

RESOLUTION OF THE BOARD OF DIRECTORS OF ORANGE COUNTY POWER AUTHORITY ADOPTING A REVISED CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974

WHEREAS, the State of California enacted the Political Reform Act of 1974, Government Code Section 81000 et seq. (the "Act"), which contains provisions relating to conflicts of interest which potentially affect all officers, employees and consultants of Orange County Power Authority ("OCPA") and requires all public agencies to adopt and promulgate a Conflict of Interest Code; and

WHEREAS, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in OCPA being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

WHEREAS, the Board of Directors has previously adopted a Conflict of Interest Code on February 9, 2021 and now desires to amend said Code; and

WHEREAS, notice of the time and place of a public meeting on, and of consideration by the Board of Directors, the proposed Conflict of Interest Code was provided each designated position and publicly posted for review at the offices of OCPA; and

WHEREAS, a public meeting was held upon the proposed Conflict of Interest Code at a regular meeting of the Board of Directors on August 10, 2021, , at which all present were given an opportunity to be heard on the proposed Conflict of Interest Code.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Orange County Power Authority that the Board of Directors does hereby adopt the proposed Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Chief Executive Officer / Interim Executive Officer, and available to the public for inspection and copying during regular business hours;

55735.00001\33669505.5

(Redline)

Attachment B

BE IT FURTHER RESOLVED that the said Conflict of Interest Code shall be submitted to the Board of Supervisors of the County of Orange for approval and said Code shall become effective 30 days after the Board of Supervisors approves the proposed Conflict of Interest Code as submitted.

APPROVED AND ADOPTED this 10th day of August, 2021.

Chair, Board of Directors
Orange County Power Authority

ATTEST:

Secretary, Board of Directors
Orange County Power Authority

Conflict of Interest Code
EXHIBIT A

Entity: **Other Misc Authorities, Districts and Commissions**

Agency: **Orange County Power Authority**

Position	Disclosure Category	Files With
Chief Operating Officer	Category 0	Agency
Consultant - Customer Outreach and Education	Category 0	Agency
Consultant - Data Management and Customer Call Center	Category 0	Agency
Consultant - Power Procurement, Risk Management	Category 0	Agency
Consultant - Scheduling	Category 0	Agency
Consultant and/or New Position	Category 0	Agency
Director of Communications and Outreach	Category 0	Agency
Director of Customer Programs	Category 0	Agency
Director of Human Resources	Category 0	Agency
Director of Information Technology	Category 0	Agency
Director of Legislative and Regulatory Affairs	Category 0	Agency
Director of Power, Planning and Procurement	Category 0	Agency
General Counsel	Category 0	Agency

Total: 13

OFFICIALS WHO ARE SPECIFIED IN GOVERNMENT CODE SECTION 87200

Officials who are specified in Government Code section 87200 (including officials who manage public investments, as defined by 2 Cal. Code of Regs. § 18700.3 (b)), are NOT subject to the Agency's Conflict of Interest Code, but are subject to the disclosure requirements of the Political Reform Act, Government Code section 87100, et seq. Gov't Code § 87203. These positions are listed here for informational purposes only.

The positions listed below are officials who are specified in Government Code section 87200:

Alternate Board of Director	Files with	Agency
Board of Director	Files with	COB
Chief Executive Officer	Files with	COB
Chief Financial Officer	Files with	Agency
Investment Consultant	Files with	Agency
Treasurer/Auditor	Files with	Agency

The disclosure requirements for these positions are set forth in Government Code section 87200, et. seq. They require the disclosure of interests in real property in the agency's jurisdiction, as well as investments, business positions and sources of income (including gifts, loans and travel payments).

Disclosure Descriptions
EXHIBIT B

Entity: **Other Misc Authorities, Districts and Commissions**

Agency: **Orange County Power Authority**

Disclosure Category	Disclosure Description
87200 Filer	Form 87200 filers shall complete all schedules for Form 700 and disclose all reportable sources of income, interests in real property, investments and business positions in business entities, if applicable, pursuant to Government Code Section 87200 *et seq.*.
Category 0	See your adopted code

Grand Total: 2

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 9.1

To: Orange County Power Authority Board of Directors

From: Community Advisory Committee

Subject: Community Advisory Committee Update

Date: September 6, 2022

RECOMMENDED ACTION

Receive and File.

BACKGROUND

A member of the Community Advisory Committee will provide an update on work that they are currently conducting.

FISCAL IMPACT

None

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 9.2

To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer
John Dalessi, Pacific Energy Advisors

Subject: Master Purchase and Sale Agreement Confirmation Letter with Southern California Edison

Date: September 6, 2022

RECOMMENDED ACTION

1. Approve Master Purchase and Sale Agreement Confirmation Letter with Southern California Edison for Modified Cost Allocation Mechanism (MCAM) procurement obligations.

2. Authorize Chief Executive Officer to execute the Confirmation Letter in substantially similar form with approval as to form by the General Counsel.

BACKGROUND

The Orange County Power Authority ("OCPA") has an opportunity to acquire resource adequacy capacity from Southern California Edison Company ("SCE") through an allocation process established by the California Public Utilities Commission ("CPUC"). This process is known as the Modified Cost Allocation Mechanism or "MCAM" and was established in CPUC decision D.22-05-015. The available resource adequacy capacity comes from incremental resource procurement undertaken by SCE pursuant to CPUC order D.19-11-016, which directed load serving entities to acquire new generation and/or storage resources to improve grid reliability. OCPA was not in operation at the time of D.19-11-016 and is not subject to the procurement order. SCE carries the D.19-11-016 procurement obligation associated with customers that are now being served by OCPA. OCPA customers are obligated to pay a share of the cost of these resources through the Power Charge Indifference Adjustment "exit fee" that SCE charges to OCPA customers.

Through MCAM, OCPA can elect to acquire a share of the D.19-11-016 resource adequacy capacity for the benefit of its customers. This is a one-time opportunity, and OCPA does not have discretion to modify the contract amount or duration. Under the contract, the price paid by OCPA will equal the benchmark price for resource adequacy as determined by the CPUC annually as part of the PCIA calculation process. The current resource adequacy benchmark price is $6.41 per kW-month, which is below the cost that OCPA can acquire resource adequacy in the market.

The delivery term of the agreement begins January 1, 2023 and continues for the life of the contracts held by SCE, which is through September 2041. The contract volumes vary throughout the term, reaching a maximum of 35.6 MW in 2024, which equates to approximately 5% of OCPA's projected resource adequacy requirements, and declining thereafter. Total volume under the contract is 5,701 MW-months.

Board authorization is required for this contract in accordance with OCPA's Energy Risk Management Policy due to the tenor exceeding three years, the volume exceeding 3,000 MW, and the notional value exceeding $30 million.

SCE has established a deadline for executing MCAM contracts of September 23, 2022 for inclusion in an Advice Letter filing to the CPUC to be made by October 3, 2022. Staff believes that the MCAM contract will reduce costs for the OCPA program and recommends your Board authorize the Chief Executive Officer to execute the agreement.

FISCAL IMPACT

The total contract cost is undetermined due to the annual true-up of the contract price in accordance with the CPUC's resource adequacy benchmark price; however, at the current benchmark price of $6.41 per kW-month, the total contract value would equate to $36.5 million.

ATTACHMENTS

1. Master Power Purchase and Sale Agreement Confirmation Letter

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER
BETWEEN
ORANGE COUNTY POWER AUTHORITY
AND
SOUTHERN CALIFORNIA EDISON COMPANY

This confirmation letter including all appendices hereto ("Confirmation") confirms the Transaction between Orange County Power Authority ("Counterparty") and Southern California Edison Company ("SCE"), each individually a "Party" and together the "Parties", dated as of _____ (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in this Confirmation, in the amounts described in this Confirmation. This Transaction is governed by the Edison Electric Institute ("EEI") Master Power Purchase and Sale Agreement between the Parties, effective as of __09/21/2021__, along with the Cover Sheet, any amendments and annexes thereto (the "Master Agreement"), and including, the EEI Collateral Annex to the Master Agreement along with the Paragraph 10 to the Collateral Annex between the Parties (such Paragraph 10 and the Collateral Annex are referred to collectively herein as the "Collateral Annex") (the Master Agreement and the Collateral Annex shall be collectively referred to as the "EEI Agreement"). The EEI 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 EEI Agreement, or the CAISO Tariff (defined herein below). To the extent this Confirmation is inconsistent with any provision of the EEI Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

RECITALS

WHEREAS, the California Public Utilities Commission ("CPUC") adopted the Decision On Modified Cost Allocation Mechanism for Opt-Out and Backstop Procurement Obligations, Decision ("D.") 22-05-015, on May 19, 2022;

WHEREAS, D.22-05-015 provides load-serving entities with loads that migrated from the investor-owned utilities since November 7, 2019 the option to enter into an agreement with the relevant investor-owned utility that conducted procurement in accordance with D.19-11-016 to purchase a share of the system resource adequacy ("RA") capacity at the Market Price Benchmark calculated in accordance with the provisions of D.19-10-001;

WHEREAS, Counterparty is a load-serving entity with such migrated loads and desires to enter into this Agreement to purchase its eligible system RA share of SCE's D.19-11-016 procurement; and

NOW THEREFORE, the Parties agree as follows:

ARTICLE 1. TRANSACTION TERMS

1.1 Product; Elections

Product: The Capacity Attributes of the Unit(s) as described in Appendix C and allocated in accordance with Section 2.1, or as provided from Alternate Unit(s) in accordance with Section 2.3.

Flexible Capacity: The Product shall include Flexible Capacity if identified in Appendix B as applicable.

This Confirmation does not convey to Buyer any right to count the Contract Quantity toward Buyer's procurement requirements pursuant to D.19-11-016 or D.21-06-035.

1.2 Delivery and Receipt of Product

Seller shall sell and deliver to Buyer, and Buyer shall receive and purchase from Seller the Product in the amount of the applicable Contract Quantity for each month of the Delivery Period.

1.3 Delivery Period and Term

(a) Delivery Period. The Delivery Period is as specified in Appendix B of this Confirmation in the row titled "Delivery Period", unless terminated earlier in accordance with the terms of this Agreement; provided, 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.

(b) Term. The Term of this Transaction shall commence upon the Confirmation Effective Date and shall continue until the later of (i) the expiration of the Delivery Period or (ii) the date the Parties' obligations under this Confirmation have been satisfied. This Confirmation shall be effective and binding as of the Confirmation Effective Date.

1.4 Contract Quantity

[redacted]

1.5 Flexible Capacity

[redacted]

1.6 Contract Price

[redacted]

ARTICLE 2. DELIVERY OBLIGATIONS

2.1 Seller's Delivery Obligations

Seller shall provide Buyer with the Expected Contract Quantity of Product for each Showing Month consistent with the following:

(a) Supply Plan Obligation. Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, (i) Monthly Supply Plans and (ii) Annual Supply Plans (if the Confirmation Effective Date is prior to the year-ahead Compliance Showing Deadline applicable for the Showing Months as specified in Sections 1.4 and 1.5 herein), in accordance with the CAISO Tariff, identifying and confirming the transfer of the Expected Contract Quantity of Product to Buyer for each Showing Month (the "Supply Plan Obligation").

(b) Showing Month Notice. If (i) Seller intends to utilize an Alternate Unit in accordance with Section 2.3 to satisfy its Supply Plan Obligation, or (ii) Seller intends to deliver less than the Contract Quantity of Product for such Showing Month for any reason, then Seller shall, or shall cause the Unit's SC to, submit written notification to Buyer (the "Showing Month Notice"), no later than the Compliance Notification Deadline, identifying (x) such Alternate Unit(s) in accordance with Section 2.3, (y) the Contract Quantity of Product from such Alternate Unit(s), and (z) the total Contract Quantity to be provided on the Showing Month Supply Plan.

(c) Contract Quantity Unit Allocation. Seller may deliver Product from any one or combination of Unit(s) set forth in Appendix C at Seller's sole discretion. Seller shall provide email notice to Buyer's Supply Plan contact, as set forth in Appendix D, no later than the initial Compliance Showing Deadline for each Showing Month containing the allocation of Contract Quantity by Unit ("Contract Quantity Unit Allocation").

2.2 Adjustments to Contract Quantity

[redacted]

[redacted]

[redacted]

[redacted]

2.3 Seller's Option To Provide Alternate Capacity

Seller may, at no cost to Buyer, provide Buyer with Product from one or more Alternate Units in an amount such that the total amount of Product provided to Buyer from the Unit and Alternate Units is not more than the Contract Quantity for the applicable Showing Month, provided that in each case:

(a) Seller shall notify Buyer no later than the Compliance Notification Deadline for such Showing Month of its intent to provide Product from and identify alternate units that (i) are accepted by the CAISO, and (ii) otherwise satisfy the requirements of this Agreement ("Alternate Units");

(b) Seller shall, or shall cause the Unit's SC to submit a Monthly Supply Plan and an Annual Supply Plan, as applicable, that includes the Alternate Units, in accordance with the CAISO Tariff, no later than the initial Compliance Showing Deadline for such Showing Month;

(c) if Seller does not comply with the requirements of Sections 2.3(a) and (b) for the applicable Showing Month, then any such Alternate Units shall not be deemed a Unit for purposes of this Confirmation for that Showing Month and Seller shall not receive payment for such Product.

Subject to the satisfaction of the conditions contained in subsections (a) – (c) of this Section 2.3, once Seller has identified in writing any Alternate Units that meet the requirements of this Section 2.3, then any such Alternate Units shall be automatically deemed a Unit for purposes of this Confirmation for that Showing Month.

2.4 <u>Damages for Failure to Provide Capacity</u>

If Seller fails to provide Buyer with the Expected Contract Quantity of Product for any Showing Month, in accordance with Section 2.1 (the "Replacement Obligation"), in each case as applicable, then the following shall apply:

(a) Buyer may, but shall not be required to, replace all or any portion of the Replacement Obligation for the applicable Showing Month with capacity having equivalent Capacity Attributes as the Expected Contract Quantity; provided, if, using commercially reasonable efforts, Buyer is unable to acquire capacity having equivalent Capacity Attributes for any portion of any Showing Month, Buyer may replace such portion of the Replacement Obligation with capacity having Capacity Attributes in excess of the Contract Quantity (the "Replacement Capacity"). Buyer may enter into purchase transactions with one or more parties to purchase Replacement Capacity. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner to minimize damages in procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any

Replacement Capacity, including any transaction costs and expenses incurred in connection with such procurement, plus (B) each applicable Replacement Capacity Price multiplied by the aggregate amount of Replacement Obligation not purchased by Buyer as Replacement Capacity, for all applicable portions of the applicable Showing Month pursuant to Section 2.4(a), and (ii) the Replacement Obligation, not provided for all applicable portions of the applicable Showing Month times the Contract Price for that month. Buyer's invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount and shall include supporting documentation.

2.5 Indemnities for Failure to Deliver Expected Contract Quantity

Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines, or costs assessed against Buyer by the CPUC or the CAISO, resulting from all or any of the following:

(a) Seller's failure to provide any portion of the Expected Contract Quantity for any portion of the Delivery Period;

(b) Seller's failure to provide a Showing Month Notice for any portion of the Delivery Period;

(c) Seller's or the Unit's SC's failure to timely or accurately submit, or otherwise satisfy its Supply Plan Obligation for any portion of the Expected Contract Quantity or any portion of the Delivery Period; or

(d) any other failure by Seller to perform its obligations under this Confirmation.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines, or costs.

2.6 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product and any associated rights, in each case, acquired under this Confirmation, in accordance with Applicable Laws and CPUC Decisions ("Resold Product"); provided, with respect to Resold Product that includes the sale of Capacity Attributes that impact Seller's obligations under this Confirmation, Buyer agrees to: (a) notify Seller that such a sale has occurred; (b) provide Seller with the information described in Appendix E; and (c) notify Seller of any subsequent changes to the information in Appendix E with respect to any particular sale; in each case promptly following such sale and in no event later than the initial Compliance Showing Deadline for each Showing Month. Subject to Article 6 below, Seller agrees, and agrees to cause the Unit's SC, to: (i) follow Buyer's instructions with respect to providing such Resold Product to subsequent purchasers of such Resold Product; and (ii) take all commercially

reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product.

Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or the Unit's SC to comply with the terms of this Confirmation, and Seller would have had liability to Buyer under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Confirmation, including without limitation, pursuant to Sections 2.4 and 2.5, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser. Buyer acknowledges and agrees that with respect to any Resold Product, if Seller incurs any liability to any purchaser of such Resold Product due to the failure of Buyer to comply with the terms of this Confirmation, and Buyer would have had liability to Seller under this Confirmation for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Buyer shall be liable to Seller under this Confirmation for the amounts it would have been liable to Seller for had such Resold Product not been sold to a subsequent purchaser.

2.7 CAISO Offer Requirements

Seller shall, or cause each Unit's SC to, schedule with, or make available to, the CAISO the Expected Contract Quantity for each Unit in compliance with the CAISO Tariff, and shall, or shall cause each Unit's SC, owner, or operator, as applicable, to perform all obligations under the CAISO Tariff that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or such Unit's SC, owner, or operator for such noncompliance.

2.8 Unit SC's Substitution Obligation

After the obligation to replace all or any portion of the Expected Contract Quantity transfers from the load serving entity to the Unit's SC for a Showing Month in accordance with the CAISO Tariff, and if the CAISO determines that any portion of the Expected Contract Quantity for any portion of a Showing Month that was shown by Buyer in its Compliance Showings requires outage substitution in accordance with Section 40.9.3.6 of the CAISO Tariff because the Unit, or Alternate Unit, as applicable, is scheduled to take an outage (planned or otherwise) (such amount requiring outage substitution, the "SC Substitute Capacity"), then: (a) Seller shall have no liability under Sections 2.4 or 2.5 with respect to such SC Substitute Capacity; and (b) Seller shall have no liability to Buyer for any costs that are allocated to Buyer by the CAISO for any CPM Capacity procured by the CAISO pursuant to the Capacity Procurement Mechanism and that are related to such SC Substitute Capacity.

ARTICLE 3. PAYMENT

3.1 Monthly Payment

[redacted]

3.2 Allocation of Other Payments and Costs

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

3.3 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs reimbursement, or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party.

3.4 Annual True-up of Contract Price

[redacted]

[redacted]

[redacted]

ARTICLE 4. OTHER BUYER AND SELLER COVENANTS

4.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period: (a) cause the Benefiting Load Serving Entity SCID to be included in all applicable Supply Plans; (b) execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Section 2.6; and (c) cause all Supply Plans to be filed in conformance with the requirements of the CPUC Filing Guide and the CAISO Tariff. If during the Delivery Period, there is a change to the Benefiting Load Serving Entity SCID, the Parties agree to communicate such changes to each other promptly. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, CAISO or other Governmental Authority having jurisdiction to administer Compliance Obligations, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

4.2 Seller's Representations, Warranties and Covenants

(a) Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(i) Seller owns or has the exclusive right to the Product sold under this Confirmation from the Unit(s), and shall furnish Buyer, CAISO, CPUC or other Governmental Authority with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(ii) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets, other

than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(iii) Seller shall comply with Applicable Laws relating to the Product;

(iv) (A) Seller shall, and shall cause the Unit's SC to promptly (and in any event within one (1) Business Day of the time Seller receives notification from the CAISO) notify Buyer in the event the CAISO designates any portion of the Contract Quantity as CPM Capacity and (B) in the event the CAISO makes such a designation Seller shall, and shall cause the Unit's SC to not accept any such designation by the CAISO unless and until Buyer has agreed to accept such designation;

(v) Buyer shall have the exclusive right to offer the Contract Quantity, or any portion thereof, to the CAISO as CPM Capacity and Seller shall not, and shall cause the Unit's SC not to, offer any portion of the Contract Quantity to the CAISO as CPM Capacity or accept any designation of any portion thereof as CPM Capacity;

(vi) The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;

(vii) Seller shall cause the Unit's SC, owner and operator to comply with Applicable Laws relating to the Product;

(viii) Buyer shall have no liability for the failure of Seller or the failure of the Unit's SC, owner, or operator to comply with such CAISO Tariff provisions, including any penalties, charges or fines imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

(ix) If Seller is the owner of the Unit, the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned or transferred for the Unit does not exceed the Unit NQC or Unit EFC for that Unit;

(x) Seller has notified the SC of the Unit that Seller has transferred the Contract Quantity, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, with respect to each Showing Month to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the CAISO Tariff and this Confirmation;

(xi) Seller has notified the SC of the Unit that Seller is obligated to cause the Unit's SC to provide to the Buyer, on or prior to the Compliance Notification Deadline, the applicable Expected Contract Quantity of the Unit for such Showing Month, including the amount of Flexible Capacity and Inflexible Capacity, to the extent applicable, that is to

be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(xii) Seller has notified the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

(b) Seller represents, warrants and covenants to Buyer that, as of the Confirmation Effective Date, all of the information set forth on Appendix C hereto is true, correct and complete.

4.3 <u>CPUC Approval</u>

(a) No later than October 3, 2022, or a later date if the CPUC extends the deadline for filing the advice letter referenced in Ordering Paragraph 4 of D.22-05-015, SCE shall file with the CPUC the appropriate request for CPUC Approval. SCE shall seek CPUC Approval, including responding to any requests for information related to the request for CPUC Approval. As requested by SCE, Seller 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 Confirmation or which contains findings required for CPUC Approval with conditions or modifications unacceptable to SCE.

(b) Either Party has the right to terminate this Confirmation on Notice if CPUC Approval has not been obtained or waived by SCE at its sole discretion within forty five (45) days after SCE files the appropriate request for CPUC Approval ("CPUC Approval Deadline").

(c) If CPUC Approval is not obtained or waived by SCE at its sole discretion prior to the initial Compliance Showing Deadline of a Showing Month within the Delivery Period, then Seller shall not be obligated to submit, or cause the Unit's SC to submit, the Monthly Supply Plan in accordance with the CAISO Tariff, identifying and confirming the transfer of the Expected Contract Quantity of Product to Buyer for the Showing Month.

(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 Settlement Amount or Termination Payment with respect to this Confirmation will be due or owing by either Party upon termination of this Confirmation due solely to failure to obtain CPUC Approval.

ARTICLE 5. CONFIDENTIALITY

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that: (i) Buyer may disclose the Contract Quantity or any applicable portion of the Contract Quantity, including any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable, under this Transaction to any Governmental Authority, the CPUC, the CAISO in order to support its Compliance Showings, if applicable; (ii) Seller may disclose the transfer of the Contract Quantity and the applicable Expected Contract Quantity (as well as any amounts of Flexible Capacity and Inflexible Capacity, to the extent applicable) for each Showing Month under this Transaction to the SC of the Unit in order for such SC to timely submit accurate Supply Plans; (iii) both Parties may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement (A) 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 or (B) to the Independent Evaluator; and (iv) Buyer and the Independent Evaluator may disclose the terms and conditions of the Agreement and any and all written or recorded or oral information, data, analyses, documents, and materials furnished or made available by a Party to the other Party in connection with this Agreement to the CAISO, the CPUC, and all divisions thereof, the California Energy Commission, and participants of the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Authority, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Contract Quantity to another party, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

ARTICLE 6. MARKET BASED RATE AUTHORITY

Seller agrees, in accordance with FERC Order No. 697, to, upon request of Buyer, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR § 35.42. Seller also agrees that it will not, in any filings, if any, made subject to FERC Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 7. COLLATERAL REQUIREMENTS

7.1 <u>Counterparty Collateral Requirements</u>

[redacted]

[redacted]

[redacted]

7.2 Current Mark-To-Market Value

[redacted]

7.3 Credit Terms

[redacted].

ARTICLE 8. OTHER

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

The Parties shall determine the Settlement Amount for this Transaction in accordance with Section 5.2 of the Master Agreement, provided that, with respect to this Transaction only, the following language is added at the end of Section 5.2 of the Master Agreement, with any terms which are defined in this Confirmation

being used in the Master Agreement with the definitions given to such terms in this Confirmation:

> "If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any Governmental Authority having jurisdiction, because Buyer is not able to include the applicable Contract Quantity in any applicable Compliance Showing due to Seller's Event of Default, then Buyer may, in good faith, estimate the amount of those penalties or fines and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller when those penalties or fines are finally ascertained. If this accounting establishes that Buyer's estimate exceeds the actual amount of penalties or fines, Buyer shall promptly remit to Seller the excess amount. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained."

8.2 <u>No Waiver</u>

The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default. Waiver by either Party of any failure to comply with any timeline or deadline by the other Party as provided herein in any instance, shall not be deemed a waiver of any failure to comply with such timeline or deadline in the future, or otherwise establish a course of performance.

[Remainder of Page Intentionally Left Blank]

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

ORANGE COUNTY POWER AUTHORITY ,	**SOUTHERN CALIFORNIA EDISON COMPANY,**
a California joint powers authority .	a California corporation.
By:	By:
Name:	Name: William V. Walsh
Title:	Title: Vice President, Energy Procurement & Management
Date:	Date:

APPENDIX A
DEFINED TERMS

"Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

"Alternate Capacity" means Product which Seller has elected to provide to Buyer in accordance with the terms of Section 2.3.

"Alternate Unit" means a generating unit meeting the requirements specified in Section 2.3.

"Annual Supply Plan" has the meaning set forth in the CAISO Tariff.

"Applicable Laws" means the CAISO Tariff and all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to either or both of the Parties, the Project, the Unit or the terms of this Agreement.

"Availability Incentive Payments" has the meaning set forth in the CAISO Tariff.

"Availability Standards" has the meaning set forth in the CAISO Tariff.

"Benefiting Load Serving Entity SCID" is as specified in Appendix D.

"Buyer" has the meaning specified in Appendix B.

"Buyer Approved Planned Outage" has the meaning set forth in Section 2.2.

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

"CAISO Control Area" has the meaning set forth in the CAISO Tariff.

"CAISO Controlled Grid" has the meaning as set forth in the CAISO Tariff.

"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.

"Capacity Attributes" means, with respect to a Unit, any and all of the following, in each case which are attributed to or associated with the Unit at any time throughout the Delivery Period:

(a) resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward RAR;

(b) resource adequacy attributes or other locational attributes for the Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Authority having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward a Local RAR; and

(c) other current or future defined characteristics, certificates, tags, credits, or accounting constructs, howsoever entitled, including any accounting construct counted toward any Compliance Obligation;

(d) if the Parties have selected Flexible Capacity as being "Applicable", flexible capacity resource adequacy attributes for the Unit, including, without limitation, the amount of Unit EFC and MWs associated with Unit EFC as may be identified from time to time by the CPUC, CAISO, or other Governmental Authority having jurisdiction, that can be counted toward Flexible RAR;

provided further, notwithstanding the foregoing, Capacity Attributes shall exclude intra-month substitution resource adequacy attributes.

"Capacity Procurement Mechanism" has the meaning set forth in the CAISO Tariff.

"Collateral Annex" has the meaning specified in the introductory paragraph of this Confirmation.

"Compliance Notification Deadline" means, for each Showing Month, fifteen (15) Business Days before the Compliance Showing Deadline.

"Compliance Obligations" means the RAR and Local RAR.

"Compliance Showings" means the (a) Local RAR compliance or advisory showings (or similar or successor showings) and (b) RAR compliance or advisory showings (or similar or successor showings), and, if applicable, (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, a CPUC Load Serving Entity is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

"Compliance Showing Deadline" means, for each Showing Month, the Compliance Showing plan submission due date for such Showing Month. For illustrative purposes only, as of the Confirmation Effective Date, the applicable Compliance Showing plan submission due dates are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the Monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the Annual Supply Plan, such dates may be modified by the CAISO from time to time throughout the Term.

"Confirmation" has the meaning specified in the introductory paragraph of this Confirmation.

"Confirmation Effective Date" has the meaning specified in the introductory paragraph of this Confirmation.

"Contract Price" [redacted]

"Contract Quantity" [redacted]

"Contract Quantity Unit Allocation" has the meaning set forth in Section 2.1(c).

"Contracted Amount" means the incremental capacity Seller procured to count towards Seller's procurement obligations in D.19-11-016 as reflected in Appendix C.

"Cover Sheet" has the meaning specified in the introductory paragraph of this Confirmation.

"CPM Capacity" has the meaning set forth in the CAISO Tariff.

"CPUC" means the California Public Utilities Commission.

"CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

"CPUC Filing Guide" is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC's resource adequacy program.

"Current Mark-to-Market Value" has the meaning specified in Section 8.2

"Delivery Period" has the meaning specified in Section 1.3(a).

"EEI" has the meaning specified in the introductory paragraph of this Confirmation.

"EEI Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

"Effective Flexible Capacity" has the meaning set forth in the CAISO Tariff.

"Expected Contract Quantity" means, with respect to any Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity of Product that Seller has elected to provide Alternate Capacity, and after giving effect to any reductions to Contract Quantity as specified in Section 2.2 with respect to which Seller has not elected to provide Alternate Capacity.

"Final Market Price Benchmark" means the higher of the final System RA Adder or the final Flexible RA Adder in the "Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up" (or successor document) published by the CPUC on or about November of each calendar year in accordance with CPUC Decision 19-10-001.

"Flexible Capacity" means, with respect to any particular Showing Month of the Delivery Period, the number of MW of Product set forth in Appendix B under the column titled "Flexible Capacity" which Seller has agreed to provide to Buyer from the Unit(s) as part of the Contract Quantity for such Showing Month, and which such MW of Product are eligible to satisfy a load serving entity's Flexible RAR and which such MW of Product are associated with MW of the Unit that are part of the Unit EFC.

"Flexible RAR" means the flexible capacity requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction and includes any non-binding advisory showings which a load serving entity is to make with respect to flexible capacity.

"Forecasted Market Price Benchmark" means the higher of the forecast System RA Adder or forecast Flexible RA Adder in the "Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up" (or successor document) published by the CPUC on or about the fourth (4th) quarter of each calendar year in accordance with CPUC Decision 19-10-001.

"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. "Independent Evaluator" has the meaning set forth in CPUC Decision 04-12-048.

"Inflexible Capacity" means, with respect to any particular Showing Month of the Delivery Period, the number of MW of Product set forth in Appendix B under the column titled "Contract Quantity", minus the number of MW of Product set forth in Appendix B under the column titled "Flexible Capacity", which Seller has agreed to provide to Buyer from the Unit as part of the Contract Quantity for such Showing Month, and which such MW of Product are not eligible to satisfy a load serving entity's Flexible RAR and which are Product associated MWs of the Unit that are not part of or outside the Unit EFC. Inflexible Capacity is also known as 'generic capacity'.

"Local Capacity Area" has the meaning set forth in the CAISO Tariff.

"Local RAR" means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

"Maintenance Outage" has the meaning set forth in the CAISO Tariff. "Master Agreement" has the meaning specified in the introductory paragraph of this Confirmation.

"Monthly Payment" has the meaning specified in Section 3.1.

"Monthly Supply Plan" has the meaning set forth in the CAISO Tariff.

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

"Net Qualifying Capacity" has the meaning set forth in the CAISO Tariff.

"Next Showing Month" means the next calendar month for which a Compliance Showing will be made.

"Non-Availability Charges" has the meaning set forth in the CAISO Tariff.

"Planned Outage" means a maintenance outage taken by a Unit originally identified in Appendix C, as such maintenance outage is determined by the applicable Unit or Unit SC.

"Product" means the Capacity Attributes of the Unit(s), including any capacity from RMR Contracts for the applicable Unit, or its successor, Capacity Procurement Mechanism, or its successor, and RUC Availability Payments, or its successor; provided that:

(a) Product does not include any right to count the Contract Quantity toward the procurement requirements pursuant to D.19-11-016 or D.21-06-035;

(b) Product does not include any right to the energy or ancillary services from the Unit;

(c) any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Local Capacity Areas that results in a decrease or increase in the amount of Capacity Attributes related to a Local Capacity Area provided hereunder will not result in a change in payments made pursuant to this Transaction;

(d) the Parties agree that, under this Confirmation, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Local Capacity

Areas whereby the Unit subsequently qualifies for a Local Capacity Area, the Product shall include all Capacity Attributes related to such Local Capacity Area;

(e) if the Parties have selected Flexible Capacity as being "Applicable", any change by the CAISO, CPUC or other Governmental Authority that defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR, that results in a decrease or increase in the amount of Capacity Attributes related to Flexible RAR provided hereunder will not result in a change in payments made pursuant to this Agreement; and

(f) if the Parties have selected Flexible Capacity as being "Applicable", the Parties agree that, under this Agreement, if the CAISO, CPUC or other Governmental Authority defines new or re-defines existing Flexible RAR, Capacity Attributes related to Flexible RAR, or attributes of the Unit related to Flexible RAR whereby the Unit, or a portion of the Unit which did not previously qualify to satisfy Flexible RAR, subsequently qualifies to satisfy Flexible RAR, the Product shall include all Capacity Attributes of the Unit related to Flexible RAR, including any Capacity Attributes related to Flexible RAR with respect to any portion of the Unit which previously was not able to satisfy Flexible RAR.

"RAR" means the resource adequacy requirements established for load serving entities by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

"Replacement Capacity" has the meaning specified in Section 2.4.

"Replacement Capacity Price" means the market price for Product with Capacity Attributes reasonably equivalent to the quantity of Product not provided by Seller under this Confirmation, as determined in the manner upon which market prices are determined under Section 5.2(b) of the Master Agreement. For purposes of this Transaction and Confirmation, the "Replacement Capacity Price" shall be deemed to be the "Replacement Price" as defined in Section 1.51 of the Master Agreement.

"Replacement Obligation" has the meaning specified in Section 2.4.

"Resold Product" has the meaning specified in Section 2.6.

"Resource Category" shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

"RMR Contracts" has the meaning set forth in the CAISO Tariff.

"RUC Availability Bid" has the meaning set forth in the CAISO Tariff.

"RUC Availability Payment" has the meaning set forth in the CAISO Tariff.

"SC" has the meaning set forth in the CAISO Tariff.

"SC Substitute Capacity" has the meaning set forth in Section 2.8.

"Seller" has the meaning specified in Appendix B.

"Seller Supply Agreement" means the agreement between Seller and the project company that owns and operates the Unit(s) identified in Appendix C under which Seller purchased product being sold pursuant to this Confirmation.

"Showing Month" shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the CPUC Decisions and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

"Showing Month Notice" has the meaning specified in Section 2.1(b).

"Supply Plan" has the meaning set forth in the CAISO Tariff.

"Supply Plan Obligation" has the meaning specified in Section 2.1(a).

"Term" has the meaning specified in Section 1.3(b).

"Unit EFC" means the Effective Flexible Capacity (in MW) of the Unit. The Parties agree that if the CAISO adjusts the Effective Flexible Capacity of a Unit after the Agreement Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Agreement Effective Date, or (ii) the CAISO-adjusted Effective Flexible Capacity.

"Unit EFC Category" shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

"Unit(s)" shall mean the generation assets described in Appendix C (and any Alternate Unit(s)), from which Product is provided by Seller to Buyer.

"Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

APPENDIX B
FLEXIBLE CAPACITY, DELIVERY PERIOD, CONTRACT QUANTITY, CONTRACT PRICE, AND FULL FLOATING INDEPENDENT AMOUNT

The quantities specified in this table will control in the event of a conflict between these values and those in Appendix C. The Parties agree to revise the Appendix C as necessary to ensure that the Contract Quantity and Flexible Capacity are satisfied in full.

Buyer	Orange County Power Authority
Seller	Southern California Edison Company

Flexible Capacity	☒ Applicable	☐ Not applicable
Delivery Period	January 01, 2023 through September 30, 2041, inclusive.	

Start	End	Months	Contract Quantity (MW)	Contract Flexible Capacity (MW)	Contract Price ($/kW-month)[1]
01/01/2023	07/31/2023	7	[redacted]	[redacted]	[redacted]
08/01/2023	05/31/2024	10	[redacted]	[redacted]	[redacted]
06/01/2024	07/31/2031	87	[redacted]	[redacted]	[redacted]
08/01/2031	05/31/2034	34	[redacted]	[redacted]	[redacted]
06/01/2034	07/31/2034	2	[redacted]	[redacted]	[redacted]
08/01/2034	07/31/2036	24	[redacted]	[redacted]	[redacted]
08/01/2036	05/31/2037	10	[redacted]	[redacted]	[redacted]
06/01/2037	07/31/2041	50	[redacted]	[redacted]	[redacted]
08/01/2041	08/31/2041	1	[redacted]	[redacted]	[redacted]
09/01/2041	09/30/2041	1	[redacted]	[redacted]	[redacted]

Initial Full Floating Independent Amount	[redacted]

[1] Contract Price is the Forecasted Market Price Benchmark ($6.41 for 2023). The Contract Price for each year will reflect the Forecasted Market Price Benchmark which will then be trued up to the Final Market Price Benchmark in accordance with Section 3.4 of this Confirmation.

APPENDIX C
UNIT INFORMATION

Projects / Units	CAISO Resource ID	Resource Type	Delivery Start Date	Delivery End Date	D.19-11-016 Contracted Amount (MW)	CPUC NQC Quantity (MW)(1)	CPUC EFC Quantity (MW)(2)
[redacted]	[redacted]	Energy Storage	10/1/2021	9/30/2041	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	Energy Storage	9/1/2021	8/31/2041	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	Energy Storage	8/1/2021	7/31/2036	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	Energy Storage	8/1/2021	7/31/2036	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	Energy Storage	8/1/2021	7/31/2036	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	Energy Storage	8/1/2021	7/31/2031	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	Energy Storage	8/1/2021	7/31/2036	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	Energy Storage	10/1/2022	5/31/2037	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	Energy Storage	8/1/2023	5/31/2034	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	Energy Storage	8/1/2023	7/31/2034	[redacted]	[redacted]	[redacted]
Total					[redacted] (4)		

[redacted]

APPENDIX D
SUPPLY PLAN INFORMATION

Benefitting load serving entity SCID: **LOCPA**

Counterparty Supply Plan contact information:

Name: Ryan McManus

Email: ryan@pacificea.com

Phone Number: 916-206-0990

SCE Supply Plan contact information[2]:

Name: Angelica Sindelar

Email: Angelica.Sindelar@sce.com

Phone Number: 626-302-9576

[2] SCE Contract Manager must also be included on all communications.

APPENDIX E
SUBSEQUENT SALE INFORMATION

Contract Key ID:	
Subsequent sale contract quantity (in MW):	
Subsequent sale delivery period:	
Amount of Inflexible Capacity included in subsequent sale contract quantity (in MW):	
New benefitting load serving entity SC identification number:	

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 9.3

To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer
Kirby Dusel, Pacific Energy Advisors

Subject: Long-Term Agreement for Purchase of Portfolio Content Category 1 Renewable Energy and Multi-Year Agreement for Resource Adequacy with Shell Energy North America, L.P.

Date: September 6, 2022

RECOMMENDED ACTION

1. Approve long-term renewable energy purchase agreement and a multi-year resource adequacy capacity purchase agreement with Shell Energy North America, L.P. ("SENA").

2. Authorize Chief Executive Officer to enter into the agreements with SENA.

BACKGROUND

OCPA has been actively engaged in the procurement of Renewables Portfolio Standard ("RPS") eligible renewable energy products to meet its statutory and voluntary purchase obligations in 2022 and beyond. Three long-term renewable energy solicitations have been issued by OCPA since June 2021 as well as several other short-term solicitations. Regarding OCPA's statutory procurement obligations, the California Public Utilities Code requires all retail sellers to purchase increasing quantities of renewable energy over time. The specific requirements associated with such obligations are further described in documentation related to California's RPS program, which obligates each retail seller to procure a minimum 60% RPS-eligible renewable energy by 2030 (relative to annual retail electricity sales). Intervening annual procurement targets are specified prior to 2030 with compliance measured across multi-year "Compliance Periods." The current Compliance Period, for example, spans the following period of time: January 1, 2021 through December 31, 2024 (a four-year period). In addition to procuring the noted quantities of renewable energy, retail sellers must secure a subset of such renewable energy through long-term contracts of ten years or more. More specifically, each retail seller must procure a minimum 65% of its total RPS obligation through one or more long-term renewable energy contracts – OCPA's expected long-term RPS need during Compliance Period 4, for example, is projected to be around 2,500 gigawatt hours (GWh), based on forecasted retail electricity sales during this period.

To begin addressing its long-term RPS need, your Board recently approved the execution of a long-term RPS supply agreement with Southern California Edison, which is expected to supply approximately 2,000 GWh of OCPA's aforementioned need in Compliance Period 4. OCPA's

residual long-term RPS requirement of approximately 500 GWh must be addressed through other agreements to avoid the potential for financial penalties that will be assessed in the event of procurement shortfalls – note that such financial penalties are set at $50/MWh, which far exceeds the current value of RPS renewable energy attributes.

Unfortunately, California's RPS program provides no flexibility to new CCA entities in meeting the long-term procurement obligation and contracting opportunities with near-term delivery start dates have been very limited. One such opportunity was proposed by SENA in response to OCPA's January 2022 Long-Term RPS Request for Proposals. This offer was evaluated by OCPA and its technical advisors, was subsequently short-listed and has been under negotiation since that time; a purchase agreement has been drafted with reviews completed by OCPA's transactional counsel; SENA has also internally approved the contract for execution. Based on key elements of this prospective transaction, which includes a 2023 delivery start date, the noted agreement is being presented to your Board for approval.

The noted renewable energy transaction has also been paired with a multi-year resource adequacy purchase agreement, which is intended to convey the capacity attributes associated with supplying renewable generators in the following delivery years: 2026-2034. The long-term RPS supply and multi-year resource adequacy supply agreements are not offered independently, meaning that such agreements are mutually inclusive.

The CEO requires Board authorization before executing the subject agreements due to the tenor, notional value, and volume limits set forth in OCPA's Energy Risk Management Policy delegation of authorities. These agreements are fundamental to OCPA meeting its long-term RPS contracting requirement in Compliance Period 4 and ongoing resource adequacy procurement obligations in 2026 and beyond. Staff recommends that your Board authorize the execution of such agreements by OCPA's CEO.

FISCAL IMPACT

Transaction Summary – Long-Term RPS Supply
Product Type: Portfolio Content Category 1 renewable energy
Tenor: 12 years
Resource Types: Small Hydro, Solar and Wind
Resource Locations: California and Arizona
RPS-Eligible Energy Volume: ≈2,700,000 MWh
Notional Value: ≈$170 million
Certain additional contract details are confidential market sensitive information per CPUC rules.

Transaction Summary – Multi-Year Resource Adequacy Supply
Product Type: Generic System Resource Adequacy Capacity
Tenor: 9 years
Volume: ≈1,200 MW-months
Notional Value: ≈$6.5 million
Certain additional contract details are confidential market sensitive information per CPUC rules.

ATTACHMNETS

1. Draft Transaction Confirmation Firm Bundled Renewable Energy Resale
2. Draft Master Power Purchase and Sale Agreement

Shell Energy North America (US), L.P.

Orange County Power Authority	**Shell Energy North America (US), L.P.**
Contract ID:	Contract ID:
Deal Maker:	Deal Maker: Vince Velasquez
Phone:	Phone: 858-204-8112
Fax:	Email: vince.velasquez@shell.com

DRAFT **TRANSACTION CONFIRMATION**
Firm Bundled Renewable Energy ("PCC1") Resale

This confirmation (this "Confirmation") is entered into this _____ , 2022 ("Effective Date"), by and between **Orange County Power Authority** ("OCPA" or "Buyer") and **Shell Energy North America (US), L.P.** ("Shell Energy"), each referred to herein individually as a "Party" and collectively as the "Parties", regarding the purchase and sale of the Product (as defined below) under the terms and conditions herein. Capitalized terms used in this Confirmation and not defined herein have the meaning assigned thereto in the Master Agreement (each as defined below). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement."

Seller: Shell Energy

Buyer: Orange County Power Authority (Buyer's WREGIS Account Holder Name: Orange County Power Authority, Account ID: **TBD**)

Master Agreement: This Confirmation shall be governed by the terms and conditions of the EEI Master Agreement, dated effective January 4, 2022, (as amended from time to time, the "Master Agreement"). Terms not defined in this Confirmation shall have the meaning set forth in the Master Agreement.

Product: As used herein, "Product" shall mean Energy produced hourly by the Projects that is simultaneously bundled with the Renewable Energy Credits ("RECs") generated therefrom, which together qualifies as Portfolio Content Category 1 (as defined below), under and pursuant to the the California Renewable Portfolio Standard.

Environmental Attributes: The only Environmental Attributes conveyed under this Confirmation as part of the Product are those Environmental Attributes required for the Product to qualify as PCC1 under the RPS.

Project: As used herein "Project" shall mean the ERRs listed in Exhibit A attached hereto and incorporated herein. Additional resource(s) that qualify as ERRs may be added to Exhibit A by Seller at Seller's discretion from time to time with three (3) Business Days' prior notice.

Delivery Period: Commencing January 1st 2023, through December 31st 2034; provided that the RECs attributable to the Energy generated during the Delivery Period but created after the Delivery Period shall be transferred to and paid for by Buyer in accordance with the terms of this Confirmation. The Delivery Period will be divided into two (2) periods: Delivery Period A and Delivery Period B as follows:

Delivery Period A: January 1, 2023 though December 31, 2025.

Delivery Period B: January 1, 2026 through December 31, 2034.

Delivery Period A Quantity: The Quantity for Delivery Period A is as set forth in the table below for the years 2023-2025.

Delivery Year	**2023**	**2024**	**2025**	**Total**
Quantity(MWh)	[redacted]	[redacted]	[redacted]	[redacted]

Delivery Period B Quantity:

The Quantity for Delivery Period B is set forth in the table below for years 2026-2034, and as more specifically described on Exhibit B. The Quantity for Delivery B is Firm and applies to all days of the week.

Delivery Year	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**	**2034**	**Total**
Quantity(MWh)	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Annual Renewable Volume Match:

[redacted]

Contract Price:

Delivery Period A**:** The Contract Price for each MWh of Product delivered to Buyer during Delivery Period A is [redacted] (*i.e.*, per REC) plus the price for Energy delivered at the Delivery Point determined in accordance with the procedures and rules of the California ISO.

Delivery Period B**:** The Contract Price for each MWh of Product delivered to Buyer at the Delivery Point during Delivery Period B shall consist of the Energy Price and the REC Price, calculated as follows: [redacted]

Delivery Point:

Delivery Period A**:** CAISO or California Balancing Authority

Delivery Period B: CAISO SP15 Trade Hub

Scheduling:

Delivery Period A**:** Seller will perform all scheduling and tagging requirements as may be applicable to the transaction contemplated hereunder.

Delivery Period B: The Quantity for Delivery Period B will be scheduled by Seller to Buyer at the Energy Delivery point via a CAISO IST.

All scheduling will be performed consistent with all applicable California ISO and WECC Scheduling Protocols.

Imported Product:

In the event that the Product being transferred from Seller to Buyer originates from a Project(s) from outside of the state of California, Seller or Seller's supplier shall be the electricity importer for purposes of California Global Warming Solutions Act, California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, also referred to as Cap and Trade Regulations. As and to the extent applicable, each NERC e-Tag shall have a Project as the source of energy, sink inside California, list the Buyer as the last purchasing selling entity (as defined by CAISO) in the physical path, and contain the Projects' CEC RPS IDs on the Buyer's Designee line of the physical path in the Miscellaneous Information field. Buyer will be copied on all tags.

REC Transfer:

Via WREGIS

Seller will transfer the RECs purchased and sold hereunder to Buyer's WREGIS account no later than May 1st of the year following the year in which the Energy to which such RECs are attributable was generated.

Settlements and Payment:

[redacted]

Delivery Period A: [redacted]

Delivery Period B: [redacted]

[redacted]

[redacted]

Supporting Data: In the event that the Product being transferred from Seller to Buyer originates from a Project(s) outside of the state of California, Seller shall provide Buyer a reconciliation consisting of hourly meter data, tag data and associated calculations, lesser of each by hour, for each vintage month of RECs delivered to Buyer under this Confirmation.

Compliance With RPS: Seller represents and warrants to Buyer that the purchase and sale of Product pursuant to this Confirmation is a resale and meets the following additional requirements:

i. this Confirmation transfers only Energy and RECs that have not yet been generated prior to the effective date of this Confirmation;

ii. in connection with the transfer of the Energy and associated RECs that comprise the Product purchased and sold under this Confirmation the Energy transferred by this Confirmation is transferred to Buyer in real-time via sale by Seller to, and purchase by Buyer from, the California ISO; and

iii. if applicable, the California Renewables Portfolio Standard-eligible energy is scheduled from one or more eligible renewable energy resources that are not interconnected to a California balancing authority into a California balancing authority without substituting electricity from another source, and the original hourly or subhourly schedule is maintained.

Change in Law Provisions: If after the Effective Date there is a change in applicable law or a governmental authority with jurisdiction over the Parties or the subject matter of this Confirmation interprets, enacts or materially modifies any law, regulation, rule or order that (a) repeals or invalidates the RPS, (b) makes it illegal or impossible to transfer any part of the Product as contemplated pursuant to this Confirmation, or (c) causes the Product to no longer qualify as PCC1 under the RPS at the time of delivery, then in the case of item (c) the Parties will in good faith negotiate regarding amendments to the terms of this Confirmation solely to cause the Product to again qualify as PCC1 and Seller shall take such commercially reasonable actions as may be prudent in an effort to cause the Product to again qualify as PCC1, but will not be required to incur any costs or expenses in pursuit thereof in excess of an aggregate amount equal to $250,000.00 (the "Compliance Cap"). In the case of (1) items (a) and (b) of the preceding sentence, or (2) item (c) of the preceding sentence if Seller has met or exceeded the Compliance Cap or the Parties have not agreed amendments to this Confirmation within sixty (60) days after the change referred to in the preceding sentence, then in either case either Party may by giving written notice to the other terminate this Confirmation. In the event of any such termination, neither Party shall have any liability to the other as a result of such termination nor any further liability or payment or performance obligations hereunder; provided, however, that the Parties shall remain liable for any payments due for, and all other obligations that may lawfully be performed respecting, delivery and receipt of Product prior to such termination.

Credit Terms: [redacted]

SPECIAL PROVISIONS:

A. Non-Modifiable Standard Terms and Conditions

(1) Eligibility: 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. (Source: D.07-11-025, Attachment A.) D.08-04-009]**

(2) Applicable Law: 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, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009]**

(3) Transfer of Renewable Energy Credits: 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. D.11-01-025]**

(4) Tracking of RECs in WREGIS: 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.11-01-025]**

B. Additional Terms and Conditions

(1) Seller Representations and Warranties: Seller represents and warrants:

(a) Seller has not sold the Product to be transferred to Buyer to a third party;

(b) the Energy component of the Product produced by a Project and purchased by Seller for resale to Buyer hereunder is not being sold by Seller back to the Project or Project owner;

(c) as Energy is delivered to and directly settled with the California ISO, the sale is being reported to FERC as a sale to the California ISO under the applicable electronic quarterly reports requirements; and

(d) the Product meets the requirements set forth in PUC Code 399.16(b)(1)(A) and the RPS compliance requirements for Portfolio Content Category 1 as set forth in CPUC Decision 11-12-052.

(e) On the Effective Date, this confirmation qualifies for the Long-Term contract requirements of SB 350(Cal. Pub. Util. 399.13, California Public utilities Decision (d.) 17-06-26).

(2) Buyer Representations and Warranties. Buyer represents and warrants that Buyer has taken all necessary steps to establish a WREGIS account to receive the RECs to be transferred from Seller to Buyer prior to the first delivery under this Confirmation.

(3) Data Privacy. The Parties may provide each other with information related to an identified or identifiable individual ("Personal Data"), the processing and transfer of which will be done in accordance with applicable data protection law.

C. AMENDMENTS TO THE MASTER AGREEMENT

Confidentiality. Section 10.11, Confidentiality, of the Master Agreement is amended for purposes of this Confirmation by inserting after the word "proceeding" prior to the semicolon the following: "or to Deliver RECs pursuant to the requirements of WREGIS".

DEFINITIONS:

For purposes of this Confirmation, the following definitions shall apply:

"California Renewables Portfolio Standard" or ("RPS") means the renewable energy program and policies, 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.

"CEC" means the California Energy Commission or its regulatory successor.

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

"Environmental Attribute" means a characteristic concerning or affecting the environment created by or resulting from the generation of electric energy by an ERR, and which is capable of measurement, verification or calculation. Environmental Attributes do not include tax credits or other benefits under any law or other subsidy for generation of Energy by an ERR

"ERR" means an eligible renewable energy resource, as such term is defined in the California Public Utilities Code Section 399.12 or Section 399.16.

"FERC" means the Federal Energy Regulatory Commission or its regulatory successor.

"Firm" means, with respect to a RECs Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the RECs Product, the Party to which performance is owed shall be entitled to receive from the Party that failed to perform an amount determined pursuant to Article 4 of the EEI Master Agreement. Force Majeure shall not excuse performance of a Firm RECs Transaction.

"Long-Term Contract" means a power purchase and sale agreement for eligible renewable resources entered into by a load serving entity subject to the jurisdiction of the CPUC that upon execution of such agreement has a delivery term of at least ten(10) years

"Product Content Category 1" or ("PCC1") means electric energy as set forth in CPUC Code 399.16(b)(1)(A) and the RPS compliance requirements for Portfolio Content Category 1 as set forth in CPUC Decision 11-12-052.

"STC" stands for Standard Terms and Conditions of the CPUC relating to purchase and sales of the Product.

"WECC" means the Western Electricity Coordinating Council or its successor organizations.

"WREGIS" means the Western Renewable Energy Generation Information System or its successor systems.

Notwithstanding anything contained in the Master Agreement to the contrary, this Confirmation shall only be effective when executed by both Parties. Please sign and return by facsimile to Shell Energy at (713) 767-5414.

IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

Orange County Power Authority	**Shell Energy North America (US), L.P.**
By:	By:
Name:	Name:
Title:	Title:

EXHIBIT A

Eligible Renewable Reources[1,2]

No.	Name of Facility	Fuel Source	Location	CEC ID	WREGIS ID
1	[redacted]	Wind	California	[redacted]	[redacted]
2	[redacted]	Wind	California	[redacted]	[redacted]
3	[redacted]	Wind	California	[redacted]	[redacted]
4	[redacted]	Wind	California	[redacted]	[redacted]
5	[redacted]	Wind	California	[redacted]	[redacted]
6	[redacted]	Solar	Arizona	[redacted]	[redacted]
7	[redacted]	Solar	California	[redacted]	[redacted]
8	[redacted]	Solar	California	[redacted]	[redacted]
9	[redacted]	Solar	California	[redacted]	[redacted]
10	[redacted]	Solar	California	[redacted]	
11	[redacted]	Solar	California		
12	[redacted]	Solar	California	[redacted]	
13	[redacted]	Small Hydro	California	[redacted]	[redacted]
14	[redacted]	Small Hydro	California	[redacted]	[redacted]
15	[redacted]	Small Hydro	California	[redacted]	[redacted]
16	[redacted]	Various	TBD	[redacted]	[redacted]

[1] Empty fields in the table above indicates the requisite information for such field is not known to Seller as of the Effective Date and such information shall be provided to Buyer in writing upon request once known.

[2] For Delivery Period B the ERRs that will provide RECs will be subject to a Long Term Contract

EXHIBIT B:

Delivery Period B Quantity
(2026-2034)

	HE 1	HE 2	HE 3	HE 4	HE 5	HE 6	HE 7	HE 8	HE 9	HE 10	HE 11	HE 12	HE 13	HE 14	HE 15	HE 16	HE 17	HE 18	HE 19	HE 20	HE 21	HE 22	HE 23	HE 24
January	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
February	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
March	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
April	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
May	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
June	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
July	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
August	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
September	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
October	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
November	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
December	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

EXHIBIT C:
Annual Renewable Volume Match

1. [redacted]

2. [redacted]

[redacted]

3. [redacted]

Delivery Period B Designated Projects:

2026 Designated Projects	Type	Designated Project Capacity	Allocation of Designated Percentage
[redacted]	Solar	[redacted]	[redacted]
[redacted]	Wind	[redacted]	[redacted]
[redacted]	Wind	[redacted]	[redacted]

Definitions: As used in this Exhibit C, the following terms have the meanings set forth below.

"Curtailed Energy" means Energy for which Seller submitted a Self-Schedule and/or an Energy Supply Bid (each as defined in the CASIO tariff) in its final CAISO market participation in respect of a given time period that clears, in full, the applicable CAISO market for the full amount of energy forecasted to be produced from the Project for such time period but which is curtailed due to a Curtailment Order.

"Curtailment Order" means any of the following,

a) the CAISO or any other entity having similar authority or performing similar functions during the Delivery Term, orders, directs, alerts, or communicates via any means, to a Party that such Party is required to curtail Energy deliveries for reasons including, (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent

condition or situation, which jeopardizes the CAISO's electric system integrity or the integrity of other systems to which the CAISO is connected; or

b) a curtailment ordered by the Transmission Provider, distribution operator (if interconnected to distribution or sub-transmission system), or any other entity having similar authority or performing similar functions during the Delivery Term, for reasons including (i) any situation that affects normal function of the electric system including any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected.

"Excused Hours" means any hours during an applicable year of Delivery Period B where the Project is excused from its obligation to deliver Product to Seller as a result of force majeure.

"Generation Profile" means the expected hourly generation of the Designated Percentage from the Designated Projects, which expectation is subject to change based on Seller's identification of alternate Designated Projects and allocation of Designated Percentages therefrom during Delivery Period B pursuant to this Exhibit C.

Example:

REC Price: [redacted]

Quantity: [redacted]

Designated Percentage: [redacted]

Designated Percentage of Quantity: [redacted]

Designated Project Generation:

	Meter Data
January	[redacted]
February	[redacted]
March	[redacted]
April	[redacted]
May	[redacted]
June	[redacted]
July	[redacted]
August	[redacted]
September	[redacted]
October	[redacted]
November	[redacted]
December	[redacted]
Total	[redacted]

Designated Project Shortfall: [redacted]

REC Discount: [redacted]

MASTER POWER PURCHASE AND SALE AGREEMENT DRAFT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SHELL ENERGY NORTH AMERICA (US), L.P.
AND
ORANGE COUNTY POWER AUTHORITY

This Confirmation Letter ("Confirmation") confirms the Transaction between **Shell Energy North America (US), L.P.**, a Delaware limited partnership ("Seller") and **Orange County Power Authority** a California joint powers authority ("Buyer"), and each individually a "Party" and together the "Parties", dated as of _____, 2022 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of January 4, 2022, along with any annexes (including Paragraph 10 of the Collateral Annex, as applicable) and amendments thereto (collectively, 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 or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.

1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.

1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.

1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.

1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.

1.6 "CAISO" means the California Independent System Operator Corporation or its successor.

1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."

1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.

1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.

1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.

1.11 "Contract Price" [redacted]

1.12 "Contract Quantity" [redacted]

1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

1.14 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

1.15 "Delivery Period" has the meaning specified in Section 4.1 hereof.

1.16 "Delivery Point" has the meaning specified in Section 4.2 hereof.

1.17 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.

1.18 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.

1.19 "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

1.20 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

1.21 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any 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 (iii) any court or governmental tribunal.

1.22 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

1.23 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.

1.24 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.

1.25 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

1.26 "LRA" means Local Regulatory Authority as defined in the Tariff.

1.27 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

1.28 "Master Agreement" has the meaning specified in the introductory paragraph hereof.

1.29 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.

1.30 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.

1.31 "Net Qualifying Capacity" has the meaning set forth in the Tariff.

1.32 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Unit Firm" in the Master Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.

1.33 "Notification Deadline" has the meaning specified in Section 4.5 hereof.

1.34 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.

1.35 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

1.36 "Product" has the meaning specified in Article 3 hereof.

1.37 "Prorated Percentage of Unit Factor" means the percentage, as specified in Appendix B, of the Unit NQC as of the Confirmation Date that is dedicated to Buyer under this Transaction.

1.38 "Prorated Percentage of Unit Flexible Factor" means the percentage, as specified in Appendix B, of the Unit EFC as of the Confirmation Date that is dedicated to Buyer under this Transaction.

1.39 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.

1.40 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.

1.41 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.

1.42 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.

1.43 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.

1.44 "Replacement Unit" has the meaning specified in Section 4.5.

1.45 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

1.46 "Scheduling Coordinator" has the same meaning as in the Tariff.

1.47 "Seller" has the meaning specified in the introductory paragraph hereof.

1.48 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

1.49 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.

1.50 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

1.51 "Transaction" for purposes of this Agreement means the Transaction (as defined in the Master Agreement) that is evidenced by this Agreement.

1.52 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

1.53 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

1.54 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ARTICLE 2. UNIT INFORMATION

Name	[redacted]	[redacted]	[redacted]
Location	Palm Springs, CA	Whitewater, CA	Riverside County, CA
CAISO Resource ID	[redacted]	[redacted]	[redacted]
Unit SCID	[redacted]	[redacted]	[redacted]
Unit NQC	[redacted]	[redacted]	[redacted]
Unit EFC	[redacted]	[redacted]	[redacted]
Resource Type	Wind	Wind	Solar
Resource Category (1, 2, 3 or 4)	4	4	4
Flexible RAR Category (1, 2 or 3)	N/A	N/A	N/A
Path 26 (North or South)	South	South	South
Local Capacity Area (if any, as of Confirmation Effective Date)	LA Basin	LA Basin	CAISO System
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	N/A	N/A	N/A
Run Hour Restrictions	N/A	N/A	N/A

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, RA Attributes or LAR Attributes and, if applicable, Flexible RA Attributes for a Contingent Firm RA Product, as specified in Section 3.2 below (the "Product"). The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity

from a Unit in excess of that Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

Seller shall provide Buyer with the Designated RA Capacity of RA Attributes, LAR Attributes and, if Section 3.3 is selected, Flexible RA Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of a Non-Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event or in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines. The Product is a Contingent Firm RA Product, and with respect to this Contingent Firm RA Product, "Contingent Firm" shall have the same meaning as "Unit Firm" in the Master Agreement.

3.3 ☐ Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of Flexible RA Attributes from the Unit(s) in the amount of the applicable Contract Quantity.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: January 1, 2026 – December 31, 2034 inclusive.

4.2 Delivery Point.

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 **Contract Quantity.** The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Month	Generic RA Contract Quantity (MWs)
January	[redacted]
February	[redacted]
March	[redacted]
April	[redacted]
May	[redacted]
June	[redacted]
July	[redacted]
August	[redacted]
September	[redacted]
October	[redacted]
November	[redacted]
December	[redacted]

4.4 **Adjustments to Contract Quantity**

[redacted]

[redacted]

[redacted]

4.5 **Notification Deadline and Replacement Units**

(a) The "Notification Deadline" in respect of a Showing Year shall be thirty (30) calendar days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings and Flexible RAR Showings and (b) the CAISO Supply Plan filings applicable to that Showing Year. For Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.

(b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to

Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.

(c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 <u>Delivery of Product</u>

(a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.

(b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the relevant deadlines for submission of the Supply Plans applicable to that Showing Month (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so; and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

(c) Seller may sell and deliver from a Shown Unit that meets requirements set forth in Exhibit A. Seller will identify the Shown Unit(s) and Quantity by providing Buyer with the specific Unit information contemplated in Exhibit A no later than the Notification Deadline for the relevant Showing Month. If during any period the Shown Unit described on Exhibit A is not available to provide the full amount of the Quantity as a result of any Planned Outage of the Unit from November thru June of each year, or reduction in the Unit EFC or Unit NQC of such Unit, or for reason of Force Majeure, then (i) Seller shall notify Buyer by the Notification Deadline of the amount, if any, of the Quantity that Seller will not sell and deliver, and Seller shall be excused from delivering such Quantity, or (ii) that Seller will sell and deliver from a different Shown Unit that meets requirements of this Confirmation, during such period. In the case of reduction in the Unit EFC or Unit NQC, the amount that Seller will not sell and deliver and be excused from delivering, or will sell and deliver from a different Shown Unit that meets requirements of this Confirmation, shall be calculated in accordance with the following formulas:

In the case of reduction in the Unit EFC: Amount of reduction in the Unit EFC * Prorated Percentage of Unit Flexible Factor

In the case of reduction in the Unit NQC:
Amount of reduction in the Unit NQC * Prorated Percentage of Unit Factor

4.7 <u>Damages for Failure to Provide Designated RA Capacity</u>

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity

with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

(b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;

(b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or

(c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

[redacted]

RA CAPACITY PRICE TABLE

Contract Month	Generic RA Capacity Price ($/kW-month)
Jan 2026 – Dec 2034	[redacted]

4.10 Allocation of Other Payments and Costs

[redacted]

[redacted].

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 6. [RESERVED]

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

(e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

(f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

(h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;

(i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and

(k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. [RESERVED]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SHELL ENERGY NORTH AMERICA (US), L.P.	**ORANGE COUNTY POWER AUTHORITY**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT A:
NQC Allocation

	Unit NQC Coachella	Prorated Percentage	Coachella Quantity (MWs)	Unit NQC Painted Hills	Prorated Percentage	Painted Hills Quantity (MWs)	Unit NQC Mav 7	Prorated Percentage	Mav 7 Quantity (MWs)	Total RA (MWs)
January	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
February	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
March	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
April	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
May	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
June	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
July	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
August	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
September	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
October	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
November	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
December	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

*Taken from Final Net Qualifying Capacity Report for Compliance Year 2023 at http://www.caiso.com/planning/Pages/ReliabilityRequirements/Default.aspx.

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 9.4

To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer

Subject: Proposed Response to FY 2021-22 Grand Jury Report

Date: September 6, 2022

RECOMMENDED ACTION

1. Approve proposed response to Fiscal Year 2021-22 Grand Jury Report
2. Direct the Chief Executive Office to forward the staff report with attachments to the Presiding Judge of the Superior Court and the Fiscal Year 2021-22 Grand Jury no later than September 23, 2022.

BACKGROUND

On June 24, 2022 the Orange County Grand Jury (OCGJ) released a report regarding OCPA. California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made no later than 90 days after the Grand Jury publishes its report. The report contains six (6) findings and made four (4) recommendations. Attachment B is OCPA's proposed response to the Grand Jury.

FISCAL IMPACT

There is no fiscal impact.

ATTACHMENT

1. Orange County Grand Jury Report
2. Proposed Response to FY 2021-22 Grand Jury Report

Orange County Power Authority:

Come Clean

GRAND JURY 2021-2022

ORANGE COUNTY POWER AUTHORITY: COME CLEAN

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ORANGE COUNTY POWER AUTHORITY: COME CLEAN

SUMMARY

With start-up funding from the City of Irvine, the Orange County Power Authority (OCPA) was formed to provide customers with an alternative power provider that offers higher levels of 'cleaner' or 'greener' electric power than default levels offered by current providers, Southern California Edison (SCE) and San Diego Gas and Electric (SDGE). OCPA has just begun serving commercial customers and will add residential customers in its member communities which currently consist of Irvine, Huntington Beach, Fullerton, Buena Park, and all unincorporated areas of Orange County.

The Orange County Grand Jury (OCGJ) endorses OCPA's mission and wants to see it flourish. The citizens of Orange County deserve and will benefit from sustainable energy. However, no matter the mission of a public agency, the ability to see how that agency operates and utilizes public funds is of paramount importance. The OCGJ began its investigation into OCPA in response to significant public discussion and criticism regarding OCPA's formation and activities, some of which came from the very individuals who had ardently supported green energy, community choice energy feasibility studies, and the inception of OCPA.

Since the OCGJ initiated its investigation in 2021, OCPA has made significant improvements in terms of transparency. Specifically, beginning in February 2022, more information can be found on the OCPA website, and OCPA Board of Directors (Board) meeting minutes and videos, which had been removed from the site, were restored. In addition, the Community Advisory Committee meeting videos appeared for the first time. While the OCGJ applauds these improvements, certain critical changes have not taken place. As of early April 2022, past the start date for commercial customers, neither the OCPA notices that were required to be mailed to customers, nor the OCPA website, contained any direct mention of the increased charges that would be incurred due to the default 'green energy' tiers selected by member cities for their businesses and residents. OCPA continues to be reluctant to share information requested by the OCGJ, the public, and OCPA member cities.

In recognition of the fact that OCPA manages a very large budget and commits to long-term power contracts worth hundreds of millions of dollars, the OCGJ is particularly concerned that OCPA is operating without in-house leadership with sufficient expertise to oversee the very complex decisions involved in energy planning and transactions.

BACKGROUND

The concept of Community Choice Aggregation (CCA) was developed to provide a higher level of 'green energy' and support the reduction of greenhouse gases. Instead of carbon-based energy, as an energy purchasing agency, a CCA can selectively purchase power from organizations that provide higher percentages of 'green power' than currently mandated in many states, albeit sometimes at a higher price per kilowatt hour (kWh) than 'baseline' energy with carbon-based components.

CCA, interchangeably known as Community Choice Energy (CCE), was enabled in California in 2002 by AB117, which authorizes government entities (such as cities or joint powers authorities) to purchase and/or generate electricity for residents, businesses, and municipal facilities. The CCE becomes the energy provider in place of a privately held Investor-Owned Utility (IOU) such as Southern California Edison or San Diego Gas and Electric. Interestingly, the IOU is still required to provide the distribution system, meter reading, and billing services to the CCE. Energy generation charges are separately itemized on the customer's bill. CCEs are subject to California Public Utilities Commission (CPUC) regulations and oversight, even though the CCE is a government entity.

CCEs are required by the CPUC to meet the same energy requirements as IOUs in terms of power quality, power reliability, and resource adequacy (i.e., they must maintain access to 115 percent of maximum expected load). Since most CCEs do not generate electricity, they rely upon the open energy market to purchase power. Power purchases must be made well in advance of need to avoid last minute, on-the-spot purchases (spot market) that are typically extraordinarily expensive and can rapidly deplete CCE cash reserves. The energy market is extremely complex and requires detailed knowledge of its rules and subtleties. Most start-up CCEs have experienced Chief Executive Officers and initially hire contractors to schedule and purchase power until the CCE is able to employ qualified staff with the knowledge and experience to meet the CPUC's strict requirements.

Joint Power CCE's in Southern California

Formation of California CCEs began in 2010. By year-end 2021, 23 California CCEs were in operation serving 11 million customers.[1] Many of the first CCEs in California started in Northern California and have been able to offer their customers financial savings in the purchase of

[1] CalCCA, a CCE advocacy group; https://cal-cca.org.

energy. CalCCA has reported that CCE customers collectively saved about $90 million on energy bills in 2018 compared to IOU counterparts.[2]

One CCE, Western Community Energy (WCE), filed for Chapter 9 bankruptcy in June 2021, approximately one year after its launch of service. At the time of its bankruptcy, WCE served 113,000 customers in six cities within Riverside County and had accumulated debt of $100 million with less than $50 million in available assets. A combination of an unexpectedly high level of customer defaults (blamed on COVID) and an extreme heat wave in August 2020 are the reasons attributed to the bankruptcy.

Roots of the Orange County Power Authority

Starting in 2018, the Cities of Huntington Beach and Irvine began conducting feasibility studies related to CCEs and their potential benefits. While Huntington Beach deferred further action, the City of Irvine continued with additional research. Based on the results of its feasibility study, around July 2020, Irvine moved forward by contracting with a team from the law firm of Best Best & Krieger (BBK). OCPA was formed pursuant to a Joint Powers Agreement (JPA) in November 2020. Five member cities signed onto the JPA: Irvine, Huntington Beach, Buena Park, Fullerton, and Lake Forest. Lake Forest later dropped out of membership. A number of other cities were approached and declined to join, deciding to "wait and see."

Initially, the City of Irvine committed $250,000 in formation costs. It pledged another $2.5 million for start-up costs, along with $5 million in "launch costs" and/or collateral for the loan OCPA would need to secure in order to purchase power needed initially.[3] To date, Irvine has invested some $7.5 million, which will be repaid beginning in 2027 assuming the CCE remains viable.[4] Other member cities do not bear any such liability risk.

In December 2020, the newly formed OCPA began to hold Board of Director meetings. The Board consisted of one delegate from each of the member cities and two delegates from the City of Irvine. In November 2021, the Orange County Board of Supervisors voted to join OCPA on behalf of all unincorporated areas within Orange County, which added a County Supervisor to the OCPA Board.

In April 2022, OCPA began providing power to commercial customers in Irvine, Huntington Beach, Buena Park, and Fullerton. OCPA plans to begin providing power for residential

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[2] *Ibid*.
[3] OCPA Joint Powers Agreement, page 20.
[4] *Ibid*., pages 20-21, and Exhibit A.

customers in these cities in October 2022. It is expected that Orange County unincorporated areas will start receiving power from OCPA in 2023.

REASON FOR THE STUDY

In Orange County, ardent supporters of CCEs began voicing criticisms and concerns about OCPA due to their lack of confidence in its leadership and a general lack of transparency in its operation. Various news articles, including reports that advocates of CCEs were advising cities not to join OCPA, prompted the OCGJ to investigate further.[5]

METHOD OF STUDY

- Interviews with OCPA Board members, OCPA staff, OCPA contractors, city council members, city managers, Community Advisory Committee (CAC) members, and members of the community.
- Review of state and local laws and regulations.
- Review of OCPA member websites, staff reports, agendas, and meeting recordings.
- Review of California Public Utilities Commission websites, rules, and regulations.
- Review of OCPA's website, contracts, proposals, written communications, financial records, reports, and OCPA Board meeting videos, agendas, and minutes.
- Website information for other CCEs in California and news articles.

INVESTIGATION AND ANALYSIS

Rocky Start for OCPA

Government agencies at all levels typically follow a strict set of rules related to filling open staff positions. These frequently include the use of recruiting firms for senior positions. For example, County executive job descriptions normally include the requirement of an advanced degree or significant managerial experience in the relevant field. According to OCPA's published implementation plan dated December 28, 2020, three months were allocated to find and hire an

[5] *See, e.g.*, Voice of OC, "*Laguna Beach to Study Leaving Edison for Renewable Energy*," July 14, 2021; Voice of OC, "*OC Power Authority to Rewrite Conflict of Interest Code Without Fixing Transparency Concerns*," Aug. 2, 2021; Irvine Watchdog, *"Orange County Power Authority Unable to Properly Manage Basic Duties*," Oct. 12, 2021.

Executive Director.[6] OCPA Board members were sworn in immediately before the inaugural Board meeting on December 16, 2020. During that meeting, the Board appointed an attorney from BBK as part-time General Counsel to OCPA.[7] The newly appointed General Counsel presented the Board with a job description and a single candidate each for the positions of Chief Executive Officer (CEO) and Chief Operating Officer (COO).

Inexplicably, the position descriptions for COO and CEO were not made publicly available prior to the hiring decision. The job descriptions also lacked any requirement for prior education, experience, knowledge of the electrical utility or energy industries, or CCEs. Recruiting efforts were minimal at best, despite these public positions being highly demanding and very well compensated. This is not consistent with best practices. The positions require the public's trust and, preferably, prior familiarity with CCEs. With no other candidates to consider, the Board voted to approve hiring of the CEO and COO on January 12, 2021. The CEO began working immediately, while the COO began employment in March. A Chief Financial Officer (CFO) was hired about nine months later in October 2021.

The COO had a strong and extensive background in the clean energy field and municipal participation in that field,. Despite her job description, the COO was not given a role in the process of vetting, retaining, or working with outside contractors critical to OCPA's operations. The COO resigned from OCPA on December 3, 2021, after less than a year of service. In the meantime, the CEO, who had virtually no employment experience with CCEs or energy purchase and trading prior to joining OCPA, was left in charge with a $34 million budget, significant signing authority, little meaningful oversight, and no OCPA governing bylaws. The CEO's duties are determined by the Board.[8] However, after the COO resigned, Board members and the CEO maintained conflicting opinions about whether a replacement should be hired, who had the authority to make that decision, and who would interview and hire the replacement.[9] With so much authority bestowed on the CEO, the OCGJ is concerned about what it found to be a continuing pattern of failing to follow best hiring practices.

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[6] EES Consulting, Inc., *CCE Feasibility Study and Technical Assessment*, January 16, 2020, Appendix A;.OCPA Community Choice Aggregation Implementation Plan and Statement of Intent, December 28, 2020, refers to an "interim" Executive Director having been appointed on December 16, 2020., which is the date of the inaugural OCPA Board Meeting. There is no mention of any such interim appointment in those or any other OCPA Board meeting minutes.

[7] The General Counsel also serves other clients, including as General Counsel to other CCEs such as San Diego Community Power, Desert Community Energy, and Butte Choice Energy Authority.

[8] OCPA Joint Powers Agreement, Section 3.12, November 20, 2020.

[9] As of the date of this Report, the COO had not been replaced.

Financial Risks and Oversight Concerns

Newly formed CCEs enjoy an initial advantage because their commercial and residential customers are automatically enrolled in their programs. OCPA is in a particularly good position because three of their four member cities chose the 100 percent tier level, which is the most financially beneficial for OCPA and its member cities. However, power purchase agreements may be negotiated as much as twenty years in advance. If its customer opt-out rate increases, a CCE may be holding power contracts that have to be sold quickly on the spot market, which could result in unanticipated profits or losses. Therefore, good decisions need to be made early; long-term stability depends on carrying out the best strategic plan possible in a very volatile market.

As an illustration of the volatility of the energy market, a 2022 study by LevelTen Energy found that "a shortage of new renewable projects available to interested buyers has caused prices for power purchase agreements to rise 9.7 percent since the beginning of 2022, and 28.5 percent since the beginning of 2021." [10] Therefore, it is not surprising that the OCPA mid-year budget reported an increase of projected energy costs to be "$14.2 million higher than expected due to higher market prices" and the member city tier level choices.[11]

OCPA has been faced with purchasing short and long-term energy contracts at a time when rates are historically high. OCPA has reportedly committed over $500 million dollars towards power deliveries through its contractor, Pacific Energy Advisors ("PEA"). PEA purchases power on behalf of a number of CCEs throughout the state. Due to the complexity and potential liability associated with these purchases, having experienced in-house positions or traders that oversee their short and long-term strategy and contracts is critical. This has not happened at OCPA.

OCPA Board members and staff have purportedly been in search of a Director of Power Purchases since OCPA's inception, but no one has been hired to fill that position. The OCGJ is concerned that the CEO and Board members provided not only different opinions about whether the position would be filled, but also who has the power to make that hiring decision.

With respect to the CEO position, other California CCE's have employed leaders with years of experience in the energy industry, as illustrated in the following comparison chart:

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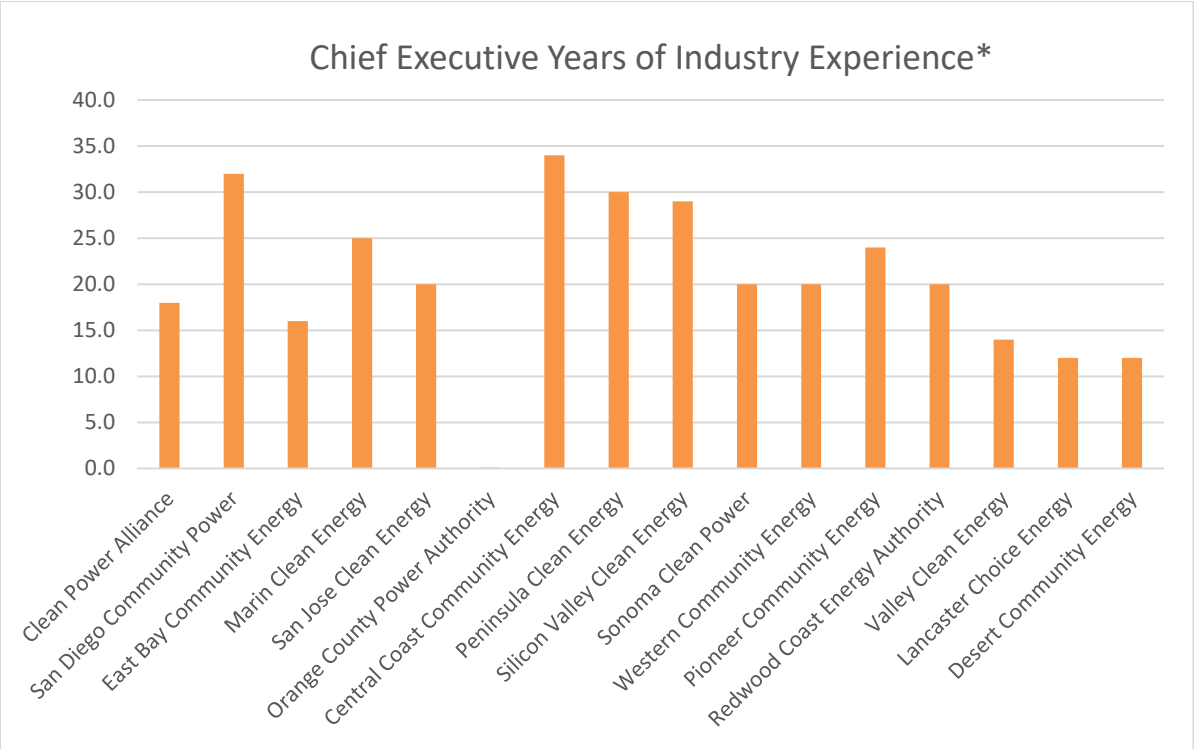
[10] Utility Drive, Penrod, E., *PPA Prices Rise 28.5 percent as Supply and Regulatory Challenges Pile Up*, April 13, 2022.
[11] OCPA Fiscal Year 2021-2022 Mid-Year Operating Budget Amendment (Staff Report Item 5.2, March 1, 2022).

ORANGE COUNTY POWER AUTHORITY: COME CLEAN



*At time of hire.

At OCPA, the CEO has nearly unchecked authority over an annual budget exceeding $34 million, power purchasing decisions, and the selection and oversight of all contractors. This is no small matter. Requests seeking the amount that had been committed to power contracts went unanswered until April 2022, when it was disclosed in a public meeting that the figure was "*in excess of a half a billion dollars*."[12]

In addition to the CEO's responsibility for implementing OCPA's overall vision, this agency, which relies almost exclusively on contractors, must also have personnel with the appropriate technical knowledge and experience to provide meaningful oversight of those contractors. Contractors have been given the responsibility for power purchases, data analysis and management, marketing and communications, management consulting, public relations, customer service, legal services, and industry lobbying. This reliance on contractors comes at a significant cost to OCPA.[13]

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[12] April 5, 2022, OCPA Board Meeting.
[13] OCPA Fiscal Year 2021-2022 Mid-Year Operating Budget Amendment (Staff Report Item 5.2, March 1, 2022).

OCPA cannot claim it has effective oversight of its contractors with a CEO who had no prior relevant energy industry experience, no COO, no Director of Power Purchases, and no other senior level employee with the appropriate expertise for hands-on oversight.

As a safeguard to this and other potential risks, and as a standard practice for CCEs, OCPA adopted Policy No. 9, the Energy Risk Management Policy. Section 7.2 of that policy requires that the Board establish a Risk Oversight Committee (ROC) prior to the commencement of retail electric service. Among other duties, the ROC is charged with reviewing trading transactions and supply contracts and reporting their findings to the Board regarding OCPA's adherence to risk management policies. Once again, the CEO is provided exclusive powers when it comes to oversight. The CEO is charged with selecting the ROC members and scheduling those meetings, which are to take place at least quarterly. To date, after over half a billion dollars has been committed to power purchases and commercial service has begun, there is no public record that the ROC has been formed.

At OCPA's inception, concerns were raised about the aggressive timeline in place to start service relative to other CCE start-ups. With only fifteen operational months before the commercial service date of April 1, 2022, the pressure was on to meet the CPUC resource adequacy power purchase requirements without overpaying. As it turns out, in November 2021, OCPA sent a request to the CPUC requesting a waiver of the 2022 year-ahead local resource adequacy requirements. On January 22, 2022, the CPUC granted the waiver based on OCPA's reasonable and good faith efforts to contract for the required amounts.

However, during the May 3, 2022, OCPA Board Meeting, the Board went into closed session to discuss the CPUC's assessment of a Resource Adequacy (RA) fine. According to the CPUC website, OCPA has been assessed an RA fine of $1,962,845. The OCPA Board has appealed this fine. It should be noted, however, that according to the CPUC listing, out of the 117 RA fines that have been imposed since 2009, only one appeal resulted in a dismissal while two others resulted in a fine adjustment. Including OCPA, only six of the 117 fines listed exceeded $1.5 million, one of which was Riverside-based Western Community, the CCE that went into bankruptcy. The legal costs and time that will be required to address this fine is unknown. It is incumbent upon the Board to determine the root cause of this problem and take steps to avoid similar issues in the future.

The Importance of Transparency

CCEs are public agencies subject to the Brown Act and the Public Records Act. Board meetings are open to the public. CCEs produce financial reports on an annual basis subject to third-party audit.

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Transparency, particularly financial transparency, helps keep corruption in check, bolsters public confidence in government, and promotes fiscal responsibility. In the case of OCPA, a hint to the attitude of the CEO and OCPA Board Chair is reflected by the Chairman's comment in the December 21, 2021, special meeting of the Board when the Chair stated, "We're not a typical agency; this is about as private as a public agency can get."[14] *OCPA is not a private agency.* According to the California Public Utilities Commission (CPUC) website:

> The Public Records Act broadly defines "public records" to include written and recorded records, unless the Public Records Act or other law exempts the records from disclosure. Pursuant to Government Code section 6252(e), public records "includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." . . . The Public Records Act provides for public access to records the CPUC generates, as well as records created by others that the CPUC has in its possession.

While there is a long list of exceptions to public disclosure in the Public Records Act, none of those exceptions broadly applies to public agency budgets, financial statements, or audits.

Until at least March 2022, after more than a year in operation and unlike other CCE's, OCPA did not have budgets, financial statements, or rate comparisons published on its website. OCPA was reticent in providing this information when it was requested, and this documentation only appeared on the OCPA website after the OCGJ investigation and interviews were underway. Even as of April 2022, the website failed to clearly state the rate differences that would be imposed upon commercial and residential customers and made no direct mention of the increases customers would be paying based on their automatic opt-in to the program.

In addition, as of June 2022, no governing bylaws have been adopted. Such bylaws can be important in establishing internal procedures, such as approval processes, and clarifying what has not been spelled out in the formation documents. For example, the JPA's provision describing a Board member's term of office can, and has been, interpreted in two ways by different Board members and OCPA. Each city is assigned a sitting council member to represent it on the Board

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[14] December 21, 2021, Special Meeting of the OCPA Board, at 1:15-1:20. The Chairman is responding to a public speaker who objected to the benefits package offered to senior OCPA staff members. The speaker noted that each of the employee benefits (high salary, 300 hours of annual paid time off, monthly car allowance of $500, retirement contributions, etc.) seemed out of scale to what public employees normally earn, even if it is a hybrid public agency. Not surprisingly, the Minutes of this Board Meeting reported only that the speaker "compared the proposed benefits with those of the Department of Homeland Security." This summary is misleading in that it seems to suggest that OCPA benefits offered are comparable when, in fact, the speaker stated that the highest Homeland Security Department benefits "don't come remotely close to the gratuitous benefits" provided to OCPA executives.

for a term of four years. Some believe that the city may reassign the Board member if the member no longer sits on their city council. Others believe that Board members may remain on the Board for four years even if they are no longer in office with their respective cities. Clarifying this procedure is important because the latter interpretation would mean that an OCPA sitting Board member who no longer has any official standing or obligation to a member city may remain on the Board. Having bylaws in place should also resolve ambiguities about what powers the CEO has, such as whether the CEO can unilaterally make decisions regarding senior management and executive positions.

Insufficient Notices, Opting Out and Hiding Rate Increases

By law, commercial and residential customers serviced by CCEs are automatically enrolled in the CCE program tier level that has been authorized by their member cities. OCPA offers three plans:

- **Basic Choice** offers the same renewable energy delivery of 38 percent as SCE and SDGE. This choice results in no increase in charges;
- **Smart Choice** offers 69 percent renewable energy. This choice increases the customer's bill by one cent per kWh;
- **100% Renewable Choice** offers the 100% renewable option and adds 1.5 cents per kWh.

In contrast, San Diego Community Power ("SDCP"), made up of San Diego, four neighboring cities and some unincorporated areas, offers two programs: PowerOn provides 50 percent renewable with five percent greenhouse gas free at prices competitive with SDGE; the Power100 program offers 100 percent renewable energy with 100 percent carbon free electricity, for less than one cent more per kilowatt hour than SDGE. Carlsbad, Del Mar and Solana Beach are served by Clean Energy Alliance ("CEA") at rates similar to SDCP.

OCPA's member cities of Irvine, Huntington Beach, and Buena Park selected their default to be 100 percent renewable energy while Fullerton chose the 69 percent tier level. Buena Park's staff report estimated a cost increase to the City of $103,127 per year for city-owned facilities if it enrolled in the 69 percent Smart Choice level, and an increase of $154,691 at the 100 percent Renewable Choice level.[15]

Under AB117, OCPA is required to provide customers with two notices prior to automatically changing the customer from SCE to OCPA service. In February 2022, commercial businesses located in the member cities of OCPA were advised of the change to have OCPA as their power

[15] Agenda Report to City Council Study Session, February 22, 2022.

provider effective April 1, 2022. Commercial customers were also informed that they were able to "opt-out" of OCPA service or change from their pre-assigned tier level.

Although the price differentials were known to OCPA at the time, no pricing information was included in the mailers sent to the affected businesses, nor could it easily be found on the OCPA website. The additional cost per kWh for OCPA customers at the 100 percent renewable energy level is *double* the additional costs SDCP and CEA charge their San Diego County customers for 100 percent renewable energy, and nearly double the additional cost SCE charges for 100 percent 'green' energy. In another example of OCPA's lack of transparency, commercial customers were expected to decide upon the level of service they wanted without being provided or given appropriate access to the price of each of those services.

At the March 1, 2022, OCPA Board Meeting, a member of the public pointed out that the notices sent out to alert commercial customers failed to mention or indicate in any way that their rates would automatically be going up unless the business chose to opt-out of the program or opt-down to the Basic Plan tier. The second required notice also omitted this information. *Nowhere in its notices to customers does OCPA inform the customer that if they take no action, their bill will increase.* Instead, the notices state: "Note, that OCPA rates are competitive with SCE rates…" Responding to the complaint about the inadequate rate information, OCPA merely replied that the notice was satisfactory because it was legally compliant.

The OCPA website also omitted the rate differentials, which OCPA had known about for quite some time. At no point has OCPA made any effort to inform its customers about the automatic raise in rates if the customer takes no action to make a change. In the current economic climate of general inflation and overall increases in energy costs, customers could easily be unaware that a percentage of the higher bills they are receiving are attributable to their auto-enrollment in the OCPA program.

OCPA'S Contradictory Messaging About the Effect of Opting Out

While explaining its "competitive and stable rates," the OCPA website includes the following statement: "When demand for clean energy goes up, OCPA gains greater leverage to negotiate better rates."[16] Consistent with this statement, during the February 8, 2022, Irvine City Council meeting, a council member stated, "As more cities join us the cheaper the rates will be for everyone." This is also the consensus in the CCE world:

> High opt-out rates can quickly deteriorate the financial stability of the CCE program. Not only would customer opt-out lead to lower than anticipated retail

[16] OCPA website; https://www.ocpower.org (last visited June 7, 2022).

> margins but could leave the CCE stuck with excess power. Having to sell extra electricity on the spot market can mean selling it at a loss.[17]

During the same February 8, 2022, Irvine City Council meeting, the question was posed: "If more people opted out than the model, how would it affect electric rates?" The OCPA CFO responded that the working model allows for a five percent opt-out rate for residential customers and a ten percent opt-out rate for commercial. The CFO then stated: "If [the opt-out rate] increases more than our expectation or assumption, it won't have a significant financial impact because the revenue will match with all the costs of energy." Follow-up questions led the CFO to explain further: "If more people chose to opt out, more than 10 percent let's say, the costs of energy will decrease as well as our revenue. So, because of the matching principle, there will be no significant financial impact to us." This statement is inconsistent with the information contained on the OCPA website and the prevailing wisdom that low opt-out rates are important to the success of any CCE.[18]

The percentage of customers and the energy load those customers represent are crucial figures to OCPA's success. Yet, dissemination of the information regarding the opt-out load percentages has been restricted by OCPA. Member cities and others requesting that information have been denied access to or received few specifics about the opt-out and opt-down activity, and what impact that has on the overall OCPA financial picture.

Public Information Not Reaching Board Members or the Public

The OCPA Board of Directors is charged with oversight of the agency. Under the JPA, the Board "shall conduct all business and activities of the Authority consistent with this Agreement and any bylaws, operating procedures, and applicable law."

To properly perform its oversight function, the Board must have access to all documents related to OCPA, even if that information is not subject to public disclosure. Unfortunately, this is not the approach that has been taken at OCPA. Based on interviews and our review of documents, there has been a pattern of failure and/or resistance to providing information to the Board, even when the information has been specifically requested. This lack of transparency does not align with public agency obligations and can create suspicions of wrongdoing.

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[17] Battaglioli, Daniela, "*Towards Electricity Decarbonizaion: Options for Community Choice Energy in Del Mar, CA*" (2017), citing Pacific Energy Advisors, Inc. (2016, January 8). Peninsula Clean Energy CCA Risk Analysis Summary Table. Retrieved from 31 28 https://www.peninsulacleanenergy.com/wpcontent/uploads/2015/10/FINAL-Peninsula-CleanEnergy-CCA-Technical-Study.pdf

[18] *See id*.

Information has been made equally unavailable to the member cities and the public. During the public comment section at the December 21, 2021, Board meeting, a speaker stated that there had been previous requests from a Board member, as well as the public, for financial information, including that the check register be provided. No response was provided, the information was not posted online, and the minutes did not record either the request made on December 21, 2021, nor those made prior to that date. The OCGJ investigation corroborated that several information requests properly submitted by the public were virtually ignored. Board members were also stymied from obtaining this information. They were allowed to review the information only after making multiple requests, and under the condition that the records be reviewed at the OCPA office.[19] The OCGJ and member cities continue to face roadblocks in their attempts to obtain information directly from OCPA. It should not be up to OCPA staff to determine which of its actions are subject to Board oversight.

In December 2020 and early January 2021, the OCPA Board meetings were held remotely, but recorded on video. Beginning on January 26, 2021 (coinciding with the hiring of the CEO), those meetings were no longer recorded. After some public outcry, video recording resumed on June 9, 2021. Often, Board meeting minutes and videos would not be posted for several weeks or longer. During the course of our investigation, in or about March 2022, video recordings of Board meetings held between July 13, 2021 and January 11, 2022, were removed entirely from the OCPA website and could not be accessed. During the first week of April 2022 the videos re-appeared, along with meeting minutes. OCPA did not explain the temporary removal of that information.

The Board meets monthly on Tuesday mornings. Often, the agenda and staff reports are not made public or provided to Board members until the preceding Friday or Saturday, just in time to comply with the 72 hours' notice required by the Brown Act, leaving little time to properly review the materials and prepare for the upcoming meeting.

The OCGJ confirmed that in 2021, matters were being placed on the agenda only at the instruction of the CEO, and that requests from individual Board members and the CAC for items to be placed on the agenda were being ignored. In a detailed review of the OCPA Board minutes, the OCGJ found inaccuracies and unnecessary or potentially misleading omissions, including failing to refer to questions and statements made during public comments. There also appeared to be many technical difficulties during Zoom meetings.

There are also examples of OCPA presenting information in a way that misled the public. At the March 1, 2022, OCPA Board meeting, approval of the mid-year operating budget was on the

[19] OCPA Board meeting video and minutes of Dec. 21, 2021.

agenda. During the budget presentation, the Board was informed that the year's anticipated legal costs would be increasing by $446,000, from $354,000 to $800,000. OCPA explained – in writing and orally – that the anticipated increased costs were "primarily due to a large number of PRA (Public Record Act) requests, non-legal board clerk support services, legal support for unanticipated matters, and power supply procurement transactions and negotiation services."[20]

Listing the PRA requests *first* overstates the significance of their associated costs. When asked for clarification, OCPA General Counsel explained that legal staff were needed to support OCPA in "day to day operations" and that there had been "quite a bit" of PRA requests. Finally, when asked directly how much of the budget was dedicated to handling PRA requests, the answer was $22,000 for the year. Aside from the fact that responses to those PRA requests had, in large part, not been forthcoming, this is a trifling percentage of the $800,000 budget request. Attempting to blame the doubling in legal costs on PRA requests seems indicative of OCPA's attitude towards individuals who seek information and transparency.

Underutilizing the Community Advisory Committee

According to the OCPA implementation document which describes the purpose and scope of the Community Advisory Committee (CAC), that Committee is intended to advise the OCPA Board on the operation of its energy program, help identify areas of concern, and assist in educating the public.

The very first duty listed on the Scope of Duties document is to elect officers of the CAC "to ensure that the Committee can operate independently and collaboratively, with limited support from Authority staff, but in keeping with the priorities of the Board." That effort was reportedly thwarted for some time by the intervention and inaction of the CEO. This finding was confirmed in a memo dated January 26, 2021, from the CEO to the OCPA Board. The Board had requested that staff provide an overview and update on the CAC at its next meeting on January 26, 2021. Rather than comply with the Board's request, the CEO disregarded its direction by notifying the Board via the memo that "since the Authority will not launch until the Spring 2022, staff does not want to rush to bring this item before the Board."

According to the minutes from the February 23, 2021, OCPA Board meeting, members of the Board and the public stressed the importance of the CAC and urged immediate action to get it started. The COO at the time believed a start date of April was reasonable. Despite the discussion of appointments and the requests to get things moving quickly, the CEO stated that this was a

[20] The Public Records Act provides the people with broad rights of access to public records to help keep government entities accountable. Except as legally exempted from disclosure, public agencies are required to make their records "*promptly* available" to requesters. Cal. Gov. Code § 6253(b) (emphasis added).

"receive and file" agenda item and that no Board action was required, thus stifling any energy and momentum for the CAC to be formed. CAC finally conducted its first meeting on July 8, 2021, but was not approved by the CEO to elect officers until January 12, 2022.

The CAC consists of two direct appointees per member city. At its first meeting in July 2021, the CAC decided to conduct meetings the first Thursday of the month. Board members and the CAC repeatedly requested to have the CAC as a standing position on the Board's agenda, but this did not occur until February 2022, a delay of six months after its establishment. Even then, the CEO planned to schedule CAC presentations to the Board on a merely quarterly basis.

The Secretary of the CAC is responsible for taking attendance and meeting notes and must work with OCPA staff to ensure meeting minutes are finalized and posted. According to the OCPA website, the CAC agendas are posted, although no minutes had been posted until April 2022. This oversight demonstrates a disregard for the CAC and contributed to a lack of transparency.

The CAC consists of well-informed and dedicated residents/business owners from the four member cities. It appears that the CEO and Board are underutilizing the CAC's expertise and enthusiasm. A key example of this underutilization occurred on November 23, 2021, when the Board discussed establishing an ad hoc marketing and outreach committee in lieu of assigning this task to the CAC, or seek its advice and input in other ways

Comparison research on how to utilize a CAC was conducted with respect to the San Diego Community Power (SDCP) agency. SDCP was established in September 2019, approximately one year before OCPA was formalized. The first CAC meeting of the SDCP was conducted on May 22, 2020. The SDCP CAC focuses on engaging with the public and providing feedback to the Board so that they can make educated decisions in the best interest of the community. The SDCP CAC is very focused and abides by the following Scope of Work guidelines:

- Provide venue of ongoing citizen support (i.e., marketing and outreach)
- Elect officers
- Adopt a work plan every year
- Work on objectives to assist the Board
- Help the Board identify issues of concern
- Draft reports to the Board with findings and recommendations
- Represent views of constituents (i.e., marketing and outreach)
- Incorporate language around inclusion and diversity
- Plan and engage at community events (i.e., marketing and outreach)
- Serve as information channel back to communities (i.e., marketing and research)

The SDCP CAC conscientiously posts their monthly agenda, the full agenda packet, and a recording of each meeting on their website. This indicates transparency within the agency. It is not uncommon for the SDCP Board to engage their CAC. For example, the CAC was able to appoint a representative to join the CEO Ad Hoc Search Committee and received updates from the Board on the CEO recruitment process. The SDCP CAC has a standing item and/or position on its Board's regular agenda. Lastly, the SDCP CAC was empowered to review and provide input on a Social Media Policy for the agency and established a CAC Community-Member Communications Guide. By comparison to SDCP, OCPA fails to empower or support its CAC.

Representative citizens of Orange County have worked very hard to develop CCEs to bring sustainable energy to Orange County. It is our hope that the issues raised in this report will be addressed in a timely manner so that confidence can be restored in OCPA, and it will flourish and expand in its membership and participation.

FINDINGS

F1 OCPA has not properly implemented bylaws and other procedures to promote and ensure transparency.

F2 OCPA unreasonably delayed the formation of the CAC, has failed to properly utilize CAC member expertise, and has stifled the CAC from functioning as an advisory committee as intended.

F3 OCPA hiring practices and procedures for both employees and contractors have failed to follow best practices, potentially damaging the credibility of the agency and raising questions of cronyism.

F4 OCPA has failed to hire a Director of Power Purchases or other experienced senior staff as appropriate for a CCE, resulting in a lack of oversight of contractors and fewer checks and balances in its operation.

F5 OCPA lacks experienced in-house staff to develop and implement a long-term strategic plan as well as short-term plans to mitigate economic risks.

F6 OCPA Board meeting agendas and staff reports are distributed at the last minute and Board meeting minutes are not always accurate, complete, or posted in a timely manner.

RECOMMENDATIONS

Based on its investigation described herein, the OCGJ makes the following recommendations:

R1 Implement OCPA and Community Advisory Committee by-laws consistent with those of other CCEs within California. (F1) Timeline: October 1, 2022.

R2 Include the Community Advisory Committee as a standing item on the OCPA Board minutes and recognize the Community Advisory Committee as an advisory committee, and not simply a mouthpiece. (F2) Timeline: October 1, 2022.

R3 Hire a Director of Power Purchases or other qualified staff positions to properly oversee Pacific Energy Advisors and CalPine contractors utilizing best practices. (F3, F4, F5) Timeline: December 1, 2022.

R4 Utilize a member agency clerk or assign a qualified OCPA staff member to handle the agendas and minutes for the OCPA Board and OCPA Community Advisory Committee to ensure that they are prepared properly and posted in a timely manner. (F6) Timeline: October 1, 2022.

RESPONSES

California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official's control *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 specifies the manner in which such comment(s) are to be made as follows:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding.

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required and requested from:

90 Day Response Required	F1	F2	F3	F4	F5	F6
OCPA Board of Directors	X	X	X	X	X	X

90 Day Response Required	R1	R2	R3	R4
OCPA Board of Directors	X	X	X	X

90 Day Response Requested	R1	R2	R3	R4
City of Buena Park City Council				X

90 Day Response Requested	R1	R2	R3	R4
City of Fullerton City Council				X

90 Day Response Requested	R1	R2	R3	R4
City of Huntington Beach City Council				X

90 Day Response Requested	R1	R2	R3	R4
City of Irvine City Council				X

90 Day Response Requested	R1	R2	R3	R4
Orange County Board of Supervisors				X

REFERENCES

California Assembly Bill 117.

Battaglioli, Daniela, "*Towards Electricity Decarbonizaion: Options for Community Choice Energy in Del Mar, CA* (2017), citing Pacific Energy Advisors, Inc., January 8, 2016.

Buena Park City Council Staff Reports and Meeting Minutes.

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GLOSSARY

AB	Assembly Bill
BBK	Best, Best & Krieger
CAC	Community Advisory Committee
CCA	Community Choice Aggregation
CCE	Community Choice Energy
CEA	Clean Energy Alliance
CEC	Community Choice Energy
CEO	Chief Executive Officer
CFO	Chief Financial Officer
COO	Chief Operating Officer
COVID	Coronavirus Disease
CPUC	California Public Utilities Commission
IOU	Investor-Owned Utility, such as Southern California Edison
JPA	Joint Powers Agreement
kWh	Kilowatt hour
OCPA	Orange County Power Authority
OCGJ	Orange County Grand Jury
PEA	Pacific Energy Advisors
PRA	Public Records Act
RA	Resource Adequacy
ROC	Risk Oversight Committee
SCE	Southern California Edison

SDGE	San Diego Gas and Electric
SDCP	San Diego Community Power, a CCE
Spot Market	The wholesale electricity spot market is a venue for trading electricity as a commodity. It serves as a clearing house to reflect the economic value of electricity for a particular period, as indicated by the "spot price."
WCE	Western Community Energy, a CCE

DRAFT Responses to Findings and Recommendations
2021-22 Grand Jury Report
"Orange County Power Authority: Come Clean"

On June 24, 2022, the Orange County Grand Jury released a report entitled "Orange County Power Authority: Come Clean." This report directed responses to findings and recommendations to the OCPA Board of Directors. The responses are below:

FINDINGS

F1: OCPA has not properly implemented bylaws and other procedures to promote and ensure transparency.

Response: OCPA disagrees wholly with Finding #1.

Bylaws are typically procedural requirements or limitations on an entity's governance. Although OCPA's Joint Powers Agreement authorizes the Board to adopt bylaws, neither the Joint Powers Agreement, the Joint Exercise of Powers Act, nor the provisions of the Public Utilities Code relating to CCAs require the adoption of bylaws. They are only required in corporate governance. Further, bylaws are often duplicative of the provisions of a joint powers agreement or applicable law, although in some cases they may be used to establish additional agency procedures. Ultimately, the need for bylaws and the substance thereof is at the discretion of the governing body if it chooses to adopt specific governance procedures not already included in its governing agreement or charter. The absence of any particular provision or policy, too, would be governed by state law where applicable.

Many older joint powers authorities have basic JPA agreements that are more general in nature and only address the required elements of the Joint Exercise of Powers Act, such as the purposes of the agency and powers of the Board of Directors. The OCPA JPA agreement, and many community choice aggregator joint powers agreements, are drafted in a more modern drafting style by including procedures that might be broken out in bylaws or an agency's policies. These include, but are not limited to, officer terms of office, committees, and board member appointments and vacancies requirements. In fact, many CCAs do not have bylaws as the larger and more established ones may have operating procedures to address larger organizational bureaucracy. Further, the Grand Jury report does not reference or mention the fact that OCPA has adopted numerous policies related to general governance subjects, and therefore, this issue does not appear to have been well-researched. Simply because these policies have been adopted as policies, and not within a document called "bylaws" does not mean that OCPA has not established basic governance policies and procedures. For example, OCPA has adopted policies on procurement of goods and services, delegated contract authority, creation of Board agendas, energy risk management, record retention, Board compensation and expense reimbursement, etc., all of which are publicly available here under "Policies": https://www.ocpower.org/resources/key-documents/ to promote and ensure transparency. The format and depth of documents follows best management practices created by CalCCA in coordination with the CPUC. The finding by the Grand Jury report that OCPA has not properly adopted "bylaws" appears to place form over substance and ignores the existence of these previously adopted policies and how other CCAs, JPAs and public agencies implement governance mechanisms.

F2: OCPA unreasonably delayed the formation of the CAC, has failed to properly utilize CAC member expertise, and has stifled the CAC from functioning as an advisory committee as intended.

Response: OCPA disagrees wholly with Finding #2.

The formation of the Community Advisory Committee ("CAC") was not delayed or even unreasonably delayed. The OCPA Board of Directors considered formation of a citizen's advisory committee at its April 13, 2021 meeting where there was significant discussion and criteria presented to the Board. OCPA staff conducted research on the various CAC models that have been established by other CCAs, joint powers authorities, and other public agencies. While the Grand Jury notes that the item was a "receive and file," the recommended action was, in fact, to "discuss and provide direction."

The Grand Jury draws a comparison to San Diego Community Power where it was asserted that the agency formed in September 2019 and held its first CAC meeting in May 2020 some eight months after formation. In reviewing this comparison, OCPA notes that its first CAC meeting was held within 7 months of formation, which is sooner than SDCP. Therefore, we see no evidence that the timeline set forth by the Grand Jury can be deemed to be unreasonable.

Further, the OCPA CAC had its first meeting on July 8, 2021. This was 267 days prior to commercial launch and 450 days prior to when residential service is scheduled to begin. As the Table below demonstrates, formation of the OCPA CAC compared to service launch occurred prior to many other CCAs.

CCA	First CAC Meeting	Date Service Began	Days Prior to Launch
OCPA (Residential)	7/8/2021	10/1/2022	450
SDCP	5/22/2020	7/1/2021	406
SJCE (Res/Com)	2/26/2018	2/1/2019	340
RCEA (Approved Committee Charter)	6/20/2016	5/1/2017	315
Easy Bay Community Energy	8/1/2017	6/1/2018	304
VCE	8/22/2017	6/1/2018	283
OCPA (Commercial)	7/8/2021	4/1/2022	267
Desert Community Energy	7/11/2019	4/1/2020	265
SJCE (Muni)	2/26/2018	9/1/2018	187
Clean Energy Alliance	12/3/2020	5/1/2021	149
Clean Power Alliance (Commercial)	2/14/2019	5/1/2019	76
Clean Power Alliance (Residential)	2/14/2019	2/1/2019	-13
Central Coast Community Energy	7/10/2018	3/1/2018	-131
Peninsula Clean Energy	5/25/2017	10/1/2016	-236
SVCE	1/17/2018	3/1/2016	-687
Pioneer Community Energy	11/10/2021	2/1/2018	-1378

Since the first CAC meeting, 11 additional meetings have been held where the Committee has been given ample opportunities to provide feedback and share their expertise, with OCPA staff and consultants in attendance. An additional three meetings were scheduled but cancelled due to there

being an insufficient quorum of committee members. CAC meetings are conducted in accordance with the Brown Act whereby all meeting agendas are posted within the statutory timelines prescribed by law and meetings are open to the public who may comment on agenda items. Furthermore, CAC committee reports have been provided to the Board on a regular basis consistent with the practice of other CCAs, which is done on a quarterly basis.

The Grand Jury commented that a key example of underutilization occurred in November 2021 when the Board established an ad hoc committee marketing and outreach committee and did not appoint a CAC member. The Grand Jury further noted that no CAC members serve on other ad hoc committees. Under the Ralph M. Brown Act, however, temporary ad hoc advisory committees of a legislative body may not include individuals other than members of the legislative body. Specifically, Government Code section 54952(b) provides, in part, that "advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies . . . ." Accordingly, although the OCPA Board's ad hoc committee could confer with one or more CAC members, the Board could not directly appoint one or more CAC members to the ad hoc while maintaining its status as an ad hoc committee composed solely of less than a quorum of the Board. The Grand Jury, therefore, does not understand the legal limitations of its comments.

The Grand Jury draws further comparison between OCPA and SDCP regarding underutilization of committee members and stifling the functionality of committee members by citing the scope of work guidelines that apply to SDCP's CAC work. OCPA notes that these same guidelines were used as a model and ultimately adopted by the OCPA CAC on March 30, 2022. Therefore, OCPA fails to see how this example supports the Grand Jury's finding.

F3: OCPA hiring practices and procedures for both employees and contractors have failed to follow best practices, potentially damaging the credibility of the agency and raising questions of cronyism.

Response: OCPA disagrees wholly with Finding #3.

OCPA follows industry best practices for the hiring of both employees and consultants. OCPA retained a CEO and COO in the same manner as other start-up CCAs have done through direct appointment of executive staff. To date OCPA has hired six additional employees and three of them had eight years of combined experience in the CCA industry. Each new hire followed an open competitive process including public posting of the job opening, screening of applicants, interview, and selection panels. OCPA has a procurement policy that is followed when hiring consultants that has been utilized to hire through competitive processes a portfolio manager, scheduling coordinator and data manager, which functions are the backbone and are 90% of a CCA's work. OCPA's procurement policy can be found at OCPower.org/key-documents.

F4: OCPA has failed to hire a Director of Power Purchases or other experienced senior staff as appropriate for a CCE, resulting in a lack of oversight of contractors and fewer checks and balances in its operation.

Response: OCPA disagrees partially with Finding #4.

OCPA agrees that it has not hired a Director of Power Purchases but disagrees that it has not hired other experienced senior staff. In October 2021, OCPA hired Tiffany Law as its CFO. Tiffany Law has approximately four years of experience working as the Chief Financial & Technology Officer at Central

Coast Community Energy (3CE), a successful CCA serves more than 430,000 customers throughout Central Coast, including residential, commercial, and agricultural customers in communities located within Monterey, San Benito, San Luis Obispo, Santa Barbara, and Santa Cruz counties. At 3CE, Tiffany oversaw critical functional areas, demonstrating leadership over accounting, auditing, finance, budgeting, treasury, credit rating, payroll, ratemaking, tax, data analytics management, and information technology. During her tenure, Tiffany was responsible for managing the data manager contracts which function was the backbone of the CCA billing operations. Notably, 3CE was the first CCA to achieve an "A" credit rating by S&P Global.

In addition, OCPA has had an active recruitment for Power Resources Director since September 28, 2021. OCPA has interviewed six candidates and made offers to two of those candidates. However, none of the candidates that had the experience for the position accepted the position. OCPA is still currently searching for an experienced Power Resources Director.

F5: OCPA lacks experienced in-house staff to develop and implement a long-term strategic plan as well as short-term plans to mitigate economic risks.

Response: OCPA disagrees wholly with Finding #5.

OCPA hired Tiffany Law as its CFO, who brings a wealth of financial and technology experience to the growing CCA sector with over 22 years serving in the private and public sectors. During her tenure at 3CE, a well-established CCA located in central coast, they were able to take immediate short-term action of providing a significant COVID-19 financial relieve assistance of $22.4 million to all customers with the goal of boosting local economy while avoiding any disparate impacts on various customer classes. For a long-term strategic plan, Tiffany managed the development and implementation of the new cost-of-service rate design process for 3CE (first in CCA) to provide customers consistent and transparent rates, enhancing local control on rate-setting, reducing cross-subsidization among rate classes, and ensuring customer classes remain competitive with IOUs rates.

In addition, OCPA hired Owen Lee as its Controller, who also comes from 3CE, brings 12 years of experience working in financial forecasting, budgeting, financial modeling, and accounting. Owen's experience in handling energy business fundamentals including cost of energy, load forecast, and utility rate schedules. Together, Tiffany and Owen made a high-performing finance team to develop and implement strategic plans for economic risks mitigation.

F6: OCPA Board meeting agendas and staff reports are distributed at the last minute and Board meeting minutes are not always accurate, complete, or posted in a timely manner.

Response: OCPA disagrees wholly with Finding #6.

All agendas and staff reports are distributed in accordance with the Brown Act. Accordingly, there is no such thing as "last minute" for distribution of the agenda. The Brown Act sets a 72-hour deadline for documents to be posted which is followed by OCPA. All minutes are approved by the OCPA Board and are posted as soon as possible after being approved. All minutes conform to industry standards.

RECOMMENDATIONS

Based on its investigation described herein, the Grand Jury makes the following recommendations:

R1: Implement OCPA and Community Advisory Committee by-laws consistent with those of other CCEs within California. (F1) Timeline: October 1, 2022.

Response: Recommendation will not be implemented because it is not warranted or is not reasonable.

OCPA is governed by a duly adopted Joint Powers Agreement as are most other CCAs within California. There is no legal requirement for the adoption of a separate agreement titled "By-laws". For comparison we note the entire Charter governing the County of Orange is only six pages long and the County has no by-laws. 4492.pdf (ocgov.com)

OCPA has adopted ten (10) Polices which cover the same material that would be included in by-laws and overtime will continue to further define governance definitions as the Board determines it is needed. As an advisory committee reporting to the board, with no legal or statutory authority the CAC has drafted and adopted its own set of operating procedures which has been sufficient.

R2: Include the Community Advisory Committee as a standing item on the OCPA Board minutes and recognize the Community Advisory Committee as an advisory committee, and not simply a mouthpiece. (F2) Timeline: October 1, 2022.

Response: The recommendation has been implemented.

OCPA believes the Grand Jury meant OCPA "agenda" not Board "minutes." The recommendation has been implemented. The Community Advisory Committee has been given the opportunity to provide updates at any and all Board Meetings. OCPA has always recognized the Community Advisory Committee as an advisory committee to the Board, which is evidenced by its formal creation as a Brown Act committee and its charter documents.

R3: Hire a Director of Power Purchases or other qualified staff positions to properly oversee Pacific Energy Advisors and CalPine contractors utilizing best practices. (F3, F4, F5) Timeline: December 1, 2022.

Response: The recommendation has been implemented.

CFO, Tiffany Law oversees the CalPine (data manager) and co-oversees the Pacific Energy Advisors (power portfolio) contractors. Tiffany has approximately four years of CCA experience managing the data manager contracts for 3CE in dual IOUs service territories (PG&E and SCE). In addition, Tiffany served as a Risk Management Committee member at 3CE working closely with the in-house power supply team over front, middle, and back offices functions. Also, the recommendation has been implemented by virtue of the fact that OCPA has had an active recruitment for Power Resources Director since September 28, 2021 well before the Grand Jury's investigation and report and has interviewed candidates for the position. Furthermore, OCPA has contacted specialized recruitment firms for assistance with fulfilling the position and will work with one of these firms if current recruitment efforts are unsuccessful. OCPA encourages qualified applicants to submit an application and view details at https://www.ocpower.org/position/power-resources-director/

R4: Utilize a member agency clerk or assign a qualified OCPA staff member to handle the agendas and minutes for the OCPA Board and OCPA Community Advisory Committee to ensure that they are prepared properly and posted in a timely manner. (F6) Timeline: October 1, 2022.

Response: This recommendation has been implemented.

Under the OCPA JPA Agreement, the CEO is designated as the Secretary. OCPA has retained and assigned these duties to at least two consultants to perform the Clerk function, both of which are former City Clerks (and one a former City Clerk and City Manager), well-trained with significant experience in open meetings laws and procedures. OCPA has properly prepared and posted agendas in a timely manner consistent with the timeframes in the Brown Act. Per the recommendation, OCPA has contacted its member agencies requesting the use of their Clerk for OCPA meetings. The member agencies either did not find this feasible or did not respond to OCPA's request. Furthermore, OCPA is currently in the process of recruiting an in-house Clerk. While OCPA is in the process of hiring a Clerk, OCPA utilizes both in-house staff and experienced contract employees to ensure that agendas and minutes are prepared and posted in a timely manner.

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 9.5

To: Orange County Power Authority Board of Directors

From: Brian Probolsky, Chief Executive Officer

Subject: Proposed Response to County of Orange Request for Audit

Date: September 6, 2022

RECOMMENDED ACTION

Direct the Chief Executive Officer to (i) draft and forward a response to the County of Orange with respect to certain actions that the County has requested OCPA to take consistent with the recommended responses set forth herein; and (ii) take such steps as are necessary to implement such actions, including the hiring of a consultant for a performance audit. The response letter should be sent no later than September 9, 2022, in accordance with the request of the County.

BACKGROUND

On August 23, 2022, the Orange County Board of Supervisors took up discussion of a supplemental agenda item to withdraw as a member of OCPA. In a motion approved by the Board of Supervisors, the decision was made not to take any action on withdrawal pending the compliance of OCPA with a number of action items, including various audits to be conducted by an independent third party.

On August 25, 2022, Orange County Power Authority received a letter from County of Orange County Counsel Leon Page seeking to implement the motion approved by the Board of Supervisors. The letter made a number of formal requests of the Orange County Power Authority and staff, including a request for formal confirmation from the OCPA Board of its intent to comply with the requested actions.

Staff believes that it is possible for OCPA to comply with the requests from the Board of Supervisors, subject to certain limitations regarding (i) the disclosure of certain confidential information; and (ii) the regulatory requirements that OCPA is subject to with respect to the advance procurement of resource adequacy and renewable energy. Staff has set forth in detail below the recommended response to each of the County's requests.

RECOMMENDATIONS REGARDING RESPONSE TO THE COUNTY

Requested Action No. 1

> An "open books" financial audit of the OCPA's financial statements detailing its assets, liabilities, revenues, and costs;

Recommended Response

OCPA is currently undergoing the regular annual audit of its financial statements for the 2021-2022 fiscal year, as well as a financial audit by another OCPA member, the City of Irvine, with a similar scope of what has been requested by the County. The process of engaging a separate third party auditing firm to conduct a substantially equivalent audit will be time consuming and expensive. While OCPA is willing to cooperate with the County with respect to a third audit, we respectfully request that the County consider working with the City of Irvine to participate in the financial audit that is already underway.

Requested Action No. 2

A performance audit of OCPA operations, including its procurement of purchase power agreements ("PPAs")

Recommended Response

A performance audit of energy procurement will be a complex undertaking that only a small number of consultants in the energy market would have the capability to provide. This is a highly technical area and will require a backward looking effort to match OCPA procurement to past market conditions and forward looking pricing expectations as of specific moments in time. OCPA has a comprehensive hedging strategy to provide price stability for its customers and has procured more than $600 million in energy and regulatory products such as resource adequacy for the years 2022, 2023 and 2024 along with procurement for long term contractual obligations for renewable energy in compliance with the CPUC's mandates to meet the State's renewable portfolio standards. This involves conducting periodic "requests for offers" to purchase energy to serve OCPA customers in a bid format where energy providers bid prices and quantities and OCPA selects the bids which best meet its needs. It also involves a substantial amount of negotiating on a day to day basis to seek out and obtain the resource adequacy and renewable energy certificates to meet its regulatory obligations and the commitment to provide renewable energy to its customers. These products are in short supply, particularly in the summer months and prices vary considerably based on market expectations. Pursuant to CPUC rules, pricing and market information for these transactions is considered confidential for a period of three years and the EEI and WSPP master purchase agreements that are standard in the energy industry include contractual limitations on the disclosure of this information to third parties. As a result, although OCPA can provide copies of its energy purchase agreements and confirmations, all pricing and market sensitive information in those documents is subject to redaction. OCPA is proud of the efforts of its procurement team and desires to facilitate the ability of the County to verify that OCPA is procuring energy in a responsible manner substantially similar to other CCAs. OCPA does have the right under its contracts to disclose market information to OCPA advisors and consultants who have a confidentiality obligation. Therefore, we propose that OCPA hire a consultant that has not previously worked with OCPA that is acceptable to the County Executive to conduct a review of OCPA procurement and deliver a report that provides objective analysis of OCPA's procurement with disclosure of aggregate prices and volumes. This report will

be useful not only for the County, but for OCPA's other members and creditors and OCPA is willing to pay the cost of this analysis.

Requested Action No. 3

Perform an audit of "the effectiveness of its internal controls, policies, and procedures"

Recommended Response

An audit of internal controls, policies and procedures would best be included in the financial audit component that is discussed above in Action Item No. 1.

Requested Action No. 4

Perform an audit of "any costs incurred by the OCPA on behalf of the County to date"

Recommended Response

OCPA can identify administrative costs incurred in connection with the addition of the County as a member, however, OCPA does not procure energy or regulatory products on behalf of individual members. OCPA procures energy on a portfolio basis to meet the energy requirements to serve its customers and comply with CPUC mandates. The load for the County was included in the amended implementation plan that was filed with the CPUC in April of this year and OCPA's regulatory requirements are set in accordance with the energy requirements set forth in that plan. Accordingly, it is not possible to segregate costs that have been incurred for a particular member and the liability of a member upon withdrawing from OCPA is based on its percentage share of the energy portfolio based on the demands of the customers within its geographic boundaries.

Requested Action No. 5

Pause all launch activities on behalf of residential and commercial customers in County unincorporated areas ("County Customers"), including, but not limited to, the OCPA's procurement of electrical power.

Recommended Response

OCPA will use good faith efforts to comply with the County's request subject to its regulatory obligations. As mentioned in the response to Action Item No. 4, OCPA purchases power on a portfolio basis and it must be prepared to comply with its regulatory obligations, which include the load associated with adding the County in 2023. If OCPA does not comply with those requirements, it can result in the imposition of penalties. Accordingly, OCPA must continue to base its procurement upon the assumption that the County will remain a member of the JPA. Doing otherwise would potentially create additional costs and burden that would be borne by all of the customer of OCPA, including the County. Because the County is being phased in at a later date, there will be some opportunity for OCPA to delay procurement activities with respect to the incremental energy load that will be necessary for the County in late 2023 and to push final approval of purchases of regulatory products into early December of this year.

Requested Action No. 6

Defer issuing notice to County Customers concerning their automatic enrollment in the OCPA until such time as the Board receives the independent audit report and considers whether to withdraw from the OCPA.

Recommended Response

OCPA is not scheduled to issue notices to County customers in the next three months, so the anticipated delay of waiting until the County has reviewed the various audits it has requested should not pose a problem.

FISCAL IMPACT

The cost of a performance audit not to exceed $50,000.

ATTACHMENT

1. Letter from County of Orange

O F F I C E O F T H E C O U N T Y C O U N S E L
C O U N T Y O F O R A N G E

400 WEST CIVIC CENTER DRIVE, SUITE 202
SANTA ANA, CA 92701
MAILING ADDRESS: P.O. BOX 1379
SANTA ANA, CA 92702-1379
(714) 834-3300
FAX: (714) 560-4552

E-Mail:
Leon.page@coco.ocgov.com

August 25, 2022

Sent Via U.S. Mail & E-Mail
Brian Probolsky
Orange County Power Authority
3349 Michelson Dr Ste 200
Irvine, CA, 92612-8881
bprobolsky@ocpower.org

Re: County of Orange Requests for Information and Audit;
Public Records Request for Power Purchase Agreements

Dear Mr. Probolsky:

At the August 23, 2022, Orange County Board of Supervisors ("Board") meeting, the Board considered a proposal to withdraw from the Orange County Power Authority ("OCPA") Joint Powers Agreement ("JPA") pursuant to section 6.1.2 of the JPA.

Instead of voting to withdraw from OCPA JPA, the Board directed the Office of County Counsel to request from OCPA its confirmation that it will complete the following actions:

1. Allow a County-selected, independent, third-party auditor to review and complete a comprehensive audit of OCPA operations. The audit shall include both (1) an "open books" financial audit of the OCPA's financial statements detailing its assets, liabilities, revenues, and costs; and (2) a performance audit of OCPA operations, including its procurement of purchase power agreements ("PPAs"), the effectiveness of its internal controls, policies, and procedures, and any costs incurred by the OCPA on behalf of the County to date; and

2. Pause all launch activities on behalf of residential and commercial customers in County unincorporated areas ("County Customers"), including, but not limited to, the OCPA's procurement of electrical power, and defer issuing notice to County Customers concerning their automatic enrollment in the OCPA until such time as the Board receives the independent audit report and considers whether to withdraw from the OCPA.

The Board expects to receive this confirmation within three days of the September 6, 2022, OCPA Board meeting. If the results of the audit do not meet the Board's satisfaction, or if the OCPA does not respond within three days of the OCPA's September 6 meeting, the Board will approve the County's withdrawal from the OCPA at the first possible Board of Supervisors meeting, no later than December 6, 2022.

In addition, pursuant to the California Public Records Act, please provide to the Office of County Counsel copies of all PPAs procured or entered into by the OCPA since its formation.

Please indicate the OCPA's agreement that it will complete the two actions outlined above by signing the letter below and returning the signed letter to me via email at Leon.Page@coco.ocgov.com no later than September 9, 2022.

Very truly yours,

LEON J. PAGE
COUNTY COUNSEL

_____

cc: Ryan M.F. Baron, Best Best & Krieger LLP
ryan.baron@bbklaw.com

By signing below, the Orange County Power Authority agrees to complete the actions enumerated 1-2.

ACCEPTED AND AGREED TO:
ORANGE COUNTY POWER AUTHORITY

By:
Name:
Title:
Date:

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 9.6

To: Orange County Power Authority Board of Directors

From: Requested by Director Khan

Subject: Consideration of New Customer Communities Policy

Date: September 6, 2022

RECOMMENDATION

Adopt Policy No. 009: New Customer Communities Policy replacing former Policy No. 009: New Member Policy.

BACKGROUND

Pursuant to the *OCPA Policy No. 012: Board Agenda Policy*, Director Khan has requested that *Policy No. 009: New Member Policy* be reconsidered to address the policy's limitation that new Board Members only have *ex officio* voting status prior to the jurisdiction's launch year. The proposed policy addresses this inconsistency with the JPA agreement by deleting it, and proposes general requirements for new communities that desire to join OCPA.

FISCAL IMPACT

There is no fiscal impact.

ATTACHMENT

1. Draft Policy No. 009: New Customer Communities Policy
2. Policy No. 009: New Member Policy

Orange County Power Authority Policy No. 009
New Customer Communities

PURPOSE

It is the purpose of this New Customer Communities Policy to describe the process for interested cities and counties to become a member agency in the Authority and be provided retail electric service and other energy programs. The addition of new communities increases buying power and reaffirms the viability of community choice energy by providing local control, competitive rates, rate stabilization, renewable energy, and other incentives for cities and counties. It is within the interests of the Authority to explore the provision of retail electric service in new communities to further the Authority goals. The addition of new communities into the Authority will also increase the voice and status of the Authority in legislative and regulatory matters at the California Public Utilities Commission, California Energy Commission, California Air Resource Board, the California State Legislature and elsewhere.

OCPA MEMBERSHIP PROCESS

Step 1: Governing body submits letter to OCPA from new community jurisdiction, requesting consideration as a member.

Step 2: Staff evaluates request to determine: (a) if internal resources are available to consider new membership, and (b) if a formal 'inclusion period' is in effect or should be offered to create staff efficiencies.

Step 3: OCPA staff requests a formal Membership Application and data release from new community governing body.

Step 4: Membership Application submitted to OCPA. Request submitted to OCPA Board to consider adherence to criteria D, E, F and G below, and to authorize membership of new community, subject to a net positive result in quantitative membership analysis by staff.

Step 5: Following OCPA Board approval, staff executes agreement with governing body of new jurisdiction. Staff undertakes and completes analysis, with primary focus on quantitative criteria A, B and C below. If needed, re-analysis may be conducted over time to account for varying market conditions.

Step 6: Results of membership analysis presented to OCPA Board. 1). If quantitative affiliate membership criteria are met, OCPA Board adopts resolution to include municipality in OCPA Joint Powers Authority membership. 2). If quantitative criteria are not met but other compelling criteria are present, Board may consider approval of membership.

Step 7: New jurisdiction satisfies all requirements of JPA agreement, the Public Utilities Code and any imposed by the OCPA Board of Directors and executes JPA Agreement.

Step 8: OCPA submits updated Implementation Plan to CPUC.

MEMBERSHIP CRITERIA

A. Including new community is projected to result in a neutral or positive fiscal impact for OCPA and the existing customer base.

B. Including new community will enhance strength of local programs, including an increase in distributed generation, and will accelerate greenhouse gas reductions on a larger scale.

C. Including new community will increase the amount of renewable energy being used in California's energy market.

D. There will be an increase in opportunities to launch and operate OCPA energy efficiency programs to reduce energy consumption and reliance on fossil fuels.

E. New opportunities are available to deploy local solar and other distributed renewable generation through the OCPA Net Energy Metering Tariff or Feed in Tariff if adopted.

F. Greater demand for jobs and economic activity is likely to result from service in new community.

G. Inclusion of new community is likely to create stronger voice for OCPA at the State and regulatory level.

Orange County Power Authority
Policy Number 009: New Member Policy

Purpose

It is the purpose of this New Member Policy to increase membership in the Orange County Power Authority and describe the process for interested cities and counties to become a member agency in the Authority and be provided retail electric service and other energy programs. The addition of new members increases buying power and reaffirms the viability of community choice energy by providing local control, competitive rates, rate stabilization, renewable energy, and other incentives for cities and counties. It is within the interests of the Authority to explore the provision of retail electric service in new communities to further the Authority goals. The addition of new members into the Authority will also increase the voice and status of the Authority in legislative and regulatory matters at the California Public Utilities Commission, California Energy Commission, California Air Resource Board, the California State Legislature and elsewhere.

Authorization

The Joint Powers Authority Agreement states in Section 4.1 (Additional Parties0: An incorporated city or county, or other public agency as authorized by California Public Utilities Code §331.1, may become a member of the Authority and a Party to this Agreement upon satisfaction of the following:

4.1.1. Adoption of a resolution by the governing body of the proposed additional party approving the Agreement, and requesting participation and an intent to join the Authority;

4.1.2 Adoption by the Board of a resolution authorizing participation of the proposed additional party;

4.1.3 Satisfaction of any additional conditions as established by the Board or applicable laws or regulations; and

4.1.4 Execution of the Agreement by the proposed additional party

General Guidelines

1. A member that joins in 2021 would be invited to join at no cost. Members that join in subsequent years would be charged a to-be-determined fee designed to offset a portion of the Authority's out of pocket costs for onboarding each new member not to exceed $100,000.

2. A member that joins would get one seat on the Board. Upon approval by the Authority Board of Directors, the new member would serve in an *ex-officio* status until the calendar year in which the Authority launches services in its community. An *ex-officio* member serves as an advisory, non-voting member of the Board and/or committees of the Authority. *Ex-officio* members serve at the pleasure of the Board. An *ex-officio* member is not considered a "contracting party" as that term is used in California Government Code § 6502. At the start of the calendar year of launch the member's *ex-officio* status cease and the member will have full rights as an Additional Party, as that term is defined in the Joint Powers Agreement.

3. Applications to serve new members will be considered if all of the following criteria are met:
   a. The community is relatively close or adjacent to the Authority's existing service territory, so that regular meeting attendance and community engagement is practical.

b. The community through a letter of intent agrees to abide by the Authority's Joint Powers Agreement, all existing Authority's adopted policies, and any conditions of service prescribed by the Authority's Board of Directors, and to take all steps required by the Joint Powers Agreement and California law to participate in the Authority program.

4. In addition to Section 4.1 of the JPA Agreement, the community must adopt an ordinance authorizing the Authority to provide retail electricity services to residents and businesses within its jurisdictional boundary in accordance with California Public Utilities Code § 366.2.

ORANGE COUNTY POWER AUTHORITY
Staff Report – Item 9.7

To: Orange County Power Authority Board of Directors

From: Requested by Director Khan

Subject: Consider Second Amendment to OCPA Joint Powers Agreement

Date: September 6, 2022

RECOMMENDATION

1. Discuss draft Second Amendment to OCPA Joint Powers Agreement ("Second Amendment").
2. Consider directing OCPA staff to notify the OCPA member agencies of the Second Amendment and place the Second Amendment on a future OCPA agenda for consideration and approval.

BACKGROUND

Pursuant to *OCPA Policy No. 012: Board Agenda Policy*, Director Khan has requested the Board's consideration of a Second Amendment to the OCPA Joint Powers Agreement. The draft amendment proposes to do the following:

1. Modify the regular director and alternate director term of office by reducing the term from four (4) years to two (2) years upon each existing director and alternate director serving an initial four (4) year term.
2. Modify the Chair and Vice Chair term of office from four (4) years to two (2) years beginning in July 2023.
3. Clarify that the term of office for a director or alternate director begins upon taking the oath of office for the respective appointment, which is currently state law.

The member agencies of OCPA do not have to individually approve an amendment to the JPA agreement. Instead, OCPA must provide the members with thirty (30) days' notice prior to the Board approving an amendment. Upon providing notice, the Board is required to approve an amendment with a 4/5ths vote.

Since the draft Second Amendment is only being considered for discussion and notice to the cities, only a majority vote is required for this item.

ATTACHMENT

1. Draft Second Amendment to OCPA Joint Powers Agreement

SECOND AMENDMENT TO THE ORANGE COUNTY POWER AUTHORITY JOINT POWERS AGREEMENT

This Second Amendment ("**Second Amendment**") to that certain Orange County Power Authority Joint Powers Agreement ("**Agreement**"), dated November 20, 2020, by and between the parties set forth in Exhibit A to the Agreement is effective as of _____, 2022 ("**Second Amendment Effective Date**").

RECITALS

A. The Orange County Power Authority is a joint powers authority established on November 20, 2020, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 *et seq.*) as a separate public agency to collectively implement a community choice aggregation program and to exercise any powers common to the Authority's members to further these purposes. On February 9, 2021, the Board of Directors approved the First Amendment to the Agreement extending the right of a Founding Party to withdraw under Section 6.1.1 of the Agreement until April 1, 2021.

B. The Parties desire to amend the Agreement to modify the terms of office for a regular and alternate director.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

1. Amendment to the Agreement.

(a) Terms of Office. Section 3.3 of the Agreement is hereby revised and replaced in its entirety as follows:

> "3.3 Terms of Office. Each regular or alternate Director appointed by a Founding Party or a Party added prior to the Second Amendment Effective Date shall serve an initial term of office of four (4) years. Upon the expiration of the initial term, or for a Party added after the Second Amendment Effective Date, a regular or alternate Director shall serve a term of office of two (2) years. A regular or alternate Director's term of office shall commence upon the Director taking the oath of office after appointment by the governing body of the Party. A regular or alternate Director shall serve at the pleasure of the governing body of the Party that the regular or alternate Director represents, and may be removed by such governing body at any time, with or without cause. If at any time a vacancy occurs on the Board, a replacement Director shall be appointed by the governing body to fill the position of the previous Director within ninety (90) days of the date that such position becomes vacant. A replacement Director shall serve until the scheduled expiration of the term of office of the director they replace."

2. Capitalized Terms. Any capitalized terms not defined herein shall have the meanings set forth in the Agreement.

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3. Full Force. Except as expressly set forth herein, the Agreement shall remain unmodified and in full force and effect.

[SIGNATURE ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the Parties have hereby approved and executed this Second Amendment as of the date first written above.

ORANGE COUNTY POWER AUTHORITY

By: _____
Michael Carroll, Chair
Orange County Power Authority

Dated: _____

Approved as to Form:

By: _____
General Counsel
Orange County Power Authority

DRAFT