

NON-DISCLOSURE AGREEMENT

Between

SOUTHERN CALIFORNIA EDISON COMPANY

and

[Seller]

This Non-Disclosure Agreement (“Agreement”) dated as of _____ (“Effective Date”) is hereby entered into by and between **SOUTHERN CALIFORNIA EDISON COMPANY** (“SCE”), a California corporation, and *[Seller]* a *[Legal Status of Seller]* (“Seller”).

SCE and Seller shall sometimes be referred to in this Agreement individually as a “Party” and jointly as the “Parties.”

RECITALS

- A. SCE may from time to time issue a request for offers (“RFO”) or request for proposals (“RFP”) seeking proposals from potential sellers to sell to SCE Potential Products (as defined below). SCE may also from time to time issue a request for bids (“RFB”) seeking bids from potential buyers to buy Potential Products from SCE (the RFO, RFP and RFB shall be collectively referred to as “Solicitation”). In addition, Seller may from time to time make offers to sell to SCE Potential Products not in connection with a Solicitation (each, a “Bilateral Offer”). The Parties seek to create a single universal confidentiality agreement that will be applicable to all future Solicitations and Bilateral Offers.
- B. In response to a Solicitation or Bilateral Offer, Seller and SCE would like to negotiate a potential agreement (“Potential Agreement”) for the sale or purchase of the Potential Products (the “Negotiations”).
- C. Each of the Parties desires that any Confidential Information (as defined below) that may be provided by it or on its behalf to the other Party or its respective Representatives (as defined below) will be kept confidential by such other Party and its Representatives.
- D. It is the Parties’ desire to have this Agreement be applicable to all future Solicitations issued by SCE for Potential Products in which the Seller may participate and to all future Bilateral Offers.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

1. Certain Defined Terms. For purposes of this Agreement, the following terms shall have the following meanings:
 - (a) “Confidential Information” means (i) all Review Material, (ii) the fact that Seller has submitted a Bilateral Offer or an offer, proposal or bid in a Solicitation, (iii) the fact that the Parties are evaluating, discussing, or negotiating a Potential Agreement, or have done so, (iv) the terms, conditions, or other facts with respect to any Potential Agreement (including commercial terms related thereto) except as otherwise provided for in a resulting agreement, and, if applicable (v) the fact that SCE has short-listed Seller’s offer, proposal or bid in a Solicitation or is considering a Bilateral Offer.
 - (b) “Potential Products” means (i) physical electric energy or capacity, including renewable energy; (ii) physical natural gas; (iii) financial derivative products related thereto; or (iv) other products as specifically referenced in the Participant Instructions or other instructional document for the respective Solicitation.
 - (c) “Representatives” means the officers, directors, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents of a Party utilized in connection with a Solicitation, a Bilateral Offer, a Potential Agreement, or Negotiations, and in the case of SCE, includes an Independent Evaluator (as such term is used in California Public Utilities Commission (“CPUC”) Decision (“D.”) 04-012-048 or such successor decision at the time the Solicitation is issued or a Bilateral Offer is made) (the “Independent Evaluator”).
 - (d) “Review Material” means any and all written (including electronic communications), orally conveyed or recorded information, data, analyses, documents, and materials furnished or made available by a Party or its Representatives to the other Party or its Representatives in connection with a Solicitation, a Bilateral Offer or Negotiations, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Representatives to the extent containing or based upon such information, data, analyses, documents, and materials, but does not include information, data, analyses, documents, and materials that (i) are when furnished, or thereafter become, available to the public other than as a result of a disclosure by the receiving Party or its Representatives, or (ii) are already in the possession of or become available to the receiving Party or its Representatives on a non-confidential basis from a source other than the disclosing Party or its Representatives, provided that, to the best knowledge of the receiving Party or its Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Representatives, or (iii) the receiving Party or its Representatives can demonstrate has been independently developed without a violation of this Agreement.
2. Confidentiality Obligations. Each Party shall, and cause its Representatives to, treat Confidential Information as confidential with respect to third parties and shall not disclose Confidential Information except as specifically authorized herein or as specifically agreed to by each Party in writing. All Confidential Information shall be used solely for the purpose of evaluating a Potential Agreement and not for any other purpose. Accordingly,

each Party must take all necessary precautions and implement all requisite procedures and practices to protect Confidential Information provided by the other Party. Each Party may disclose Confidential Information only to its employees, directors, advisors, attorneys, consultants or accountants who have a strict need to know solely for the purpose of directly assisting such disclosing Party in evaluating the Potential Agreement (“Permitted Disclosee”), or in subsequent discussions or negotiations regarding the Potential Agreement and so long as such disclosing Party advises each Permitted Disclosee of the confidential nature of the Confidential Information and uses reasonable efforts to prevent or limit the disclosure of Confidential Information by such Permitted Disclosee. In addition, to the extent that an Independent Evaluator is engaged by SCE to monitor and participate in the Solicitation or Bilateral Offer process, such Independent Evaluate shall be deemed to be a Permitted Disclosee.

3. Permitted Disclosures.

- (a) Each Party may disclose Confidential Information to the Independent Evaluator, and each Party and the Independent Evaluator may also disclose Confidential Information to the following entities and their staff and divisions thereof in furtherance of the Solicitation or Bilateral Offer: (i) any duly authorized regulatory or governmental agency or entity, including the California Public Utilities Commission (“CPUC”) and all divisions thereof, California Energy Commission (“CEC”), and Federal Energy Regulatory Committee (“FERC”); and (ii) participants of the Procurement Review Group established pursuant to D.02-08-071 and D.03-06-071 (“PRG”), and (iii) the California Independent System Operator (“CAISO”); *provided*, and notwithstanding any other provision in this Agreement, Seller may only disclose to such entities Confidential Information that is information on the bid and negotiation process of the Solicitation or Bilateral Offer.
- (b) Each Party will seek confidential treatment of any Confidential Information submitted by it to the CPUC in a formal proceeding or filing by means that is consistent with applicable law, including, if applicable, a motion for protective order; *provided*, such Party may disclose Confidential Information under the preceding paragraph even if the CPUC does not specifically grant confidentiality or issue a protective order. SCE will seek confidential treatment of any Confidential Information submitted by it to the CEC, CAISO, or FERC by appropriate application to or agreement with such entities; *provided*, SCE may disclose Confidential Information under the preceding paragraph even if no confidentiality or non-disclosure agreements are entered into. With respect to non-CPUC PRG participants, neither Party may disclose Confidential Information to such third parties unless and until a written confidentiality or non-disclosure agreement is fully executed between the disclosing Party and such third-party disclosee. Seller shall provide notice to SCE of any disclosure by Seller of Confidential Information pursuant to this Section 3 of this Agreement. Each Party will seek confidential treatment of any Confidential Information provided to the CPUC outside of a formal proceeding or filing by means that is consistent with applicable law.
- (c) Neither Party nor the Independent Evaluator shall have any liability whatsoever to any party in the event of any unauthorized use or disclosure by a governmental or

regulatory agency or entity, including, without limitation, the CPUC and all divisions thereof, CEC, FERC, PRG or CAISO, of any Confidential Information or other information disclosed to any of them by such disclosing Party or its representatives.

- (d) SCE may also disclose Confidential Information as may be reasonably required to (i) participate in any auction, market or other process pertaining to the allocation of priorities or rights related to the transmission of electrical energy sold or to be sold to SCE under any agreement reached as a result of discussions or negotiations, (ii) to comply with any exchange, control area or CAISO rule, or (iii) to comply with any discovery or data request of a party to any proceeding pending before any entity set forth in Section 3(a) above.
 - (e) The Parties may disclose any Confidential Information to the extent necessary in order to comply with any law or any order issued by a court or entity with competent jurisdiction over the disclosing Party, or in connection with a discovery request of a party to any proceeding before the foregoing.
4. Notwithstanding anything to the contrary set forth herein, the obligations set forth in this Agreement shall not apply to and the term “Confidential Information” shall not include:
- (a) Information which is in the public domain or which later comes into the public domain from a source other than from the receiving Party, its Permitted Disclosees or representatives of its rating agencies;
 - (b) Information which SCE or Seller can demonstrate in writing was already known to SCE or Seller prior to the Effective Date;
 - (c) Information which comes to SCE or Seller from a *bona fide* third party source not under an obligation of confidentiality; or
 - (d) Information which is independently developed by SCE or Seller without use of or reference to Confidential Information or information containing Confidential Information.
5. The Parties agree that irreparable damage would occur if this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party may be entitled to seek an injunction or injunctions to prevent breach of this Agreement and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which such Party may be entitled by law or equity.
6. The Parties agree not to introduce (in whole or in part) into evidence or otherwise voluntarily disclose in any administrative or judicial proceeding, any Confidential Information, except as required by law, legal compulsion, or with the written consent of the Party providing the Confidential Information or as SCE or Seller may be required to disclose to duly authorized governmental or regulatory agencies, including the CPUC or any division thereof, in order to demonstrate the reasonableness of its actions.
7. All written Confidential Information supplied by a Party, and all copies or translations thereof made by the Party or Permitted Disclosee who received the Confidential

Information, shall, upon written request of the Party who initially provided the Confidential Information, be returned to that Party, destroyed, or held and maintained subject to the terms of this Agreement; *provided, however*, that a Party or Permitted Disclosee shall not be obligated to return or destroy any Confidential Information contained in its archive computer back-up system and *provided further*, that a Party may retain copies of Confidential Information to the extent that retention is required by applicable law or regulation.

8. Nothing in this Agreement is intended to waive any attorney-client, work-product or other privilege applicable to any statement, document, communication, or other material of a Party or the Parties.
9. Any notice or communication given pursuant to this Agreement shall be in writing and:
 - (a) Delivered personally, in which case delivery is given upon written acknowledgment of receipt;
 - (b) Mailed by registered or certified mail; postage prepaid, in which case delivery is given on the earlier of the actual date of delivery, as set forth in the return receipt, or three (3) days from the date posted, or
 - (c) Delivery by telecopy, in which case delivery is given upon actual receipt of the entire document.

In any of these cases, the writing shall be sent or delivered as follows (subject to change by either Party by notifying the other Party pursuant to this paragraph).

If to SCE: Southern California Edison Company
 2244 Walnut Grove Avenue
 Rosemead, California 91770
 Attention: EP&M Contracts Management
 Facsimile: (626) 302-8168

If to Seller:

[Name of Seller]
[Address of Seller]
Telephone:
Facsimile:

With copy to:

Telephone:
Facsimile:

10. Either Party may terminate this Agreement for any reason or no reason, with or without cause, by providing thirty (30) days prior written notice to the other of its intention to terminate; *provided, however*, that the terms of this Agreement remain applicable to any Confidential Information created or received with respect to a Bilateral Offer or a submitted offer, proposal or bid in response to a Solicitation for a period of five (5) years from the later of the date the Confidential Information is created or received.
11. This Agreement shall be interpreted in accordance with the plain meaning of its terms and not strictly for or against any of the Parties hereto. This Agreement shall be construed as if each Party was its author and each Party hereby adopts the language of this Agreement as if it were its own.
12. Any waiver of the requirements and provisions of this Agreement shall be in writing.
13. The failure of either Party to enforce at any time any of the provisions of the Agreement or to require at any time performance by the other Party of any of such provisions, shall in no way be construed as a waiver of such provision or a relinquishment of the right thereafter to enforce such provision.
13. This Agreement may not be modified except by a written agreement executed by both Parties.
14. This Agreement shall be interpreted, governed and construed under the laws of the State of California (without giving effect to its conflict of laws provisions that could apply to the law of another jurisdiction) as if executed in and to be wholly performed within the State of California.
15. The Parties' entry into this Agreement, the exchange of Confidential Information by the Parties, and the Negotiations, do not separately or together constitute or imply a commitment of the Parties to enter into a Potential Agreement or any other agreement. If the Parties elect to enter into binding commitments with respect to any Bilateral Offer or offer, proposal or bid in response to a Solicitation, such commitments will be explicitly stated in a separate written agreement executed by both Parties.
16. This Agreement fully expresses the Parties' agreement concerning the subject matter hereof and supersedes any prior agreements or understandings regarding the same subject matter.
17. The signatories hereto represent that they have been duly authorized to enter into this Agreement on behalf of the Party for whom they sign.
18. If any provision hereof is unenforceable or invalid, it shall be given effect to the extent it may be enforceable or valid, and such enforceability or invalidity shall not affect the enforceability or invalidity of any other provision of this Agreement.
19. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this

Agreement and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.

[Seller's Full Name],

**SOUTHERN CALIFORNIA EDISON
COMPANY,**

[Legal Status of Seller]

a California corporation.

By:

By:

Name:

Name:

Title:

Title:

Date:

Date: