

**Board of Directors Special Meeting Agenda**

September 16, 2021, 1 p.m.

Virtual Meeting

Members of the public can watch the meeting live by clicking the Live Stream Link at:

<https://thecleanenergyalliance.org/agendas-minutes/>

or

<https://www.youtube.com/channel/UCGXJILzITUJOCZwVGpYoC8Q>

Per State of California Executive Order N-29-20, and in interest of public health and safety, we are temporarily taking actions to prevent and mitigate the effects of the COVID-19 pandemic by holding Clean Energy Alliance Joint Powers Authority meetings electronically or by teleconferencing. All public meetings will comply with public noticing requirements in the Brown Act and will be made accessible electronically to all members of the public seeking to observe and address the Clean Energy Alliance Joint Powers Authority Board of Directors.

You can participate in the meeting by e-mailing your comments to the Secretary at [secretary@thecleanenergyalliance.org](mailto:secretary@thecleanenergyalliance.org) 1 hour prior to commencement of the meeting. If you desire to have your comment read into the record at the meeting, please indicate so in the first line of your e-mail and limit your e-mail to 500 words or less. These procedures shall remain in place during the period in which state or local health officials have imposed or recommended social distancing measures.

**CALL TO ORDER**

**ROLL CALL**

**FLAG SALUTE**

**BOARD COMMENTS & ANNOUNCEMENTS**

**PRESENTATIONS**

**PUBLIC COMMENT**

**New Business**

**Item 1: Approve Execution of a Long-Term Renewable Energy Agreement with San Diego Gas & Electric**

**RECOMMENDATION**

Approve execution of a long-term renewable energy agreement with San Diego Gas & Electric for Portfolio Category 1 renewable energy for the delivery period 2022 - 2031 and authorize the Interim Chief Executive Officer to execute all documents, subject to Special Transactions Counsel approval.

**BOARD MEMBER REQUESTS FOR FUTURE AGENDA ITEMS**

**ADJOURN**

**NEXT MEETING:** September 30, 2021, 2 p.m., hosted by City of Carlsbad (Virtual Meeting)

**Reasonable Accommodations**

*Persons with a disability may request an agenda packet in appropriate alternative formats as require by the Americans with Disabilities Act of 1990. Reasonable accommodations and auxiliary aids will be provided to effectively allow participation in the meeting. Please contact the Carlsbad City Clerk's Office at 760-434-2808 (voice), 711 (free relay service for TTY users), 760-720-9461 (fax) or [clerk@carlsbadca.gov](mailto:clerk@carlsbadca.gov) by noon on the Monday before the Board meeting to make arrangements.*

**Written Comments**

*To submit written comments to the Board, please contact the Clean Energy Alliance Board Clerk at [secretary@thecleanenergyalliance.org](mailto:secretary@thecleanenergyalliance.org). Written materials related to the agenda that are received by 5:00 p.m. on the day before the meeting will be distributed to the Board in advance of the meeting and posted on Clean Energy Alliance webpage.*



## Staff Report

**DATE:** September 16, 2021

**TO:** Clean Energy Alliance Board of Directors

**FROM:** Barbara Boswell, Interim Chief Executive Officer

**ITEM 1:** Approve Execution of a Long-Term Renewable Energy Agreement with San Diego Gas & Electric

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### **RECOMMENDATION**

Approve execution of a long-term renewable energy agreement with San Diego Gas & Electric (SDG&E) for Portfolio Category 1 renewable energy for the delivery period 2022-2031 and authorize the Interim Chief Executive Officer to execute all documents, in a form substantially as attached, subject to Special Transactions Attorney approval.

### **BACKGROUND AND DISCUSSION**

In October 2015, the State of California enacted Senate Bill 350, also known as The Clean Energy and Pollution Reduction Act of 2015 (the Act). The Act established new clean energy, clean air, and greenhouse gas reduction goals for the state. Specifically, the Act requires that all load serving entities, including Community Choice Aggregators (CCAs) such as Clean Energy Alliance (CEA), enter into long-term renewable energy contracts, defined as 10-years or longer.

CEA has established a goal of procuring locally generated renewable energy from new sources to the extent possible. The solicitation and development of a new renewable energy facility is a 2–3-year process. CEA's requirements related to long-term renewable energy procurement began on the date that it began serving customers and as such, needs to begin taking delivery as quickly as possible. This immediate requirement necessitates entering into contracts for energy produced by existing renewable generating facilities. Through the agreement with SDG&E, CEA can begin taking delivery of the energy as early as 2022, once the transaction is fully executed.

CEA staff has been engaging in bilateral negotiations with SDG&E for renewable energy from SDG&E's existing portfolio. The energy will come from a variety of sources, both local and outside the San Diego County territory, including wind and solar, with pricing indexed to market prices. The agreement does not require any credit or collateral posting from CEA.

Once approved by the CEA Board, SDG&E will seek approval for the transaction from the California Public Utilities Commission.

The agreement with SDG&E meets the requirements of SB350, as well as meets CEA's JPA goal of focusing on Portfolio Category 1 renewable energy. CEA's long-term contracting requirement began in 2021, and this agreement will fill a portion of CEA's need for 2022-2031.

CEA plans to layer in additional long-term renewable energy by issuing a solicitation in the next few months.

**FISCAL IMPACT**

Funds for the long-term renewable power purchase agreement will come from revenue generated from CEA customers and costs are within the assumed costs in the CEA pro forma that was used to set CEA rates.

**ATTACHMENTS**

Draft Agreement between SDG&E and Clean Energy Alliance for Long-Term Renewable Energy

**EEl AGREEMENT  
CONFIRMATION  
BETWEEN  
SAN DIEGO GAS & ELECTRIC COMPANY  
AND  
CLEAN ENERGY ALLIANCE**

This confirmation letter (“Confirmation”) confirms the transaction (“Transaction”) between **San Diego Gas & Electric Company** (“Seller” or “SDG&E” or “Party B”) and **Clean Energy Alliance, a California joint powers authority** (“Buyer” or “CEA” or “Party A”), each individually a “Party” and together the “Parties”, effective as of \_\_\_\_\_, 2021 (the “Confirmation Effective Date”). This Transaction is governed by the **EEl Master Power Purchase and Sale Agreement**, effective as of \_\_\_\_\_, 2021, along with any amendments and annexes executed between the Parties thereto (the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement.” Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement, Tariff or Renewable Portfolio Standard (“RPS”) (as defined below). If any term in this Confirmation conflicts with the Master Agreement, the definitions set forth in this Confirmation shall supersede.

**ARTICLE 1. COMMERCIAL TERMS**

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

<b>Product:</b>	<p>The “Product” is electric energy and associated Green Attributes generated from the Project.</p> <p>During the Delivery Period, Seller shall deliver and sell, and Buyer shall purchase and receive, the Contract Quantity of this Product, subject to the terms and conditions of this Confirmation. Seller shall not substitute or attempt to deliver any Product, including Green Attributes, from any generating resource other than the Project.</p>								
<b>Project:</b>	<p>All Product sold by Seller to Buyer hereunder shall be from the facilities listed in Exhibit A, or subsequently identified pursuant to the requirements of this Confirmation, with Long-Term Contracts and otherwise meeting the representations set forth in Article 6 (collectively, the “Project”).</p> <p>Seller has the right to amend the list of facilities in Exhibit A from time to time with written notice ten (10) days prior to the delivery of electric energy from such facility or facilities; provided however, if Seller wishes to add a facility to Exhibit A which utilizes biomethane or biomass fuel to generate electricity that is not allocated to Buyer under then-existing Applicable Law, then Buyer has the right to reject such facility by written notice to Seller provided within five (5) Business Days of Seller’s notice to amend the Project.</p>								
<b>Contract Capacity:</b>	In any hour throughout the Delivery Term, the “Contract Capacity” shall be, in MW, as determined by Seller.								
<b>Contract Quantity:</b>	<p>Beginning with the commencement of the Delivery Period until the Allocation Start Date, the applicable “Contract Quantity” for each calendar year shall be the quantity specified in the table below for the applicable calendar year (the “Annual Delivery Amount”).</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: center;">Year</th> <th style="text-align: center;">Annual Delivery Amounts (MWh)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">2022</td> <td style="background-color: black;"></td> </tr> <tr> <td style="text-align: center;">2023</td> <td style="background-color: black;"></td> </tr> <tr> <td style="text-align: center;">2024</td> <td style="background-color: black;"></td> </tr> </tbody> </table>	Year	Annual Delivery Amounts (MWh)	2022		2023		2024	
Year	Annual Delivery Amounts (MWh)								
2022									
2023									
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2025			
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2031			

Commencing on the Allocation Start Date and continuing through the remainder of the Delivery Period, the applicable Contract Quantity to be delivered in any calendar year shall be Buyer’s RPS Energy Allocation, as defined below, subject to the following adjustments:

- (a) If the Allocation Start Date occurs after January 1st, the Contract Quantity shall be ratably allocated between the Annual Delivery Amount and Buyer’s RPS Energy Allocation as follows:

[(the then-current Annual Delivery Amount) x (the number of calendar days between January 1st and the Allocation Start Date / the number of days in the calendar year)] + [(the then-current Buyer’s RPS Energy Allocation) x (the number of calendar days between the Allocation Start Date and December 31<sup>st</sup> / the number of days in the calendar year)]

- (b) If Buyer’s RPS Energy Allocation for calendar year 2023 or calendar year 2024, is less than the 2023 or 2024 Annual Delivery Amounts, respectively, the Contract Quantity for the applicable deficient calendar year shall be the applicable Annual Delivery Amount identified for 2023 and/or 2024, above.

- (c) If the CPUC modifies subsection (i) of the definition of Buyer’s RPS Energy Allocation that changes allocations on a date other than January 1st of any calendar year (other than on the Allocation State Date, as address above), the Contract Quantity for that calendar year shall be:

[(the new annual Buyer’s RPS Energy Allocation) x (the number of calendar days between January 1st and the start of the new annual Buyer’s RPS Energy Allocation amount / the number of days in the calendar year)] + [(the most recent Buyer’s RPS Energy Allocation) x (the number of calendar days between the start of the new annual Buyer’s RPS Energy Allocation amount and December 31<sup>st</sup> / the number of days in the calendar year)]

- (d) If, during the Delivery Term of this Agreement, a CPUC action results in an allocation to Buyer of a portion of Seller’s PCIA-eligible RPS Energy Portfolio without a MWh for MWh reduction to account for the quantities sold under this Agreement, Buyer’s RPS Energy Allocation shall be reduced on a MWh per MWh basis.

“Buyer’s RPS Energy Allocation” means the quantity of Product to be delivered from the Project during the applicable calendar year, or pro rata portion of the final partial calendar year remaining in the Delivery Period, as applicable, in an amount equal to the product of: (i) Buyer’s election percentage of its forecasted annual load share, incorporating its then current vintage composition, listed in Seller’s approved annual RPS Plan, and (ii) the quantity of generation from Seller’s PCIA-eligible RPS Energy Portfolio of Long-Term Contracts.

<b>Contract Price:</b>	Index Price plus Green Attributes Price.
<b>Index Price:</b>	“Index Price” means the CAISO Integrated Forward Market Day-Ahead price (as such term is defined in the Tariff) for SP15 for each applicable hour as published by the CAISO on the CAISO website; or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties.
<b>Green Attributes Price:</b>	The Green Attributes Price applicable to the Product delivered to Buyer in each calendar year during the Delivery Term shall be [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
<b>Term:</b>	The “Term” of this Transaction shall commence upon the Confirmation Effective Date and shall continue until delivery by Seller to Buyer of the Contract Quantity of the Product has been completed and all other obligations of the Parties under this Agreement have been satisfied, unless terminated earlier due to failure to satisfy the Condition Precedent or as otherwise provided in the Agreement.
<b>Delivery Period:</b>	The “Delivery Period” of this Transaction shall commence on the later of (i) January 1, 2022, and (ii) first day of the month following the month in which the Condition Precedent Satisfaction Date occurs (the “Start Date”), and continues until midnight on the last day of the month in which the tenth (10 <sup>th</sup> ) anniversary of the Start Date occurs.
<b>Delivery Point:</b>	The “Delivery Point” shall be TH_SP15_GEN-APND.
<b>Delivery Obligation:</b>	The obligation to provide the Contract Quantity is a firm obligation in that Seller shall deliver the quantity of the Product from the Project, instantaneously with its receipt of such Product, consistent with the terms of this Confirmation without excuse other than Force Majeure.
<b>Scheduling Obligations:</b>	Seller, or a qualified third party designated by Seller, shall act as Scheduling Coordinator. Buyer hereby authorizes Seller, or its third-party Scheduling Coordinator designee, to deliver the Product, or cause the Product to be delivered, to the CAISO at the Delivery Point.
<b>Condition Precedent:</b>	The commencement of the Delivery Period in accordance with Section 3 below shall be contingent upon the Seller obtaining or waiving CPUC approval as described in this Confirmation, including approval that the Annual Delivery Amount in the Contract

<p>Quantity, above, shall be deemed to be included as Buyer's load share allocation of the PCIA-eligible RPS Energy Portfolio, as defined in D.21-05-030.</p> <p>Either Party has the right to terminate this Confirmation upon notice in accordance with Section 10.7 of the Master Agreement, which will be effective five (5) Business Days after such notice is given, if: (i) the CPUC does not issue a final and non-appealable order approving this Agreement or the requested relief contained in the related advice letter filing, both in their entirety, (ii) the CPUC issues a final and non-appealable order which contains conditions or modifications unacceptable to either Party, or (iii) CPUC approval has not been obtained by Seller, on or before March 31, 2022.</p> <p>The date on which CPUC approval of this Confirmation has been obtained, or waived by Seller in its sole discretion, shall hereinafter be the "Condition Precedent Satisfaction Date."</p> <p>Any termination made by a Party under this section shall be without liability or obligation to the other Party.</p> <p>Notwithstanding any other provision in this Confirmation, Seller will have no obligation to transfer, and Buyer shall have no obligation to receive or pay for, Product unless the Condition Precedent Satisfaction Date has occurred.</p>
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## ARTICLE 2. DEFINITIONS

"Allocation Start Date" means the date on which the CPUC determines that Buyer's RPS Energy Allocation should commence.

"Alternate Monthly REC Market Price" is defined in the Green Attributes Price section of this Confirmation.

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

"Buyer" means "Purchaser".

"Buyer's RPS Energy Allocation" has the meaning set forth above in the Contract Quantity.

"CAISO" means the California Independent System Operator.

"CAISO Energy" means "Energy" as defined in the Tariff.

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

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

"CBA" means the California Balancing Authority.

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

"Condition Precedent Satisfaction Date" means the date on which CPUC approval, as fully described in the "Condition Precedent" provision, has been obtained or waived, by Seller, in its sole discretion.

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

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

"CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

- (a) Approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer's administration of the Agreement; and



(b) Finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

Notwithstanding the foregoing, if a Tier 2 or Tier 3 advice letter process is used to obtain CPUC Approval of this Agreement, CPUC Approval will also be deemed to have occurred on the date that a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings becomes final and non-appealable. **[STC 3 – CPUC APPROVAL, NON-MODIFIABLE]**

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

“Delivery Period” means “Delivery Term”.

“Final Adder for RPS” means the PCIA Market Price Benchmark Final Adder for RPS, (in \$/MWh) for the then-current calendar year, as determined and issued by the CPUC in the Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up, pursuant to D. 19-10-001 and subsequent decisions.

“Forecast Adder for RPS” means the PCIA Market Price Benchmark Forecast Adder for RPS, (in \$/MWh) for the then-current calendar year, as determined and issued by the CPUC in the Calculation of the Market Price Benchmarks for the Power Charge Indifference Adjustment Forecast and True Up, pursuant to D. 19-10-001 and subsequent decisions.

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

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

- (i) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants;
- (ii) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;<sup>1</sup>
- (iii) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy.

Green Attributes do not include;

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

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

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

“Integrated Forward Market” has the meaning set forth in the Tariff.

“Long-Term Contract” means any RPS power purchase and sale agreement between Seller and a third party generator which has at least ten (10) years remaining in its delivery term as of the Start Date or, for facilities added to Exhibit A after the Start Date, the date when its generation facilities are added to Exhibit A, from which Seller shall re-sell Product to Buyer under this Agreement, and which otherwise meets the Seller representations and warranties set forth in Article 6 of this Agreement.

“Market Disruption Event” has the meaning set forth in the Green Attributes Price above.

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

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

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

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

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

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

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

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

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

### **ARTICLE 3. CONVEYANCE OF RENEWABLE ENERGY**

#### **3.1. Seller’s Conveyance Of Electric Energy**

Except as stated in this Section 3.1 and beginning on the first day of the Delivery Period and throughout all applicable months of the Delivery Period, Seller shall deliver and sell, and Buyer shall purchase and receive, the Product, subject to the terms and conditions of this Confirmation. Seller will not be obligated to sell or replace any Product that is not or cannot be delivered as a result of Force Majeure.

The electric energy transferred hereunder is transferred immediately to Buyer. Should any electric energy provided by Seller under this Confirmation be determined to not have been transferred to Buyer immediately or to have originated from a resource other than the Project, Seller shall remedy such failure in a manner reasonably acceptable to Buyer within a reasonable period of time after written notice of such failure is given to the Seller by the Buyer.

In the event that electric energy being transferred from Seller to Buyer originates from a facility outside of the state of California that does not have a pseudo-tie arrangement with the CBA, 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.

### **3.2. Seller's Conveyance Of Green Attributes**

(a) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project. The Green Attributes are delivered and conveyed upon completion of all actions described in Section 3.2(b) below. **[STC 2 – GREEN ATTRIBUTES, NON-MODIFIABLE]**

(b) Green Attributes Initially Credited to Seller's WREGIS Account

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

(ii) For each applicable month of the Delivery Period, Seller shall deliver and convey the Green Attributes associated with the electric energy delivered in Section 3.1 within five (5) Business Days after the end of the month in which the WREGIS Certificates for the Green Attributes are created by properly transferring such WREGIS Certificates, in accordance with the rules and regulations of WREGIS, equivalent to the quantity of Green Attributes to Buyer into Buyer's WREGIS account such that all right, title and interest in and to the WREGIS Certificates shall transfer from Seller to Buyer.

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

## **ARTICLE 4. PERFORMANCE ASSURANCE; CPUC FILING AND APPROVAL**

### **4.1. Performance Assurance**

Notwithstanding anything herein or in the Master Agreement to the contrary, Performance Assurance shall not be required from either Party in connection with this Transaction.

### **4.2. CPUC Filing and Approval**

Within thirty (30) Business Days after the Confirmation Effective Date, Seller shall file with the CPUC the appropriate request for CPUC approval of this Agreement and possibly other agreements. Seller shall seek CPUC approval of the filing, including promptly responding to any requests for information related to the request for CPUC approval. Buyer shall use commercially reasonable efforts to support Seller in obtaining CPUC approval. Seller and Buyer have no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement, or which fails to meet the requirements contained in the Condition

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

## **ARTICLE 5. COMPENSATION**

### **5.1. Calculation Period**

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

### **5.2. Monthly Cash Settlement Amount**

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

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

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

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

### **5.3. Payment Date**

Notwithstanding any provision to the contrary in Article 6 of the Master Agreement, payments of each Monthly Cash Settlement Amount by Buyer to Seller under this Confirmation shall be due and payable on or before the later of (i) the twentieth (20<sup>th</sup>) day of the month in which Buyer receives from Seller an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, and (ii) ten (10) Business Days, or, if such day is not a Business Day, then on the next Business Day, following receipt of an invoice issued by Seller for the applicable Calculation Period. The invoice shall include a statement detailing the portion of Product transferred to Buyer during the applicable Calculation Period.

Invoices to Buyer will be sent by Excel/PDF format via email pursuant to Buyer's instructions set forth in the Master Agreement, and for purposes of this Confirmation, Buyer shall be deemed to have received an invoice upon the receipt of the Excel/PDF format of the invoice at such email address. Payment to Seller shall be made by electronic funds transfer pursuant to the wire transfer instructions set forth in the Master Agreement.

### **5.4. Annual True-Up**

(a) Monthly Cash Settlement Amount Annual True-Up. After the CPUC issues the Final Adder for RPS in November of each calendar year, Seller shall calculate the true-up for each Calculation Period in which the Forecast Adder for RPS was used to calculate the Monthly Cash Settlement Amounts (the "Annual True-Up"). The Annual True-Up shall be calculated for any period in which the Forecast Adder for RPS was used to calculate the Monthly Cash Settlement Amount as an amount equal to (i) the difference between the Forecast Adder for RPS and the Final Adder for RPS, multiplied by (ii) the quantity of Green Attributes (in MWhs) Seller delivered to, or expects to be delivered or credited to, Buyer's WREGIS account pursuant to Section 3.2 (the "True-Up Payment"). If the True-Up Payment is a positive amount, such

amount is owed by Seller to Buyer, and if the True-Up Payment is a negative amount, such amount is owed by Buyer to Seller.

(b) True-up Payments. Within thirty (30) Business Days after the Final Adder for RPS is issued in November of each calendar year, Seller shall issue an invoice to Buyer for amounts owed by, or due to, Seller, as applicable, resulting from the Annual True-Up. Payment for the Annual True-Up shall be due and payable by the owing party on or before the due date for the next monthly invoice and shall be netted pursuant to Section 6.4 of the Master Agreement.

## **ARTICLE 6. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

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

(i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and

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

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

(c) The term "commercially reasonable efforts" as set forth in Sections 6.1 (a) and (b) above shall not require Seller to incur out-of-pocket expenses in excess of **\$25,000** in the aggregate in any one calendar year between the Confirmation Effective Date and the last day of the Term.

(d) 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]**

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

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

(i) Seller has the contractual rights to sell all right, title, and interest in the Product agreed to be delivered hereunder;

(ii) Seller has not sold the Product to be delivered under this Confirmation to any other person or entity;

(iii) at the time of delivery, all rights, title, and interest in the Product to be delivered under this Confirmation are free and clear of all liens, taxes, claims, security

interests, or other encumbrances of any kind whatsoever;

- (iv) The facilities included in the Project each: (a) have a first point of interconnection with a California balancing authority, or (b) have a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area, or (c) are scheduled from the eligible renewable energy resource into a California balancing authority without substituting electricity from another source;
- (v) This Agreement transfers only Energy and Green Attributes that have been generated during the Delivery Period; and
- (vi) All Product sold hereunder will be from Long-Term Contracts.

## ARTICLE 7. GENERAL PROVISIONS

### 7.1 Audit.

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

### 7.2 Governing Law.

For purposes of this Transaction, the first two sentences in Section 10.6 of the Master Agreement are deleted entirely and replaced with the following:

“This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.” **[STC 17 – APPLICABLE LAW, NON-MODIFIABLE]**

### 7.3 Terminated Transaction.

(a)

[REDACTED]

(b)

[REDACTED]

*[Signature page follows]*

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE:

**SAN DIEGO GAS & ELECTRIC COMPANY,**  
a California corporation

**CLEAN ENERGY ALLIANCE,**  
a California joint powers authority

BY: \_\_\_\_\_

BY: \_\_\_\_\_

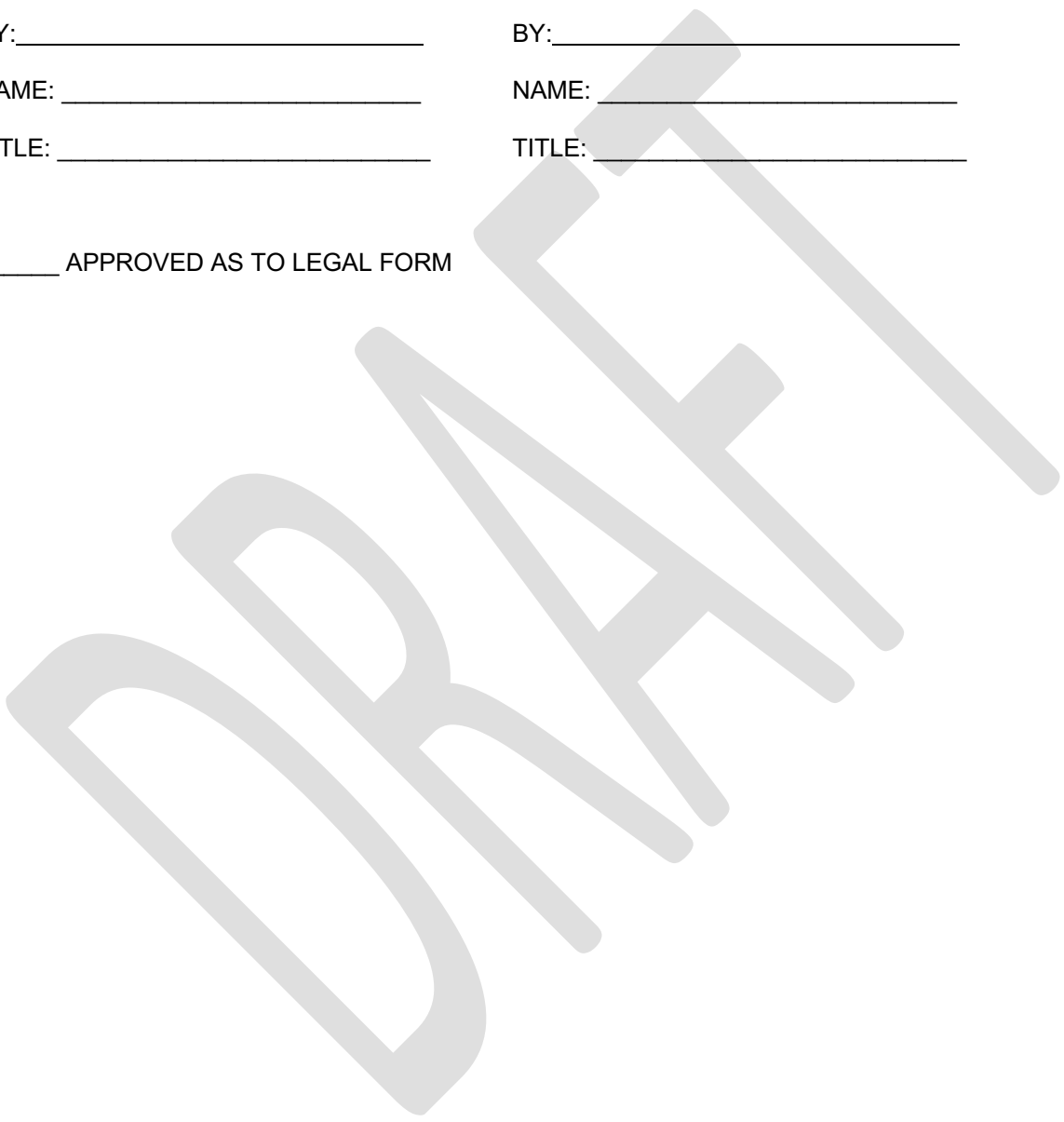
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TITLE: \_\_\_\_\_

\_\_\_\_\_ APPROVED AS TO LEGAL FORM







[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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