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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**ID #11038
RESOLUTION E-4455
March 8, 2012**

CONFIDENTIAL

R E S O L U T I O N

Resolution E-4455. Pacific Gas and Electric Company (“PG&E”) requests approval of an amendment to five Qualifying Facility (“QF”) Standard Offer Power Purchase Agreements (collectively, the “Amendments”) that PG&E has executed with Covanta Mendota, L.P. (“Mendota”), Rio Bravo Fresno (“Fresno”), Rio Bravo Rocklin (“Rocklin”), Wheelabrator Shasta Energy Company, Inc. (“Shasta”), and Pacific-Ultrapower Chinese Station (“Chinese Station”), collectively (“the Five Facilities”), for delivery of Renewable Portfolio Standard (“RPS”)-eligible power from these five separate Biomass facilities located throughout California. The amendment consists of an initial three-year period, after which time PG&E (where applicable) would have the option to extend the amendment for an additional year and, subsequently, the option to extend the amendment for another eleven months.

PROPOSED OUTCOME: This Resolution approves the Proposed Amendment of the existing QF contracts between Covanta Mendota, L.P.; Rio Bravo Fresno; Rio Bravo Rocklin; Pacific-Ultrapower Chinese Station; and Wheelabrator Shasta Energy Company, Inc.; and PG&E without modifications.

ESTIMATED COST: Actual costs are confidential at this time.

By Advice Letter 3921-E filed on October 6, 2011, as amended by supplemental Advice Letter 3921-E-A filed on October 14, 2011.

SUMMARY

Pacific Gas and Electric Company’s (“PG&E’s”) Proposed Amendments to the existing Qualifying Facility (“QF”) contracts with Covanta Mendota, L.P. (“Mendota”), Rio Bravo Fresno (“Fresno”), Rio Bravo Rocklin (“Rocklin”), and Wheelabrator Shasta Energy Company, Inc. (“Shasta”), and Pacific-

Ultrapower Chinese Station (“Chinese Station”), collectively (“Five Facilities”), comply with QF contract extension provisions, and is approved without modifications.

On October 6, 2011, PG&E filed Advice Letter (“AL”) 3921-E, as amended by supplemental Advice Letter 3921-E-A filed on October 14, 2011, requesting Commission approval of a three-year to four-year, eleven month QF contract amendment between PG&E and each of Five Biomass generators, consisting of the following five separate Biomass facilities: Mendota, Fresno, Rocklin, Shasta and Chinese Station with ranging capacities, generation, terms and expiration dates (see table 1 below for detailed information). If approved this resolution would take effect starting September 1, 2011.

Table 1. Basic Information regarding the Five Biomass Facilities

Facility Name	Mendota	Fresno	Rocklin	Shasta	Chinese Station
	Generator Characteristics				
Technology	Biomass	Biomass	Biomass	Biomass	Biomass
Capacity (nameplate MW)	25.0	26.5	25.0	54.9	22.0
Capacity Factor	80%	69%	74%	81%	68%
Expected Generation (GWh/Year)	~175 GWh/yr	~160 GWh/yr	~162 GWh/yr	~391 GWh/yr	~132 GWh/yr
Amendment Effective Date	9/1/2011	9/1/2011	9/1/2011	9/1/2011	9/1/2011
Amendment Term	~3 yr 4 mth	4 yrs 11 mth	4 yrs 11 mth	4 yrs 11 mth	4 yrs 11 mth
Location (City State)	Mendota, CA	Fresno, CA	Rocklin, CA	Anderson, CA	Unincorporated community of Chinese Camp, CA
Control Area	CAISO	CAISO	CAISO	CAISO	CAISO
Exisiting 30 year ISO 4 Expires On	1/14/2015	2/12/2019	3/16/2020	4/30/2018	1/23/2017

Mendota

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Fresno

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Rocklin

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Shasta

Redacted

Chinese Station

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BACKGROUND

Recent Decisions related to the California QF Program

On December 16, 2010, the Commission adopted the Qualifying Facilities and Combined Heat and Power (QF/CHP) settlement with the issuance of Decision (“D.”)10-12-035. The settlement resolves a number of longstanding issues regarding the contractual obligations and procurement options for facilities operating under legacy and new QF contracts. The Settlement became effective on November 23, 2011.

Among other things, D.10-12-035 updates methodologies and formulas for Short Run Avoided Cost (SRAC) energy price for QFs to be used in Transition PPAs, Legacy PPAs, other existing QF PPAs and Optional As-Available PPAs. The SRAC methodology under the QF/CHP settlement includes:

- (1) by January 1, 2015, transitioning SRAC pricing from a formula that is based in part on administratively-determined heat rates to a formula that relies entirely on market heat rates;
- (2) investor-owned utility (“IOU”)-specific time-of-use (“TOU”) factors to be applied to energy prices to encourage energy deliveries during the times when the energy is most needed by customers;
- (3) a locational adjustment based on California Independent System Operator (“CAISO”) nodal prices; and
- (4) pricing options based on whether a cap-and-trade program or other form of greenhouse gas (“GHG”) regulation is developed in California or nationally.

Approval for QF contract changes was previously addressed in D.98-12-066, which authorized the advice letter process to be used for restructured QF contracts that are supported by the utility, the QF and the Division of Ratepayer Advocates (“DRA”), and the application process to be used for controversial QF contract restructurings. More recently, D.04-12-048 stipulated that contracts with greater than a five-year term require an application, and D.06-12-009 clarifies that modifications and amendments of QF contracts with terms less than five years may be addressed through the filing of an advice letter (“AL”).¹

Pursuant to these stipulations PG&E filed AL 3921-E, as amended by AL 3921-E-A seeking approval of a Proposed Amendment to five existing QF contracts.

Overview of the Five Biomass Facilities

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generating facilities located near Mendota, CA, Fresno, CA, Rocklin, CA, Shasta, CA, and Unincorporated community of Chinese Camp, CA respectively. All five of these facilities have historically burned biomass. Each facility’s fuel mix is discussed in more detail in the confidential appendix of this resolution.

The PPA between PG&E and the Mendota Facility was executed in 1985, and initial electricity delivery commenced in 1990. The existing PPA is a thirty-year standard offer contract that expires on January 14, 2015. The PPA between PG&E and the Fresno facility was executed in 1984, and initial electricity delivery commenced in 1989. The existing PPA is a thirty-year standard offer contract that expires on February 19, 2019. The PPA between PG&E and the Rocklin facility was executed in 1984, and initial electricity delivery commenced in 1990. The existing PPA is a thirty-year standard offer contract that expires on March 16, 2020. The PPA between PG&E and the Shasta facility was executed in 1984, and initial electricity delivery commenced in 1988. The existing PPA is a thirty-year standard offer contract that expires on April 30, 2018. The PPA between PG&E and the Chinese Station facility was executed in 1983, and initial electricity delivery commenced in 1987. The existing PPA is a thirty-year standard offer contract that expires on January 23, 2017.

The Proposed Amendment provides a price increase in exchange for enhanced performance obligations for the five facilities.

¹ See D.06-12-009 at p.7.

NOTICE

Notice of AL 3921-E, as amended by AL 3921-E-A, was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

PROTESTS

There were no protests to Advice Letter ("AL") 3921-E, as amended by AL 3921-E-A.

DISCUSSION

PG&E requests Commission approval of a Proposed Amendments to the existing QF contracts with Covanta Mendota, L.P. ("Mendota"), Rio Bravo Fresno ("Fresno"), Rio Bravo Rocklin ("Rocklin"), Wheelabrator Shasta Energy Company, Inc. ("Shasta"), and Pacific-Ultrapower Chinese Station ("Chinese Station"), collectively ("Five Facilities").

On May 10, 2011, PG&E filed Advice Letter ("AL") 3921-E, seeking approval of a Proposed Amendment to the existing PPAs between PG&E and five separate biomass facilities. The amendment effective dates for all facilities are set to be September 1, 2011. On October 14, 2011, PG&E filed AL 3921-E-A, amending AL 3921-E. In its AL 3921-E-A supplemental filing PG&E presented a slightly revised Independent Evaluator ("IE") report and updated the Confidential Appendices for the Five Facilities that reflect the changes contained in the revised IE reports for each respective facility.

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Specifically, PG&E requests that the Commission:

1. Approve the Proposed Amendments without modification as just and reasonable; and,
2. Determine that all costs associated with the Proposed Amendments, may be recovered through PG&E's Energy Resource Revenue Account ("ERRA").

Energy Division evaluated the Proposed PPA Amendment based on the following criteria:

- Consistency with D.06-12-009 and D.07-09-040
- Consistency with D.10-12-035 (QF/CHP Program Settlement)
- Consistency with RPS standard terms and conditions
- Consistency with RPS Resource Eligibility Guidelines
- Consistency with the RPS resource needs identified in PG&E's 2011 RPS Procurement Plan
- Consistency with D.02-08-071, which requires Procurement Review Group (PRG) participation
- Cost reasonableness
- Project viability

- Contract term reasonableness

In considering these factors, we also consider the analysis and recommendations of the Independent Evaluator.

The Proposed Amendments filings are consistent with D.06-12-009 and D.07-09-040 allowing modifications and amendments for QF contracts extensions of less than five years duration.

The filing of AL 3921-E, as amended by AL 3921-E-A, is consistent with Commission procedures for the extension of QF contracts. D.04-12-048, which adopts the IOUs' long-term procurement plans, concludes that "contracts with duration five years or longer [shall] be submitted with an application to the Commission for preapproval."² D.06-12-009 clarifies that based on D.04-12-048, QF contract extensions for less than five years should be authorized through the advice letter process. Because the contractual changes embodied in the Proposed Amendment would, at most, modify either of the existing contracts for 4 years 11 months, we find that filing of the Proposed Amendment via Advice Letter is consistent with D.06-12-009. Furthermore, D.07-09-040 states that "in recognition of the often lengthy process involved in negotiating contract terms... the QF may extend the non-price terms and conditions of the expiring contract and continue service with the pricing set forth in this Decision until the final [QF Standard Offer] contract is available."³

Consistency with D.10-12-035 (QF/CHP Program Settlement)

On December 16, 2010, the Commission adopted the QF/Combined Heat and Power (CHP) settlement ("Settlement") with the issuance of D.10-12-035. The Settlement became effective as of November 23, 2011. The Settlement resolves a number of longstanding issues regarding the contractual obligations and procurement options for facilities operating under legacy and new QF contracts. Among other things, it establishes methodologies and formulas for calculating SRAC to be used in Transition Power Purchase Agreements (PPAs), Legacy PPAs, other existing QF PPAs and Optional As-Available PPAs. Furthermore, the Settlement allows for bilaterally negotiated contracts with QFs to determine alternative energy and capacity payments mutually agreeable by relevant parties

² D.04-12.048 at p.108.

³ D.07-09-040 at p.126.

and subject to CPUC approval. Finally, it establishes specific CHP procurement targets and greenhouse gas (GHG) reduction targets for each named utility.

The proposed fixed energy price amendments which are the subject of this resolution are consistent with the not-yet effective Settlement allowing for bilaterally negotiated contracts. Since none of the five facilities are CHP resources, they do not count towards PG&E's megawatt or GHG reduction targets under the Settlement. Upon expiration of the price amendment, the energy price paid to the QFs will revert to SRAC, as defined by the Settlement or updated by the CPUC, for any remaining term of the contracts.

Approvals of the Proposed Amendments are contingent upon demonstration that the five facilities include all relevant RPS non-modifiable standard terms and conditions.

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, four of which are considered "non-modifiable." The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. More recently, the Commission further refined these STCs in D.10-03-021, as modified by D.11-01-025.

While all five facilities are currently operating under QF contracts, and will continue to do so under the Proposed Amendments, since the five facilities are delivering RPS-eligible power, it is prudent to ensure the contract includes the most recent RPS non-modifiable terms and conditions. This will help ensure consistency in managing renewable power generated to meet the utility's RPS obligations.

Under the proposed amendments, the PPAs for the Five Facilities include the Commission adopted RPS "non-modifiable" standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, and D.10-03-021, as modified by D.11-01-025.

Approvals of the Proposed Amendments are contingent upon demonstration that the Facility meets the RPS Resource Eligibility Guidelines.

Pursuant to Pub. Util. Code § 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts.

That language requires a seller to warrant that the project qualifies and is certified by the CEC as an “Eligible Renewable Energy Resource,” and that the project’s output delivered to the buyer qualifies under the requirements of the California RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.⁴

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires “CPUC Approval” of a PPA to include an explicit finding that “any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource as certified by the California Energy Commission 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.”⁵

The Commission has no jurisdiction to determine whether a project is an eligible renewable energy resource, nor can the Commission determine prior to final CEC certification of a project, that “any procurement” pursuant to a specific contract will be “procurement from an eligible renewable energy resource.”

Therefore, while we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the utilities’ administration of contracts.

The Proposed Amendments are consistent with the RPS resource needs identified in PG&E’s 2011 RPS Procurement Plan.

⁴ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

⁵ See id. at Appendix A, STC 1, CPUC Approval.

Under its existing QF contract, PG&E is obligated to pay the Facility, for all facilities under 20 MWs, short run avoided cost for its output pursuant to the utilities' must take obligations under the Public Utility Regulatory Policies Act. However, because the price under the Proposed Amendment is justified on the basis of the contribution that deliveries from the Facility will make toward PG&E's RPS goals, we evaluate the Proposed Amendment for consistency with PG&E's most recently approved RPS procurement plan, which in part, identifies PG&E's need for RPS-eligible energy.

On May 11, 2011 the Commission approved the 2011 Renewable Portfolio Standard (RPS) Procurement Plan that was filed on May 4, in response to D.11-04-030. Pursuant to statute, PG&E's Plan includes an assessment of supply and demand to determine the optimal mix of renewable generation resources. While the Proposed Amendment relates to an existing QF contract negotiated bilaterally outside of the competitive RPS solicitation process, we find that it is consistent with the RPS resource needs identified in PG&E's Plan. The five biomass facilities will deliver the following: 175 gigawatt-year ("GWh/yr") for the Mendota facility, 160GWh/yr for the Fresno facility, 162GWh/yr for the Rocklin facility, 391GWh/yr for the Shasta facility and 132GWh/yr for the Chinese Station facility, of RPS-eligible resources in the near-term, and the projects are already delivering renewable energy under their existing contracts. [Redacted]

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We also note that approval of the Proposed Amendment supports California Executive Order S-06-06, establishing targets for the use and production of biofuels and biopower and directing state agencies to work together to advance biomass programs in California while providing environmental protection and mitigation.⁶

⁶ Executive Order S-06-06 by the Governor of the State of California (April 2006).
<http://www.dot.ca.gov/hq/energy/Exec%20Order%20S-06-06.pdf>

Consistency with D.02-08-071

PG&E's Procurement Review Group (PRG) was notified of the Proposed Amendment. PG&E discussed the Proposed Amendment with its PRG on June 14, 2011.

The costs in the Proposed Amendments are reasonable.

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The projects are viable

The five facilities are all existing facilities and as such, from a project development standpoint, viability is not in question. We do have concerns regarding the longer term operational viability of these projects. These concerns do not rise to the level of rejecting the Proposed Amendment, but are important considerations.

We note that after the term of the Proposed Amendment, the contracts for each of the Five Facilities will revert to their original contract terms and pricing. PG&E and the Five Facilities have indicated their intention to continuing negotiations during the term of the Proposed Amendment to develop a longer-term solution for each facility.

The Proposed Amendment is Reasonable

We find that the initial term of the Proposed Amendments, starting September 1, 2011 through August 31, 2014 reasonable. The Proposed Amendments provide each of the facilities with immediate relief so they can continue operating economically, and provide PG&E near-term deliveries of renewable energy at reasonable cost. PG&E will provide true-up payments to the Sellers for the period agreed to by the Sellers and Buyer, with the expiration date subject to CPUC approval.

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More details of the contract term and request for extension are included in Confidential Appendix A.

Independent Evaluator Review

Although it was not required, PG&E elected to have an Independent Evaluator (“IE”) review the amendment. Arroyo Seco Consulting evaluated the Amendment and concluded that the Amendment merits CPUC approval. The IE noted some concerns about the amendments that PG&E addressed in their Confidential Appendices.

CONFIDENTIAL INFORMATION

The Commission, in implementing Pub. Utils. Code § 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Specified information, such as price, is confidential for three years from the date the contract states that energy deliveries begin, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked "[REDACTED]" in the public copy of this resolution, as well as the confidential portions of the advice letter, should remain confidential at this time.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

FINDINGS AND CONCLUSIONS

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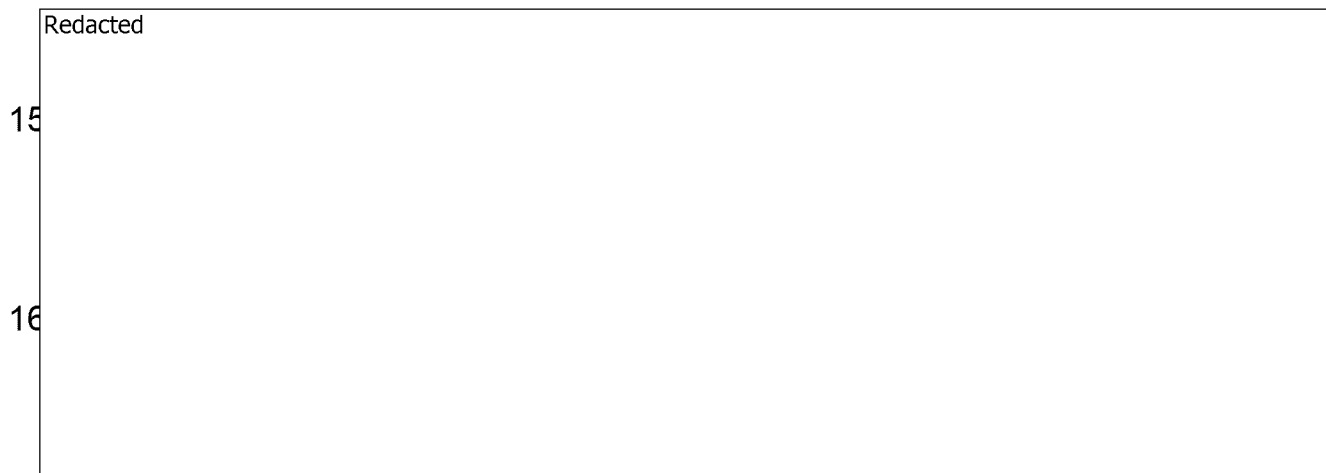
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THEREFORE IT IS ORDERED THAT:

1. Pacific Gas and Electric Company's Advice Letter 3921-E, as amended by Advice Letter 3921-E-A, requesting Commission approval of a three year amendment to five existing Qualifying Facility (QF) contracts and the option to extend (where applicable) the proposed amendment by 1 year, and subsequently (where applicable), an additional 11 months, with Covanta Mendota, L.P., Rio Bravo Fresno, Rio Bravo Rocklin, Wheelabrator Shasta Energy Company, Inc., and Pacific-Ultrapower Chinese Station is approved with modifications.
2. This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on March 8, 2012; the following Commissioners voting favorably thereon:

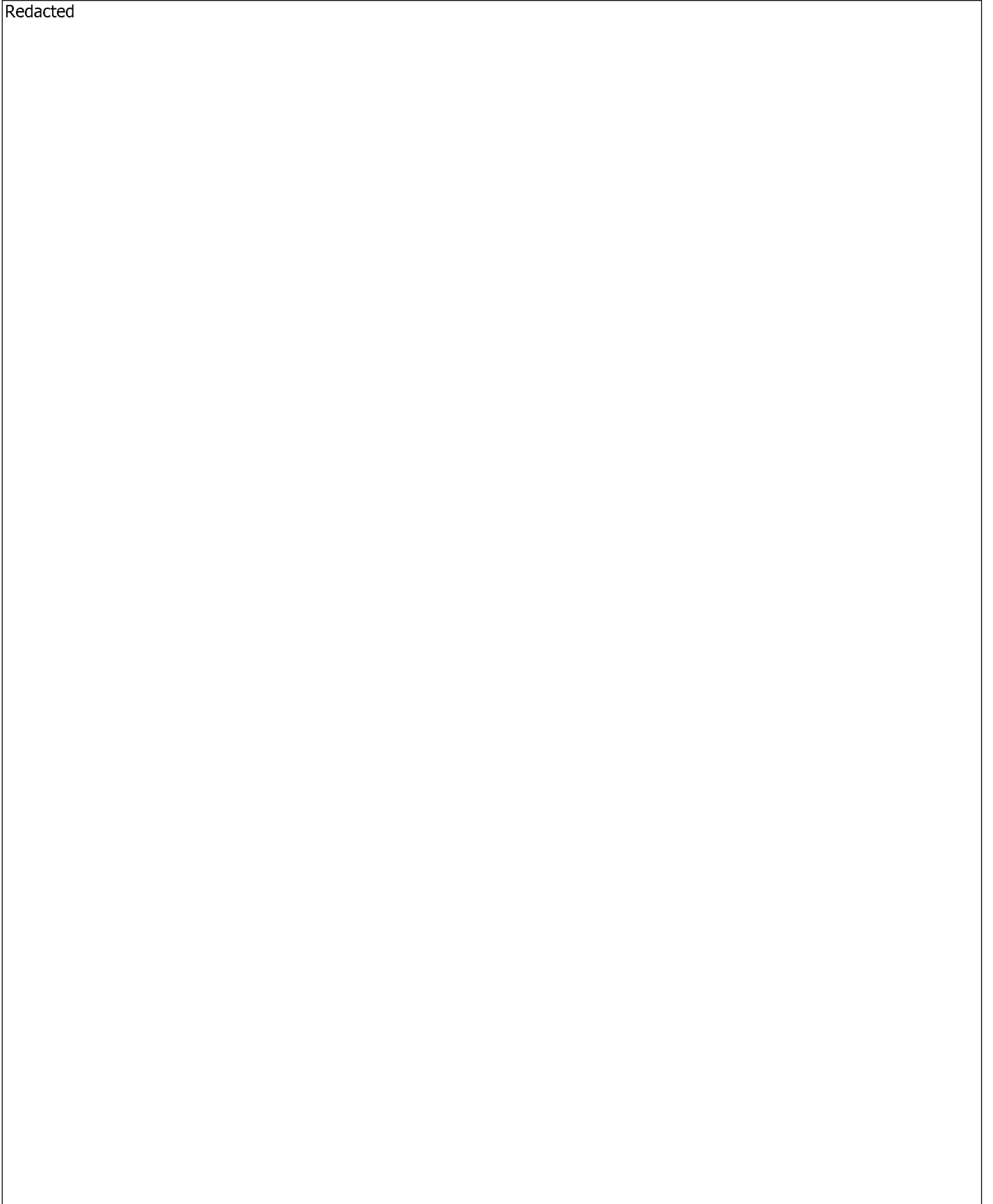
PAUL CLANON
Executive Director

Confidential Appendix A


Summary and Analysis of Proposed Amendment

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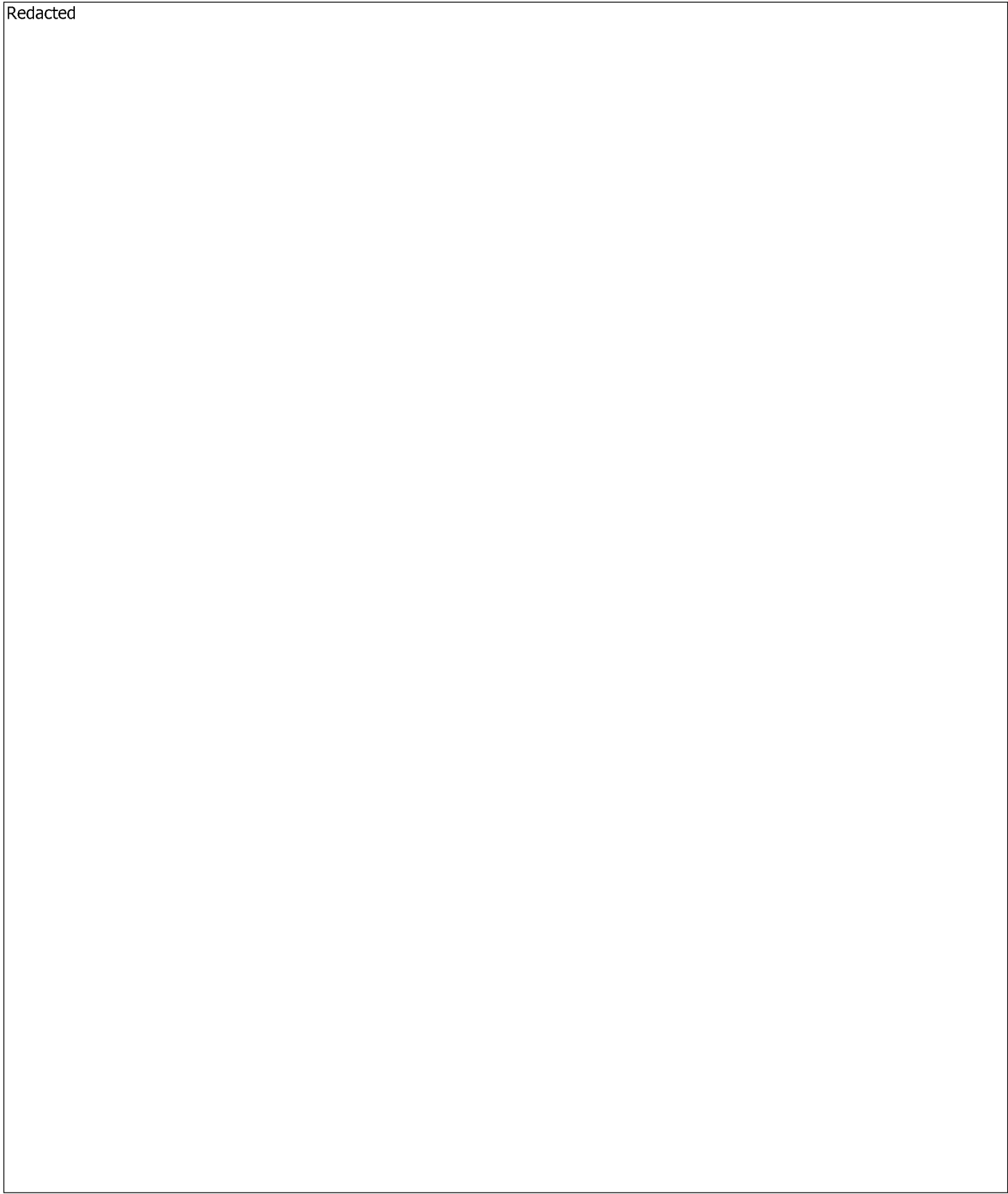
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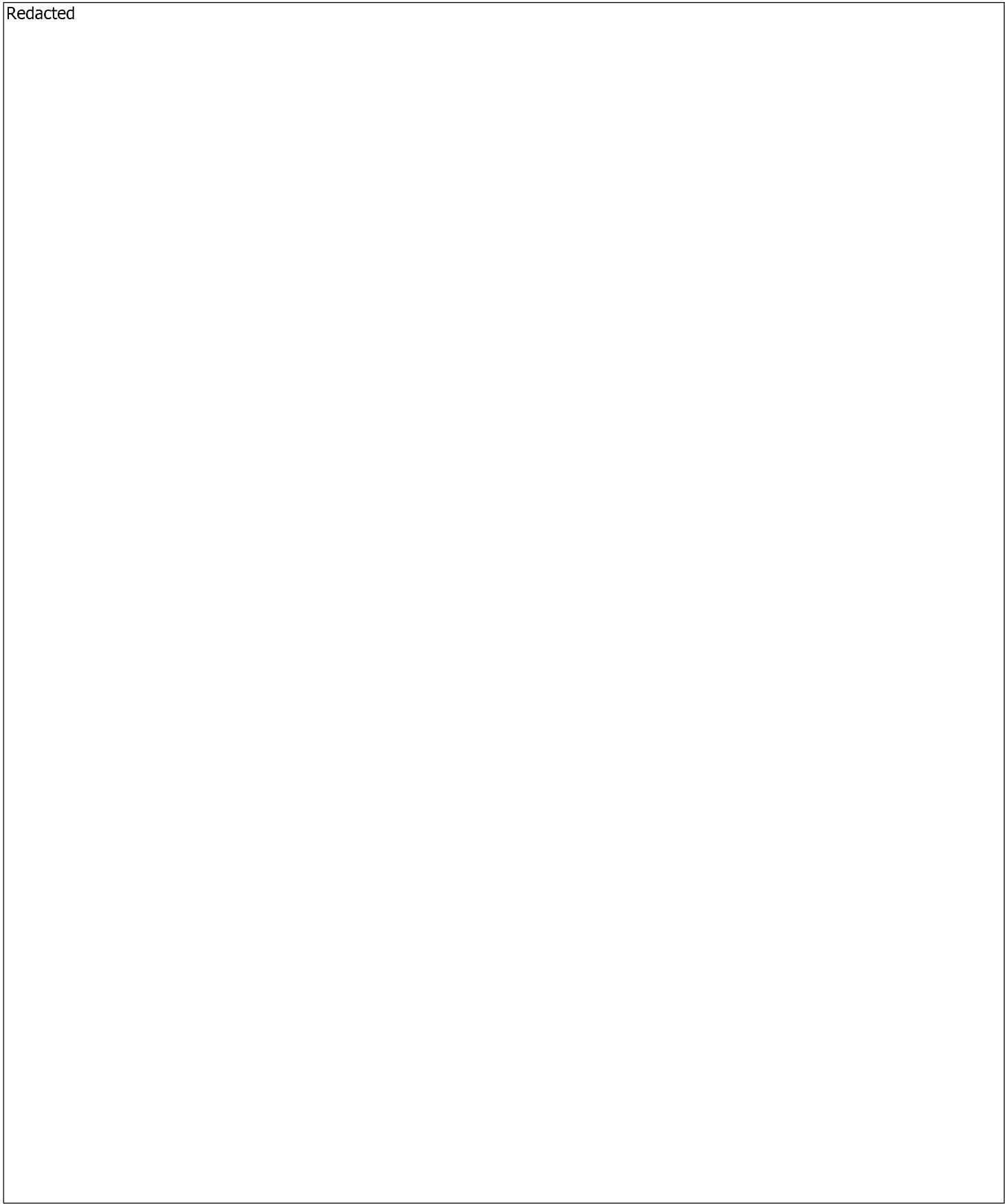
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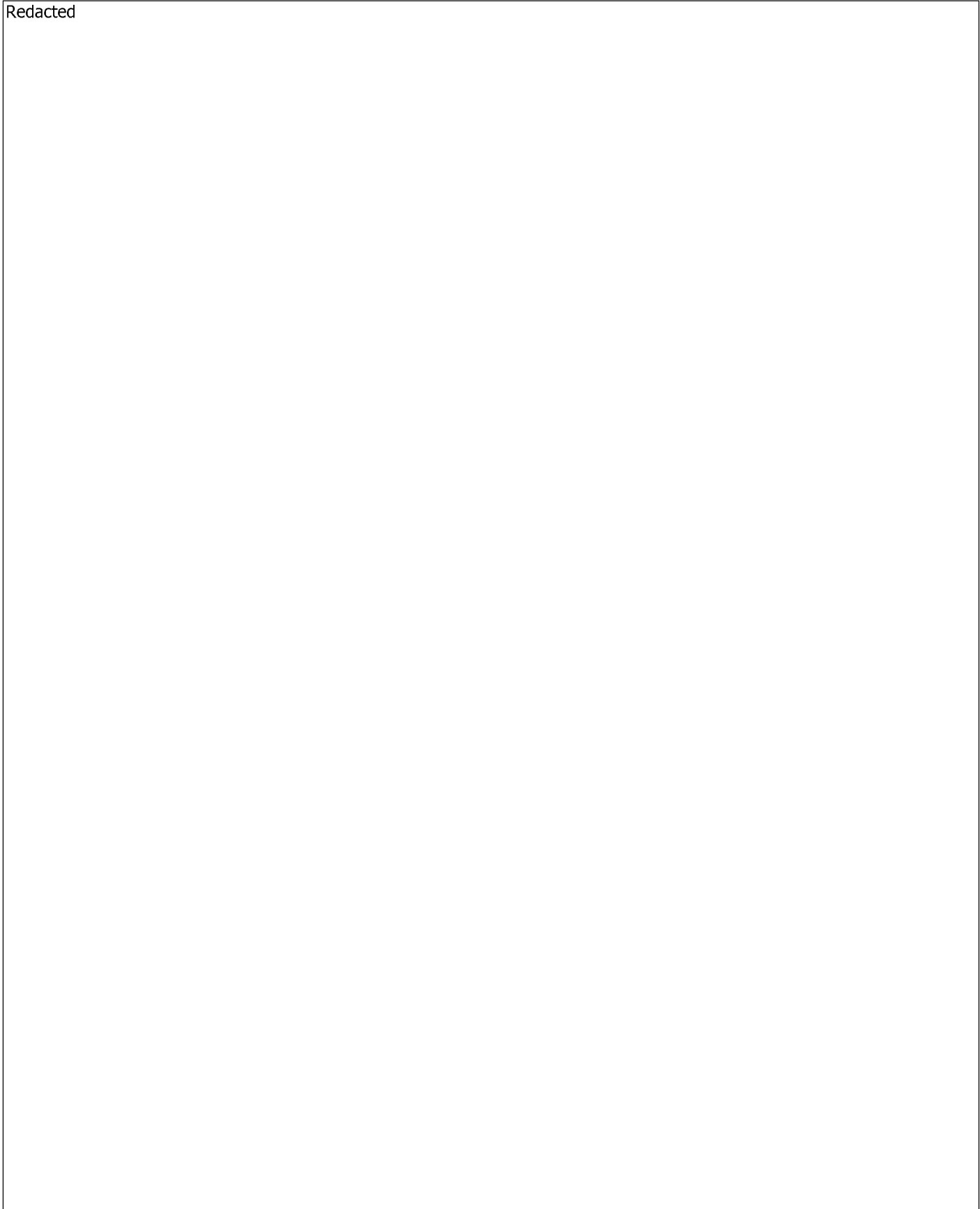
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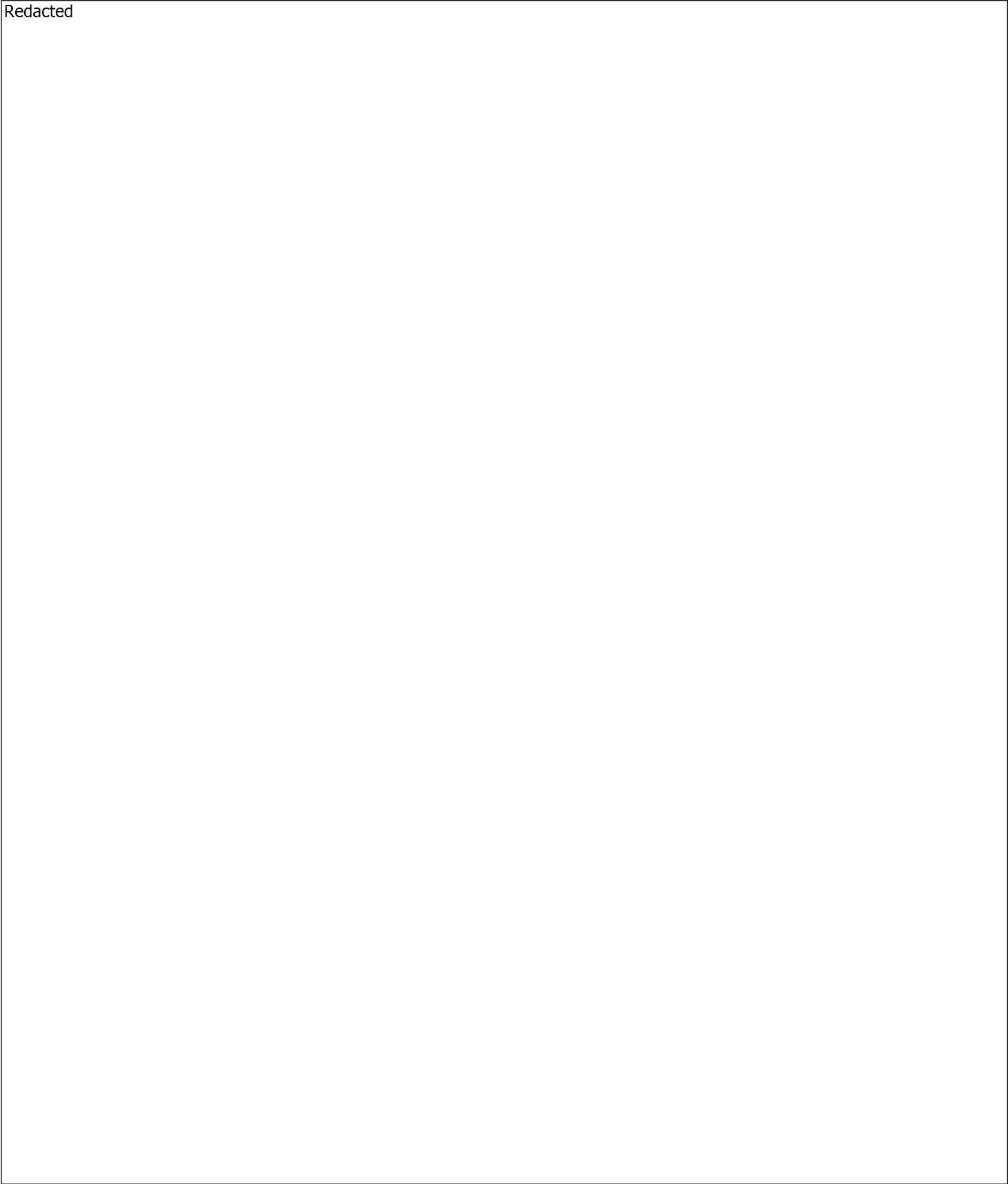
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