

**AMENDMENT NO. 4  
TO  
POWER PURCHASE CONTRACT  
between  
SOUTHERN CALIFORNIA EDISON COMPANY  
and  
DESERT WINDS II POWER PURCHASE CONTRACT TRUST**

**(RAP ID# 6113)**

This Amendment No. 4 to Power Purchase Contract (this "Amendment"), by and between Southern California Edison Company, a California corporation ("Edison"), and Desert Winds II Power Purchase Contract Trust, a California trust ("Seller"), is entered into and effective as of June 1, 2012 (the "Amendment Effective Date"). Edison and Seller are sometimes referred to in this Amendment individually as a "Party" and collectively as the "Parties". Unless the context specifies or requires, any initially capitalized term used but not otherwise defined in this Amendment has the meaning given to such term in the Agreement (as defined in Recital A).

**RECITALS**

- A. Energy Distribution Company (predecessor to Desert Winds II Power Purchase Contract Trust) and Edison entered into that certain Power Purchase Contract, executed on or about August 20, 1985, as amended by that certain Amendment No. 1 to the Power Purchase Contract between SeaWest Industries, Inc. (predecessor to Desert Winds II Power Purchase Contract Trust) and Edison, executed on or about August 17, 1990, that certain Amendment No. 2 to the Power Purchase Contract, executed on or about November 13, 1990, and that certain Amendment No. 3 to the Power Purchase Contract, executed on or about January 17, 1992 (as amended, the "Power Purchase Contract"); ~~which Power Purchase Contract was modified by that certain Agreement Addressing Renewable Energy Pricing and Payment Issues, executed on or about June 19, 2001, as amended by that certain Amendment No. 1 to Agreement Addressing Renewable Energy Pricing and Payment Issues, executed on or about November 30, 2001 (as amended, the "Renewable Energy Pricing Agreement");~~ that certain Agreement No. 2 Addressing Renewable Energy Pricing Issues, executed on or about June 2, 2006 (the "Agreement No. 2 Addressing Renewable Energy Pricing Issues"), and that certain Fixed Energy Price Agreement, executed on or about December 8, 2011 (the "Fixed Energy Price Agreement" and, together with the Power Purchase Contract, the Renewable Energy Pricing Agreement and Agreement No. 2 Addressing Renewable Energy Pricing Issues, the "Agreement").
- B. On or about September 20, 2007, the Commission issued Decision 07-09-040 (the "Decision") which, among other things, directed Edison to develop a form of a standard contract and offer such contract to Qualifying Facilities meeting the eligibility criteria set forth in the Decision.
- C. Commencing in May 2009, Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Edison Company, the California Cogeneration

Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, the Independent Energy Producers Association, the Division of Ratepayer Advocates of the California Public Utilities Commission, and The Utility Reform Network (collectively, the "Settling Parties") entered into Commission-facilitated settlement negotiations in order to resolve certain outstanding issues among the Settling Parties, including the implementation of the Decision.

- D. Pursuant to the settlement negotiations, the Settling Parties entered into that certain Settlement Agreement, dated October 8, 2010 (the "Settlement Agreement"), which resolved certain issues pending in Rulemakings 99-11-022, 04-04-003, 04-04-025, and 06-02-013, and Application 08-11-001.
- E. On December 21, 2010, the Commission issued Decision 10-12-035 approving the Settlement Agreement.
- F. Pursuant to the Settlement Agreement, the Settling Parties developed a form of a power purchase agreement amendment (the "Form Amendment") that certain Qualifying Facilities may elect, at their option and subject to certain restrictions set forth in the Settlement Agreement, to enter into with the applicable California investor-owned utility. This Amendment is based on the Form Amendment.
- G. Edison must offer this Amendment to Seller in order to fulfill its obligations under the Settlement Agreement, and Seller desires to accept such offer and enter into this Amendment.

NOW, THEREFORE, the Parties, intending to be legally bound, agree as follows:

#### **ARTICLE ONE. AMENDMENTS TO THE AGREEMENT**

- ~~1.01~~ Pricing. ~~Section 9.3 of the Power Purchase Contract is deleted and replaced as of the Pricing Effective Date (as defined below) with one of the options ("Options") set forth below in this Section 1.01, which must be checked by Seller in the blank space provided for next to such Option and will be the only Option incorporated into the Agreement; *provided, however,* that if Seller selects Option C.1, Seller must also select one of Option A, Option B, Option C.2 or Option C.3, as further described in Option C.1 below. Notwithstanding anything to the contrary in the Agreement, including, but not limited to, the Fixed Energy Price Agreement, the pricing option checked by Seller, below in this Section 1.01, shall continue from the Pricing Effective Date through the end of the Contract Term; provided, however, that during the Fixed Energy Price Period (as defined in the Fixed Energy Price Agreement), the Fixed Energy Price (as defined in the Fixed Energy Price Agreement) shall be applied instead of the pricing option checked by Seller below in this Section 1.01. For purposes of clarity, for the periods from the Pricing Effective Date until the commencement of the Fixed Energy Price Period on January 1, 2013 and following the expiration of the Fixed Energy Price Period on December 31, 2013, notwithstanding anything to the contrary in the Agreement, including, but not limited to, Section 6.6 of the Fixed Energy Price Agreement, the pricing option checked by Seller below in this Section 1.01 shall apply from January 1, 2014, through the end of the Contract Term.~~

For purposes of this Section 1.01, the "Pricing Effective Date" means the Amendment Effective Date.

To the extent that the Agreement requires Edison to purchase and pay for Energy based on the short run avoided cost pricing scheme, and Seller elects Option A, Option A will replace such short run avoided cost pricing scheme.

**OPTION A. \_\_\_\_\_**

- (a) "Energy Price. Subject to subsections (b) through (e) of this Section, Edison shall calculate the Energy price for Energy delivered to Edison by Seller during the applicable time-period in accordance with the following formula:

$$\text{Energy Price \$/kWh} = ((\text{Applicable HR} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA} + \text{GHG Charges}$$

Where:

*Applicable HR* = The Heat Rate for the specified time-period, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2012	8,225
January 1, 2013 through December 31, 2014	8,125
January 1, 2015 until the termination of this Contract	Market Heat Rate

*BTGP* = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and Commission Resolution E-4246;

*VOM* = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and Commission Resolution E-4246;

*GHG Charges* = All taxes, charges or fees assessed with the implementation and regulation of Greenhouse Gas emissions with respect to the Generating Facility imposed by any Governmental Authority, such as the CARB's AB 32 Cost of Implementation Fee (as defined in Title 17 C.C.R. §95200). For example, if the charges are assessed on but not included in fuel consumption or gas costs, the Applicable HR or Burner Tip Gas Price will be used to derive the dollars per kilowatt-hour charge. On January 1, 2015 or the commencement of the First Compliance Period, the GHG Charges will equal zero in the above formula.

*TOU* (i.e., time-of-use) = As of the Amendment Effective Date until the termination of this Contract, the applicable time-of-use factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.4251	N/A
Mid-Peak	see below	1.2185
Off-Peak	0.8526	see below
Super Off-Peak	N/A	0.7760

Summer Mid-Peak = (Total # hours in month - (1.4251 \* # of Summer On-Peak hours in month) - (0.8526 \* # of Summer Off-Peak hours in month)) / # of Summer Mid-Peak hours in month

Winter Off-Peak = (Total # hours in month - (1.2185 \* # of Winter Mid-Peak hours in month) - (0.7760 \* # of Winter Super Off Peak hours in month)) / # of Winter Off-Peak hours in month

$LA$  (i.e., hourly location adjustment, in \$/kWh) =  $LMP_{QF}$  -  $LMP_{Trading\ Hub}$

Where the hourly location adjustment (i.e.,  $LA$ ) will be based on the hourly Day-Ahead prices and actual hourly generation by the Generating Facility for delivery to Edison as follows:

$LMP_{QF}$  (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$  (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

(b) Energy Price during the Floor Test Term.

(i) If there is a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), then, during the Floor Test Term, the Energy price will be the higher of the two formulas provided in subsection (b)(i)(1) or (b)(i)(2) of this Section (the "GHG Floor Test"):

(1) Energy Price \$/kWh = ((Market Heat Rate \* BTGP/1,000,000) + VOM) \* TOU + LA

Where:

Market Heat Rate (Btu/kWh) = As defined in Section 15161;

BTGP (\$/MMBtu) = As set forth above;

VOM (\$/kWh) = As set forth above;

TOU = As set forth above; and

LA (\$/kWh) = As set forth above.

**OR**

(2) Energy Price \$/kWh = ((Applicable HR \* (BTGP + GHG Allowance Price) /1,000,000) + VOM) \* TOU + LA + GHG Charges .

Where:

Applicable HR = (A) 8,225 Btu/kWh through December 31, 2012; (B) 8,125 Btu/kWh from January 1, 2013 through December 31, 2014; and (C) Actual HR from January 1, 2015 until the end of the Floor Test Term;

BTGP (\$/MMBtu) = As set forth above;

$GHG\ Allowance\ Price\ (\$/MMBtu) = Allowance\ Cost\ (\$/MT) * 117lbs\ of\ GHG\ per\ MMBtu / 2,204.6\ lbs\ per\ MT$

Where:

*Allowance Cost* (\$/MT) = The cost of one Allowance, determined using the GHG Auction clearing price from the latest GHG Auction that has taken place during the calendar quarter immediately preceding the date that Edison's payment is due to Seller; *provided, however*, that if there is no GHG Auction held during the applicable time-period, then the Allowance Cost is determined in accordance with subsection (d) of this Section.

*VOM* (\$/kWh) = As set forth above;

*GHG Charges* (\$/kWh) = As set forth above;

*TOU* = As set forth above; and

*LA* (\$/kWh) = As set forth above.

- (c) Free Allowance Reporting and Allocation. If, at any time, Edison makes a monthly payment to Seller utilizing the GHG Floor Test formula set forth in subsection (b)(i)(2) of this Section, then Edison shall deduct from the monthly payment to Seller for the applicable month the value of the Free Allowances disclosed in and based on all Free Allowance Notices that have not already been applied to a prior payment to Seller; *provided, however*, that if Edison, using reasonable efforts, is unable to process such payment adjustment for the applicable month, then Edison shall make such payment adjustment to the next monthly payment due to Seller. For any month that Edison utilizes the formula set forth in subsection (b)(i)(1) of this Section to make a monthly payment to Seller, Edison shall maintain a record of the value and quantity of all Free Allowances disclosed in the Free Allowance Notices, if any, and shall deduct the value of such Free Allowances to any subsequent monthly payment due to Seller where Edison calculates such monthly payment utilizing the formula set forth in subsection (b)(i)(2) of this Section until such time that the value of all such Free Allowances are expended.

In order for Edison to make the payment adjustment set forth in the immediately preceding paragraph, Seller agrees to deliver to Edison, within twenty (20) calendar days of receiving any Free Allowances, a Free Allowance Notice for the applicable month, which Free Allowance Notice must include all Additional GHG Documentation. Edison shall value any such Free Allowances using the same methodology Edison uses in valuing the Allowance Cost, as set forth above.

- (d) Determining Allowance Costs under the GHG Floor Test if there is No GHG Auction. This subsection (d) is applicable if no GHG Auction has been held during the time-period for which the Allowance Cost variable set forth in subsection (b)(i) of this Section is to be determined. In such an instance, publicly available indices will be used to determine the price for the applicable period. If no such indices exist, Edison will meet with the Trade Organizations to negotiate in good faith to reach an agreement on setting the Allowance Cost variable. If, after negotiating for fifteen (15) Business Days, Edison and the Trade Organizations have not reached an agreement on setting the Allowance Cost variable, then Edison and the Trade Organizations shall each select, within fifteen (15) calendar days after such failed negotiations, price quotations from two (2) different Reference Market-Makers, for a total of four (4) price quotations. The Allowance Cost variable for the applicable time-period will be determined by taking the average of the four (4) price quotations so selected by Edison and the Trade Organizations. Seller agrees and acknowledges that it shall be bound by any agreement as to the Allowance Cost variable between Edison and the Trade Organizations, in accordance with the foregoing.

- (e) Energy Price from the End of the Floor Test Term. As of the end of the Floor Test Term until the termination of this Contract, Edison shall calculate the Energy price for Energy delivered to Edison by Seller during the applicable time-period in accordance with the following formula:

$$\text{Energy Price } \$/\text{kWh} = ((\text{Market Heat Rate} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA}$$

Where:

*Market Heat Rate* (Btu/kWh) = As defined in Section [ ];

*BTGP* (\$/MMBtu) = As set forth above;

*VOM* (\$/kWh) = As set forth above;

*TOU* = As set forth above; and

*LA* (\$/kWh) = As set forth above.

- (f) Seller's Responsibility. Other than Edison's payment to Seller for GHG Compliance Costs and GHG Charges as set forth in payment formulae in Section [ ] above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of GHG emissions with respect to Seller or the Generating Facility.

### **OPTION B. X**

#### 9.3 Energy Payments -- Second Period.

##### 9.3.1 Energy Payments.

During the Second Period of the Contract Term, as of the Pricing Effective Date, and with regard to deliveries of Energy delivered on or after the Pricing Effective Date, excluding the Fixed Energy Price Period, Seller shall be paid a "Monthly Energy Payment" for Energy delivered by Seller and purchased by Edison, calculated pursuant to the following formula:

$$\text{Monthly Energy Payment} = A \times B$$

Where:

A = kWh purchased by Edison for each on-peak, mid-peak, off-peak and super off-peak time period defined in Edison's Tariff Schedule No. TOU-8; and

B = the Energy price, determined in accordance with Section 9.3.2 below.

- 9.3.2 Energy Price. Edison shall calculate the Energy price for Energy delivered to Edison by Seller during the applicable time-period in accordance with the following formula:

$$\$/\text{kWh} = ((\text{Applicable HR} * \text{BTGP}/1,000,000) + \text{VOM}) * \text{TOU} + \text{LA}$$

Where:

*Applicable HR* = The Heat Rate applicable for the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2012	8,600
2013	8,500

2014	8,500
2015 through the termination of the Contract	Market Heat Rate

*BTGP* = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and Commission Resolution E-4246;

*VOM* = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and Commission Resolution E-4246;

*TOU* (i.e., time-of-use) = As of the Amendment Effective Date until the termination of this Contract, the applicable time-of-use factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.4251	N/A
Mid-Peak	see below	1.2185
Off-Peak	0.8526	see below
Super Off-Peak	N/A	0.7760

Summer Mid-Peak = (Total # hours in month - (1.4251 \* # of Summer On-Peak hours in month) - (0.8526 \* # of Summer Off-Peak hours in month)) / # of Summer Mid-Peak hours in month

Winter Off-Peak = (Total # hours in month - (1.2185 \* # of Winter Mid-Peak hours in month) - (0.7760 \* # of Winter Super Off Peak hours in month)) / # of Winter Off-Peak hours in month

and

*LA* (i.e., hourly location adjustment, in \$/kWh) = Zero (0).

As part of calculating the Energy price, the hourly location adjustment (i.e., *LA*) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Edison.

9.3.3 Seller's Responsibility. Notwithstanding anything to the contrary set forth in this Contract, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility."

**OPTION C.1. \_\_\_\_\_**

"For a period of no more than ninety (90) calendar days following the Amendment Effective Date, Edison and Seller shall negotiate in good faith so that Edison and Seller shall, if such negotiations are successful, enter into a mutually agreed upon tolling agreement ("Tolling Agreement"), pursuant to which Seller shall cause the Generating Facility to be dispatchable and Edison shall purchase electric energy and related attributes from Seller on a dispatchable basis. Until such time that Edison and Seller have entered into such Tolling Agreement and the payment terms thereof are in effect, or if Edison and Seller are unable to successfully negotiate and enter into a Tolling Agreement, Seller shall be paid in accordance with the terms of this Contract, as such Contract's pricing provision has been amended by Amendment No. [REDACTED], pursuant to which Seller selected to receive payment under one of Option A, Option B, Option C.2 or Option C.3 (as further described in Amendment No. [REDACTED])."

**OPTION C.2. \_\_\_\_\_**

"Energy Price. Edison shall calculate the Energy price for Energy delivered to Edison by Seller during the applicable time-period in accordance with the following formula:

$$\$/kWh = [((\text{Applicable HR} * \text{TOU}) - \text{Applicable BTU}) * \text{BTGP}/1,000,000] + (\text{VOM} * \text{TOU}) + \text{LA}$$

Where:

*Applicable HR* = The Heat Rate applicable for the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,600
2013	8,500
2014	8,500
2015 through the termination of the Contract	Market Heat Rate

*TOU* (i.e., time-of-use) = As of the Amendment Effective Date until the termination of this Contract, the applicable time-of-use factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.4251	N/A
Mid-Peak	see below	1.2185
Off-Peak	0.8526	see below
Super Off-Peak	N/A	0.7760

Summer Mid-Peak = (Total # hours in month - (1.4251 \* # of Summer On-Peak hours in month) - (0.8526 \* # of Summer Off-Peak hours in month)) / # of Summer Mid-Peak hours in month

Winter Off-Peak = (Total # hours in month - (1.2185 \* # of Winter Mid-Peak hours in month) - (0.7760 \* # of Winter Super Off Peak hours in month)) / # of Winter Off-Peak hours in month

*Applicable BTU* = (i) 265 Btu/kWh through December 31, 2014; (ii) Zero (0) from January 1, 2015 through the termination of the Contract;

*BTGP* = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and Commission Resolution E-4246;

*VOM* = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and Commission Resolution E-4246; and

*LA* (i.e., hourly location adjustment, in \$/kWh) =  $LMP_{QF} - LMP_{Trading\ Hub}$

Where:

$LMP_{QF}$  (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$  (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

As part of calculating the Energy price, the hourly location adjustment (i.e., *LA*) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Edison.



GHG Compliance Costs Payments. In addition to making Energy payments to Seller under this Contract as described above, from calendar year 2011 through the earlier of December 31, 2014 and the termination of this Contract, Edison shall make payments to Seller for GHG Compliance Costs, if applicable, in accordance with the following formula (and subject to accounting for Free Allowances, as described below), with the first such payment to be made on or before the thirtieth (30<sup>th</sup>) Business Day after the end of the First GHG Year, and additional GHG Compliance Costs payments to be made on or before the thirtieth (30<sup>th</sup>) Business Day after at the end of each calendar quarter following the First GHG Year:

$$(\$) = ((E * 936 \text{ lbs/MWh}) \div 2204.6 \text{ lbs/MT of Greenhouse Gas}) * \text{Allowance Cost}$$

Where:

*E* = Energy (in MWh) generated by the Generating Facility and delivered to Edison during the applicable time-period; and

*Allowance Cost* = Zero (0); *provided, however,* that if there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California), then *Allowance Cost* equals the lesser of (i) \$20/MT of Greenhouse Gas, and (ii) the Estimated Allowance Cost.

Free Allowances. Seller shall deliver to Edison, no later than thirty (30) calendar days before the end of the First GHG Year and no later than ten (10) calendar days before the end of each calendar quarter following the First GHG Year, a Free Allowance Notice for the applicable time-period, and any other GHG Documentation reasonably requested by Edison. Edison shall maintain a record of the quantity and value of all Free Allowances disclosed in the Free Allowance Notices and shall value any such Free Allowances using the same methodology used in valuing Allowances, as described in the variable *Allowance Cost* above. Edison shall then deduct from any payment for GHG Compliance Costs to Seller the value of any Free Allowances, as disclosed in and based on all Free Allowance Notices delivered by Seller, that have not already been applied to a prior payment to Seller for GHG Compliance Costs until such time that the quantity and value of all such Free Allowances are expended.

Seller shall, at the end of each calendar quarter or as soon as practicable thereafter, deliver to Edison the total number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar quarter.

Seller's Responsibility. Other than as set forth in the GHG Compliance Costs payment formula above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility."

### OPTION C.3. \_\_\_\_\_

Energy Price. Edison shall calculate the Energy price for Energy delivered to Edison by Seller during the applicable time-period in accordance with the following formula:

$$\$/\text{kWh} = [((\text{Applicable HR} * \text{TOU}) - \text{Applicable BTU}) * \text{BTGP}/1,000,000] + (\text{VOM} * \text{TOU}) + \text{LA}$$

Where:

*Applicable HR* = The Heat Rate applicable to the specified calendar year, per the following table:

Calendar Year(s)	Heat Rate (Btu/kWh)
2011	8,700
2012	8,600
2013	8,500

2014	8,500
2015 through the termination of the Contract	Market Heat Rate

*TOU* (i.e., time-of-use) = As of the Amendment Effective Date until the termination of this Contract, the applicable time-of-use factors are as follows:

	<u>Summer</u>	<u>Winter</u>
On-Peak	1.4251	N/A
Mid-Peak	see below	1.2185
Off-Peak	0.8526	see below
Super Off-Peak	N/A	0.7760

Summer Mid-Peak = (Total # hours in month - (1.4251 \* # of Summer On-Peak hours in month) - (0.8526 \* # of Summer Off-Peak hours in month)) / # of Summer Mid-Peak hours in month

Winter Off-Peak = (Total # hours in month - (1.2185 \* # of Winter Mid-Peak hours in month) - (0.7760 \* # of Winter Super Off Peak hours in month)) / # of Winter Off-Peak hours in month

*Applicable BTU* = (i) 265 Btu/kWh through December 31, 2014; (ii) Zero (0) from January 1, 2015 through the termination of the Contract;

*BTGP* = Calendar month Burner Tip Gas Price (\$/MMBtu), per D.07-09-040 and Commission Resolution E-4246;

*VOM* = Calendar month avoided variable O&M (\$/kWh), per D.07-09-040 and Commission Resolution E-4246;

*LA* (i.e., hourly location adjustment, in \$/kWh) =  $LMP_{QF} - LMP_{Trading\ Hub}$

Where:

$LMP_{QF}$  (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price at the point of interconnection with the CAISO-controlled electric system associated with the Generating Facility; and

$LMP_{Trading\ Hub}$  (in \$/kWh) = The hourly Day-Ahead Locational Marginal Price of the trading hub where the Generating Facility is located (i.e., SP15 Existing Zone Generation Trading Hub (formerly SP15), NP15 Existing Zone Generation Trading Hub (formerly NP15), or ZP26 Existing Zone Generation Trading Hub (formerly ZP26), as applicable, or any successor thereto).

As part of calculating the Energy price, the hourly location adjustment (i.e., *LA*) will be applied to the actual hourly generation of Energy by the Generating Facility for delivery to Edison.

**GHG Compliance Costs Payments.** In addition to making Energy payments to Seller under this Contract as described above, from calendar year 2011 through the earlier of December 31, 2014 and the termination of this Contract, Edison shall, within thirty (30) Business Days of receiving Seller's Quarterly Emissions Notice, make payments for the applicable calendar quarter to Seller for GHG Compliance Costs, if applicable, up to the Annual Facility Emissions Cap, according to the following formula and subject to accounting for Free Allowances, as described below (*provided, however*, that Seller must also deliver the information required in the Base Year Emissions Notice before Edison makes any such payments):

(\$)= G \* Allowance Cost

Where:

$G$  = Greenhouse Gas emissions (in MTs) attributable to the Generating Facility for Energy generated by the Generating Facility and delivered to Edison during the applicable quarter and based on Seller's Quarterly Emissions Notice; *provided, however*, that, once the aggregate quantity of the variable  $G$  for the applicable calendar year equals or exceeds the Annual Facility Emissions Cap for such calendar year,  $G$  equals zero (0); *provided further* that if such Greenhouse Gas emissions equals or exceeds the Annual Facility Emissions Cap for such calendar year in the middle of the applicable month, Edison shall make a pro rated payment for Seller's GHG Compliance Costs for the applicable month; and

*Allowance Cost* = Zero (0); *provided, however*, that if there exists a cap-and-trade program in California for the regulation of Greenhouse Gas, as established by the CARB (or substantially similar federal, state or regional legislation by an authorized Governmental Authority and applicable to California), then *Allowance Cost* equals the lesser of (i) \$12.50/MT of Greenhouse Gas, and (ii) the Estimated Allowance Cost.

Free Allowances. Seller shall deliver to Edison, no later than thirty (30) calendar days before the end of the First GHG Year and no later than ten (10) calendar days before the end of each calendar quarter following the First GHG Year, a Free Allowance Notice for the applicable time-period, and any other GHG Documentation reasonably requested by Edison. Edison shall maintain a record of the quantity and value of all Free Allowances disclosed in the Free Allowance Notices and shall value any such Free Allowances using the same methodology used in valuing Allowances, as described in the variable *Allowance Cost* above. Edison shall then deduct from any payment for GHG Compliance Costs to Seller the value of any Free Allowances, as disclosed in and based on all Free Allowance Notices delivered by Seller, that have not already been applied to a prior payment to Seller for GHG Compliance Costs until such time that the quantity and value of all such Free Allowances are expended.

Seller shall, at the end of each calendar quarter or as soon as practicable thereafter, deliver to Edison the total number of Allowances (including Free Allowances) held and/or surrendered by Seller for such calendar quarter.

Seller's Responsibility. Other than as set forth in the GHG Compliance Costs payment formula above, Seller is solely responsible for all GHG Compliance Costs and all other costs associated with implementation and regulation of Greenhouse Gas emissions with respect to Seller or the Generating Facility."

**1.02** Reporting Requirements. The following is added to the Power Purchase Contract as Section 25:

"25. Reporting Requirements.

25.1 From the Amendment Effective Date through the end of the term of this Contract (and for any period following the termination of this Contract to the extent relating back to the term of this Contract), Seller shall provide to Edison the following information (together, the "Annual GHG Reports");

25.1.1 On or before the fifth (5<sup>th</sup>) Business Day following Seller's timely submission to the CARB (or any other authorized Governmental Authority having jurisdiction in California) of the CARB Mandatory GHG Emissions Annual Report, or such other annual report submitted to the CARB, detailing the Greenhouse Gas emissions of the Generating Facility for the applicable calendar year (as verified by an independent third party, if applicable) (the "CARB Annual Report"), Seller shall deliver such CARB Annual Report to Edison; and

25.1.2 To the extent not set forth in the CARB Annual Report (or if Seller is no longer required to submit the CARB Annual Report for any reason), then Seller shall submit to Edison, along with the CARB Annual Report (or, if Seller is no longer

required to submit the CARB Annual Report for any reason, then on the sixtieth (60th) Business Day following the end of the applicable calendar year), the following information for the applicable calendar year, which, in each case, must be verifiable and of settlement quality: (1) the Useful Thermal Energy Output of the Generating Facility; and (2) total fuel usage of the Generating Facility; and (3) the total amount of Greenhouse Gas emissions attributable to the Generating Facility, the electrical energy used to serve the Site Host Load, and the Useful Thermal Energy Output of the Generating Facility; and (4) the total electrical energy produced by the Generating Facility, the electrical energy used to serve the Site Host Load, and the Energy delivered to Edison.

- 25.2 If Edison requires any other information not delineated in Section 25.1 in order to comply with any Greenhouse Gas emissions reporting requirements adopted by the CARB and/or by any other Governmental Authority and imposed on Edison (other than the information that Seller must provide in accordance with Section 25.3), then Edison shall meet and confer with the Trade Organizations regarding such other information that Edison requires and negotiate in good faith to reach a mutually acceptable agreement. Seller agrees and acknowledges that it shall be bound by any agreement between Edison and the Trade Organizations, in accordance with the foregoing.
- 25.3 Each Party shall deliver to the other Party, or before the tenth (10<sup>th</sup>) Business Day following receipt of a notice from the other Party, such information as such other Party is required to report to any authorized Governmental Authority pursuant to the Settlement Agreement.
- 25.4 Edison will review the Annual GHG Reports described in this Section to determine if there is any discrepancy in the payments made by Edison to Seller for GHG Compliance Costs during the course of the applicable calendar year. To the extent Edison determines that there is any such discrepancy, (i) if Edison owes Seller an additional payment for GHG Compliance Costs, then Edison shall make such additional payment in a subsequent monthly payment to Seller under this Contract, or (ii) if Seller owes Edison a payment refund for GHG Compliance Costs, then Edison shall offset such payment refund amount in a subsequent monthly payment to Seller under this Contract. If this Contract terminates before Edison is able to make such additional payment for GHG Compliance Costs or offset such GHG Compliance Costs payment refund from Seller's monthly payments, as applicable, then Edison or Seller, as applicable, shall pay all remaining payment amounts due within the thirty- (30) calendar day period after the termination of this Contract.
- 25.5 To the extent that the information provided by the disclosing Party in accordance with this Section is Confidential Information, the receiving Party shall treat such Confidential Information with the same degree of care that it currently treats the data and information provided by Qualifying Facilities under the existing Qualifying Facilities monitoring compliance program."

**1.03 Market Disruption Event.** The following is added to the Power Purchase Contract as Section 9.3.4:

"Unless this Contract has terminated, if, on or after the date that the Market Heat Rate applies to and is used in the calculation of the Energy price and until the end of the term of this Contract, there occurs a Market Disruption Event, then the Market Heat Rate for the affected Trading Day(s) must be determined by reference to the Market Heat Rate for the first Trading Day thereafter on which no Market Disruption Event exists; *provided, however,* that if the Market Heat Rate is not so determined within five (5) Trading Days after the Market Disruption Event occurred or existed, then Edison shall meet with the Trade Organizations to negotiate in good faith to reach an agreement on a Market Heat Rate (or a method for determining a Market Heat Rate), and if Edison and the Trade Organizations have not so agreed on or before the twelfth

(12<sup>th</sup>) Trading Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Market Heat Rate will be determined in good faith by taking the average of the price quotations for energy and relevant Trading Days that are obtained from no more than two (2) Reference Market-Makers selected by each of Edison and the Trade Organizations (for a total of four (4) price quotations). Seller hereby agrees and acknowledges that it shall be bound by any agreement as to a Market Heat Rate (or a method for determining a Market Heat Rate) between Edison and the Trade Organizations, in accordance with the foregoing."

**1.04 Addition of Forecasting Appendix.** The following is added to the Power Purchase Contract as Appendix E:

"1. General Requirements. The Parties shall make good faith efforts to abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to (i) support Edison's compliance with the CAISO's scheduling requirements related to the Contract, (ii) accommodate changes to the Parties' respective generation technology and organizational structure, (iii) address changes in the Operating and Scheduling procedures of Seller, Edison and the CAISO, including automated Forecast and outage submissions. The Parties agree that the Forecasts generated by, or otherwise resulting from the Forecasting requirements and procedures in this Appendix are non-binding on Seller, the Generating Facility or the Site Host.

2. Seller's Forecasting Submittal Requirements.

a. 30-Day Forecast. No later than 30 calendar days before the first calendar day of the Initial Forecast Month, Seller shall provide Edison with a Forecast for the 30 calendar-day period commencing on the first calendar day of the Initial Forecast Month using the Web Client. If the Web Client becomes unavailable, Seller shall provide Edison with the Forecast by e-mail at [presched@sce.com](mailto:presched@sce.com) or by telephoning Edison's generation operations center at 626-307-4420. The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall (i) not include any anticipated or expected electric energy losses between the meter(s) used for measuring the Energy sold to Edison by Seller and the point of delivery of the Energy delivered to Edison by Seller, and (ii) limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

b. Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. California time of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2.a of this Appendix, and on or before 5:00 p.m. California time every Wednesday thereafter for the remainder of the term of the Contract, Seller shall update the Forecast for the 30 calendar-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Edison with the weekly Forecast update by e-mailing or telephoning Edison at the e-mail address or telephone number listed in Section 2.a of this Appendix.

c. Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates to take into account expected changes in daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Seller's Facility ambient conditions, a Forced Outage, or a Real-Time Forced Outage, any of which results or is expected to result in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Appendix must be submitted to Edison via the Web Client by no later than (i) 5:00 p.m. California time on the calendar day before the calendar day in which Day-Ahead trading occurs in accordance with the Western Electricity Coordinating Council Preschedule Calendar (as found on the Western Electricity Coordinating Council's website) is impacted by the change, if the change is known to Seller at that time, (ii) the Hour-Ahead Scheduling Deadline, if the change is known to Seller at

that time, (iii) if the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected Energy production change. Seller's updated Forecast must contain the following information: (w) the beginning date and time of the event resulting in a change in the availability of the Generating Facility and expected hourly Energy production in MWh/h; (x) the expected ending date and time of the event; (y) the expected Energy production or available generation capacity, as applicable, in MWh; and (z) any other information required by the CAISO as communicated to Seller by Edison.

3. Miscellaneous. Edison is responsible for all CAISO charges and is entitled to receive all CAISO revenues. Except as set forth in this Appendix, there shall be no modification of Seller's existing communication protocols and designated contacts with Edison, if any, including any requirement to notify Edison of Generating Facility parallel operation or separation from the electrical system."

**1.05 Additional Representations, Warranties, and Covenants Applicable to Renewable Facilities**. If the Generating Facility is a small power production facility (as described in 18 Code of Federal Regulations Part 292, Section 292.203(a)) that utilizes a technology referenced in Section 399.12 of the California Public Utilities Code, then the following is added to the Power Purchase Contract as Section 26:

"26. RPS Eligibility; Conveyance of Green Attributes.

26.1 Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Contract that:

26.1.1 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

26.1.2 The Project's output delivered to Edison qualifies under the requirements of the California Renewables Portfolio Standard.

To the extent a change in law occurs after execution of this Contract 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.

26.2 Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Contract the renewable energy credits transferred to Edison 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 Contract 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.

26.3 Seller warrants that all necessary steps to allow the renewable energy credits transferred to Edison to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

26.4 Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Edison 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 Edison as included in the delivery of the Product from the Project."

1.06 Dispute Resolution. The following is added to the Power Purchase Contract as Section 27:

"27. Dispute Resolution.

27.1 Informal Dispute Resolution. Either Party may at any time notify the other Party of an intention to discuss or dispute any matter connected with this Contract, including, without limitation, a change to the CARB's authority (or the authority of any other authorized Governmental Authority having jurisdiction in California), or any other development in the regulation of Greenhouse Gas that makes it impossible to perform or administer any provision of this Contract, or results, or could reasonably be forecasted to result, in an inability of the Parties to quantify or value GHG Compliance Costs. Within fifteen (15) calendar days of receiving such notification, the Parties shall each appoint a representative knowledgeable on the topic at issue and such representatives shall meet within the following thirty (30) calendar days in an attempt to settle the matter at issue. If the representatives of the Parties are unable to resolve the matter at issue within thirty (30) calendar days of their first meeting, then the Parties shall each appoint a senior officer knowledgeable on the topic at issue and such senior officers shall meet within fifteen (15) calendar days in an attempt to resolve the matter at issue. If the senior officers of the parties are unable to resolve the matter at issue within a further thirty (30) calendar day period following their first meeting, or if either Party fails to appoint a representative or senior officer or if such representatives or senior officers fail to meet with each other in either case within the time-periods specified herein, then either party may refer the matter at issue to binding arbitration in accordance with the paragraph immediately below.

27.2. Mediation. In the event that the Parties are unable to resolve a disagreement or dispute in accordance with the immediately preceding paragraph, either Party may initiate mediation by delivering to the other Party a written request for mediation, setting forth a description of the dispute and the relief requested. The Parties will cooperate with one another in selecting a mediator ("Mediator") from the panel of neutrals from JAMS or any other mutually acceptable non-JAMS Mediator, and in scheduling the time and place of the mediation. Such selection and scheduling will be completed within forty-five (45) calendar days after delivery of the written request for mediation. ~~Unless otherwise agreed to by the Parties, the mediation will not be scheduled for a date that is greater than one-hundred twenty (120) calendar days from the date of delivery of the written request for mediation.~~ The Parties covenant that they will participate in the mediation, and that they will share equally in its costs (other than each Party's individual attorneys' fees and costs related to the Party's participation in the mediation, which fees and costs will be borne by such Party). All offers, promises, conduct and statements, whether oral or written, made in connection with or during the mediation by either of the Parties, their agents, representatives, employees, experts and attorneys, and by the Mediator or any of the Mediator's agents, representatives and employees, will not be subject to discovery and will be confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding between or involving the Parties, or either of them; *provided, however,* that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

27.3 Binding Arbitration. In the event that the Parties are unable to resolve a disagreement or dispute in accordance with the immediately preceding paragraphs, either Party may initiate binding arbitration with respect to the matters first submitted to mediation in accordance with the immediately preceding paragraph by providing notice of a demand for binding arbitration before a single, neutral arbitrator (the "Arbitrator") at any time following the unsuccessful conclusion of the mediation provided for in the immediately

preceding paragraph. The Parties will cooperate with one another in selecting the Arbitrator within sixty (60) calendar days after notice of the demand for arbitration and will further cooperate in scheduling the arbitration to commence no later than one hundred eighty (180) calendar days from the date of notice of the demand. If the Parties are unable to agree upon a mutually acceptable Arbitrator, the Arbitrator will be appointed as provided for in California Code of Civil Procedure Section 1281.6. To be qualified as an Arbitrator, each candidate must be a retired judge of a trial court of any state or federal court, or retired justice of any appellate or supreme court. Unless otherwise agreed to by the Parties, the individual acting as the Mediator will be disqualified from serving as the Arbitrator in the dispute, although the Arbitrator may be another member of the JAMS panel of neutrals or such other panel of neutrals from which the Parties have agreed to select the Mediator. Upon notice of a Party's demand for binding arbitration, such disagreement or dispute submitted to arbitration, including the determination of the scope or applicability of this Contract to arbitrate, will be determined by binding arbitration before the Arbitrator, in accordance with the laws of the State of California, without regard to principles of conflicts of laws. Except as provided for in this section, the arbitration will be conducted by the Arbitrator in accordance with the rules and procedures for arbitration of complex business disputes for the organization with which the Arbitrator is associated. Absent the existence of such rules and procedures, the arbitration will be conducted in accordance with the California Arbitration Act, California Code of Civil Procedure Section 1280 et seq. and California procedural law (including the Code of Civil Procedure, Civil Code, Evidence Code and Rules of Court, but excluding local rules).

27.3.1 Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in Los Angeles, California, and discovery will be limited as follows:

- (a) Before discovery commences, the Parties shall exchange an initial disclosure of all documents and percipient witnesses which they intend to rely upon or use at any arbitration proceeding (except for documents and witnesses to be used solely for impeachment);
- (b) The initial disclosure will occur within thirty (30) calendar days after the initial conference with the Arbitrator or at such time as the Arbitrator may order;
- (c) Discovery may commence at any time after the Parties' initial disclosure;
- (d) The Parties will not be permitted to propound any interrogatories or requests for admissions;
- (e) Discovery will be limited to twenty-five (25) document requests (with no subparts), three (3) lay witness depositions, and three (3) expert witness depositions (unless the Arbitrator holds otherwise following a showing by the Party seeking the additional documents or depositions that the documents or depositions are critical for a fair resolution of the dispute or disagreement or that a Party has improperly withheld documents);
- (f) Each Party is allowed a maximum of three (3) expert witnesses, excluding rebuttal experts;
- (g) Within sixty (60) calendar days after the initial disclosure, or at such other time as the Arbitrator may order, the Parties shall exchange a list



of all experts upon which they intend to rely at the arbitration proceeding;

- (h) Within thirty (30) calendar days after the initial expert disclosure, the Parties may designate a maximum of two (2) rebuttal experts;
- (i) Unless the Parties agree otherwise, all direct testimony will be in form of affidavits or declarations under penalty of perjury; and
- (j) Each Party shall make available for cross-examination at the arbitration hearing its witnesses whose direct testimony has been so submitted.

27.3.2 The Arbitrator will have the authority to grant any form of equitable or legal relief a Party might recover in a court action. The Parties acknowledge and agree that irreparable damage would occur in the event certain provisions of this Contract are not performed in accordance with the terms hereof, that money damages would not be a sufficient remedy for any breach of such provisions of this Contract, and that the Parties shall be entitled, without the requirement of posting a bond or other security, to specific performance and injunctive or other equitable relief as a remedy. Judgment on the award may be entered in any court having jurisdiction. The Arbitrator must, in any award, allocate all of the costs of the binding arbitration (other than each Party's individual attorneys' fees and costs related to the Party's participation in the arbitration, which fees and costs will be borne by such Party), including the fees of the Arbitrator and any expert witnesses, against the Party who did not prevail. Until such award is made, however, the Parties will share equally in paying the costs of the arbitration."

**1.07 Addition of Certain Defined Terms.** The following defined terms, which are deemed to include any variations thereof, are added to Section 2 of the Power Purchase Contract:

"Allowance: A limited tradable authorization (whether in the form of a credit, allowance or other similar right), allocated to, issued to or purchased by, Seller, the Site Host or a Related Entity of Seller, with respect to the Generating Facility, to emit one MT of GHG, in accordance with a cap-and-trade program in California for the regulation of GHG, as established by CARB (and/or by a different Governmental Authority pursuant to federal or state legislation), and as applied to the GHG emitted by the Generating Facility."

"Amendment Effective Date: June 1, 2012, which is the date that the Parties entered into Amendment No. 4."

"Amendment No. 4: That certain Amendment No. 4 to Power Purchase Contract, dated as of June 1, 2012, by and between Edison and Seller."

"Annual GHG Reports: As defined in Section 25."

"Burner Tip Gas Price or BTGP: As determined in Commission Decision 07-09-040 and Commission Resolution E-4246."

"Business Day: Any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a notice or payment or performing a specified action."

"CAISO: The California Independent System Operator Corporation or successor entity."

"CAISO-Approved Quantity: The total quantity of electric energy that Edison Schedules with the CAISO and the CAISO approves in its final schedule which is published in accordance with the CAISO Tariff."

"CAISO Tariff: The CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC, or any successor entity."

"California Renewables Portfolio Standard" means the California Public Utilities Code Section 399.11, *et seq.*, or any successor thereto"

"CEC: The California Energy Commission, or any successor thereto."

"CARB: The California Air Resources Board, or any successor entity."

"CARB Annual Report: As defined in Section 25."

"CARB Mandatory GHG Emissions Annual Report: The mandatory reporting regulations approved by CARB in December 2007, which became effective in January 2009, pursuant to the requirements set forth in the California Global Warming Solutions Act of 2006 for the reporting of Greenhouse Gas by major sources."

"Confidential Information: All oral or written communications exchanged between the Parties on or after the Amendment Effective Date relating to the implementation of this Contract, including information related to Seller's compliance with operating and efficiency standards applicable to a qualifying cogeneration facility or fuel use standards applicable to a qualifying small power production facility. Confidential Information does not include (i) information which is in the public domain as of the Amendment Effective Date or which comes into the public domain after the Amendment Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Amendment Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information."

"Day-Ahead: As defined and may be modified in the CAISO Tariff."

"Delivery Term: The Contract Term."

"ERR: As defined in the California Public Utilities Code Section 399.12, or any successor thereto."

"FERC: The Federal Energy Regulatory Commission, or successor agency."

"Fixed Energy Price Agreement: That certain Fixed Energy Price Agreement, executed on or about December 8, 2011, between Desert Winds II Power Purchase Contract Trust, a California trust, and Edison."

"Fixed Energy Price Period: The period commencing on January 1, 2013, and terminating on December 31, 2013, as defined in the Fixed Energy Price Agreement."

"Forecast: The hourly forecast of (i) the total electric Energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible, or (ii) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible, in each case net of the Site Host Load and Station Use."

"Free Allowance: Any Allowance freely allocated to Seller or the Generating Facility by CARB or an authorized Governmental Authority (or any entity authorized by such Governmental Authority)."

"GHG Compliance Costs: The cost of Allowances, as determined in accordance with this Contract."

"Governmental Authority: Any governmental authority responsible for the regulation of Greenhouse Gas in California, including (i) any federal, state, local, municipal or other governmental authority, (ii) any governmental, regulatory or administrative agency, commission, lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (iii) any court or governmental tribunal."

"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:

- (1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants;
- (2) 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>†</sup>
- (3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

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

Green Attributes do not include:

- (i) Any energy, capacity, reliability or other power attributes from 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 Edison with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project."

"Greenhouse Gas or GHG: Emissions released into the atmosphere of carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O) and methane (CH<sub>4</sub>), which are produced as the result of combustion or transport of fossil fuels. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF<sub>6</sub>), which are generated in a variety of industrial processes. Greenhouse gases may be defined or expressed in terms of a MT of CO<sub>2</sub>-equivalent, in order to allow comparison between the different effects of gases on the environment; *provided, however*, that the definition of the term 'Greenhouse Gas', as set forth in the immediately preceding sentence, shall be deemed revised to include any update or other change to such term by the CARB and/or any other Governmental Authority."

<sup>†</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.

"Heat Rate: The value obtained, in BTU per kWh, when the fuel input (on a Higher Heating Value basis), in BTU is divided by generation, net of Station Use, in kWh."

"Higher Heating Value: The high or gross heat content of the fuel with the heat of vaporization included; the water vapor is assumed to be in a liquid state."

"Hour-Ahead Scheduling Deadline: Thirty (30) minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour."

"Initial Forecast Month: The first calendar month for which Seller provides to Edison a 30 calendar-day Forecast pursuant to Section 2 of Appendix E, which must be the first calendar month commencing no earlier than 30 calendar days after Amendment Effective Date and no later than 60 calendar days after such date."

"JAMS: The Judicial Arbitration and Mediation Services, Inc. or any successor entity."

"Locational Marginal Price: As defined and may be modified in the CAISO Tariff."

"Market Disruption Event: With respect to any MHR Source, any of the following events: (i) the permanent discontinuation or material suspension of trading in the exchange or in the market specified for determining a Market Heat Rate; (ii) the temporary or permanent discontinuance or unavailability of the MHR Source; or (iii) the temporary or permanent closing of any exchange specified for determining a Market Heat Rate. For purposes of this definition, "temporary" means five (5) or more continuous Trading Days."

"Market Heat Rate: The 12-month forward market heat rate, calculated for each calendar pricing month utilizing the methodology set forth in Commission Decision 07-09-040 and Commission Resolution E-4246 for SP15 Existing Zone Generation Trading Hub (formerly known as SP15), or its successor. Unless otherwise agreed to by the Parties, this definition of Market Heat Rate will not be updated by any subsequent decision, ruling or order by the Commission."

"MHR Source: The relevant publications used to determine the Market Heat Rate."

"MT(s): Metric Ton(s)."

"PIRP (i.e., Participating Intermittent Resource Program): The CAISO's intermittent resource program initially established pursuant to Amendment 42 of the CAISO Tariff in FERC Docket ER02-922-000, or any successor program that Edison determines accomplishes a similar purpose."

"Pricing Effective Date: The Amendment Effective Date."

"Project: The Generating Facility."

"Real-Time Forced Outage: A Forced Outage which occurs only after 5:00 p.m. California time on the calendar day before a Trading Day impacted by such Forced Outage."

"Reference Market-Maker: A leading dealer in the energy market that is not a Related Entity of either Party (or of a Trade Organization) and that is selected by a Party in good faith among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit. Such dealer may be represented by a broker."

"Related Entity: With respect to either Party, any individual or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this Contract, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power."

"Schedule: The action of Edison, or its designated representatives, of notifying, requesting, and confirming to the CAISO, the CAISO-Approved Quantity of electric energy."

"Settlement Agreement: That certain Settlement Agreement, dated October 8, 2010, filed by the Settling Parties in Commission R.04-04-025 and R.04-04-003, A.08-11-001, R.99-11-022, and R.06-02-013."

"Site Host: The entity or entities purchasing or otherwise using the Site Host Load or Useful Thermal Energy Output from the Generating Facility."

"Site Host Load: The electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (other than Station Use) of Seller or one or more third parties conducted pursuant to California Public Utilities Code § 218(b)."

"Station Use: The electric energy produced by the Generating Facility that is (i) used within the Generating Facility to power the lights, motors, control system and other electrical loads that are necessary for Operation, (ii) consumed within the Generating Facility's electricity energy distribution system as losses needed to deliver electricity to the Site Host Load, and (iii) consumed within the generator collection system as losses between the generator(s) and the high voltage side of the Generating Facility output transformer(s)."

"Trade Organizations: The California Cogeneration Council, the Cogeneration Association of California, the Energy Producers and Users Coalition, and the Independent Energy Producers Association, or any successor entity."

"Trading Day: The day in which Day-Ahead trading occurs in accordance with the Western Electricity Coordinating Council's Preschedule Calendar (as found on the Western Electricity Coordinating Council's website, or any successor thereto)."

"Useful Thermal Energy Output: As defined in 18 CFR §292.202(h) and modified by the Energy Policy Act of 2005, or any successor thereto."

"Web Client: An Edison provided web based system or an email address designated by Edison."

**1.08** Settlement Agreement. Seller agrees to be bound by the terms and conditions set forth in the Settlement Agreement.

**1.09** General Provisions.

- (a) Except as expressly set forth in this Amendment, the Agreement remains unchanged and, so modified, the Agreement shall remain in full force and effect.
- (b) This Amendment will not be construed against any Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (c) The terms and provisions hereof shall be binding on and inure to the benefit of and be enforceable by the successors and assigns of the Parties, whether so expressed or not.
- (d) If any provision of this Amendment is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Amendment will remain in full force and effect. Any provision of this Amendment held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

- (e) THIS AMENDMENT 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 AMENDMENT.
- (f) This Amendment may be executed in one or more counterparts, each of which will be deemed to be an original of this Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this Amendment as to the Parties and may be used in lieu of the original Amendment 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.
- (g) Each Party represents and warrants that the execution, delivery and performance of this Amendment are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and that the person who signs below on behalf of that Party has authority to execute this Amendment on behalf of such Party and to bind such Party to this Amendment.
- (h) The term "including" when used in this Amendment is by way of example only and will not be considered in any way to be in limitation. The word "or" when used in this Amendment includes the meaning "and/or" unless the context unambiguously dictates otherwise. The headings used in this Amendment are for convenience and reference purposes only and will not affect its construction or interpretation.
- (i) This Amendment sets forth the entire agreement of the Parties with respect to the subject matter herein, and supersedes all previous understandings, written or oral, with respect thereto.
- (j) This Amendment may not be amended, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
- (k) Whenever this Amendment specifically refers to any law, tariff, government department or agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

*[Signature page follows]*

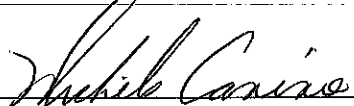
IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed by respective authorized representatives as of the Amendment Effective Date.


**Desert Winds II Power Purchase  
Contract Trust,**

**Southern California Edison Company,**

a California corporation

a California trust  
By its Project Manager  
ESI Mojave LLC

By:   
Name: Michele Canino  
Title: Vice President

By:   
Nicole Neeman Brady  
*Director, Renewable & Alternative  
Power Contracts*