

February 6, 2018

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: First Amendment to 2009 Agreement
NEO California Power, LLC
Docket Nos. EL02-18, EL00-95-000, EL00-98-000**

Dear Secretary Bose:

Pursuant to Rule 602 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2017), the California Independent System Operator Corporation ("CAISO"), along with Wayzata Opportunities Fund LLC ("Wayzata"),¹ Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company² (collectively, the "Executing Parties") hereby request Commission approval of a "First Amendment" to the 2009 Agreement³ approved by the Commission in the above-referenced dockets.⁴

The Commission's approval of the 2009 Agreement directed the California Power Exchange ("PX") to release funds out of the PX Settlement Clearing Account to the individual SRA Owners that are Parties as full payment for the critical reliability services they provided to the CAISO and its market participants during the 2001 summer period pursuant to the SRAs. As

¹ On January 3, 2007, Wayzata California Power Holdings, a wholly-owned subsidiary of Wayzata Opportunities Fund, LLC, acquired all of NEO California Power LLC's ("NEO") interests in NEO's Summer Reliability Agreements ("SRAs") and associated generating plants, including NEO's claims against the CAISO under the SRAs. *See NEO California Power LLC*, 117 FERC ¶ 62,247 (2006). Wayzata California Power Holdings, LLC was subsequently renamed California Power Holdings, LLC ("CPH"). On June 30, 2011, Wayzata Opportunities Fund, LLC sold 100% of the equity interests in CPH to EWP Renewable Corporation ("EWP"). *See Wayzata Opportunities Fund, LLC*, 135 FERC ¶ 62,249 (2011) (order authorizing disposition of jurisdictional facilities in connection with the sale of CPH to EWP). The sale to EWP excluded the claims of CPH, originally NEO, against the CAISO under the SRAs and the April 20, 2009 Agreement ("2009 Agreement"). CPH's claims against the CAISO under the SRAs were transferred to Wayzata Opportunities Fund LLC as part of the sale to EWP.

² Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are, collectively, the "California Utilities."

³ Harbor Cogeneration Company ("Harbor") and RAMCO, Inc., a predecessor to MMC Energy North America, LLC ("MMC"), also were parties to the 2009 Agreement. Harbor and MMC are Additional Settling Participants under the First Amendment and have the right to elect not to participate in the First Amendment. If they do not so elect, they will be Parties and be bound by the terms of the First Amendment. Wayzata, Harbor, and MMC are, collectively, the SRA Owners.

⁴ *NEO California Power LLC*, 127 FERC ¶ 61,146 (2009).

with many other CAISO creditors during the energy crisis, payment to the SRA Owners was deferred due to the crisis-related freeze on PX payments. The 2009 Agreement let funds flow. Importantly, however, the amounts paid to the SRA Owners represented only the principal balances they were owed. Under the 2009 Agreement, interest is to be paid to the SRA Owners upon conclusion of the refund proceedings in Docket Nos. EL00-95 and EL00-98 (“Refund Proceeding”), which are still ongoing.

Since the Commission approved the 2009 Agreement, it has approved a number of settlement agreements whereby PX and CAISO creditors were paid both principal and interest amounts owed to them.⁵ For this reason, and because a final accounting at the end of the Refund Proceeding may still not happen for some time, some of the parties to the 2009 Agreement explored ways to more quickly resolve the claims for the outstanding SRA Interest Receivable Settlement Amount owed to them. As a result of these conversations, the California Utilities agreed to facilitate interest payments to the SRA Owners in full satisfaction of their claims and to assume the risk of liability for shortfalls that may exist at final market clearing, thereby extinguishing SRA claims. The Executing Parties have entered into the attached First Amendment to provide for the distribution by the PX of part of the interest owed to the SRA Owners with certain amounts “held back” until the Refund Proceeding concludes and a final accounting is performed. The California Utilities agree that if such holdbacks are insufficient to satisfy the shortfalls, they will make up the difference, and they will receive any amount of the holdbacks in excess of the actual shortfalls.

Harbor and MMC were parties to the 2009 Agreement but did not participate in the negotiations of the First Amendment, and MMC may no longer exist.⁶ Therefore, the First Amendment provides that those entities are Additional Settling Participants. They have the right to elect not to participate in the First Amendment by providing notice of such election no later than five Business Days following the Settlement Effective Date. Absent such notice, they will be deemed to be Parties and bound by the terms of the First Amendment. This structure fulfills the desire of the CAISO and Wayzata for final resolution of all SRA claims and is consistent with Commission precedent.⁷ Maintaining these claims, held by entities that may no longer exist, would frustrate the Commission’s stated policy to resolve California energy crisis claims through settlement.⁸

⁵ See e.g., *San Diego Gas & Electric Co.*, 155 FERC ¶ 61,312 at P 8 (2016) (approving settlement with payment of principal and interest, less a holdback for the estimated interest shortfall amount).

⁶ Counsel for Harbor’s parent, Southwest Generation, was provided with a copy of the First Amendment in advance of the filing of this Joint Offer of Settlement and has no objection to the terms of the First Amendment.

⁷ See *San Diego Gas & Electric Co.*, 126 FERC ¶ 61,007 PP 24, 25 (2009) (approving “opt-out” provision in settlement through which a market participant would become a party to the settlement unless it affirmatively notified the Commission that it would not participate in the settlement); *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,297 (2007) (approving settlement containing opt-out provision).

⁸ See, e.g., *San Diego Gas & Elec. Co.*, 145 FERC ¶ 61,015 at P 26 (2013) (“[W]e note that the Commission has long encouraged the settlement of disputes in general and in these proceedings in particular.”); *Pub. Utils. Comm’n of Cal.*, 99 FERC ¶ 61,087 at 61,384 (2002) (“[W]e want to strongly encourage all parties involved in disputes

The First Amendment is in the public interest as it appropriately recognizes the role that the SRA Owners played in responding to the reliability and capacity needs that the CAISO identified during the energy crisis, but who, as a result of the PX's default, were never fully paid for the services they provided.

I. JOINT OFFER OF SETTLEMENT

In accordance with Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2016), the Parties attach hereto the following documents:

- A Joint Explanatory Statement (Attachment A); and
- The First Amendment (Attachment B).

II. CONCLUSION

For the foregoing reasons, and the reasons set forth in the attached Joint Explanatory Statement, the Parties state that the First Amendment to the 2009 Agreement serves each of their own interests and also serves important overriding public interest purposes. Approval of the First Amendment will avoid further litigation, provide monetary consideration, eliminate regulatory uncertainty, and enhance financial certainty. As such, the Parties respectfully request that the Commission approve the First Amendment in accordance with its terms as filed without change or modification.

Respectfully submitted

By /s/ Daniel J. Shonkwiler

Roger E. Collanton

General Counsel

Burton A. Gross

Assistant General Counsel

Daniel J. Shonkwiler

Lead Counsel

California Independent System

Operator Corporation

250 Outcropping Way

Folsom, CA 95630

T: 916.608.7015

F: 916.608-7222

dshonkwiler@caiso.com

arising from the California crisis to seriously negotiate settlements.”); *Pub. Utils. Comm'n of Cal. v. FERC*, No. 01-71051, slip op. at 3 (9th Cir. Oct. 23, 2006) (extending deadlines “to encourage further settlement efforts”).

ATTACHMENT A
Joint Explanatory Statement

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

NEO California Power LLC)	Docket No. EL02-18-000
)	
)	
San Diego Gas & Electric Company)	
v.)	Docket No. EL00-95-000
Sellers of Energy and Ancillary Services)	
)	
Investigation of Practices of the)	
California Independent System Operator)	Docket No. EL00-98-000
and the California Power Exchange)	

JOINT EXPLANATORY STATEMENT

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.602 (2016), the California Independent System Operator Corporation (“CAISO”), along with Wayzata Opportunities Fund, LLC (“Wayzata”),¹ Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), and San Diego Gas & Electric Company (“SDG&E”)² hereby submit this Joint Explanatory Statement (“Explanatory Statement”) in support of their request for

¹ On January 3, 2007, Wayzata California Power Holdings, a wholly-owned subsidiary of Wayzata Opportunities Fund, LLC, acquired all of NEO California Power LLC’s (“NEO”) interests in the Summer Reliability Agreements (“SRAs”) and associated generating plants, including NEO’s claims against the CAISO under the SRAs. *See NEO California Power LLC*, 117 FERC ¶ 62,247 (2006). Wayzata California Power Holdings, LLC was subsequently renamed California Power Holdings, LLC (“CPH”). On June 30, 2011, Wayzata Opportunities Fund, LLC sold 100% of the equity interests in CPH to EWP Renewable Corporation (“EWP”). *See Wayzata Opportunities Fund, LLC*, 135 FERC ¶ 62,249 (2011) (order authorizing disposition of jurisdictional facilities in connection with the sale of CPH to EWP). The sale to EWP excluded the claims of CPH, originally NEO, against the CAISO under the SRAs and the April 20, 2009 Agreement (“2009 Agreement”). CPH’s claims against CAISO under the SRAs were transferred to Wayzata Opportunities Fund, LLC as part of the sale to EWP.

² PG&E, SCE, and SDG&E are, collectively, the “California Utilities.”

Commission approval of a “First Amendment” to the 2009 Agreement approved by the Commission in the above-referenced dockets.³

The foregoing Parties submit that the First Amendment is in the public interest, and urge the Commission to approve it on its terms, without modification or condition. This Explanatory Statement summarizes the First Amendment, but is not intended to modify or alter any of its provisions.

I. BACKGROUND

To ensure the reliability of the CAISO Control Area during the 2001, 2002, and 2003 summer periods, on August 24, 2000, the CAISO issued a request for bids seeking proposals from new generation facilities to provide peaking capability (up to 3,000 MW). In response: (1) NEO submitted a proposal to construct a 48 MW unit located in Chowchilla, California and a 44 MW unit in Red Bluff, California; (2) Harbor Cogeneration Company (“Harbor”) submitted a proposal to add two steam turbines to an 80 MW combined-cycle unit located in Wilmington, California; and (3) MMC⁴ (formerly known as RAMCO, Inc.) (“RAMCO”) submitted a proposal to construct a 44 MW unit located in Escondido, California and a 44 MW unit in Chula Vista, California. Subsequently, the CAISO executed an SRA with the owners of each of these units,⁵ which entitled CAISO to dispatch capacity from these units for up to 500 hours during the summer periods of 2001, 2002, and 2003.

³ *NEO California Power LLC*, 127 FERC ¶ 61,146 (2009). A copy of the First Amendment is Attachment B to the Joint Offer of Settlement. Capitalized terms used in this Explanatory Statement that are not otherwise defined shall have the meanings set forth in the First Amendment and/or the 2009 Agreement.

⁴ On January 9, 2006, MMC Energy North America, LLC (“MMC”) acquired from Disbursed Generating Co. all of RAMCO’s interests in the SRAs and associated generating plants, including any claims that RAMCO may have against the CAISO under the SRAs.

⁵ Wayzata, Harbor, and MMC are, collectively, the “SRA Owners.”

Under the SRAs, the CAISO's obligation to pay the SRA Owners was expressly conditioned on the CAISO's recovery of the costs from its Scheduling Coordinators pursuant to the CAISO Tariff. To facilitate this recovery, the CAISO established a trust account (the "SRA Trust Account") to receive payment through its markets. The SRA Owners were paid from the SRA Trust Account.

The SRA Owners did not receive full payment in 2001 because the California energy crisis led to a halt in payments in the CAISO markets. The unpaid invoices included adjustments to settlements from December 2000, including additional charges to the California Power Exchange Corporation ("PX"). The PX did not pay its CAISO invoices; and those funds were tied up with the funds that have been the subject of ongoing litigation concerning the California energy crisis. Consequently, all market creditors, including the SRA Trust Account, were paid only a portion of their receivables for July and August 2001.

On November 13, 2001, NEO filed a complaint against the CAISO in Docket No. EL02-18-000 asserting non-payment of invoiced amounts under the SRAs. The CAISO responded to NEO's complaint, explaining that it would be unable to pay NEO (or the other SRA Owners) until the Commission ordered the funds that the PX controlled to be distributed pursuant to the Commission's authority under the PX's confirmed plan of reorganization. On May 20, 2003, the Commission issued an order on NEO's complaint, establishing hearing procedures, but holding the hearing in abeyance pending settlement judge procedures.⁶ Through lengthy settlement discussions, the CAISO and the SRA Owners resolved issues relating to NEO's complaint under the framework of a global settlement.

⁶ *NEO California Power LLC*, 103 FERC ¶ 61,206 (2003).

On March 4, 2009, the CAISO, CPH, Harbor, and MMC (the “Settling Parties”) filed a settlement agreement with the Commission and, on April 20, 2009, the Settling Parties filed the 2009 Agreement, revising the earlier filing. Under the 2009 Agreement, the PX would release funds that it held to the individual SRA Owners as payment for the critical reliability services they provided under the SRAs to the CAISO during the 2001 summer period and would receive a corresponding credit from the CAISO on the PX’s debit balance with the CAISO. The 2009 Agreement also required the PX to pay to the SRA Trust Account interest (the “SRA Interest Receivable Settlement Amount”) owed on the “SRA Principal Receivable Settlement Amount”, but only after final refund calculations were completed. Thus, under the 2009 Agreement, the SRA Owners received payment of only the principal amounts owed to them, with all owed interest held back pending the conclusion of the refund proceedings. The Commission approved the 2009 Agreement by order dated May 21, 2009, in the above-referenced dockets.⁷

II. FIRST AMENDMENT

Under the First Amendment, the SRA Owners that are Parties would receive most of the SRA Interest Receivable Settlement Amount owed to them in the amounts set forth in Exhibit 1 to the First Amendment and as provided for under the terms of the First Amendment. However, the PX would be directed to retain from the SRA Interest Receivable Settlement Amounts the amounts set forth in Exhibit 2 to the First Amendment (the “SRA Interest Shortfall Estimate Holdback”). These “holdbacks” represent the Parties’ estimate of the allocation to SRA Owners of any interest shortfall resulting from the fact that the PX has been earning a rate of interest on the funds that it has retained that is less than the interest rate specified in FERC’s regulations.⁸

⁷ *NEO California Power LLC*, 127 FERC ¶ 61,146 (2009).

⁸ *See San Diego Gas & Electric Co*, 107 FERC ¶ 61,165 (2004), at PP 31-34.

The First Amendment is intended to extinguish all rights and obligations of the SRA Owners. To accomplish that purpose, the California Utilities have agreed to satisfy the interest shortfall, if any, remaining after the SRA Interest Shortfall Estimate Holdback is exhausted.

The obligations and rights of all three SRA Owners are addressed in the First Amendment. However, because Harbor has not participated in the negotiations of the First Amendment; and MMC may no longer be in business, efforts to contact MMC have failed, they are not signatories to the First Amendment or the Joint Offer of Settlement. They are afforded the right not to participate in the First Amendment as explained in the description of Section 2.5 below. This structure fulfills the desire of the CAISO and Wayzata for a final resolution of all SRA claims and is consistent with Commission precedent.⁹ Maintaining these claims, held by entities that may no longer exist, would frustrate the Commission's stated policy to resolve California energy crisis claims through settlement.¹⁰

III. SUMMARY OF SETTLEMENT AGREEMENT

The principal terms of the First Amendment are briefly described below, with reference to the Articles/Sections of the First Amendment that contain them.

ARTICLE 1 sets forth the definitions of certain terms used in the First Amendment.

SECTION 2.1 sets forth the condition precedent for implementation of the First Amendment, *i.e.*, the occurrence of the First Amendment Effective Date.

⁹ See *San Diego Gas & Electric Co.*, 126 FERC ¶ 61,007 PP 24, 25 (2009) (approving "opt-out" provision in settlement through which market participant would become a party to the settlement unless it affirmatively notified the Commission that it would not participate in the settlement); *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,297 (2007) (approving settlement containing opt-out provision).

¹⁰ See, e.g., *San Diego Gas & Elec. Co.*, 145 FERC ¶ 61,015 at P 26 (2013) ("[W]e note that the Commission has long encouraged the settlement of disputes in general and in these proceedings in particular."); *Pub. Utils. Comm'n of Cal.*, 99 FERC ¶ 61,087 at 61,384 (2002) ("[W]e want to strongly encourage all parties involved in disputes arising from the California crisis to seriously negotiate settlements."); *Pub. Utils. Comm'n of Cal. v. FERC*, No. 01-71051, slip op. at 3 (9th Cir. Oct. 23, 2006) (extending deadlines "to encourage further settlement efforts").

SECTION 2.2 sets forth the binding nature of the First Amendment and its impact on the 2009 Agreement.

SECTION 2.3 provides that the First Amendment shall become effective when the Commission by order accepts or approves it.

SECTION 2.4 addresses termination of the First Amendment should the Commission not approve it or approve it subject to condition or modification.

SECTION 2.5 provides that MMC and Harbor are Additional Settling Participants. Each may elect not to participate in the First Amendment by notifying the Commission of such election no later than five Business Days after the First Amendment Effective Date. Upon making such election, MMC and/or Harbor would no longer be an Additional Settling Participant and would have no rights or obligations under the First Amendment. Absent such election, MMC and Harbor will be Parties and be bound by the terms of the First Amendment.

SECTION 3.1 defines the terms “SRA Interest Receivable Estimates” and “SRA Interest Receivable Settlement Amounts”.

SECTIONS 3.2 and 3.3 provide that upon Commission approval of the First Amendment, the PX will be directed to pay – no later than fifteen Business Days after the First Amendment Settlement Date – to the SRA Owners that are Parties the SRA Interest Receivable Settlement Amounts subject to the “holdback” amounts set forth in Exhibit 2 to the First Amendment. Any surplus interest holdback is to be paid to the California Utilities.

SECTION 3.4 provides that the California Utilities assume the obligations of the SRA Owners to satisfy any Principal Shortfall, if the CAISO does not recover its SRA costs, and any Interest Shortfall that exceeds the SRA Interest Shortfall Estimate Holdbacks. If, at final market

clearing, the Interest Shortfall is less than the holdbacks or the CAISO has recovered amounts in excess of its costs, the California Utilities are entitled to the excess.

SECTION 3.5 provides that except as provided in Section 3.4 of the First Amendment, payments pursuant to Article 3 of the First Amendment constitute full and complete satisfaction of the Parties' right to collect and receive, and obligation to pay, interest pursuant to Section 2.2 of the 2009 Agreement.

SECTIONS 4.1 and 4.2 provide that upon Commission approval, the CAISO and the PX will each conform their books and records to reflect the payments under the First Amendment and any holdback amounts.

SECTION 4.3 provides that each Party will reasonably and in good faith cooperate and take all reasonable steps to secure (i) the release of funds to the SRA Owners as contemplated by the First Amendment, (ii) the accounting treatment contemplated under Article 4, and (iii) any other acts of the PX or CAISO necessary to effectuate the terms of the First Amendment.

SECTION 4.4 provides that Commission approval of the First Amendment will constitute a grant of such waivers of the CAISO and the PX tariffs as may be necessary for the CAISO and the PX to disburse such funds as required by the First Amendment.

SECTIONS 5.1 and 5.2 provide that the First Amendment is subject to the Commission's approval and that the Executing Parties will cooperate in the submission and defense of the First Amendment.

SECTION 6.1 includes representations by the Parties that they have requisite authority to enter into the First Amendment and that they have rights to the claims being resolved by the First Amendment.

SECTION 7.1 provides that in the event of a conflict, the terms of the First Amendment control over the terms of the 2009 Agreement.

SECTION 7.2 provides that the California Utilities, by virtue of the First Amendment, shall not become parties to the 2009 Agreement.

SECTION 7.3 provides that, except as otherwise noted, all claims as between the SRA Owners that are Parties and the CAISO relating to SRAs for monetary or non-monetary remedies, including attorneys' fees, shall be deemed settled and resolved.

SECTION 7.4 provides that to the extent not governed by federal law, the First Amendment will be governed by the laws of the State of California, without giving effect to principles of conflicts of laws that would require the application of laws of another jurisdiction.

SECTION 7.5 provides that the Agreement may be executed in counterparts.

SECTION 7.6 provides that the PX is held harmless and shall not be liable for implementing the First Amendment.

SECTION 7.7 provides that the First Amendment constitutes the entire agreement among the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations, or warranties between the Parties other than those set forth or referred to herein and in the 2009 Agreement.

IV. REQUIRED INFORMATION

In accordance with the Chief Administrative Law Judge's December 15, 2016 Amended Notice to the Public Regarding Information to be Provided with Settlement Agreements and Guidance on the Role of Settlement Judges, the Parties provide the following information:

A. Other Pending Cases

The First Amendment does not affect any other pending proceeding. None of the SRA Owners are parties to any related refund proceedings, nor are the SRA payments subject to refund.

B. Issues of First Impression

The First Amendment does not involve issues of first impression.

C. Commission Precedent

The First Amendment does not depart from any Commission precedent.

D. Applicable Standard of Review

As set forth in the 2009 Agreement approved by the Commission, the Commission's review of any modifications to the First Amendment or the underlying 2009 Agreement proposed by the Settling Parties, the Commission, or third parties, shall be based on the just and reasonable standard.

Dated: February 6, 2018

ATTACHMENT B

The First Amendment

FIRST AMENDMENT TO THE 2009 SETTLEMENT AGREEMENT

This FIRST AMENDMENT TO THE 2009 SETTLEMENT AGREEMENT (“First Amendment”) is entered into by and among Wayzata Opportunities Fund LLC, as successor in interest to California Power Holdings, LLC (*fka* NEO California Power LLC) (“Wayzata”), Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), and San Diego Gas & Electric Company (“SDG&E”) (PG&E, SCE, and SDG&E are, collectively, the “California Utilities”); and the California Independent System Operator Corporation (“CAISO”) to implement and modify the terms of the REVISED SETTLEMENT AGREEMENT dated April 20, 2009 (the “2009 Agreement”), among, on the one hand, California Power Holdings, LLC, Harbor Cogeneration Company (“Harbor”), and MMC Energy North America, LLC (“MMC”) (collectively, the “SRA Owners”) and, on the other hand, the California Independent System Operator Corporation (“CAISO”), which FERC approved on May 21, 2009, *NEO California Power LLC*, 127 FERC ¶ 61,146 (2009). Wayzata, PG&E, SCE, SDG&E, and CAISO is each an “Executing Party” and collectively they are “Executing Parties” to this First Amendment. Additionally, each of Harbor and MMC shall be an “Additional Settling Participant” and collectively they are “Additional Settling Participants,” provided that either Harbor or MMC may elect not to be an Additional Settling Participant as provided in Section 2.5 of this First Amendment.

Unless otherwise expressly provided for herein, each capitalized term used in this First Amendment shall have the meaning set forth for such term in the Recitals below, in Article 1 of this First Amendment, in the Recitals of the 2009 Agreement, or in Article 1 of the 2009 Agreement.

RECITALS

A. Whereas, the 2009 Agreement resolved certain significant issues between and among the SRA Owners and the CAISO arising from events in the CAISO markets during 2000-2001 that resulted in the SRA Owners receiving partial payment for amounts owed to them for the months of July and August 2001;

B. Whereas, to expedite distribution to the SRA Owners of amounts still due to them by the CAISO in connection with the CAISO markets that are currently held by the California Power Exchange Corporation (“PX”) pursuant to the 2009 Agreement, and to revise and supplement certain accounting and other provisions in the 2009 Agreement to allow for such expedited distributions and the implementation of the terms of this First Amendment, the Executing Parties have agreed to amend and supplement the terms of the 2009 Agreement; and

C. Whereas, the California Utilities have agreed to become Parties to this First Amendment and assume certain risks and obligations of the SRA Owners associated with the distribution to the SRA Owners of amounts still due to them from the CAISO in connection with the CAISO markets, in return for certain benefits to the California Utilities provided for under this First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements and other good and valuable consideration provided for herein, and subject to the conditions herein, the Executing Parties agree as follows:

**ARTICLE 1
DEFINITIONS**

- 1.1 **“Additional Settling Participant”** has the meaning set forth in the Preamble of this First Amendment.
- 1.2 **“Allocation Agreement”** has the meaning set forth in Section 3.4.2.
- 1.3 **“Executing Party”** has the meaning set forth in the Preamble of this First Amendment.
- 1.4 **“FERC Interest Determination”** means the FERC order or orders, including orders on rehearing, determining the amount of Interest Shortfall allocable to different entities based on the CAISO and PX settlement reruns and refund calculations and directing that interest be paid, regardless of whether such order or orders is/are subject to requests for rehearing or appeal, provided that such order or orders has/have not been stayed pending such rehearing or appeal.
- 1.5 **“Final Order”** means a FERC order that is no longer subject to further rehearing before FERC regardless of whether such order is subject to appeal, provided that such order has not been stayed pending such appeal. The “date” of a Final Order shall be the date upon which it becomes no longer subject to rehearing.
- 1.6 **“First Amendment”** has the meaning set forth in the Preamble of this First Amendment.
- 1.7 **“First Amendment Effective Date”** has the meaning set forth in Section 2.3 of this First Amendment.
- 1.8 **“First Amendment Execution Date”** means the date on which this First Amendment has been duly executed by all Executing Parties and, if execution occurs on various dates, the First Amendment Execution Date shall be the date shown on the signature pages of this First Amendment that is last in time.
- 1.9 **“First Amendment Order”** means the FERC order or orders approving this First Amendment in its entirety, including a directive to the PX to release funds from the PX Settlement Clearing Account, as contemplated herein, whether or not such order(s) is/are subject to rehearing or appeal, provided that such order or orders has/have not been stayed pending such rehearing or appeal.
- 1.10 **“Interest Shortfall”** means any difference between the interest actually earned on funds held by the PX and/or CAISO and the interest that would be earned through application of the FERC Interest Rate.
- 1.11 **“Parties”** means the Executing Parties and the Additional Settling Participants that do not opt out of this First Amendment pursuant to Section 2.5 of this First Amendment.

- 1.12 **“Principal Shortfall”** means the amount, if any, by which the total principal amount paid to the SRA Owners exceeds the CAISO’s recovery of costs incurred through the SRA Agreements, including any allocation of CAISO or PX shortfalls to the SRA Owners or SRA Trust Account, to be determined at the conclusion of the Refund Proceeding.
- 1.13 **“SRA Interest Receivable Settlement Amounts”** has the meaning set forth in Section 3.1.2 of this First Amendment.
- 1.14 **“SRA Interest Receivable Estimates”** has the meaning set forth in Section 3.1.1 of this First Amendment.
- 1.15 **“SRA Interest Shortfall Estimate Holdbacks”** has the meaning set forth in Section 3.2 of this First Amendment, and applies only to any principal and/or interest shortfall occurring in any CAISO market as a result of the CAISO being allocated by the PX a portion of any principal and/or interest shortfall occurring in any PX market.
- 1.16 **“SRA Principal Receivable Settlement Amounts”** has the meaning set forth in Section 2.1 of the 2009 Agreement.
- 1.17 **“SRA Owners Payment”** has the meaning set forth in Section 3.3 of this First Amendment.
- 1.18 **“SRA Trust Account”** means the account established by the CAISO that is referenced in the fourth Recital of the 2009 Agreement.
- 1.19 **“Termination of the Refund Proceeding”** means the issuance by FERC of a Final Order or Final Orders in the Refund Proceeding establishing the rights and obligations of market participants that are parties to the Refund Proceeding to collect or pay refunds and effectuating the payment of such refunds.

**ARTICLE 2
FIRST AMENDMENT EFFECTIVE DATE;
EFFECT OF FIRST AMENDMENT; TERMINATION**

- 2.1 **Condition Precedent for Implementation of First Amendment.** The occurrence of the First Amendment Effective Date is a condition precedent to implementation of the provisions set forth in Articles 3, 4, and 5 of this First Amendment.
- 2.2 **Effect of First Amendment.**
 - 2.2.1 **Binding Obligation.** Except as provided in Section 2.1, this First Amendment shall be a binding obligation of each Party upon the occurrence of the First Amendment Execution Date.

- 2.2.2 **Effect of First Amendment.** Except as modified by this First Amendment, all of the terms and conditions of the 2009 Agreement shall remain in full force and effect.
- 2.3 **First Amendment Effective Date.** The First Amendment Effective Date shall be the date on which FERC issues the First Amendment Order.
- 2.4 **Termination of First Amendment.**
- 2.4.1 **Termination by the Parties.** This First Amendment shall terminate on the date of a Final Order rejecting this First Amendment in whole or in material part or accepting this First Amendment with material conditions or modifications deemed unacceptable to any adversely affected Executing Party. In the event of a material condition or modification that materially affects any Executing Party, each Executing Party so affected shall communicate its consent or lack of consent to such condition or modification in writing to the other Parties no later than five (5) Business Days after the date of the order that imposes the material condition or modification on FERC's acceptance of this First Amendment. The failure of an adversely affected Executing Party to provide written notice to the other Executing Parties in accordance with the foregoing sentence shall constitute acceptance by such Executing Party of the material change or condition; provided, however, that the Executing Parties may, in the sole discretion of each Executing Party, agree to attempt to modify this First Amendment in a manner that would resolve the grounds or conditions for which the required approval by FERC was denied. Nothing herein shall be construed as obligating any Executing Party to appeal a Final Order rejecting this First Amendment or accepting this First Amendment with material conditions or modifications deemed unacceptable to any adversely affected Executing Party.
- 2.4.2 **Effect of Termination.** If this First Amendment is terminated for any reason, pursuant to this Section 2.4, this First Amendment shall be null and void and of no further effect, with all rights, duties, and obligations of the Parties restored as if this First Amendment had never been executed. A termination pursuant to this Section 2.4 shall not affect the 2009 Agreement.
- 2.5 **Right Not to Participate in this First Amendment.** Upon the filing of this First Amendment at FERC, each Additional Settling Participant that does not elect to opt out of this First Amendment pursuant to this Section 2.5 shall be deemed to have consented to this Agreement and shall be bound by its terms as an Additional Settling Participant, and thus a Party to this First Amendment, effective as of five (5) Business Days following the First Amendment Effective Date. An Additional Settling Participant may elect not to be bound by the terms of this First Amendment by notifying FERC that it elects not to be an Additional Settling Participant. Electronic copies of such notice shall be served on all Executing Parties to this First Amendment, all parties to FERC Docket No. EL02-18, and each person designated on the ListServ established for the Refund

Proceeding in accordance with FERC's rules. If Harbor or MMC provides such notice on or prior to the date that is five (5) Business Days following the First Amendment Effective Date, the entity so electing shall no longer be an Additional Settling Participant to this First Amendment and shall have no rights or obligations under this First Amendment. Exercising the right to opt out of the First Amendment pursuant to this Section 2.5 shall not affect the rights and obligations established under the 2009 Agreement.

ARTICLE 3 PAYMENT OF SRA OWNER INTEREST; HOLDBACKS

3.1 SRA Interest Receivable Estimates and Settlement Amounts

3.1.1 **SRA Interest Receivable Estimates.** The Executing Parties jointly estimate that, as of March 31, 2017, the unpaid amounts of interest accruing at the FERC Interest Rate on the SRA Principal Receivable Settlement Amount and on such unpaid interest owed to each SRA Owner, prior to any adjustment for the SRA Interest Shortfall, for each SRA Owner, are the amounts specified in Exhibit 1 to this First Amendment (the "SRA Interest Receivable Estimates").

3.1.2 **SRA Interest Receivable Settlement Amounts.** The SRA Interest Receivable Settlement Amounts shall be the SRA Interest Receivable Estimates, as adjusted to include the additional interest accruing, between March 31, 2017 and the date of distribution pursuant to Section 3.3 of this First Amendment, on the SRA Principal Receivable Settlement Amount and on the unpaid interest owed to each SRA Owner.

3.2 **SRA Interest Shortfall Estimate Holdbacks.** The First Amendment Order shall, as of the First Amendment Effective Date, constitute direction to the PX to retain from the SRA Interest Receivable Settlement Amounts the amounts set forth in Exhibit 2 of this First Amendment (the "SRA Interest Shortfall Estimate Holdbacks") in the PX Settlement Clearing Account for the SRA Owners that are Parties. Interest on the SRA Interest Shortfall Estimate Holdbacks shall accrue at the FERC Interest Rate. Any Interest Shortfalls allocated to the SRA Owners that are Parties as a result of the FERC Interest Determination remaining after all funds of the SRA Interest Shortfall Estimate Holdbacks for such Parties have been applied to satisfy the Interest Shortfall shall be the responsibility of the California Utilities as set forth in Section 3.4.3 of this First Amendment. To the extent that the amount of an SRA Interest Shortfall Estimate Holdbacks, plus any interest accrued thereon, exceeds the Interest Shortfalls allocated to the SRA Owners that are Parties as a result of the FERC Interest Determination, and the PX makes payment to the CAISO pursuant to the FERC Interest Determination, the CAISO shall pay such amounts to an account or accounts designated by the California Utilities no later than ten (10) Business Days after the later of (i) the date on which the PX makes payment to the CAISO, as detailed in Section 2.2 of the 2009 Agreement, or (ii) the date on which the California Utilities designate to the CAISO an account or accounts for the receipt of such funds.

3.3 **Distribution by the PX to the SRA Owners that are Parties.** No later than five (5) Business Days after the First Amendment Effective Date, the SRA Owners that are Parties shall notify the PX of the bank name, bank location, bank account number, and ABA number of the bank account to which the PX shall wire transfer the SRA Owners Payment pursuant to this Section 3.3. No later than fifteen (15) Business Days after the First Amendment Effective Date, the PX shall transfer from the PX Settlement Clearing Account to each SRA Owner that is a Party a cash payment consisting of (i) the SRA Interest Receivable Settlement Amount due to such SRA Owner; (ii) minus the SRA Interest Shortfall Estimate Holdback applicable to such SRA Owner, as set forth in Exhibit 2 of this First Amendment (which amount is termed the “SRA Owners Payment”). To the extent that any SRA Owner that is a Party fails to provide the information required by this Section, the PX shall be excused from the time limits governing distribution with respect to that SRA Owner and shall make reasonable efforts to provide for such distribution in a timely manner once the necessary information is received.

3.4 **California Utilities’ Assumption of Liabilities and Entitlement to Benefits.**

3.4.1 **Assumption of Liabilities.** The California Utilities hereby assume liability for the obligations pursuant to Sections 2.1 and 2.2 of the 2009 Agreement for any Principal Shortfall and/or any Interest Shortfall of any SRA Owner that is a Party, all as set forth in this Section 3.4. Neither the CAISO, nor the PX, nor any SRA Owner that is a Party shall be liable for a Principal Shortfall or Interest Shortfall.

3.4.2 **Satisfaction of Principal Shortfalls and Surpluses.** As soon as practicable after Termination of the Refund Proceeding, the California Utilities shall pay to the CAISO the amount of any Principal Shortfall. If and to the extent that, as of the Termination of the Refund Proceeding, the CAISO has recovered amounts in excess of its total SRA costs, the CAISO shall refund such excess to the California Utilities, who may allocate those amounts among themselves pursuant to a separate agreement among themselves (the “Allocation Agreement”).

3.4.3 **Satisfaction of Interest Shortfalls and Surpluses.** As soon as practicable after issuance of the FERC Interest Determination, the California Utilities shall pay to, or receive from, the CAISO and PX, the difference between (a) the SRA Interest Receivable Estimate less the SRA Interest Shortfall Estimate Holdbacks and (b) the amount of interest that the FERC Interest Determination finds to be owing to SRA Owners that are Parties. If, as a result of an order by a court of appeals that is no longer subject to appeal or a FERC order on remand of such court order, the FERC Interest Determination is changed in a way that increases or decreases the amount of Interest Shortfall allocated to SRA Owners that are Parties, there shall be a true-up for such change by way of refund or surcharge to the California Utilities (or debit or credit to the applicable CAISO or PX account, as appropriate), with interest at the FERC Interest Rate or such other rate as

FERC may determine to be applicable, to give full effect to the change from the FERC Interest Determination.

3.4.4 **Limitation on California Utilities' Liability.** The California Utilities shall not be liable under this First Amendment for payments other than payments to the CAISO and/or PX to satisfy obligations of the SRA Owners, solely as set forth in this First Amendment, or for any costs other than those included in invoices for trading months July and August, 2001.

3.5 **Release of Claims for Interest.** Except as provided in Section 3.4 of this First Amendment, payments pursuant to this Article 3 shall constitute full and complete satisfaction of the Parties' right to collect and receive, and obligation to pay, interest pursuant to Section 2.2 of the 2009 Agreement.

ARTICLE 4 PX AND CAISO ACCOUNTING

4.1 **Updated Accounting Treatment.** As of the First Amendment Effective Date, Article 4 of the 2009 Agreement is amended to the extent otherwise inconsistent with this Article 4.

4.2 **FERC-Directed Compliance.** As of the First Amendment Effective Date, the First Amendment Order shall constitute authorization and direction to the CAISO and PX to implement the terms of this First Amendment. As a result of FERC's approval of this First Amendment in the First Amendment Order, the CAISO and/or PX shall be required to do the following:

4.2.1 **General Accounting Treatment.** The CAISO and PX shall conform their books and records, as to each Party's account, to reflect the distributions, offsets, transfers, assignments, adjustments, and status of accounts provided for in the 2009 Agreement and this First Amendment.

4.2.2 **Accounting Treatment of SRA Interest Receivable Settlement Amount.** The PX and CAISO shall reflect on their books and records all distributions from the PX Settlement Clearing Account to the SRA Owners that are Parties as payments of amounts owed by the CAISO to the SRA Owners for the SRA Interest Receivable Settlement Amounts. The CAISO shall recognize, as a reduction in the amounts payable by the PX to the CAISO, all distributions from the PX Settlement Clearing Account to the SRA Owners that are Parties as payments of amounts owed by the CAISO to the SRA Owners for the SRA Interest Receivable Settlement Amounts.

4.2.3 **Accounting Treatment of SRA Interest Shortfall Estimate Holdbacks.** The CAISO shall reflect on its books and records the SRA Interest Shortfall Estimate Holdbacks, plus interest accruing on that amount retained by the PX.

- 4.2.4 **Interest Accrual.** The PX and the CAISO shall reflect on their books and records that the SRA Owners that are Parties have, through this First Amendment, been paid the SRA Interest Receivable Settlement Amounts, less the SRA Interest Shortfall Estimate Holdbacks, and that the further accrual of interest at the FERC Interest Rate subject to any allocation of Interest Shortfall as established in the FERC Interest Determination payable to the SRA Owners ceases upon the transfer of funds from the PX Settlement Clearing Account to the SRA Owners pursuant to this First Amendment. Interest will continue to accrue, at the FERC Interest Rate, on the SRA Interest Shortfall Estimate Holdbacks through the date of distribution as provided in Section 3.2 of this First Amendment.
- 4.3 **Duty of Cooperation.** Each Party shall reasonably and in good faith cooperate with each other and the CAISO and PX and take all reasonable steps to secure (i) the release and transfer of funds to the SRA Owners that are Parties as contemplated by the 2009 Agreement as amended by this First Amendment, (ii) the accounting treatment contemplated under this Article 4, and (iii) any other acts of the PX or the CAISO necessary to effectuate the terms of the 2009 Agreement as amended by this First Amendment. This duty of cooperation shall include making individual or joint requests to the PX and/or the CAISO, executing appropriate waivers, providing data, and providing other assistance to the PX and the CAISO as necessary to implement the 2009 Agreement as amended by this First Amendment.
- 4.4 **Tariff Waivers.** FERC approval of this First Amendment in the First Amendment Order shall constitute a grant of such waivers of the CAISO and the PX tariffs as may be necessary for the CAISO and the PX to disburse such funds as required by this First Amendment, to account for transfers, allocations, and distributions of funds as required by this First Amendment, and to otherwise implement the 2009 Agreement as amended by this First Amendment.

ARTICLE 5 REQUIRED APPROVALS

- 5.1 **Required Approvals.** The settlement made pursuant to this First Amendment shall be subject to approval by FERC in the First Amendment Order without material change or condition unacceptable to any adversely affected Party.
- 5.2 **Parties' Cooperation.** The Executing Parties shall cooperate in (a) the preparation and submission of the application or other form of filing necessary to obtain the First Amendment Order, (b) the submission of appropriate responses to any protests to the filing of this First Amendment, and (c) the submission of appropriate responses to any requests for rehearing challenging the First Amendment Order. The application or other form of filing necessary to obtain the First Amendment Order shall be submitted to FERC within ten Business Days following the First Amendment Execution Date, unless the Executing Parties mutually agree to extend such deadline.

**ARTICLE 6
REPRESENTATIONS AND WARRANTIES**

6.1 **Representations of the Parties.** Each Party makes the following representations and warranties, for itself only, to each other Party, to be effective from and after the First Amendment Execution Date:

6.1.1 **Organizational Status, Power, and Authority.** It is a corporation, limited partnership, or limited liability company duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation. It possesses all necessary power and authority to execute, deliver, and perform its obligations under this First Amendment.

6.1.2 **Authority to Execute.** The execution, delivery, election to participate, and performance of this First Amendment (a) are within its powers, (b) have been duly authorized by all necessary action on its behalf and all necessary consents or approvals have been obtained and are in full force and effect, and (c) do not violate any of the terms and conditions of any applicable law, or materially violate any contracts to which it is a party.

6.1.3 **Binding Obligation.** This First Amendment constitutes its legal, valid, and binding obligation, enforceable against it in accordance with its terms.

6.1.4 **Ownership of Claims.** It is the sole owner of the claims that are being resolved pursuant to this First Amendment, and except as provided in this First Amendment, there has been no sale, assignment, transfer, pledge, or hypothecation, or attempted sale, assignment, transfer, pledge, or hypothecation, by it of any such claims, whether directly, indirectly, by operation of law, or otherwise.

**ARTICLE 7
MISCELLANEOUS**

7.1 **First Amendment Controls.** To the extent inconsistent with the 2009 Agreement, this First Amendment shall control.

7.2 **2009 Agreement.** The California Utilities are not, and shall not become by operation of this First Amendment, parties to the 2009 Agreement and, except to the extent expressly provided in this First Amendment, the California Utilities shall have no liability under the 2009 Agreement, whether by contract, common law indemnity, or otherwise.

7.3 **Claims Resolved.** In return for the consideration specified elsewhere in this First Amendment and full performance by the Parties of their respective obligations hereunder, and subject to the occurrence of the First Amendment Effective Date, all claims as between the SRA Owners that are Parties, on the one hand, and the CAISO, on the other hand, relating to Summer Reliability Agreements for monetary or non-monetary Remedies, including attorney's fees, shall be deemed settled and resolved. Nothing in

this First Amendment shall alter the PX's allocation of any principal and/or interest shortfall in the PX markets to the CAISO pursuant to the Refund Proceeding, or any applicable court order.

- 7.4 **Governing Law.** To the extent not governed by federal law, this First Amendment and the rights and duties of the Parties hereunder will be governed by and construed, enforced, and performed in accordance with the laws of the State of California, without giving effect to principles of conflicts of laws that would require the application of laws of another jurisdiction.
- 7.5 **Execution.** This First Amendment may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This First Amendment may be executed by signature delivered via facsimile transmission or PDF file image, each of which electronic image shall be deemed the same as an original signature.
- 7.6 **Hold Harmless.** The PX, its officers, directors, employees and professionals shall be held harmless and shall not be liable for implementing this First Amendment.
- 7.7 **Entire Agreement.** This First Amendment and any other documents with respect to the subject matter hereof executed contemporaneously by the Executing Parties constitute the entire agreement among the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations, or warranties between the Parties other than those set forth or referred to herein and in the 2009 Agreement.

SIGNATURES



IN WITNESS WHEREOF, the Executing Parties hereto have caused this First Amendment to be executed by their duly authorized officers or representatives.

[SIGNATURES APPEAR ON THE PAGES THAT FOLLOW]

SIGNATURE PAGE FOR
FIRST AMENDMENT TO THE 2009 SETTLEMENT AGREEMENT

CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

By: _____

  SISO Legal

Name: _____

Eric J. Schmitt

Title: _____

VP, Operations

Date: _____

1-29-2018

SIGNATURE PAGE FOR
FIRST AMENDMENT TO THE 2009 SETTLEMENT AGREEMENT

**WAYZATA OPPORTUNITIES FUND LLC (as successor in interest to
California Power Holdings, LLC, *fka* NEO California Power LLC)**

By: 

Name: BLAKE CARLSON

Title: Authorized Signatory

Date: 1-26-18

SIGNATURE PAGE FOR
FIRST AMENDMENT TO THE 2009 SETTLEMENT AGREEMENT

PACIFIC GAS AND ELECTRIC COMPANY

By:  _____

Name: John R. Simon _____

Title: Executive Vice President and General Counsel

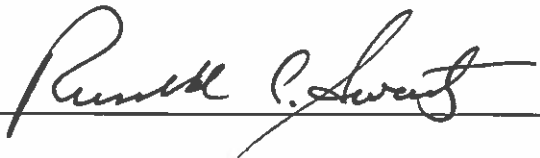
PG&E Corporation

Authorized Representative

Date: January 30, 2018 _____

SIGNATURE PAGE FOR
FIRST AMENDMENT TO THE 2009 SETTLEMENT AGREEMENT

SOUTHERN CALIFORNIA EDISON COMPANY

By: 

Name: Russell C Swartz

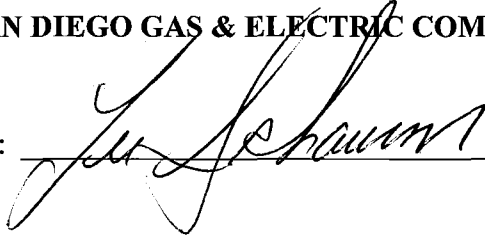
Title: Senior VP + General Counsel

Date: 2-2-18

SIGNATURE PAGE FOR
FIRST AMENDMENT TO THE 2009 SETTLEMENT AGREEMENT

SAN DIEGO GAS & ELECTRIC COMPANY

By: _____

A handwritten signature in black ink, appearing to read "Lee Schavrien", is written over a horizontal line.

Name: Lee Schavrien

Title: Chief Regulatory Officer

Date: January 25, 2018

Exhibit 1

SRA Interest Receivable Estimates:

Wayzata Opportunities Fund: \$569,106.43

MMC Energy North America, LLC: \$42,010.34

Harbor Cogeneration Company: \$61,716.24

Exhibit 2

SRA Interest Shortfall Estimate Holdbacks

Wayzata Opportunities Fund: \$199,187.25

MMC Energy North America, LLC: \$14,703.62

Harbor Cogeneration Company: \$21,600.68

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in the above-referenced proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 6th day of February, 2018.

Anna Pascuzzo
Anna Pascuzzo