

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

California Independent System Operator            )  
Corp., Pacific Gas and Electric Company,        )       Docket No. ER22-\_\_\_\_-000  
Southern California Edison Company            )

**PETITION FOR APPROVAL OF  
UNCONTESTED SETTLEMENT AGREEMENT**

Pursuant to Rule 207(a)(5) of the Rules of Practice and Procedure<sup>1</sup> of the Federal Energy Regulatory Commission (“Commission”), the California Independent System Operator Corporation (“CAISO”), Pacific Gas and Electric Company (“PG&E”), and Southern California Edison Company (“SCE”) (collectively, the “Applicants”) respectfully file this petition<sup>2</sup> (“Petition”) for approval of an uncontested settlement (the “Settlement Agreement”) among the Applicants and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, the “Six Cities”).<sup>3</sup> The Settlement Agreement resolves the issues presented in the Six Cities’ petition for review pending before the U.S. Court of Appeals for the District of Columbia Circuit

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<sup>1</sup> 18 C.F.R. § 385.207(a)(5).

<sup>2</sup> The Applicants proceed by way of a petition under Rule 207(a)(5) following the Commission’s guidance in *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285, P 32 (2005), and subsequent cases. *E.g.*, *Sw. Power Pool, Inc.*, 175 FERC ¶ 61,155, P 1 & n.1 (2021). Here, as in those orders, the Settlement Agreement does not settle a matter currently before the Commission in any existing Commission docket. Rather, the Settlement Agreement resolves issues presented in petitions for review before the U.S. Court of Appeals for the District of Columbia Circuit.

Should the Commission determine that approval of the Settlement Agreement is proper under Rule 602, the Applicants will supplement this filing to comply with Rule 602(c) (18 C.F.R. § 385.602(c)), the Chief Administrative Law Judge’s December 15, 2016 Notice to the Public, and any other applicable requirement.

<sup>3</sup> The Applicants and the Six Cities are collectively referred to in this Petition and in the Settlement Agreement as the “Settling Parties.”

("D.C. Circuit"), Case No. 20-1236 (the "Litigation").<sup>4</sup> In order to avoid the time and expense of further litigation, the Applicants respectfully request that the Commission issue an order accepting the Settlement Agreement as just and reasonable, without modification or condition.

## **I. COMMUNICATIONS**

The Applicants request that all correspondence, pleadings, and other communications concerning this filing be served upon the following individuals who should be included on the official service list in this proceeding:

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<sup>4</sup> This Petition is not intended to alter the terms of the Settlement Agreement. In the event of any conflict between the Petition and the terms of the Settlement Agreement, the Settlement Agreement will govern. Unless otherwise stated, capitalized terms used in the Petition have the meanings provided or incorporated by reference in the Settlement Agreement.

## **II. BACKGROUND**

The Settlement Agreement relates to litigation concerning Amendment No. 60 to the CAISO Tariff, in which the CAISO proposed revisions to the methodology for allocating costs related to the must-offer obligation under that Tariff. The proceedings on Amendment No. 60 to the CAISO Tariff have an extensive history before the Commission and are also the subject of petitions for review before the D.C. Circuit brought by the Six Cities and others.

The Applicants and the Six Cities each participated in Commission Docket No. ER04-835. The Six Cities, the CAISO, and SCE are parties to D.C. Circuit Case No. 20-1236 (consolidated with Case No. 20-1239).<sup>5</sup> As discussed below, the Settlement Agreement resolves certain issues and ongoing litigation among the Settling Parties related to the Litigation concerning Amendment No. 60 presented in the Six Cities' petition for review before the D.C. Circuit.

The Six Cities have authorized the Applicants to represent to the Commission that they do not oppose Commission acceptance of the Settlement Agreement as requested herein.

## **III. PETITION**

The Applicants respectfully request that the Commission approve the attached Settlement Agreement, without modification or condition, as a just and reasonable resolution of the Litigation. Acceptance of the Settlement Agreement will result in the resolution of the pending Litigation, saving of litigation expenses, and elimination of

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<sup>5</sup> Case No. 20-1239 is addressed in a separate petition for approval of an uncontested settlement agreement that the above-listed Applicants filed on August 13, 2021 in Docket No. ER21-2718-000. The Commission approved that settlement agreement, without modification, on October 21, 2021.

regulatory uncertainty. Nothing in the Settlement Agreement will prejudice or harm any other CAISO market participant, as the only commitments and obligations under the Settlement Agreement are those that will be borne by the Settling Parties thereto. A description of each significant section of the Settlement Agreement follows:

Section 2.1 of the Settlement Agreement explains that the purpose of the Settlement Agreement is to fully resolve all issues raised by the Six Cities in the Litigation before the D.C. Circuit.

Section 3.1 of the Settlement Agreement states that all issues raised by the Six Cities in the Litigation will be fully resolved by the Commission's acceptance of the Settlement Agreement and summarizes the structure of the Settlement Agreement.

Section 3.2 of the Settlement Agreement states that if and only if the Commission approves the Settlement Agreement without modification or condition, then, within seven Business Days after the date of expiration of all deadlines for rehearing or appeal of such Commission order, as applicable (such date of expiration being the "Settlement Effective Date"), the Six Cities will file motion(s) with the D.C. Circuit to dismiss the Litigation along with any other pending petition(s) for review filed by the Six Cities regarding any Commission orders issued in Commission Docket Nos. ER04-835, EL04-103, and EL14-67.

Section 3.3 of the Settlement Agreement states that if and only if the D.C. Circuit grants the motion(s) to dismiss described in Section 3.2 of the Settlement Agreement, then, within seven Business Days after the issuance of the latest of the D.C. Circuit's orders on the motion(s) to dismiss, the Six Cities will file a notice of withdrawal of all pending protests, requests for rehearing, or other pending pleadings in Commission

Docket No. ER04-835, and covenant not to file any further pleadings in Commission Docket No. ER04-835 after the Settlement Effective Date, except for pleadings to enforce the Settlement Agreement.

Section 3.4 of the Settlement Agreement states that once the Six Cities' notice of withdrawal described in Section 3.3 of the Settlement Agreement becomes effective, then the CAISO will issue Recalculation Settlement Statements that contain: (1) settlement charges reflecting Reliability Services Costs to the SCE Participating Transmission Owner in the amount of \$1,215,000; (2) settlement charges reflecting Reliability Services Costs to the PG&E Participating Transmission Owner in the amount of \$1,215,000; and (3) credits to the Six Cities in the total amount of \$2,430,000, distributed among the Six Cities in accordance with directions communicated by their counsel. The CAISO will make every effort, but will not be required, to issue such Recalculation Settlement Statements within thirty calendar days after the effectiveness of the Six Cities' notice of withdrawal described in Section 3.3 of the Settlement Agreement, and the CAISO will issue such Recalculation Settlement Statements no later than sixty calendar days after the effectiveness of the Six Cities' notice of withdrawal.

Section 3.5 of the Settlement Agreement states that the issuance of the Recalculation Settlement Statements described in Section 3.4 of the Settlement Agreement solely reflects a compromise by the Settling Parties to resolve the Litigation and will not serve as the basis for any future adjustments.

Section 3.6 of the Settlement Agreement states that within fourteen calendar days after the issuance of the Recalculation Settlement Statements described in

Section 3.4 of the Settlement Agreement, the CAISO will issue Invoices or Payment Advices reflecting the adjustments shown in the Recalculation Settlement Statements, with the result being that the Six Cities will receive a credit from CAISO in the total amount of \$2,430,000.

Section 3.7 of the Settlement Agreement states that if and only if the Commission approves the Settlement Agreement without modification or condition and the D.C. Circuit grants the Six Cities' motion(s) to dismiss as described in Sections 3.2 and 3.3 of the Settlement Agreement, then SCE will pass through to the City of Colton, California ("Colton") its proportionate share of SCE's net interest receipts for the period during which Colton paid SCE Reliability Services Tariff charges incorporating must-offer costs, consistent with SCE's pass-through of Colton's proportionate share of the principal amounts of refunds determined pursuant to orders issued in Commission Docket Nos. ER04-835, EL04-103, and EL14-67.

Section 4.1 of the Settlement Agreement states that the Settlement Agreement will become effective upon execution by Settling Parties, subject to the provisions of Article 3.

Section 5.1 of the Settlement Agreement states that the standard of review for any proposed change sought by any of the Settling Parties to the terms of the Settlement Agreement shall be the "public interest" application of the just and reasonable standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Fed. Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

Article 6 of the Settlement Agreement sets forth representations and warranties of the Settling Parties, and Article 7 sets forth general terms and conditions of the Settlement Agreement.

**V. DOCUMENT SUBMITTED WITH THIS PETITION**

The following document is included as an attachment to this Petition:

Attachment A – Settlement Agreement

**VI. CONCLUSION**

The Settlement Agreement would fully resolve all of the issues raised in the Litigation. Commission approval of the Settlement Agreement will result in the resolution of pending litigation, saving of litigation expenses, and elimination of regulatory uncertainty. The Settlement Agreement will not prejudice or harm any entity. As a result, Commission acceptance of the Settlement Agreement will have a just and reasonable outcome. The Applicants therefore respectfully request that the Commission accept the Settlement Agreement without modification or condition.

**[Signatures on the Following Page]**

Respectfully submitted,

/s/ Michael Kunselman

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/s/ Daniel J. Shonkwiler

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Deputy General Counsel  
Daniel J. Shonkwiler  
Assistant General Counsel  
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/s/ M. Grady Mathai-Jackson

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*Counsel for Pacific Gas and  
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*Counsel for the California Independent  
System Operator Corporation*

/s/ Ainsley Carreno

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*Counsel for Southern California Edison  
Company*

Dated January 31, 2022



**ATTACHMENT A**

**SETTLEMENT AGREEMENT**

## **SETTLEMENT AGREEMENT**

This settlement agreement (“Settlement Agreement”) is entered into by the California Independent System Operator Corporation (“CAISO”), the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, the “Six Cities”), Pacific Gas and Electric Company (“PG&E”), and Southern California Edison Company (“SCE”) (collectively, the “Settling Parties,” and each individually, a “Settling Party”).

### **TERMS**

The terms of this Settlement Agreement are as follows:

#### **ARTICLE 1**

##### **DEFINITIONS**

1.1 All defined terms used in this Settlement Agreement and not defined herein have the meanings set forth in the CAISO Tariff as of the date hereof.

#### **ARTICLE 2**

##### **PURPOSE**

2.1 The purpose of this Settlement Agreement is to fully resolve all issues raised by the Six Cities in *City of Anaheim, et al. v. Federal Energy Regulatory Commission*, U.S. Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) No. 20-1236 (the “Litigation”), thereby avoiding the time and expense of further litigation.

2.2 The Settlement Agreement shall be submitted to the Federal Energy Regulatory Commission (the “Commission”) for its approval.

## **ARTICLE 3**

### **AGREEMENT OF THE SETTLING PARTIES**

3.1 All issues raised by the Six Cities in the Litigation will be fully resolved by the Commission's approval of this Settlement Agreement and the performance thereof by the Settling Parties. In accordance with the process set forth in the remaining provisions in this Article 3, the Settlement Agreement provides that the CAISO will issue SCE and PG&E charges of \$1,215,000 each and the Six Cities corresponding credits totalling \$2,430,000, in exchange for the Six Cities withdrawing the Litigation.

3.2 If and only if the Commission approves the Settlement Agreement without modification or condition, then, within seven Business Days after the date of expiration of all deadlines for rehearing or appeal of such Commission order, as applicable (such date of expiration being the "Settlement Effective Date"), the Six Cities will file motion(s) with the D.C. Circuit to dismiss the Litigation along with any other pending petition(s) for review filed by the Six Cities regarding any Commission orders issued in Commission Docket Nos. ER04-835, EL04-103, and EL14-67.

3.3 If and only if the D.C. Circuit grants the motion(s) to dismiss described in Section 3.2 of this Settlement Agreement, then, within seven Business Days after the issuance of the latest of the D.C. Circuit's orders on the motion(s) to dismiss, the Six Cities will file a notice of withdrawal of all pending protests, requests for rehearing, or other pending pleadings in Commission Docket No. ER04-835, and covenant not to file any further pleadings in Commission Docket No. ER04-835 after the Settlement Effective Date, except for pleadings to enforce the Settlement Agreement.

3.4 Once Six Cities' notice of withdrawal described in Section 3.3 of this Settlement Agreement becomes effective, the CAISO will issue Recalculation Settlement Statements that contain: (1) settlement charges reflecting Reliability Services Costs to the SCE Participating Transmission Owner in the amount of \$1,215,000; (2) settlement charges reflecting Reliability Services Costs to the PG&E Participating Transmission Owner in the amount of \$1,215,000; and (3) credits to the Six Cities in the total amount of \$2,430,000, distributed among the Six Cities in accordance with directions communicated by their counsel. The CAISO will make every effort, but will not be required, to issue such Recalculation Settlement Statements within thirty calendar days after the effectiveness of the Six Cities' notice of withdrawal described in Section 3.3 of the Settlement Agreement, and the CAISO will issue such Recalculation Settlement Statements no later than sixty calendar days after the effectiveness of the Six Cities' notice of withdrawal.

3.5 The issuance of the Recalculation Settlement Statements described in Section 3.4 of this Settlement Agreement solely reflects a compromise by the Settling Parties to resolve the Litigation and will not serve as the basis for any future adjustments.

3.6 Within fourteen calendar days after the issuance of the Recalculation Settlement Statements described in Section 3.4 of this Settlement Agreement, the CAISO will issue Invoices or Payment Advices reflecting the adjustments shown in the Recalculation Settlement Statements, with the result being that the Six Cities will receive a credit from CAISO in the total amount of \$2,430,000.

3.7 If and only if the Commission approves the Settlement Agreement without modification or condition and the D.C. Circuit grants the Six Cities' motion(s) to dismiss as described in Sections 3.2 and 3.3 of this Settlement Agreement, then SCE will pass through to the City of Colton, California ("Colton") its proportionate share of SCE's net interest receipts for the period during which Colton paid SCE Reliability Services Tariff charges incorporating must-offer costs, consistent with SCE's pass-through of Colton's proportionate share of the principal amounts of refunds determined pursuant to orders issued in Commission Docket Nos. ER04-835, EL04-103, and EL14-67.

#### **ARTICLE 4**

##### **EFFECTIVE DATE**

4.1 Subject to the provisions of Article 3, this Settlement Agreement will become binding on the Settling Parties upon execution by the Settling Parties.

#### **ARTICLE 5**

##### **STANDARD OF REVIEW**

5.1 The standard of review for any proposed change sought by any of the Settling Parties to the terms of this Settlement Agreement shall be the "public interest" application of the just and reasonable standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). With respect to proposed changes to the terms of the Settlement Agreement sought by a third party other than a Settling Party or the Commission acting *sua sponte*, the standard of review shall be the ordinary just and reasonable standard.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES**

Each Settling Party represents and warrants to the other Settling Parties that:

it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

it has all regulatory authorizations necessary for it to legally perform its obligations as set forth under this Settlement Agreement;

the execution, delivery, and performance of this Settlement Agreement 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;

this Settlement Agreement is a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; and

there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Settlement Agreement.

## **ARTICLE 7**

### **GENERAL TERMS AND CONDITIONS**

7.1 *Negotiated Compromise Subject to Commission Approval.* This Settlement Agreement represents a negotiated compromise resolved in the public interest and is expressly conditioned upon the approval of all provisions hereof by the Commission without material condition or modification. If the Commission fails to approve this Settlement Agreement in its entirety, without material condition or

modification, this Settlement Agreement shall not become effective and shall be null and void.

7.2 *No Precedential Value.* Except as explicitly set forth herein, no Settling Party will be deemed to have approved, accepted, agreed to, or consented to (i) any principle or position in this proceeding or to have prejudiced positions taken or that may be taken in this or any other proceedings, nor (ii) any principle or policy related to the rates, charges, classifications, terms, conditions, principles, or issues associated with the Settlement Agreement. This Settlement Agreement will have no precedential value, will not be cited as precedent, and will not be deemed to bind any entity (except as otherwise expressly provided for herein) in any proceeding, including any Commission or court proceeding, except in any proceeding to enforce the Settlement Agreement. The Settlement Agreement will not be deemed to be a “settled practice” as that term was interpreted and applied in *Public Service Commission of the State of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980), or a “long standing practice” as that term was used in *Columbia Gas Transmission Corp. v. FERC*, 628 F.2d 578 (D.C. Cir. 1979).

7.3 *Entire and Nonseverable Agreement.* This Settlement Agreement constitutes the full and complete agreement of the Settling Parties with respect to the subject matter addressed herein and supersedes all prior negotiations, understandings, and agreements, whether written or oral, between the Settling Parties with respect to the subject matter addressed herein, including, but not limited to, any “TermSheets” exchanged among the Settling Parties. The various provisions of the Settlement Agreement are not severable, and none of the provisions of the Settlement Agreement

shall become operative unless and until the Settlement Agreement becomes effective in accordance with Section 4.1 hereof.

7.4 *Settlement Privilege.* All discussions among the Settling Parties related to this Settlement Agreement have been conducted with the explicit understanding and agreement, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, that all offers of settlement and discussions relating thereto are and shall be privileged, shall be without prejudice to the positions of any party or participant presenting any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding or otherwise, except to the extent of enforcing the terms and conditions of the Settlement Agreement.

7.5 *Support for Settlement Agreement/No Waiver of Rights.* The Settling Parties will support this Settlement Agreement and will cooperate in securing Commission approval and implementation of the Settlement Agreement. The Six Cities agree to intervene in the Commission proceeding seeking approval of this Settlement Agreement and to indicate that they support approval of the Settlement Agreement. The Settling Parties hereby waive any and all rights to seek rehearing or judicial review of any Commission order(s) approving the Settlement Agreement without modification or condition. However, if the Commission approves the Settlement Agreement with modifications or conditions, any Settling Party may seek rehearing or judicial review of the Commission order(s) approving the Settlement Agreement solely to challenge the Commission's imposition of such modifications or conditions in order to preserve the terms and conditions of the Settlement Agreement as filed.



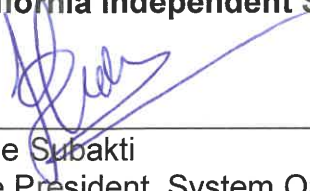
7.6 *Successors, Assigns, and Purchasers.* This Settlement Agreement shall be binding on and shall inure to the benefit of the successors, assigns, or purchasers for value of the stock or assets of all Settling Parties.

7.7 *Headings.* Headings in this Settlement Agreement are included for convenience only and are not intended to have any significance in interpretation of the Settlement Agreement.

7.8 *Governing Law.* This Settlement Agreement and the rights and duties of the Settling 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.

**[SIGNATURES APPEAR ON THE PAGES THAT FOLLOW]**

**California Independent System Operator Corporation**



\_\_\_\_\_  
Dede Subakti  
Vice President, System Operations

Date: Jan 13, 2022

**City of Anaheim, California**

\_\_\_\_\_  
Robert Fabela  
City Attorney

Date: \_\_\_\_\_

**City of Azusa, California**

By: \_\_\_\_\_  
Robert Gonzales  
Mayor

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Jeffrey Lawrence Cornejo, Jr.  
City Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney


Date: \_\_\_\_\_

**California Independent System Operator Corporation**

\_\_\_\_\_  
Dede Subatki  
Vice President, System Operations

Date: \_\_\_\_\_

**City of Anaheim, California**

  
\_\_\_\_\_  
Robert Fabela  
City Attorney

Date: 1/24/22 \_\_\_\_\_

**City of Azusa, California**

By: \_\_\_\_\_  
Robert Gonzales  
Mayor

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Jeffrey Lawrence Cornejo, Jr.  
City Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

Date: \_\_\_\_\_

**California Independent System Operator Corporation**

\_\_\_\_\_  
Dede Subatki  
Vice President, System Operations


Date: \_\_\_\_\_

**City of Anaheim, California**

\_\_\_\_\_  
Robert Fabela  
City Attorney

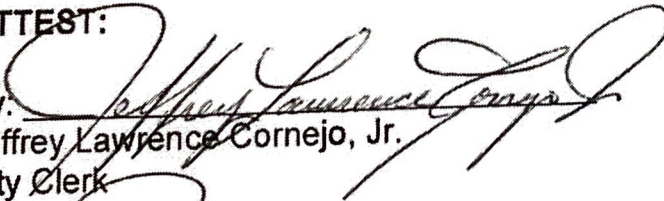
Date: \_\_\_\_\_

**City of Azusa, California**

By:   
Robert Gonzales  
Mayor

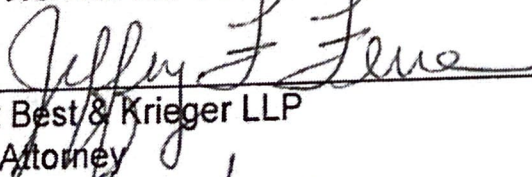
Date: 1/27/2022

**ATTEST:**

By:   
Jeffrey Lawrence Cornejo, Jr.  
City Clerk

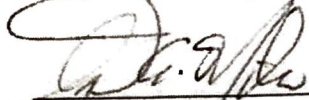
Date: January 27, 2022

**APPROVED AS TO FORM:**

By:   
Best Best & Krieger LLP  
City Attorney

Date: 1/20/22

**City of Banning, California**



\_\_\_\_\_  
Thomas Miller  
Electric Utility Director  
On behalf of the City of Banning, California

Date: 1-12-22\_\_\_\_\_

**City of Colton, California**

\_\_\_\_\_  
William R. Smith  
City Manager  
On behalf of the City of Colton, California


Date: \_\_\_\_\_

**City of Banning, California**

\_\_\_\_\_  
Thomas Miller  
Electric Utility Director  
On behalf of the City of Banning, California

Date: \_\_\_\_\_

**City of Colton, California**

  
\_\_\_\_\_  
William R. Smith  
City Manager  
On behalf of the City of Colton, California

Date: 20 Jul 2002

**City of Pasadena, California**

By: *Cynthia Kurtz*  
Cynthia Kurtz  
Interim City Manager

Date: 1/19/22

Approved as to form:

By: *Lisa Hosey*  
Lisa Hosey  
Assistant City Attorney

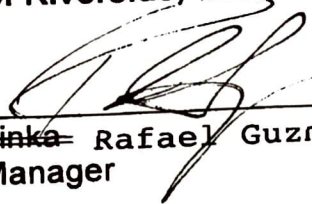
Date: 1/19/22

Approved as to form:

By: *Bonnie S. Blair*  
Bonnie S. Blair  
Thompson Coburn LLP

Date: 1/20/22

**City of Riverside, California**

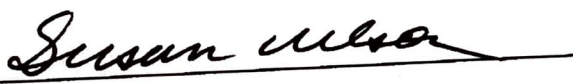
By:   
~~Al Zelinka~~ Rafael Guzman, Assistant City Manager  
for City Manager

Date: January 20, 2022

Attest:   
By: \_\_\_\_\_  
City Clerk

Date: January 20, 2022

Approved as to form:

By:   
Susan Wilson  
Assistant City Attorney

Date: 1-12-22

**Pacific Gas and Electric Company**

\_\_\_\_\_  
Candice Chan  
Director, Energy Contract Management and Settlements

Date: \_\_\_\_\_



**City of Riverside, California**

By: \_\_\_\_\_  
Al Zelinka  
City Manager

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
Susan Wilson  
Assistant City Attorney

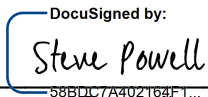
Date: \_\_\_\_\_

**Pacific Gas and Electric Company**

  
\_\_\_\_\_  
Candice Chan  
Director, Energy Contract Management and Settlements

Date: 01/10/2022

**Southern California Edison Company**

DocuSigned by:  


---

Steven Powell  
President and CEO

Date: 1/11/2022