

NONDISCLOSURE AGREEMENT

RECITALS

Pursuant to Section 9 of the Combined Heat and Power (CHP) Program Settlement Agreement (“Settlement”) adopted by the California Public Utilities Commission (“CPUC”) Decision (“D.”) _____, the CPUC has directed IOU to provide for a CHP Auditor.

Pursuant to Section 9.1.2 of the Settlement, the purpose and role of a CHP Auditor is to be an informed advocate for CHP interests regarding the implementation of the CHP Program. CHP Auditor(s) will only be designated to conduct a CHP Program audit if, upon written notice the IOU does not, or anticipates it will not, meet any of the following: a MW Target established by the Settlement; a GHG Emissions Reduction Target established by the Settlement; any MW Target or GHG Emissions Reduction target established by the CPUC after the Settlement Effective Date (collectively, “Target” or “Targets”).

Pursuant to Section 9.1.4.1 of the Settlement the CHP Auditor, before the CPUC, and all divisions thereof, and before an IOU’s procurement review group (PRG) report on the IOU’s conduct of and procurement decisions arising from a particular IOU Request for Offer (RFO), may use any information, including Confidential Information obtained by the CHP Auditor from the IOU.

On _____, IOU provided written notice to those CHP Parties on the CPUC service list [docket] that it will not meet, or anticipates that it will not meet a Target, associated with a particular RFO.

Except as otherwise provided in the Settlement, any Confidential Information (as defined below) that is provided to the CHP Auditor during the audit process will be kept confidential by the CHP Auditor and specified support staff.

AGREEMENT

NOW, THEREFORE, in consideration of these recitals and the agreements contained herein, the Parties, intending to be legally bound, agree as follows:

THIS NON-DISCLOSURE AGREEMENT (this “Agreement”) is made as of _____, 201_ (“Effective Date”) and entered into between _____ (“IOU”), and _____ (“CHP Auditor”).

In consideration of the mutual covenants set forth below, the parties hereby agree as follows:

1. “Confidential Information” shall mean, collectively, all agreements and associated documents (regardless of whether such agreement(s) and associated documents are executed or in draft form), and technical, financial and business information of any kind whatsoever including, where appropriate and without limitation, all data, specifications, technology, ideas, know-how, improvements, maps, technical drawings, inventions (whether or not patentable or copyrightable), trade secrets, that are provided

by or on behalf of IOU, and without limiting the foregoing, any other information as well as any and all tangible and intangible embodiments thereof of any kind whatsoever that would reasonably be considered the confidential or proprietary information of IOU, its parent company, its subsidiaries or affiliates and/or third parties who have licensed or provided such information to IOU given the nature of the information or manner of disclosure, in each case disclosed by or on behalf of IOU to CHP Auditor or obtained by CHP Auditor through observation or examination of the foregoing, regardless of whether such information or embodiment has been marked as confidential or proprietary. Confidential Information shall not include information that:

- (a) has been publicly known prior to disclosure by IOU of such information to CHP Auditor;
 - (b) has become publicly known, without fault on the part of CHP Auditor or, subsequent to disclosure by IOU of such information to CHP Auditor;
 - (c) has been or is received by CHP Auditor at any time on a non-confidential basis from a source, other than IOU, lawfully having possession of and the right to disclose such information; or
 - (d) has been independently developed by CHP Auditor, which may include the written records of CHP Auditor, without use of Confidential Information.
2. Pursuant to Section 9.5.3 of the Settlement, at the initiation of the CHP audit for the subject RFO the CHP Auditor certifies that he/she is not currently engaged, and will not engage for a period of twenty four (24) months beginning on the date of delivery of Confidential Information associated with the subject CHP RFO directly in: (a) a transaction for the generation, purchase, sale or marketing of electrical energy, capacity, and/or related products, including but not limited to electricity related financial products (meaning derivatives, swaps or options), at wholesale in the State of California, (b) a transaction for the purchase, sale or marketing at wholesale of natural gas commodity, assets, including but not limited to natural gas related financial products, for electric generation purposes in the State of California, (c) preparing bids and/or bidding strategies, bidding on, or purchasing of power or power plants in the State of California (or the substantive supervision of any employee(s) whose duties include such responsibilities with regard to those activities, subject to the following Section 3), or (d) mergers and/or acquisitions of entities that own or control electric generation and/or natural gas assets or commodity associated with electric generation in the State of California, (e) consulting with or advising others in connection with any activity set forth in subparagraphs (a), (b), (c) or (d).
3. As provided in Section 9.5.4 of the Settlement, the CHP Auditor(s) may not share the Confidential Information with any third party, including any co-worker or employee, except to provide necessary technical, administrative and clerical support of no more than three (3) individuals for the Auditor's work; provided that such party is also subject to this Agreement. The CHP Auditor may directly supervise employees, office

colleagues or co-workers, but shall establish rules to eliminate any substantive supervision of activities identified in Section 2, above. A supervisor, employee, office colleague or co-worker of a CHP Auditor shall not have any substantive involvement in reviewing, providing guidance to or reviewing the results of the analysis derived from the Confidential Information

4. In the course of an audit, IOU may disclose certain Confidential Information to CHP Auditor. Each such disclosure shall be subject to the terms and conditions of this Agreement, provided that the limitations on engaging in specified activities in Section 2 shall begin on the date of initial delivery of any Confidential Information.
5. Subject to Sections 9.1.4.1, 9.1.4.2 and 9.1.4.3 of the Settlement, the CHP Auditor shall not disclose Confidential Information. CHP Auditor shall hold the Confidential Information in strict confidence and shall not, subject to Sections 9.1.4.1, 9.1.4.2 and 9.1.4.3 of the Settlement, directly or indirectly, without the prior written consent of IOU, disclose the Confidential Information to any third party other than CPUC Commissioners, Staff or Procurement Review Group (“PRG”) members. Moreover, disclosure of Confidential Information to the CPUC Commissioners, Staff or PRG members shall be accompanied by an appropriate declaration concerning its confidentiality. IOU acknowledges that CHP Auditor shall have the right to convey Confidential Information to CPUC Commissioners, Staff and PRG members. CHP Auditor shall keep the Confidential Information in a safe and secure location.
6. Notwithstanding the foregoing, in the event that CHP Auditor becomes legally compelled by notice of deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process to disclose any of the Confidential Information, CHP Auditor shall give IOU prompt prior written notice of such requirement so that IOU may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement and if such protective order or other remedy is not obtained, or IOU waives compliance with the terms hereof, CHP Auditor agrees to provide only that limited portion of the Confidential Information that it is required by the legal request and to ensure that all Confidential Information that is so disclosed will be accorded confidential treatment. Prior to disclosure, CHP Auditor shall work with IOU to determine whether or not such information shall be marked confidential before being disclosed.
7. When the Confidential Information is no longer needed for the purpose of auditing the CHP RFO associated with a Target or due to a violation of this Agreement, the IOU may request in writing and the CHP Auditor shall promptly return all tangible items relating to Confidential Information, including all written material, photographs, models, compounds, compositions and the like made available or supplied by IOU to CHP Auditor, and all copies and derivatives thereof. CHP Auditor agrees that all Confidential Information shall, together with any copies, reproductions and other records, thereof, in any form, and all information and materials developed by CHP Auditor therefrom, be returned to IOU or destroyed by CHP Auditor, as IOU shall instruct, when no longer needed for the performance of CHP Auditor’s services or due

to a violation of this Agreement. CHP Auditor shall provide IOU with a written certification of return or destruction signed by the CHP Auditor.

8. As between IOU and CHP Auditor, IOU's Confidential Information will remain the property of IOU. Nothing contained in this Agreement will be construed as obligating IOU to disclose Confidential Information to CHP Auditor, or as granting to or conferring on CHP Auditor, expressly or by implication, any rights to use the Confidential Information other than in the CHP Auditor's conduct of his/her duties under this Agreement, or pursuant to provisions of the Settlement, including Sections 9.1.4.1, 9.1.4.2 and 9.1.4.3 of the Settlement.
9. CHP Auditor is aware of the restrictions imposed by the United States securities laws on the purchase or sale of securities by any person who has received material, non-public information from the issuer of such securities.
10. Subject to Sections 9.1.4.1, 9.1.4.2 and 9.1.4.3 of the Settlement, CHP Auditor will not disclose any information or make any news release, advertisement, public communication, response to media inquiry or other public statement regarding this Agreement, the Confidential Information, any transactions, potential transactions, or bids contained in the Confidential Information and/or the potential commercial relationship between the parties or CHP Auditor's performance hereunder without the prior written consent of IOU.
11. This Agreement shall last until and cover Confidential Information received by the CHP Auditor for five (5) years following the Effective Date. Notwithstanding the foregoing, all of the CHP Auditor's duties of confidentiality and non-use shall, with respect to Confidential Information, continue until such time that Confidential Information is no longer deemed confidential by IOU or falls within one of the exceptions set forth in Section 1.
12. CHP Auditor may not transfer or assign all or part of this Agreement, whether by operation of law or otherwise, without the prior written consent of IOU.
13. IOU makes no express or implied warranty or representation relating to the Confidential Information (including as to completeness) or its use, provided that, consistent with Section 9.4.2 of the Settlement, at a minimum the Confidential Information shall include all information provided to the subject RFO's Independent Evaluator. Notwithstanding anything to the contrary in this Settlement, the CHP Auditor is not entitled to review any proprietary models used by an IOU in an RFO, provided that all inputs and outputs of the model used in the RFO shall be provided to the CHP Auditor. IOU provides the Confidential Information on an "as is" basis and CHP Auditor's use of the Confidential Information shall be at its own risk.
14. This Agreement represents the entire agreement between the parties regarding the subject matter hereof and shall supersede all previous communications, representations, understandings, acknowledgements and agreements, whether oral or written, by or

between the parties with respect to Confidential Information, whether heretofore or hereafter disclosed between the parties.

15. No change, modification, extension, termination or waiver of this Agreement, or any of the provisions herein contained, shall be valid unless made in writing and signed by a duly authorized representative of the IOU and by the CHP Auditor.
16. CHP Auditor shall be responsible for any breach of the provisions of this Agreement by it and its support staff pursuant to Section 3. In the event that CHP Auditor learns of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by the CHP Auditor or its support staff or reasonably believes such use, disclosure or breach has occurred, CHP Auditor shall immediately notify IOU in writing, and shall cooperate with IOU in every reasonable way to help IOU regain possession of such Confidential Information and to prevent its further unauthorized use.
17. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction. Any controversy or claim arising out of or in any way relating to this Agreement which cannot be amicably settled without court action shall be litigated in a California State Court of competent jurisdiction; or if jurisdiction over the action cannot be obtained in a California State Court, in a Federal Court of competent jurisdiction situated in the State of California.
18. CHP Auditor understands and agrees that, because of the unique nature of the Confidential Information, IOU and/or CHP RFO Participants will suffer irreparable harm if CHP Auditor fails to comply with any of its obligations under this Agreement, and monetary damages will be inadequate to compensate IOU for such breach. Accordingly, CHP Auditor agrees that IOU shall, in addition to any other remedies available to IOU at law or in equity, be entitled to injunctive relief to enforce the terms of this Agreement without posting a bond or other undertaking. It is further understood and agreed that no failure or delay by IOU in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
19. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
20. This Agreement has been negotiated by both parties and shall not be strictly construed against either party.

21. This Agreement may be executed in one or more original or faxed counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Intending to be legally bound, each of the undersigned Parties has executed this Agreement, which is effective on the last date indicated below.

Name of IOU
By: _____
Printed: _____
Title: _____
Date: _____

CHP Auditor
By: _____
Printed: _____
Title: _____
Date: _____