

SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



ITEM  
12.3  
(ID # 6408)

**MEETING DATE:**

Tuesday, February 27, 2018

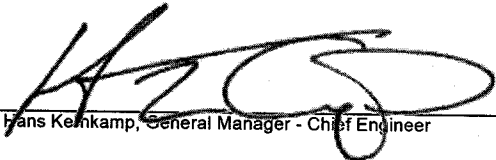
**FROM :** DEPARTMENT OF WASTE RESOURCES:

**SUBJECT:** DEPARTMENT OF WASTE RESOURCES: Approval of Termination Agreement with Southern California Edison of the California Renewable Energy Small Tariff Excess Agreement, Badlands Gas-to-Energy, District 5 [\$0 – Department of Waste Resources Enterprise Funds]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the attached Termination Agreement with Southern California Edison; and
2. Authorize the General Manager - Chief Engineer of the Department of Waste Resources to execute the Termination Agreement on behalf of the County.

**ACTION:** Policy

  
Hans Kemkamp, General Manager - Chief Engineer 2/15/2018

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**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Perez, seconded by Supervisor Washington and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley  
Nays: None  
Absent: None  
Date: February 27, 2018  
xc: Waste

Kecia Harper-Ihem  
Clerk of the Board

By:   
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,  
STATE OF CALIFORNIA**

**BACKGROUND:**

**Summary**

On February 10, 2009 (Item 12.1) the Board of Supervisors approved a 10 year California Renewable Energy Small Tariff Excess Agreement (PPA) under which Southern California Edison (SCE) would purchase the power from the Badlands Landfill Gas-to-Energy Facility (Facility). The term of the PPA went into effect on June 1, 2009 and is set to expire on June 30, 2019.

The Facility was permanently shut down on September 30, 2017 to comply with the South Coast Air Quality Management District (SCAQMD) Rule 1110.2. SCAQMD Rule 1110.2 was amended on June 3, 2016 to lower the emission threshold for internal combustion engines operating on biogas effective January 1, 2017. The Department paid a compliance flexibility fee to operate the first three quarters of 2017 while analyzing all options for reducing the emissions from the engine to meet the lower permissible emission limits; however, there were no economically feasible options found and ultimately resulted in the decision to shut the system down at the end of the third quarter 2017.

The Termination Agreement would terminate the PPA effective February 28, 2018 (Termination Effective Date). Under the Termination Agreement, the County (1) would have to permanently shut down and decommission the Facility within 120 days of the Termination Effective Date, and (2) would be restricted from selling or entering into a contract to sell all or any portion of the Facility or the Product (as defined in the Termination Agreement) attributable to the Facility for a period of 2 years following the Execution Date of the Termination Agreement, with certain exceptions, including providing SCE with the right of first refusal, making the transferee agree to be bound by such terms pursuant to written agreement approved by SCE, or having the transferee use such parts of the Facility as spare or replacement parts for existing facilities.

<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> Waste Resources Enterprise Funds			<b>Budget Adjustment: No</b>	
			<b>For Fiscal Year: 17/18</b>	

**C.E.O. RECOMMENDATION: APPROVE**

**Impact on Residents and Businesses**

This action has no impact on residents or businesses.

**SUPPLEMENTAL:**

**Additional Fiscal Information**

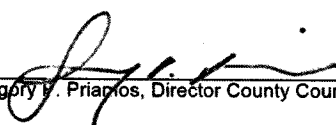
The termination agreement does not impact sources of funding. The engine can no longer operate due to regulatory issues. Terminating the agreement will allow the county to sell off the equipment (subject to the aforementioned restrictions in the Termination Agreement) in an

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earlier time frame which may allow for a higher value than if the equipment sat unused until the PPA runs out in 2019.

**ATTACHMENTS**

**ATTACHMENT A.** Termination Agreement with Southern California Edison

  
\_\_\_\_\_  
Gregory V. Priaplos, Director County Counsel 2/15/2018

# Southern California Edison

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WHEN DOCUMENT IS FULLY EXECUTED RETURN

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010  
Post Office Box 1147, Riverside, Ca 92502-1147

Thank you.

## TERMINATION AGREEMENT

This Termination Agreement ("Termination Agreement") is entered into between the County of Riverside, a political subdivision of the State of California, on behalf of its Department of Waste Resources (formerly known as the Riverside County Waste Management Department) ("Producer") and Southern California Edison Company, a California corporation ("SCE"). SCE and Producer are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties". Capitalized terms used and not otherwise defined in this Termination Agreement shall have the meanings ascribed to such terms in the Agreement (as that term is defined below).

### RECITALS

- A. SCE and Producer are Parties to that certain California Renewable Energy Small Tariff Excess Agreement, dated as of March 31, 2009 (the "Complete Agreement"), pursuant to which, among other things, Producer sells Excess electric energy, and all associated Green Attributes, Capacity Attributes, and Resource Adequacy Benefits, produced by the Renewable Generating Facility (collectively the "Product"), directly to SCE and SCE pays Producer for such Product. The contract Term of the Agreement expires on June 30, 2019, or ten (10) Term Years from Initial Operation, which occurred on June 1, 2009. Appendix B of the Complete Agreement contains the Interconnection Facilities Agreement between SCE and Producer (the "Interconnection Agreement"). The Complete Agreement, excluding the Interconnection Agreement, is hereinafter referred to as the "Agreement".
- B. The Complete Agreement defines the term "Producer" as the "Riverside County Waste Management Dept. ('Producer'), a Department of the County of Riverside, California", which is the entity that entered into the Complete Agreement. However, the entity that was and is legally bound by the Complete Agreement and authorized to terminate it, was and is the County of Riverside, a political subdivision of the State of California.
- C. On August 28, 2017, Producer Notified SCE that it intends to permanently shut down the Renewable Generating Facility on October 1, 2017, and requested mutual termination of the Agreement from SCE. The Parties mutually relinquished SCE's role as Producer's scheduling coordinator effective on December 6, 2017 at 11:59:59 pm Pacific Time.
- D. The Parties now desire to mutually terminate the Agreement, subject to the terms and conditions set forth herein. Termination of the Interconnection Agreement is not addressed by this Termination Agreement.

### AGREEMENT

In consideration of the foregoing recitals and the following promises and conditions, the Parties hereby agree:

1. Termination of the Agreement

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# Southern California Edison

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The Agreement shall be terminated (the "Termination") at 11:59:59 pm Pacific Time on February 28, 2018 (the "Termination Effective Date").

## 2. Shut-Down and Decommissioning

(a) Producer shall:

- (i) On or before the Termination Effective Date, Producer shall permanently disconnect and shut down the Renewable Generating Facility, cease all exports of electricity from the Renewable Generating Facility to the grid, and cease all service from the Renewable Generating Facility to the host facility (the "Shut-Down"); and
- (ii) Within 120 days of the Termination Effective Date, dismantle and permanently disable the Renewable Generating Facility (the "Decommissioning").

(b) Notwithstanding any other provisions of this Termination Agreement or the Agreement, the Parties understand and agree that Producer is solely responsible for any applicable legal and regulatory requirements associated with the Shut-Down and Decommissioning of the Renewable Generating Facility.

## 3. Interconnection Agreement

Producer and SCE acknowledge that the Interconnection Agreement will terminate in accordance with the process and procedures set forth in the Interconnection Agreement and related tariffs. Producer shall be responsible for any payments due in connection with the termination of the Interconnection Agreement and for completing, in coordination with SCE, any and all actions required in connection with such termination.

## 4. Indemnification

(a) Producer shall defend, save harmless and indemnify SCE and the directors, officers, employees, and agents of SCE against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, penalty, fine, liability, damage, claim, third-party claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation) arising out of or resulting from (i) Producer's obligations under this Termination Agreement, (ii) the Shut-Down and Decommissioning of the Renewable Generating Facility, and (iii) any subsequent maintenance of the Renewable Generating Facility and the Site. This indemnity applies notwithstanding SCE's active or passive negligence. However, SCE will not be indemnified by Producer for its loss, liability, damage, claim, cost, charge, demand or expense to the extent caused by SCE's gross negligence or willful misconduct.

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- (b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, penalty, fine, liability, damage, claim, cost, charge, demand or expense arising out of or in connection with any breach made by the releasing Party of its representations, warranties and covenants set forth in this Termination Agreement.

## 5. Retention of Claims; Limitations on Third Party Sales

The Parties each retain all rights, remedies and claims which have accrued as of the Termination Effective Date; provided, however, neither Producer nor Producer's affiliates may sell, or enter into a contract to sell all or any portion of the Product, including but not limited to all electric energy, Green Attributes, Capacity Attributes, or Resource Adequacy Benefits, generated by, associated with or attributable to a generating facility installed at the Site to any party, including SCE, for a period of two (2) years following the Execution Date (the "Restricted Period").

This prohibition on contracting and sale will not apply with respect to any third party buyer, other than SCE, if before entering into such contract or making a sale to a party other than SCE, Producer or Producer's affiliate provides SCE with a written offer to sell the Excess electric energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits to SCE at the Product Price and on other terms and conditions materially similar to the terms and conditions contained in the Agreement and SCE fails to accept such offer within forty-five (45) days after SCE's receipt thereof.

Neither Producer nor Producer's Affiliates may sell or transfer the Renewable Generating Facility, or any part thereof, or land rights or interests in the Site (including the Interconnection Agreement) (collectively, "Assets") during the Restricted Period so long as the limitations contained in this Section 5 apply, unless the transferee (i) agrees to be bound by the terms set forth in this Section 5 pursuant to a written agreement approved by SCE, or (ii) uses the Assets as spare or replacement parts for existing facilities.

Producer shall indemnify and hold SCE harmless from all benefits lost and other damages sustained by SCE as a result of any breach of the covenants contained within this Section 5.

## 6. Representations and Warranties

- (a) Each Party warrants and represents that:
  - (i) The Party relies wholly on its own judgment in executing this Termination Agreement, and the Party has not been influenced by any statement made by or on behalf of the other Party to this Termination Agreement (excluding the warranties in this Section 6);
  - (ii) The Party has been fully informed and has full knowledge of the terms, conditions, and effects of this Termination Agreement;

# Southern California Edison

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- (iii) The Party has the full and complete authority to enter into this Termination Agreement and to execute any and all documents required pursuant to this Termination Agreement;
  - (iv) The Parties negotiated the terms and conditions of this Termination Agreement through legal counsel, at arms-length, and with equal bargaining power; and
  - (v) The Party has all right, title and/or interest in and to the Agreement, including the authority to terminate and assign the Agreement, and that no other person or entity has any right, title or interest in or to the Agreement such that such person or entity could interfere with the Party's ability to terminate or assign the Agreement or to enter into this Termination Agreement.
- (b) Producer represents and warrants that:
- (i) The Recitals are true, accurate and complete, and do not omit any material fact.
  - (ii) Producer has all right, title and/or interest in and to the Renewable Generating Facility, including the authority to Shut-Down the Renewable Generating Facility, and that no other person or entity has any right, title or interest in or to the Generating Facility that could limit or interfere with Producer's ability to enter into this Termination Agreement; and
  - (iii) Producer's desire to Shut-Down the Renewable Generating Facility is caused by Producer's inability to meet new emission thresholds required under South Coast Air Quality Management District Rule 1110.2.

## 7. Notice

All notices, requests, demands or other communications made in connection with this Termination Agreement shall be in writing and shall be deemed to have been duly given on the date delivered, if delivered personally or email to the persons identified below or three (3) days after mailing in the U.S. mail if mailed by certified or registered mail, postage prepaid, return receipt requested, addressed as follows, or one (1) business day after mailing by overnight courier, addressed as follows:

- (a) If to SCE, in accordance with the Complete Agreement; and
- (b) If to Producer, to:

Riverside County Department of Waste Resources  
14310 Frederick Street  
Moreno Valley, CA 92553  
Attn: General Manager – Chief Engineer.

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## 8. MISCELLANEOUS.

- (a) Reservation of Rights. Except as otherwise provided in this Termination Agreement, each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.
- (b) Legal Effect. Except as expressly modified as set forth herein, the Agreement remains unchanged. Each of the Parties hereby represents and warrants that the representations contained in the Agreement are true on and as of the date hereof as if made by the Party on and as of said date.
- (c) Jointly Drafted. The Parties have consulted legal counsel and they fully understand and voluntarily accept the terms of this Termination Agreement. The Parties cooperated in drafting this Termination Agreement and it shall not be presumptively construed either to the benefit or detriment of any Party as the drafter of this Termination Agreement.
- (d) Governing Law. THIS TERMINATION AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS TERMINATION AGREEMENT.
- (e) Successors and Assigns. This Termination Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
- (f) Authorized Signatures; Notices. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this Termination Agreement on behalf of such Party and to bind such Party to this Termination Agreement. Any written notice required to be given under the terms of this Termination Agreement shall be given in accordance with the terms of this Termination Agreement.
- (g) Effective Date. This Termination Agreement shall be deemed effective as of the Execution Date.
- (h) Entire Agreement. This Termination Agreement is the entire agreement between the Parties regarding the subject matter contained herein. This Termination Agreement supersedes, and its terms govern, all prior proposals, agreements, or other communications between the Parties, oral or written, regarding the subject matter contained herein. This Termination Agreement shall not be amended,



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changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.

- (i) Counterparts; Electronic Signatures. This Termination Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Termination Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Termination Agreement and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Termination Agreement as to the Parties and may be used in lieu of the original Termination Agreement for all purposes.
- (j) Enforceability/Severability. If any provision of this Termination Agreement shall be invalid, void, voidable or unenforceable to any extent, the Parties intend that the validity, legality and enforceability of the remaining provisions of this Termination Agreement shall in no way be affected or impaired. The remaining provisions of this Termination Agreement shall remain valid and enforceable as written to the maximum extent permitted by law. However, in the event that any provision of this Termination Agreement is deemed to be invalid, void, voidable, or unenforceable to any extent, the Parties agree to negotiate in good faith to replace the invalidated provision(s) with a provision or provisions that provide substantially the same economic benefit for the Parties as was provided by way of this Termination Agreement in its entirety, to the maximum extent permitted by law. If it is not possible to retain substantially the same economic benefit for the Parties provided for in this Termination Agreement by means of such good faith negotiations and replacement provisions, this severability provision shall not apply.
- (k) Survival of Warranties. The warranties in this Termination Agreement shall survive any investigation made by or on behalf of each Party, regardless of any actual or constructive knowledge by the Party concerning the truth or accuracy of any such warranty.

*[Signature pages to follow]*

# Southern California Edison

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IN WITNESS WHEREOF, the Parties hereto have caused this Termination Agreement to be executed as of the last date set forth below, the "Execution Date".

**COUNTY OF RIVERSIDE,**  
a political subdivision of the State of  
California, on behalf of its Department of  
Waste Resources (formerly known as the  
Riverside County Waste Management  
Department)

By:



Name: Hans W. Kernkamp  
Title: General Manager – Chief Engineer

Date:

3/1/2018

**SOUTHERN CALIFORNIA EDISON  
COMPANY,**  
a California corporation

By:



Name: Mark Irwin  
Title: Director of Energy Contract  
Management

Date:

02/08/2018

FORM APPROVED COUNTY COUNSEL

BY:

  
THOMAS OH

2/13/18  
DATE