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File No. 55735.00004

June 7, 2023

VIA E-MAIL

NBIESIADA@VOICEFOC.ORG

NOAH BIESIADA

Re: Orange County Power Authority – Public Records Act Request Received June 6, 2023 – Noah Biesiada – Determination Letter

Dear Mr. Biesiada:

On behalf of our client, Orange County Power Authority (“OCPA”), this letter is in response to your Public Records Act (“PRA”) (Gov. Code § 7920.000 *et seq.*¹) request received by OCPA on June 6, 2023. Your request is as follows:

I would like a copy of Brian Probolsky’s severance package, including any NDAs he signed and the total amount of severance compensation.

OCPA conducted a search of its records and has determined that records responsive to your request exist. These records are attached to this correspondence in electronic format. Please note that, consistent with the Ralph M. Brown Act, the attached record and facts relating to its approval were not publicly disclosable until after it was fully executed, which occurred on May 31, 2023.

Please note that OCPA has redacted a portion of the responsive record pursuant to Government Code § 7928.300, which provides that home addresses, home telephone numbers, cell phone numbers, and birth dates of agency employees are exempt from disclosure. Because OCPA has redacted a portion of the record as described above, the PRA requires OCPA to provide a written response when a records request is denied, either in whole or in part. (Gov. Code § 7922.540(a)²). The PRA also requires that notification of denial of any request for records must include the names and titles or positions of each person responsible for the denial. In compliance with the requirement noted above, Pat Jacques-Nares, Board Clerk, is responsible for the claims

¹ Previously codified as Gov. Code § 6250, *et seq.*

² Previously codified to Gov. Code §6255(b)
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June 7, 2023

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of exemption in this letter.

With this letter and information provided, OCPA has completed its response to your request. Should you have any questions or wish to discuss this matter further, please do not hesitate to contact me directly.

Sincerely,



Christine N. Wood
for BEST BEST & KRIEGER LLP

CNW:NWN

Joe Mosca - OCPA

SEVERANCE AGREEMENT AND GENERAL RELEASE

This Severance Agreement and General Release (“Agreement”) is entered into by and between Brian Probolsky (“Executive”) on the one hand, and Orange County Power Authority, its officers, directors, and employees (collectively, “OCA”), on the other hand, (Executive and OCA are collectively referred to as the “Parties”) and is made with reference to the following:

RECITALS

- A. WHEREAS, Executive has served as OCA’s Chief Executive Officer pursuant to that certain Employment Agreement with an effective date of January 15, 2021 (the “Employment Agreement”), which is attached hereto as Exhibit A;
- B. WHEREAS, on April 19, 2023, at a regular meeting of the Board of Directors (the “Board”), the Board voted to terminate Executive’s employment without cause, which termination shall be effective May 31, 2023 (the “Separation Date”);
- C. WHEREAS, Executive is entitled to certain severance benefits pursuant to the Employment Agreement, and the Board wishes to provide for Executive’s transition;
- D. WHEREAS, Executive has asserted that he has certain claims related to whistleblower retaliation, harassment, and defamation (the “Claims”), against OCA and/or members of its Board;
- E. WHEREAS, Executive has been encouraged to consult with and has been given ample time to consult with an attorney prior to agreeing to his execution of this Agreement;
- F. WHEREAS, Executive and OCA desire to mutually, amicably, and finally resolve and compromise all issues and claims surrounding Executive’s employment and separation from employment with OCA on the terms set forth below; and
- G. WHEREAS, Executive makes this Agreement expressly recognizing that the making of this Agreement does not in any way constitute an admission of wrongdoing or liability on the part of OCA, its officers, directors, or employees.

NOW THEREFORE, in consideration of the promises and mutual agreements hereinafter set forth, it is agreed by and between the undersigned as follows:

AGREEMENT

1. Separation. As of the Separation Date, Executive will perform no further services for OCA and his status as an employee of OCA will cease. Regardless of whether Executive signs this Agreement, OCA will pay Executive all salary and/or wages through the Separation

Date, and Executive shall be eligible to receive any vested benefits in accordance with the terms of any applicable benefit plan.

1.1 In addition, pursuant to Section 3(b)(i) of Executive's Employment Agreement, Executive accrues Paid Time Off ("PTO"). Executive shall be paid at his final base rate of pay (annual salary/2080 hours = equivalent hourly rate) for all accrued unused paid time off. As of the date of termination, Executive shall have accrued 203.32 hours of unused paid time off, and he will receive compensation in his final paycheck in the amount Twenty-Three Thousand Three Hundred Sixty-Two Dollars and Twenty-Five Cents (\$23,362.25).

1.2 OCPA will contribute all ordinary amounts from Executive's final pay and cash out of PTO to Executive's 401(a) plan, notwithstanding that Executive's final pay may occur after Executive's Separation Date.

2. Severance Payment and Additional Consideration. Executive is entitled to certain severance benefits conferred by his Employment Agreement (Ex. A) in exchange for Executive's release of any and all claims he has or believes he has against OCPA. OCPA also seeks to provide additional benefits in consideration for Executive's promises and covenants made herein and to ease his transition. The total value of Executive's severance benefits under this Agreement is valued at Four Hundred Fifty Thousand Dollars and No Cents (\$450,000.00), delineated as follows:

2.1 Contractual Severance Payment. Pursuant to Section 4(a)(ii) of Executive's Employment Agreement, OCPA agrees to provide Executive payment of One Hundred Nineteen Thousand Five Hundred Dollars and No Cents (\$119,500.00) less required payroll taxes and withholdings, which payment is equal to six (6) months of Executive's current salary.

2.2 Additional Cash Consideration. OCPA shall pay Executive One Hundred Nineteen Thousand Five Hundred Dollars and No Cents (\$119,500.00) less required payroll taxes and withholdings as additional wage replacement;

2.3 Payment of Accrued Unused Executive Leave. As of the Separation Date, Executive shall have eighty (80) hours of unused executive leave granted pursuant to Section 3(b)(i) of Executive's Employment Agreement. As further severance, OCPA agrees to pay Executive additional compensation for executive leave in the amount of Nine Thousand One Hundred Ninety-Two Dollars and Thirty-One Cents (\$9,192.31) less required payroll taxes and withholdings; and

2.4 Compensation for COBRA Continuation Benefits. In lieu of COBRA continuation benefits, OCPA further agrees to provide additional compensation to Executive in the amount Thirty-Two Thousand Six Hundred Fifty-Six Dollars and Forty-Four Cents (\$32,656.44) less required payroll taxes and withholdings, which is equal to twelve (12) months of family coverage for "PPO," dental and vision insurance; and

2.5 Non-Wage Compensation and Consideration for the Claims. OCPA further agrees to pay Executive additional non-wage sum of One Hundred Sixty-One Thousand Six Hundred Fifty-One Dollars and Twenty-Five Cents (\$161,651.25) in connection with the Claims, which shall be reported on a Form-1099 and issued to Executive.

2.6 The amounts in Subsections 2.1 through 2.5, collectively, shall be called the "Severance Payment," which is equal to Four Hundred Forty-Two Thousand Five Hundred Dollars and No Cents (\$442,500.00).

2.7 No later than thirty (30) days after the Effective Date, as defined in Subsection 15.5, below, OCPA shall issue two checks to Executive:

(i) One check in the amount of Two Hundred Eighty Thousand Eight Hundred Forty-Eight Dollars and Seventy-Five Cents (\$280,848.75) less required withholdings (Subsections 2.1 through 2.4), which Executive understands, acknowledges, and agrees is fully taxable W-2 income; and

(ii) One check in the amount of One Hundred Sixty-One Thousand Fifty-One Dollars and Twenty-Five Cents (\$161,651.25) for non-wage compensation, with no withholdings, which shall be reported on a Form-1099.

(iii) The checks shall be sent with tracking to: Brian Probolsky, [REDACTED].

2.8 OCPA also agrees to reimburse Executive's legal fees incurred in connection with the negotiation of this Agreement in the amount of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00). OCPA shall remit such payment in a check made payable to Executive Law Group, Attn: R. Craig Scott, 4675 MacArthur Court, Suite 1240, Newport Beach, CA 92660, for which an IRS-Form 1099 will be issued to both Executive and his counsel.

2.9 Executive agrees, understands, and acknowledges that the Severance Payment and reimbursement of attorneys' fees are valid consideration for his covenants and promises, herein, and that Executive acknowledges and agrees that Executive would not be entitled to these payments absent Executive's execution of this Agreement.

2.10 This Agreement is not intended nor does it purport to give Executive advice or counseling concerning federal, state, or local tax responsibilities or liabilities. Executive and his counsel agree to complete IRS W-4 and W-9 forms as necessary and/or provide employer identification numbers along with this Agreement. Executive acknowledges that the Settlement Payment and other benefits conferred by this Agreement, are something of value, and but for Executive's signature on this Agreement, Executive would have no right to receive the Severance Payment, COBRA continuation benefits and/or reimbursement of attorneys' fees. The Severance Payment that OCPA is paying in consideration for Executive's execution of this Agreement is not intended by

either party to be treated, and will not be treated, as compensation for purposes of eligibility or benefits under any benefit plan of OCPA. Executive agrees that he will deliver fully-executed copies of the Agreement and IRS Forms W-4 and W-9, to counsel for OCPA. Executive's counsel shall deliver to OCPA's counsel a current, fully-executed IRS Form W-9.

2.11 Executive further agrees to indemnify and hold harmless OCPA from any tax, assessment, penalty, or other liability suffered or incurred by OCPA by reason of Executive's failure to direct OCPA by virtue of Executive's claim of excessive deductions on his W-4 Form to withhold any necessary or required taxes from the Severance Payment made pursuant to this Agreement or Executive's failure to pay any associated federal, state, or local taxes, penalties, and interest, if any, in respect thereof.

3. Executive's Complete Release of All Claims. In consideration of the Severance Payment and other benefits being provided under this Agreement to which Executive is not otherwise entitled but for his execution of this Agreement, Executive, for himself, his attorneys, spouse, heirs, executors, representatives, administrators, agents, and successors and assigns (collectively, the "Releasers") hereby voluntarily, unconditionally, irrevocably and absolutely releases and forever discharges OCPA and, as the case may be, all of its past and present representatives, members, agents, officers, directors, advisors, attorneys, insurers, consultants, partners, divisions, sponsors, parents, subsidiaries, affiliates, assigns, successors, joint ventures, and related entities, and each of them (collectively, the "Released Parties"), from any and all claims, demands, actions, causes of action, suits, charges of discrimination, obligations, damages, attorneys' fees, costs, losses, and liabilities of any nature whatsoever, including all common law and statutory claims of race, sex, national origin, religion, disability and age discrimination, whether or not now known, suspected or claimed, which Executive has ever had, now has, or may claim to have as of the date of this Agreement against the Released Parties arising out of, or in any way related to Executive's hire, benefits, employment, or separation from employment with OCPA or otherwise by reason of any actual or alleged act, omission, transaction, practice, conduct, occurrence or other matter from the beginning of time up to and including the date of execution of this Agreement.

3.1 Executive acknowledges and agrees that this Agreement represents a waiver and release of any and all known and unknown, suspected or unsuspected, asserted and unasserted, actual and potential claims of any kind or any liability of OCPA and any of the other Released Parties whatsoever for any violation of any right of Executive arising under any duty, contract, or covenant or under any state, federal or local law, statute, or order that Executive may have against OCPA or any of the other Released Parties, including but not limited to, under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, the Americans With Disabilities Act, 42 U.S.C. §§ 12101 et seq., the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623 et seq., the Family Medical Leave Act, 29 U.S.C. §§ 2601 et seq., the California Fair Employment and Housing Act, Cal. Gov't Code §§ 12940, et seq., the California Family Rights Act, Cal. Gov't Code §§ 12945.2 et seq., the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., any provisions of the California Labor Code pertaining to the payment of wages, the Meyers-Milias-Brown Act, Cal. Gov't Code §§ 3500-3511, any claims under the Federal

Worker Adjustment Retraining Notification Act, 29 U.S.C. §§ 2101 et seq., and the California Worker Adjustment Retraining Notification Act, Cal. Lab. Code §§ 1400 et seq., any violation of the U.S. and/or California Constitutions, and that any all such claims are released by way of his signature affixed on this Agreement (the “Released Matters”).

3.2 In addition to the above, the Released Matters include, but are not limited to, claims for employment discrimination or harassment, retaliation, wrongful termination, constructive termination, violation of public policy, wage and hour law violations, breach of any express or implied contract, breach of any implied covenant, fraud, breach of fiduciary duty, negligence, intentional or negligent misrepresentation, emotional distress, interference with prospective economic advantage, interference with contract, loss of consortium, defamation, slander, or libel, invasion of privacy, any personal injury, promissory estoppel, unjust enrichment, detrimental reliance, whistle blowing, failure to pay wages, and tort, compensatory and/or punitive damages, claims for attorneys’ fees, any injunctive relief, violation of any statute, or any other claims relating to Executive’s employment with or separation of employment from OCPA.

3.3 The Parties acknowledge that this general release is not intended to bar any claims that, by statute, may not be waived, such as Executive’s right, if any, to file a charge with the National Labor Relations Board, Equal Employment Opportunity Commission, Occupational Safety and Health Administration, Securities and Exchange Commission and other similar federal or state government agencies (“Government Agencies”), or claims for statutory indemnity, workers’ compensation benefits or unemployment insurance benefits, as applicable.

3.4 Executive further understands that this Agreement does not limit Executive’s ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to OCPA. This Agreement does not limit Executive right to receive an award for information provided to any Government Agencies.

3.5 Executive acknowledges that he may discover facts or law different from, or in addition to, the facts or law that he knows or believes to be true with respect to the claims released in this Agreement and agrees, nonetheless, that this Agreement and the release contained in it shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery of them.

3.6 If Executive chooses to sign this Agreement, then Executive’s signature and/or reconfirmation of his agreement hereto (Reconfirmation of Agreement by Executive, below), will affirm that Executive has been paid in full for all amounts due to Executive for services provided during Executive’s employment with OCPA, and is not due any additional wages, premium payments, expense reimbursements, penalties or interest pursuant to any agreement, the California Labor Code or Wage Orders, local law, other state or federal law or otherwise. If Executive cannot make this representation, Executive should immediately inform OCPA of any amounts claimed to be due and

provide any supporting information. Executive further acknowledges that, to the extent Executive is or could be due any amount of wages earned during Executive's employment with OCPA, that the Severance Payment is in excess of any amount that is or could be due to Executive for wages earned during Executive's employment.

3.7 By signing this Agreement, Executive is not waiving any existing rights to indemnification under OCPA's governing documents or coverage under directors and officers OCPA's insurance with respect to Executive's acts or omissions during his service as an officer or director of OCPA, if any.

4. OCPA's Release of All Claims Against Executive. OCPA hereby voluntarily, unconditionally, irrevocably and absolutely releases and forever discharges Executive from any and all claims, demands, actions, causes of action, suits, obligations, damages, attorneys' fees, costs, losses, and liabilities of any nature whatsoever, whether or not now known, suspected or claimed, which OCPA has ever had, now has, or may claim to have arising out of, or in any way related to Executive's hire, benefits, employment, or separation from employment with OCPA or otherwise by reason of any actual or alleged act, omission, transaction, practice, conduct, occurrence or other matter from the beginning of time up to and including the Effective Date of this Agreement.

5. No Claims or Charges Filed. Notwithstanding the general nature of the releases contained herein, Executive represents, warrants, and agrees that he has not at any time filed any lawsuits, complaints, administrative charges, or any charge of any kind against OCPA or any of the Released Parties relating to claims of sexual harassment, assault, or sexual discrimination. Executive further represents, warrants, and agrees that he is not aware of any factual or legal basis for any personal claims of sexual harassment, assault, or sexual discrimination against OCPA or any of the Released Parties.

6. Claims Not Released. This Agreement is not intended to affect, and does not affect Executive's entitlement, if any, to workers' compensation benefits, vested retirement benefits, unemployment benefits, continuation coverage under COBRA, indemnity for necessary expenditures (e.g., reimbursement of business expenses) incurred on behalf of OCPA as provided in Section 2802 of the California Labor Code, or any other entitlement or claim excluded by law. Notwithstanding this Section 6, Executive represents, agrees, and warrants that he has not suffered any work-related injuries that he has not reported or for which he has not received treatment.

7. Mutual Waiver of Unknown Claims. This Agreement is intended to encompass all claims, known and unknown, foreseen and unforeseen, that the Parties may have against each other, whether arising in tort, contract, law, equity, or whether based upon a violation of any federal, state, local or administrative statute, law, regulation or ordinance arising out of or related to facts or events occurring prior to the execution of this Agreement. It is further understood that all rights under Section 1542 of the California Civil Code, and any similar state or federal law, are hereby expressly waived. Civil Code section 1542 provides as follows:

Section 1542: Certain Claims Not Affected by General Release.

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that, if known by him or her, would have materially affected his or her settlement with the debtor or the released party.

Executive certifies that he has read all of this Agreement, including the release provisions contained herein and the quoted Civil Code and fully understands all of the same. The Parties further understand and acknowledge that they may later discover facts different from, or in addition to, those facts now known or believed to be true with respect to any or all of the matters covered by this Agreement. Nonetheless, the Parties agree that the releases so given in this Section 7 shall be and remain in effect as full and complete releases of the respective claims, notwithstanding any such different or additional facts.

8. No Other Charges. Except as permitted by law, the Parties shall not bring against each other any claim or action before any state or federal agency, court or other tribunal which claim or action relates in any way to the matters released herein. Nothing in this Agreement shall be construed to prohibit Executive from filing a charge with or participating in any investigation or proceeding conducted by the EEOC or a comparable state or local agency. Notwithstanding the foregoing, Executive agrees to waive his right to recover monetary damages in any charge, complaint, or lawsuit filed by him or by anyone else on his behalf. Notwithstanding this Section 8, Executive warrants, agrees, and represents that he has not filed such a charge and that as of the date of execution of this Agreement and/or the date of his reconfirmation of the Agreement, Executive does not have reason to file a such a charge on any basis.

9. No Other Benefits. Except as provided herein, Executive waives any future coverage and benefits under all other employer-sponsored benefit plans, including any short-term or long-term disability plans, flexible spending, life insurance, incentive compensation or bonus plan, retirement. All such benefits and coverage cease the last day on which Executive receives compensation by OCPA, except to the extent deposits or contributions are associated with payments referenced in Section 1, above, which may occur after the Separation Date. With respect to Executive's vested benefits, if any, in any OCPA qualified retirement plan, Executive shall retain such benefits, as determined under the official terms of the applicable benefit plan. Nothing herein shall prohibit Executive from seeking continued coverage of healthcare benefits, if any, under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

10. Confidential/Proprietary Information. Executive agrees that he shall continue to treat OCPA's information, finances, financial information, rate setting, market-sensitive information on power procurement contracts or other power transactions, confidential documents, personnel records, contractual agreements, communications learned or received while employed by OCPA about OCPA, or the Released Parties, as confidential ("Confidential Information"), and shall not disclose, divulge or communicate any such Confidential Information, except as provided in this Agreement, pursuant to subpoena or upon order of any court. Executive further agrees not to disclose trade secrets acquired by Executive in the course of employment with OCPA, except by court order or pursuant to subpoena. The term "trade

secrets” shall include, but not be limited to, information concerning OCPA’s and its affiliates’ methods of operation, future plans, budgets, revenues, expenses, customers, vendors, equipment and any and all information not disseminated to the public. Executive agrees, understands, and expressly acknowledges that this provision is a material provision of this Agreement and that this provision is an inducement to OCPA in agreeing to the terms of this Agreement.

11. Return of OCPA Property. Executive agrees to return to OCPA on or before May 31, 2023, all property acquired during his employment, including but not limited to his laptop, all documents and other materials (and all copies thereof) relating to the business of OCPA, all identification and access cards and keys, OCPA provided credit cards, all contact lists and third-party business cards, computers, telephones, OCPA issued mobile devices, memory cards and the like. Executive further agrees not to take any confidential, trade secret information of OCPA, whether in electronic, written, or other form.

12. Mutual Non-Disparagement: Both Executive and OCPA agree that they shall not make, directly or indirectly, to any person or entity, including but not limited to OCPA’s present, future, and/or former employees and/or clients, and/or the press, derogatory or disparaging oral, written, and/or electronic statements about the other relating to OCPA’s products, services, and business policies, or Executive’s employment with and/or separation from employment with OCPA, or do anything which damages Executive or OCPA or any of its and/or their products and services, reputation, good will, financial status, or business or client relationships, which may reasonably be calculated to harm OCPA’s reputation or are knowingly false or made with reckless disregard for the truth. Executive further agrees not to post any such statements on the internet or any blog or social networking site, including but not limited to Facebook, Glassdoor, Linked-In, or any other internet site or platform. OCPA, for its part, will advise current Board members of this mutual non-disparagement clause and OCPA’s obligations required by it and, further, will instruct current Board members with respect to their obligations, if any, that they may have pursuant to this Section 12, solely in their capacity as directors of OCPA. In the event an employer or other third-party seeks information about Executive’s employment with OCPA and/or Executive’s separation from it, OCPA will only confirm dates of employment and job title, unless Executive has provided a signed, written release for the release of additional information. All reference inquiries should be directed to Human Resources. As stated in Section 14, nothing in the Agreement, including this Section 12, precludes Executive from exercising his rights, if any, under Section 7 of the NLRA or under similar state law to engage in protected, concerted activity with other employees, including discussing his compensation or terms and conditions of employment. Executive agrees, understands, and expressly acknowledges that this provision is a material provision of this Agreement and that this provision is an inducement to OCPA in agreeing to the terms of this Agreement.

13. Disclosure of Agreement Pursuant to the Public Records Act. The Parties acknowledge that OCPA is a public entity and this Agreement and its terms are of public record within the meaning of the California Public Records Act, and therefore, OCPA will, upon request, release the Agreement and/or its terms, which may be produced in redacted or unredacted form.

14. No Interference with Rights. Executive understands this Agreement does not apply to (i) claims for unemployment or workers’ compensation benefits, (ii) claims or rights

that may arise after the date that Executive signs this Agreement, (iii) claims for reimbursement of expenses under OCPA's expense reimbursement policies, (iv) any vested rights under OCPA's ERISA-covered employee benefit plans as applicable on the date Executive signs this Agreement, and (v) any claims that controlling law clearly states may not be released by private agreement. Moreover, nothing in this Agreement (including but not limited to the acknowledgements, release of claims, the promise not to sue, the confidentiality and non-disparagement obligations, and the return of property provision) (i) limits or affects Executive's right to challenge the validity of this Agreement under the ADEA or the OWBPA, (ii) prevents Executive from communicating with, filing a charge or complaint with; providing documents or information voluntarily or in response to a subpoena or other information request to, or from participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, National Labor Relations Board, the Securities and Exchange Commission, the Occupational Safety and Health Administration, law enforcement, or any other any federal, state or local agency charged with the enforcement of any laws, or from testifying, providing evidence, responding to a subpoena or discovery request in court litigation or arbitration, or (iii) precludes Executive from exercising his rights, if any, under Section 7 of the NLRA or under similar state law to engage in protected, concerted activity with other employees, including discussing his compensation or terms and conditions of employment.

14.1 Executive represents that he has received all wages and salary, including accrued unused vacation or paid time off, if any, which he was owed during his employment with OCPA by virtue of his execution and/or reconfirmation of his agreements, herein.

14.2 Executive represents that he does not have any unreimbursed business expenses for which he is entitled to payment from OCPA.

14.3 Executive represents that he did not suffer a workplace injury incurred in the course and scope of his employment with OCPA for which he has not made a claim for workers' compensation benefits.

14.4 Executive has had the opportunity to provide OCPA with written notice of any and all concerns regarding suspected ethical and compliance issues or violations on part of OCPA.

15. Release of Age Discrimination Claims. In addition to the releases above, Executive, for himself and his agents, representatives, successors, heirs and assigns, does hereby unconditionally release and forever discharge OCPA and the Released Parties and each of them, of and from any and all claims, demands, claims for relief, actions or causes of action of any type or nature whatsoever that now exist or that may arise in the future based upon or arising out of acts or events arising on or before the date of execution of this Agreement in connection with Executive's employment with OCPA or termination thereof, including but not limited to any and all claims or demands for unlawful discrimination based on age and any claims he may have under the Age Discrimination in Employment Act ("ADEA") and the Older Workers Benefit Protection Act.

15.1 **Executive understands and acknowledges that: (a) he has been given a period of twenty-one (21) days, if he chooses, to review and consider this Agreement before signing it; (b) any rights or claims that arise after he signs this Agreement are not waived; (c) he is advised to consider carefully the terms of this Agreement and to consult with an attorney of his choice before signing the Agreement as he is giving up important legal rights by signing this Agreement and agreeing to the releases contained in it; (d) he may revoke the Agreement within seven (7) days of signing of this Agreement, provided that such revocation must be in writing and must actually be received by OCPA before the expiration of the seven (7) days (the “Revocation Period”); and (e) if Executive fails timely to execute this Agreement and return the executed original thereof to OCPA, or if he timely exercises the right of revocation provided for in this Section, then this Agreement shall not be effective or enforceable, and Executive will not receive the benefits described in this Agreement.**

15.2 **Executive further understands, agrees, and acknowledges that Executive’s twenty-one-day (21) consideration period was extended by mutual agreement of the Parties to Wednesday, May 31, 2023, expiring on that date without exception.**

15.3 This waiver does not affect Executive’s rights to file a charge of age discrimination with the Equal Employment Opportunity Commission (“EEOC”) and does not affect the EEOC’s responsibilities to enforce the ADEA. Should Executive file a charge with the EEOC he will take nothing by way of that charge if he has accepted the terms and conditions herein.

15.4 If Executive chooses to revoke this Agreement, then within seven (7) days, commencing with the day after he signs the Agreement, he must notify OCPA in writing of the revocation. Notice of the revocation must be sent to OCPA in writing addressed to:

Nicholaus Norvell, Interim General Counsel
Best, Best, & Krieger, LLP
655 W. Broadway, 15th Floor
San Diego, CA
Email: Nicholaus.norvell@bbklaw.com
Electronic notification by email shall be accepted.

15.5 **Executive understands that this Agreement will not be effective until the seven (7) day period has expired without revocation (i.e., the eighth (8th) day after he has executed this Agreement without revoking it, but in no event shall it be effective before June 7, 2023 (“Effective Date”).**

15.6 **Reconfirmation by Executive If Agreement Is Executed Prior to May 31, 2023. If Executive chooses to sign this Agreement before the expiration of the 21-day consideration period, he represents, agrees, and acknowledges that he has done so voluntarily. If Executive executes this Agreement before Wednesday,**

May 31, 2023, then he will be required to reconfirm his assent to this Agreement and all of its terms, including all releases and representations made in herein, including but not limited to representations made in Sections 3, 5, 7, 10, 11, 12, 14, and 15. In no event shall the Effective Date of this Agreement be earlier than Thursday, June 7, 2023.

16. Representation by Counsel and Informed Consent. Executive expressly acknowledges and represents that he been or has had the opportunity to be represented by counsel in the negotiations culminating in this Agreement, and he has read this Agreement, reviewed the same, and fully understands the meaning and effect of each and every provision of this Agreement, in particular the meaning and effect of California Civil Code section 1542.

17. No Admission of Liability. This Agreement shall not be construed as an admission by OCPA of any liability or acts of wrongdoing or unlawful conduct, nor shall it be considered to be evidence of such liability, wrongdoing, or unlawful discrimination. This Agreement is the result of a compromise and is made for the purpose of settling disputed claims and shall not, at any time or for any purpose, constitute or be considered or deemed any admission of liability on the part of either Party hereto.

18. Signatories Have Authority; No Assignment. Each Party represents and warrants that such Party has the full power, capacity and authority to enter into this Agreement, that no portion of any charge, claim, right, demand, action or cause of action that either has or might have arising out of the transactions, omission or acts referred to herein has been assigned, transferred or conveyed to any third party, by way of subrogation, operation of law or otherwise, and that no other agreement, release, or settlement is necessary from any other person or entity to release and discharge completely the other Party from the claims specified above which may be held by such Party.

19. Entire Agreement. This Agreement constitutes the entire agreement between and among the Parties and supersedes any and all other agreements or understandings, either oral or written, between the Parties with respect to the subject matter hereof. Each party to this Agreement acknowledges that no representations, inducements, promises, or other agreements have been made by or on behalf of any party except those covenants, agreements and promises embodied in this Agreement. This Agreement is binding upon and shall inure to the benefit of the Parties, their respective agents, employees, representatives, officers, directors, divisions, subsidiaries, affiliates, heirs, predecessors, successors in interest, and shareholders.

20. Severability. If any term of this Agreement is declared invalid for any reason, such determination shall not affect the validity of the remainder of the Agreement. The remaining parts of this Agreement shall remain in effect as if the Agreement had been executed without the invalid term.

21. Attorneys' Fees and Costs for Legal Proceedings. If any party to this Agreement is required to initiate proceedings to enforce any term of this Agreement, the prevailing party shall be entitled to all reasonable attorneys' fees and costs expended to enforce this Agreement.

22. Counterparts and Electronic Signatures. This Agreement may be executed in counterparts and by use of electronic signatures. All counterparts when executed shall constitute one agreement binding upon all Parties notwithstanding that all of the Parties are not a signatory to the original or the same counterpart. Executive or his counsel shall deliver the executed Agreement to OCPA's Interim General Counsel, Nicholas Norvell, as identified in Section 14.4.

PLEASE READ CAREFULLY. BY SIGNING THIS SEVERANCE AGREEMENT AND GENERAL RELEASE, YOU WILL BE WAIVING YOUR KNOWN AND UNKNOWN CLAIMS.

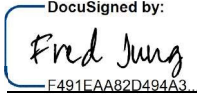
EXECUTIVE

DATED: MAY 17, 2023

By:  _____
Brian Probolsky

ORANGE COUNTY POWER AUTHORITY

DATED: May 19, 2023, 2023

By:  _____
Fred Jung, Chair of the Board of Directors

Reconfirmation of Agreement by Executive (below):

Having executed this Severance Agreement and General Release on the date set forth above, which may be in advance of the Separation Date of May 31, 2023, as set forth in Section 15.6, I reconfirm all promises, covenants, releases of all claims including those that are known or unknown, suspected or unsuspected, asserted or unasserted, waivers, and all other provisions of the Agreement without reservation or revision.

EXECUTIVE

DATED: MAY 31, 2023

By:  _____
Brian Probolsky