

AGENDA

Regular Meeting of the Board of Directors of San Diego Community Power (SDCP)

April 28, 2022 5:00 p.m.

The meeting will proceed as a teleconference meeting in compliance with waivers to certain provisions of the Brown Act provided for under Government Code section 54953(e)(1)(A), in relation to the COVID-19 State of Emergency and recommended social distancing measures. There will be no location for inperson public attendance. In compliance with the Brown Act, SDCP is providing alternatives to in-person public attendance for viewing and participating in the meeting. Further details are below.

Note: Any member of the public may provide comments to the Board of Directors on any agenda item. When providing comments to the Board, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Board as a whole through the Chair. Comments may be provided in one of the following manners:

- Providing Oral Comments During Meeting. To provide comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. On Zoom video conference by computer or mobile phone, use the "Raise Hand" feature. This will notify the moderator that you wish to speak during a specific item on the agenda or during non-agenda Public Comment. Members of the public will not be shown on video but will be able to speak when called upon. If joining the meeting using the Zoom dial-in number, you can raise your hand by pressing *9. Comments will be limited to three (3) minutes. Please be aware that the Chair has the authority to reduce equally each speaker's time to accommodate a large number of speakers.
- 2. Written Comments. Written public comments must be submitted prior to the start of the meeting by using this (<u>web form</u>). Please indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided to the Board members in writing. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting. Comments read at the meeting will be limited to the first 400 words. Comments received after the start of the meeting will be collected, sent to the Board members in writing, and be part of the public record.

If you have anything that you wish to be distributed to the Board, please provide it via <u>info@sdcommunitypower.org</u> and it will be distributed to the Members.

The public may participate using the following remote options:

Teleconference Meeting Webinar https://zoom.us/j/94794075133

Telephone (Audio Only) (669) 900-6833 or (346) 248-7799 | Webinar ID: 947 9407 5133

AGENDA – BOARD OF DIRECTORS – SAN DIEGO COMMUNITY POWER

Welcome

Call to Order

Pledge of Allegiance

Roll Call

Items to be Added, Withdrawn, or Reordered on the Agenda

Public Comments

Opportunity for members of the public to address the Board on any items not on the agenda but within the jurisdiction of the Board. Members of the public may provide a comment in either manner described above.

Consent Calendar

All matters are approved by one motion without discussion unless a member of the Board of Directors requests a specific item to be removed from the Consent Calendar for discussion. A member of the public may comment on any item on the Consent Calendar in either manner described above.

- 1. Approval of Findings to Continue Holding Remote/Teleconference Meetings Pursuant to Assembly Bill 361
- 2. Receive and File Treasurer's Report for Period Ending 2/28/22
- 3. Approval of Amendment to Engagement Letter with Best Best & Krieger
- 4. Approval of Joint Representation Agreement with Keyes & Fox LLP for Legal and Regulatory Services.
- 5. Approval of Amendment to Professional Services Agreement with NewGen Strategies and Solutions, LLC for Regulatory Support and Rate-related Analysis
- 6. Approval of Debt Collection Professional Services Agreement with Financial Credit Network
- 7. Approval of Sublease Agreement with Nuvve Holding Corporation for Temporary Office Space

Regular Agenda

The following items call for discussion or action by the Board of Directors. The Board may discuss and/or take action on any item listed below if the Board is so inclined.

8. Quarterly Update on Community Advisory Committee

Recommendation: Receive and file quarterly update from Community Advisory Committee

9. Update on Back Office Metrics/Dashboard

Recommendation: Receive and file update on Back Office Metrics/Dashboard

10. Update on Regulatory and Legislative Affairs

AGENDA – BOARD OF DIRECTORS – SAN DIEGO COMMUNITY POWER

Recommendation: Receive and file update on Regulatory and Legislative Affairs

11. Update on Marketing and Public Relations

Recommendation: Receive and file update on Marketing and Public Relations

12. Approval of Second Amendment to Civilian Contract for Marketing and Communications Services

Recommendation: Approve Second Amendment to Civilian Contract for Marketing and Communications services

13. Approval of a Market Salary Increase for Employees and Next Steps for a Comprehensive Salary Structure

Recommendation: Approve a salary increase of 4.5% for all current SDCP employees other than the Chief Executive Officer, retroactive to January 1, 2022, or the first day of the month an employee was hired, whichever is more recent. Direct the Chief Executive Officer to proceed with next steps to retain a human resources firm to support various efforts including development of a comprehensive salary structure.

Reports by Management and General Counsel

SDCP Management and General Counsel may briefly provide information to the Board and the public. The Board may engage in discussion if the specific subject matter of the report is identified below, but the Board may not take any action other than to place the matter on a future agenda. Otherwise, there is to be no discussion or action taken unless authorized by law.

Director Comments

Board Members may briefly provide information to other members of the Board and the public, ask questions of staff, request an item to be placed on a future agenda, or report on conferences, events, or activities related to SDCP business. There is to be no discussion or action taken on comments made by Directors unless authorized by law.

Adjournment

Compliance with the Americans with Disabilities Act

SDCP Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact (888) 382-0169 or info@sdcommunitypower.org. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Board Documents

Copies of the agenda and agenda packet are available at https://sdcommunitypower.org/resources/meeting-notes/. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are

AGENDA – BOARD OF DIRECTORS – SAN DIEGO COMMUNITY POWER

available for public review as required by law. Previously, public records were available for inspection at San Diego Community Power at Moniker Commons, located at 2869 Historic Decatur Road, San Diego, CA 92106. However, due to the Governor's Executive Orders N-25-20 and N-29-20 and the need for social distancing, in-person inspection is now suspended. Public records, including agenda-related documents, can instead be requested electronically at info@sdcommunitypower.org or by mail to SDCP, 815 E Street, Suite 12716, San Diego, CA 92112. The documents may also be posted at the above website.



SAN DIEGO COMMUNITY POWER Staff Report – Item 1

To: San Diego Community Power Board of Directors

From: Ryan Baron, General Counsel

Subject: Findings to Continue Holding Remote/Teleconference Meetings Pursuant to Assembly Bill 361

Date: April 28, 2022

RECOMMENDATION

Find and determine that the Board has reconsidered the circumstances of the COVID-19 State of Emergency; the State of Emergency remains in effect; state or local officials continue to impose or recommend social distancing measures; and meetings of SDCP legislative bodies may be held remotely in compliance with Government Code section 54953(e) for the next 30 days.

BACKGROUND

As more fully described in the staff report for the October 28, 2021 meeting related to AB 361, the State of California has adopted AB 361, which allows public agencies to hold fully or partially virtual meetings under certain circumstances without being required to follow certain Brown Act teleconferencing requirements. Under AB 361, a legislative body holding a fully or partially virtual meeting pursuant to AB 361 must make certain findings at least every thirty (30) days to continue holding such meetings.

If the Board desires to continue allowing Directors and members of SDCP committees to participate remotely pursuant to AB 361, the Board must reconsider the COVID-19 State of Emergency, find that the proclaimed State of Emergency remains in effect, and find either: (1) that state or local officials continue to impose or recommend measures to promote social distancing; or (2) that as a result of the COVID-19 emergency, meeting in person would present imminent risks to the health or safety of attendees.

ANALYSIS AND DISCUSSION

Based on the continued COVID-19 State of Emergency and continued required or recommended social distancing measures, as initially described in the staff report for October 28, 2021 meeting relating to AB 361, the Board may make the findings necessary to continue allowing Board members and members of all SDCP committees to participate remotely pursuant to AB 361.

and the

FISCAL IMPACT

None.

ATTACHMENTS

None.





SAN DIEGO COMMUNITY POWER Staff Report – Item 2

То:	San Diego Community Power Board of Directors
From:	Eric W. Washington, Chief Financial Officer
Via:	Karin Burns, Chief Executive Officer
Subject:	Treasurer's Report – Presentation of Financial Results for Fiscal Year 2022 Period ended 2/28/22
Date:	April 28, 2022

RECOMMENDATION

Receive and File Report

BACKGROUND

San Diego Community Power (SDCP) maintains its accounting records on a full accrual basis in accordance with Generally Accepted Accounting Principles (GAAP) as applicable to governmental enterprise funds.

SDCP has prepared year-to-date financial statements for the period ended February 28, 2022, along with budgetary comparisons.

ANALYSIS AND DISCUSSION

Financial results for the period ended 2/28/22: \$228.33 million in net operating revenues were reported compared to \$230.80 million budgeted for the period. \$222.15 million in total expenses were reported (including \$217.66 million in energy cost) compared to \$223.85 million budgeted for the period (including \$217.37 million budgeted for energy costs). After expenses, SDCP's change in net position of \$6.12 million was reported. The following is a summary to actual results compared to the Fiscal Year 2022 Budget.

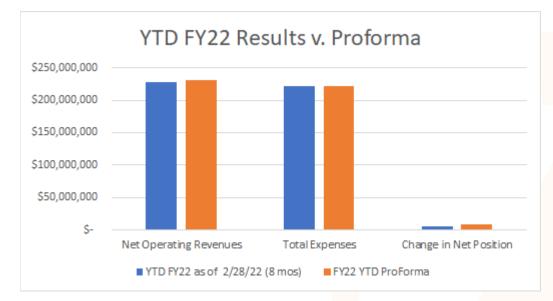
	Budget Comparison						
		TD FY22 as of 28/22 (8 mos)		FY22 YTD Budget	v	Budget ariance (\$)	Budget (%)
Net Operating Revenues	\$	228,330,099	\$	230,800,904	\$	(2,470,805)	99
Total Expenses	\$	222,154,462	\$	223,850,573	\$	(1,696,111)	99
Change in Net Position	\$	6,175,637	\$	6,950,331	\$	(774,694)	

• Net operating revenues finished -\$2.47 million (or -1.1 percentage points) under the amended budget

 Operating expenses finished -\$1.70 million (or -0.8 percentage points) under the amended budget

Financial results for the period were under the projections presented in the year-to-date proforma. SDCP's change in net position was -22.81% under the projection mainly due to lower than projected revenue. The following is a summary to actual results compared to the fiscal year-to-date proforma.

		Proforma Comparison				
	D FY22 as of 28/22 (8 mos)		FY22 YTD ProForma		ProForma ′ariance (\$)	Proforma (%)
Net Operating Revenues	\$ 228,330,099	\$	230,322,724	\$	(1,992,625)	-0.87%
Total Expenses	\$ 222,154,462	\$	222,322,132	\$	(167,670)	-0.08%
Change in Net Position	\$ 6,175,637	\$	<mark>8,000,59</mark> 2	\$	(1,824,955)	-22.81%



COMMITTEE REVIEW

The report was reviewed by the Financial Risk Management Committee (FRMC) on April 7, 2022.

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: 2022 Year-to-Date Period Ended 2/28/22 Financial Statements



ACCOUNTANTS' COMPILATION REPORT

Management San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of February 28, 2022, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA March 23, 2022

SAN DIEGO COMMUNITY POWER **STATEMENT OF NET POSITION** As of February 28, 2022

ASSETS

	1100210
Current assets	
Cash and cash equivalents	\$ 11,068,424
Accounts receivable, net	21,438,377
Accrued revenue	13,028,594
Prepaid expenses	1,192,789
Other receivables	31,983
Deposits	5,752,057
Total current assets	52,512,224
Noncurrent assets	
Restricted cash	9,000,000
Deposits	3,450,000
Total noncurrent assets	12,450,000
Total assets	64,962,224
	JABILITIES
Current liabilities	42 514 720
Accrued cost of energy	43,514,729
Accounts payable Other accrued liabilities	392,323
	338,138
Security deposits	570,000
Interest payable	54,683
Bank note payable	22,840,082
Total current liabilities	67,709,955
Noncurrent liabilities	
Other noncurrent liabilities	517,741
Loans payable	5,000,000
Total noncurrent liabilities	5,517,741
Total liabilities	73,227,696
	ET POSITION
Unrestricted	(8,265,472)
Total net position (deficit)	\$ (8,265,472)

SAN DIEGO COMMUNITY POWER STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION Eight Months Ended February 28, 2022

OPERATING REVENUES	
Electricity sales, net	\$ 228,330,099
OPERATING EXPENSES	
Cost of energy	217,660,392
Contract services	1,598,750
Staff compensation	2,047,811
General and administration	847,509
Total operating expenses	222,154,462
Operating income (loss)	 6,175,637
NONOPERATING EXPENSES	
Interest and financing expense	 392,472
Nonoperating expenses	 392,472
CHANGE IN NET POSITION	5,783,165
Net position at beginning of period	 (14,048,637)
Net position at end of period	\$ (8,265,472)

SAN DIEGO COMMUNITY POWER STATEMENT OF CASH FLOWS Eight Months Ended February 28, 2022

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 207,912,459
Other operating receipts	5,596,638
Payments to suppliers for electricity	(192,126,582)
Payments for goods and services	(2,519,645)
Payments to employees for services	(1,979,686)
Payments for deposits and collateral	(6,573,708)
Payments for state surcharges	(560,365)
Net cash provided (used) by operating activities	9,749,111
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES	
Interest and related expense payments	(401,253)
Net cash provided (used) by non-capital	
financing activities	(401,253)
Net change in cash and cash equivalents	9,347,858
Cash and cash equivalents at beginning of period	10,720,566
Cash and cash equivalents at end of period	\$ 20,068,424
Reconciliation to the Statement of Net Position	
Cash and cash equivalents (unrestricted)	11,068,424
Restricted cash	9,000,000
Cash and cash equivalents	\$ 20,068,424

SAN DIEGO COMMUNITY POWER STATEMENT OF CASH FLOWS (continued) Eight Months Ended February 28, 2022

RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES

Operating income	\$ 6,175,637
Adjustments to reconcile operating income (loss) to net	
cash provided (used) by operating activities	
Provision for uncollectible accounts	2,306,365
(Increase) decrease in:	
Accounts receivable	(22,628,621)
Accrued revenue	(808,285)
Other receivables	4,011,289
Prepaid expenses	(1,192,789)
Deposits	(5,302,057)
Increase (decrease) in:	
Accrued cost of electricity	27,370,008
Accounts payable	30,041
Other accrued liabilities	84,988
Due to State of California	152,535
Supplier security deposits	(450,000)
Net cash provided (used) by operating activities	\$ 9,749,111



SAN DIEGO COMMUNITY POWER Staff Report – Item 3

To: San Diego Community Power Board of Directors

From: Karin Burns, Chief Executive Officer

Subject: Approval of Amendment to Engagement Letter with Best Best & Krieger

Date: April 28, 2022

RECOMMENDATION

Approve Amendment to Engagement Letter with Best Best & Krieger and authorize the Chief Executive Officer to execute the engagement letter.

BACKGROUND

In November 2019, Best Best & Krieger (BB&K) was approved by the Board of Directors to provide General Counsel legal services for a not-to-exceed amount of \$120,000. BB&K has extensive experience with municipal/public agencies as well as Community Choice Aggregation agencies in California.

In August 2020, the Board of Directors approved BB&K's engagement letter to be amended through Fiscal Year End (FYE) 2021 in the amount of \$120,000 for general counsel services and an additional \$120,000 for legal review of power supply and other vendor contracts.

In May 2021, the Board of Directors approved BB&K's engagement letter to be amended through the FYE 2022 in the amount of \$300,000 for general counsel services and specialized legal services including but not limited to power procurement.

The amended engagement letter is proposed with out a not-to-exceed amount and no term limit which is believed to be in line with the philosophy of general councel services provided to other entities.

ANALYSIS AND DISCUSSION

BB&K has been an integral part of the early success of San Diego Community Power and is intimately familiar with the workings of the organization. Staff therefore recommends amending the BB&K engagement letter to retain their services.

FISCAL IMPACT

The FY23 budget, which will be presented to the Board for approval at the June 2022 meeting, will included an assumed set aside amount for the amended engagement.

the second way to

ATTACHMENTS

Attachment A: Amended Professional Services Agreement with Best Best & Krieger.



Bend OR (541) 382-3011 Indian Wells (760) 568-2611 Irvine (949) 263-2600 Los Angeles (213) 617-8100 Ontario (909) 989-8584

Ryan M. F. Baron (949) 263-6568 ryan.baron@bbklaw.com BBK

BEST BEST & KRIEGER

ATTORNEYS AT LAW

655 West Broadway, 15th Floor, San Diego, CA 92101 Phone: (619) 525-1300 | Fax: (619) 233-6118 | www.bbklaw.com Riverside (951) 686-1450

Sacramento (916) 325-4000

San Diego (619) 525-1300

Walnut Creek (925) 977-3300 Washington, DC (202) 785-0600

April 28, 2022

Karin Burns Chief Executive Officer San Diego Community Power 815 E Street, Suite 12716 San Diego, CA 92112

RE: General Counsel Services for San Diego Community Power

Dear Mrs. Burns:

ABOUT OUR REPRESENTATION

Best Best & Krieger LLP is pleased to enter into this Amended Engagement Letter dated April 28, 2022 with San Diego Community Power ("SDCP"). Specifically, we are pleased to continue providing General Counsel legal services to SDCP, including:

- Prepare any required legal filings with County or state agencies that may be required by law
- Attendance at the regular Board of Directors ("Board") meetings and any special meetings and workshops as required by the Chief Executive Officer or Chair of the Board
- Brown Act, Conflict of Interest and Public Records Act advice and representation
- Preparation and/or review of consultant and vendor contracts
- Advice and preparation of documents related to personnel matters
- Advice to the Chief Executive Officer and designated staff on administrative and operational matters



Karin Burns April 28, 2022 Page 2

- Research and advice on operational/pubic agency legal questions asked by the Board, Chief Executive Officer and designated staff
- Advice and assistance on other legal matters as may be assigned by the Chief Executive Officer

Legal services may also include specialized legal services requested by SDCP. This letter constitutes our updated agreement setting the terms of our representation.

CONFIDENTIALITY AND ABSENCE OF CONFLICTS

An attorney-client relationship requires mutual trust between the client and the attorney. It is understood that communications exclusively between counsel and the client are confidential and protected by the attorney-client privilege.

To also assure mutuality of trust, we have maintained a conflict of interest index. The California Rules of Professional Conduct defines whether a past or present relationship with any party prevents us from representing SDCP. Similarly, SDCP's name will be included in our list of clients to ensure we comply with the Rules of Professional Conduct with respect to your firm.

We have checked the following names against our client index: Community Power, including its member agencies, the Cities of San Diego, Chula Vista, La Mesa, Encinitas, Imperial Beach, and National City and the County of San Diego. Under this agreement, an attorney-client relationship is only established with SDCP and not any of its member agencies. Based on that check, we can represent SDCP. Please review the list to see if any other persons or entities should be included. If you do not tell us to the contrary, we will assume that this list is complete and accurate. We request that you update this list for us if there are any changes in the future.

YOUR OBLIGATIONS ABOUT FEES AND BILLINGS

For general legal services, the current rate is \$330 per hour for Partners and Of Counsel, \$279 per hour for Associates, and \$165 per hour for Paralegals. General legal services will include the General Counsel scope of work discussed above as well as attendance at meetings, agenda and document review, routine contracts, government ethics and open meetings laws, and entity incorporation.

Should SDCP desire additional specialized services, the current rate is \$395 per hour for Partners and Of Counsel, \$315 per hour for Associates, and \$168 per hour for Paralegals. Special legal services includes complex matters such as regulatory advice and advocacy, power procurement, litigation, CEQA document review, public finance, and other complex matters.



Karin Burns April 28, 2022 Page 3

Other billing rates are described in the memorandum attached to this letter which is entitled "Best & Krieger LLP's Billing Policies." It also describes the other aspects of our firm's billing policies. You should consider the Billing Policies memorandum part of this agreement as it binds both of us. For that reason, you should read it carefully.

INSURANCE

We are also pleased to let you know that Best Best & Krieger LLP carries errors and omissions insurance with Lloyd's of London. After a standard deductible, this insurance provides coverage beyond what is required by the State of California.

HOW THIS AGREEMENT MAY BE TERMINATED

SDCP, of course, have the right to end our services at any time. If you do so, you will be responsible for the payment of fees and costs accrued but not yet paid, plus reasonable fees and costs in transferring the case to you or your new counsel. By the same token, we reserve the right to terminate our services to you upon written notice, order of the court, or in accordance with our attached Billing Policies memorandum. This could happen if you fail to pay our fees and costs as agreed, fail to cooperate with us in this matter, or if we determine we cannot continue to represent you for ethical or practical concerns.

CLIENT FILE

If you do not request the return of your file, we will retain your file for five years. After five years, we may have your file destroyed. If you would like your file maintained for more than five years or returned, you must make separate arrangements with us.

THANK YOU

On a personal note, we are pleased to continue to represent SDCP. If you have any questions at any time about our services or billings, please do not hesitate to call me.

If this letter meets with your approval, please sign and date it, and return the original to us. We have enclosed a separate signed copy of this letter for your records.

Sincerely,

Ryan M. F. Baron of BEST BEST & KRIEGER LLP



BEST BEST & KRIEGER B

ATTORNEYS AT LAW

Karin Burns April 28, 2022 Page 4

AGREED AND ACCEPTED:

By:

Karin Burns

Dated:

Our century of experience has shown that the attorneyclient relationship works best when there is mutual understanding about fees, expenses, billing and payment terms. Therefore, this statement is intended to explain our billing policies and procedures. Clients are encouraged to discuss with us any questions they have about these policies and procedures. Clients may direct specific questions about a bill to the attorney with whom the client works or to our Accounts Receivable Department (accounts.receivable@bbklaw.com). Any specific billing arrangements different from those set forth below will be confirmed in a separate written agreement between the client and the firm.

Invoice and Payment Options

Best Best & Krieger strives to meet our clients' needs in terms of providing a wide variety of invoice types, delivery and payment options. Please indicate those needs including the preferred method of invoice delivery (Invoice via Email; or USPS). In addition, accounts.receivable@bbklaw.com can provide a W-9 upon request and discuss various accepted payment methods.

Fees for Professional Services

Unless a flat fee is set forth in our engagement letter with a client, our fees for the legal work we will undertake will be based in substantial part on time spent by personnel in our office on that client's behalf. In special circumstances which will be discussed with the client and agreed upon in writing, fees will be based upon the novelty or difficulty of the matter, or the time or other special limitations imposed by the client.

Hourly rates are set to reflect the skill and experience of the attorney or other legal personnel rendering services on the client's behalf. All legal services are billed in one-tenth of an hour (0.10/hour) or six-minute increments. Our attorneys are currently billed at rates from \$235 to \$850 per hour, and our administrative assistants, research assistants, municipal analysts, litigation analysts, paralegals, paraprofessionals and law clerks are billed at rates from \$175 to \$295 per hour for new work. These rates reflect the ranges in both our public and our private rates. These hourly rates are reviewed annually to accommodate rising firm costs and to reflect changes in attorney status as lawyers attain new levels of legal experience. Any increases resulting from such reviews will be instituted automatically and will apply to each affected client, after advance notice.

Non-Attorney Personnel: BBK may employ the services of non-attorney personnel under the supervision of a BBK attorney in order to perform services called for in the legal services agreement. The most common non-attorney personnel utilized are paralegals. Other types of non-attorney personnel include, but are not limited to, case clerks, litigation analysts, and specialty consultants. The client agrees that BBK may use such non-attorney personnel to perform its services when it is reasonably necessary in the judgment of the responsible BBK attorney. Hourly fees for non-attorney personnel will be charged at the rate then in effect for such personnel. A copy of BBK's current rates and titles for non-attorney personnel will be provided upon request.

<u>Fees For Electronically Stored Information ("ESI")</u> <u>Support and Storage</u>

BBK provides Electronically Stored Information ("ESI") services for matters requiring ESI support – typically litigation or threatened litigation matters. BBK provides services for basic ESI processing and storage at the following rates per month based on the number of gigabytes of data ("GB") processed and stored:

1GB	-2500	GB:	\$10	per	GB
251GB	-	550GB:	\$8	per	GB
551GB	-	750GB:	\$6	per	GB
751GB -	1TB: \$4	per GB			

The amount BBK charges for basic processing and storage of ESI allows BBK to recover the costs of providing such services, plus a net profit for BBK. BBK believes that the rates it charges for processing and storage are lower than comparable services available from third party vendors in the market. If you wish to contract separately with a third party vendor for processing and storage costs, please notify BBK in writing. BBK shall not incur costs for ESI support on a particular matter without first confirming by email or written correspondence with the client that the client agrees such services are necessary for the matter at hand.

Fees For Other Services, Costs and Expenses

We attempt to serve all our clients with the most effective support systems available. Therefore, in addition to fees for professional legal services, we also charge separately for some other services and expenses to the extent of their use by individual clients. These charges include but are not limited to, mileage at the current IRS approved rate per mile, extraordinary telephone and document delivery charges, copying charges, computerized research, court filing fees and other court-related expenditures including court reporter and transcription fees. No separate charge is made for secretarial or word processing services; those costs are included within the above hourly rates.

We may need to advance costs and incur expenses on your behalf on an ongoing basis. These items are separate and apart from attorneys' fees and, as they are out-of-pocket charges, we need to have sufficient funds on hand from you to pay them when due. We will advise the client from time to time when we expect items of significant cost to be incurred, and it is required that the client send us advances to cover those costs before they are due.

Advance Deposit Toward Fees And Costs

Because new client matters involve both a substantial undertaking by our firm and the establishment of client credit with our accounting office, we require an advance payment from clients. The amount of this advance deposit is determined on a case-by-case basis discussed first with the client, and is specified in our engagement letter.

Upon receipt, the advance deposit will be deposited into the firm's client trust account. Our monthly billings will reflect such applications of the advance deposit to costs and not to attorney's fees (unless otherwise noted in our accompanying engagement letter). At the end of engagement, we will apply any remaining balance first to costs and then to fees. We also reserve the right to require increases or renewals of these advanced deposits.

By signing the initial engagement letter, each client is agreeing that trust account balances may be withdrawn and applied to costs as they are incurred and to our billings, when we issue our invoice to the client. If we succeed in resolving your matter before the amounts deposited are used, any balance will be promptly refunded.

Monthly Invoices and Payment

Best Best & Krieger LLP provides our clients with monthly invoices for legal services performed and expenses incurred. Invoices are due and payable upon receipt.

Each monthly invoice reflects both professional and other fees for services rendered through the end of the prior month, as well as expenses incurred on the client's behalf that have been processed by the end of the prior month. Processing of some expenses is delayed until the next month and billed thereafter.

Our fees are not contingent upon any aspect of the matter and are due upon receipt. All billings are due and payable within ten days of presentation unless the full amount is covered by the balance of an advance held in our trust account. If a bill is not paid within 30 days, a late charge of one percent per month on the unpaid invoice may be added to the balance owed, commencing with the next statement and continuing until paid.

It is our policy to treat every question about a bill promptly and fairly. It is also our policy that if a client does not pay an invoice within 60 days of mailing, we assume the client is, for whatever reason, refusing to pay. We reserve the right to terminate our engagement and withdraw as attorney of record whenever our invoices are not paid. If an invoice is 60 days late, however, we may advise the client by letter that the client must pay the invoice within 14 days or the firm will take appropriate steps to withdraw as attorney of record. If the delay is caused by a problem in the invoice, we must rely upon the client to raise that with us during the 14-day period. This same policy applies to fee arrangements which require the client to replenish fee deposits or make deposits for anticipated costs.

From time to time clients have questions about the format of the bill or description of work performed. If you have any such questions, please ask them when you receive the bill so we may address them on a current basis.

Changes in Fee Arrangements and Budgets

It may be necessary under certain circumstances for a client to increase the size of required advances for fees after the commencement of our engagement and depending upon the scope of the work. For example, prior to a protracted trial or hearing, the firm may require a further advance payment to the firm's trust account sufficient to cover expected fees. Any such changes in fee arrangements will be discussed with the client and mutually agreed in writing.

Because of the uncertainties involved, any estimates of anticipated fees that we provide at the request of a client for budgeting purposes, or otherwise, can only be an approximation of potential fees.

BEST BEST & KRIEGER LLP



SAN DIEGO COMMUNITY POWER Staff Report – Item 4

- To: San Diego Community Power Board of Directors
- From: Laura Fernandez, Director of Regulatory and Legislative Affairs
- Via: Karin Burns, Chief Executive Officer
- Subject: Approve Joint Representation Agreement with Keyes & Fox LLP for Legal and Regulatory Services

Date: April 28, 2022

RECOMMENDATIONS

1. Approve Joint Representation Agreement with Keyes & Fox LLP for Legal and Regulatory Services

BACKGROUND

Keyes & Fox LLP has extensive experience supporting community choice aggregators in Energy Resource Recovery Account (ERRA) forecast proceedings. On July 28, 2020, SDCP executed a Professional Services Agreement with Keyes & Fox LLP with a not-to exceed amount of \$50,000. On November 12, 2020, SDCP approved a Joint Representation Agreement by and between SDCP, Clean Energy Alliance (CEA) and Keyes & Fox LLP for legal and regulatory advocacy services related to SDG&E's 2021 ERRA forecast proceeding. This Joint Representation Agreement was revised on January 20, 2021, but the not-to-exceed amount did not change. The Joint Representation Agreement was revised again on February 9, 2021 to include legal representation of SDCP and CEA for SDG&E's 2022 ERRA Forecast proceeding, with a revised not-to exceed amount of \$112,500. In May 2021, the not-to-exceed amount of the Joint Representation Agreement was increased to \$150,000 and the scope was expanded to include SDG&E's 2020 ERRA Compliance Proceeding, Proceeding No. A. 21-05-006, the Expedited Application of SDG&E Under the ERRA Trigger Mechanism and SDG&E's sales forecast proceeding. All of these proceedings impact the cost competitiveness of SDCP's service

ANALYSIS AND DISCUSSION

Staff recommends executing the Joint Representation Agreement with Keyes & Fox LLP for legal representation with regard to the 2023 ERRA Forecast proceeding and 2021 ERRA Compliance proceeding. The not-to-exceed amount for these proceedings is \$37,500.

COMMITTEE REVIEW

N/A

I BARE I

FISCAL IMPACT

Cost of this action includes a total amount not to exceed \$37,500 through June 30, 2023. Funding is available in the proposed FY23 budget.

ATTACHMENTS

Attachment A: Joint Representation Agreement Between Keyes & Fox LLP, San Diego Community Power and Clean Energy Alliance



KEYES&FOX

Karin Burns, Chief Executive Officer San Diego Community Power 815 E Street, Suite 12716 San Diego, CA 92112

Barbara Boswell, Chief Executive Officer Clean Energy Alliance 1200 Carlsbad Village Drive Carlsbad, CA 92008

RE: Joint Representation Agreement Between Keyes & Fox LLP, San Diego Community Power and Clean Energy Alliance re San Diego Gas & Electric Company's 2021 Energy Resource Recovery Account Compliance Proceeding and 2023 Energy Resource Recovery Account Forecast Proceeding

Keyes & Fox LLP ("<u>K&F</u>") is delighted San Diego Community Power ("<u>SDCP</u>") and Clean Energy Alliance ("<u>CEA</u>") (collectively, the "<u>Joint Clients</u>") have decided to engage K&F to provide legal representation before the California Public Utilities Commission ("<u>Commission</u>") with regard to San Diego Gas & Electric Company's 2021 Energy Resource Recovery Account ("<u>ERRA</u>") Compliance Proceeding and 2023 ERRA Forecast Proceeding, or any other matters K&F and the Joint Clients mutually agree to undertake (the "<u>Legal Services</u>"). This Joint Representation Agreement describes the basis of the attorney-client relationship between K&F and the Joint Clients with respect to the Legal Services.

1. Joint Representation

K&F will represent each of the Joint Clients with respect to the Legal Services, and all appearances and filings made in connection with the Legal Services shall be made in the name of both the Joint Clients. By executing this Joint Representation Agreement, each of the Joint Clients agrees that K&F will take direction from each of them jointly in this matter. In addition, each of the Joint Clients agrees that if any of the Joint Clients requests in writing – for any reason or for no reason – to withdraw from this Joint Representation Agreement, that withdrawal would be effective immediately, and from that point forward, K&F would not have an attorney-client relationship or further attorney-client obligations with the withdrawn party with respect to the Legal Services.

K&F will coordinate projects with Karin Burns, as the designated representative of SDCP, and Barbara Boswell, as the designated representative of CEA, or with whomever Ms. Burns or Ms. Boswell, respectively, may specifically delegate that authority. We understand that Ms. Burns and Ms. Boswell have the authority to make decisions on behalf of the Joint Clients in connection with the Legal Services, and we are relying on that understanding.

Because K&F will be representing multiple clients in this engagement, the applicable rules of professional conduct require that we inform you, as a Joint Client, of actual and potential

conflicts of interest with respect to joint representation, and that we obtain informed, written consent from each of the Joint Clients agreeing to the joint representation.

K&F has run a conflict check as it relates to the Legal Services. Based on the information we have been provided, we do not believe representation of the Joint Clients with respect to the Legal Services involves an actual conflict of interest between either of the Joint Clients. If either of the Joint Clients is aware of an actual conflict of interest as between them, please let K&F know immediately.

Even though there may be no actual conflict, there are potential conflicts. K&F currently represents numerous community choice aggregators and other organizations and companies in California's energy industry in matters that do not pertain to the Legal Services.

Differences in respective financial resources, prior experience, interests, and objectives of the Joint Clients could make one approach to K&F's responsibilities more favorable to one of the Joint Clients than to the other, or could lead to disputes among the Joint Clients. For example, if K&F was to represent only one client, rather than both of the Joint Clients, K&F might be able to obtain more favorable treatment for that one. Because K&F will be representing both of the Joint Clients, it will be necessary to balance the interests of the Joint Clients rather than prioritizing the interests of only one client.

If either of the Joint Clients becomes concerned with any relationship K&F may have with particular clients, companies, or individuals, we encourage that Joint Client to bring those concerns to our attention. If a potential conflict arises, either among the Joint Clients or between one or more of the Joint Clients and other K&F clients that may impact our ability to fully represent the Joint Clients with respect to the Legal Services, we will promptly bring that conflict to the attention of the Joint Clients.

In the event the Joint Clients become adverse to each other with respect to the Legal Services, each of the Joint Clients agree that they shall not seek disqualification of K&F from representation of the other Joint Client with respect to the Legal Services on the basis of this Joint Representation Agreement, K&F's access to confidential information obtained from the Joint Clients in connection with the Legal Services, or K&F's separate representation of either of the Joint Clients on matters unrelated to the Legal Services; provided, however, that nothing in this Joint Representation Agreement authorizes K&F to represent either of the Joint Clients in any action brought by or against either of the other Joint Clients.

2. Confidentiality of Communications and Work Product

It is in the Joint Clients' interest to preserve confidentiality of all communications and work product related to the Legal Services. If either of the Joint Clients discloses such communications or work product to persons or entities that are not a party to this Joint Representation Agreement, it jeopardizes the privileged and confidential nature of that communication or work product. Accordingly, we advise the Joint Clients to take care not to disclose privileged information or work product to any person or entity that is not a party to this Joint Representation Agreement. The Joint Clients understand and acknowledge that any communications between each of the Joint Clients and K&F regarding the Legal Services may not be kept confidential from the other Joint Clients. In addition, should any future dispute among the Joint Clients concerning the matter on which the Joint Clients have engaged us to represent you lead to litigation, the attorney-client privilege may not protect communications that were commonly shared.

If either of the Joint Clients wishes to communicate confidentially with K&F about matters outside the scope of the Legal Services, that client should: 1) exclude all third parties from the communication, including the other member of the Joint Clients, and 2) ensure K&F is aware the correspondence is on behalf of the individual agency, company or organization and is not related to the Legal Services subject to this Joint Representation Agreement.

Through this Joint Representation Agreement, the Joint Clients authorize K&F to engage in confidential communications with EQ Research LLC to obtain litigation support with respect to the Legal Services. K&F understands it is the intent of the Joint Clients that all communications and work product that are developed by, or shared with, EQ Research LLC related to the Legal Services shall be confidential and subject to attorney-client privilege.

3. Fees, Costs, and Invoicing

By signing this Joint Representation Agreement, the Joint Clients agree to pay for time and out-of-pocket expenses according to the terms set forth below.

a. Professional Fees

K&F will keep an hourly total of time spent on the Legal Services matters. Work will be performed at hourly rates according to the rates set forth in <u>Attachment A</u> to this Engagement Letter, which is incorporated by reference herein. It is K&F's policy to adjust hourly rates for all attorneys and staff at the beginning of the calendar year. Historically, rate increases have been between 5-8% per year. Rates quoted in <u>Attachment A</u> are 2022 rates. Our firm's practice is to charge for travel time, as discussed in <u>Attachment A</u>.

Tim Lindl will be the lead K&F attorney providing the Legal Services to the Joint Clients. Mr. Lindl may utilize services of other K&F attorneys and support staff in connection with this matter. By executing this Joint Representation Agreement, you consent to Mr. Lindl serving as lead attorney in providing the Legal Services and to his assignment, as necessary, of work on this matter to the attorneys or support staff listed in Attachment A.

b. Expenses

Expenses may be incurred in performing the Legal Services. K&F will bill for all costs, disbursements, and expenses in addition to our hourly fees. Costs and expenses include costs for travel including mileage and parking, and similar expenses. Expenses shall be billed at actual cost.

c. Invoices and payments

K&F will invoice SDCP and CEA separately at the beginning of each month for all Legal Services provided to both SDCP and CEA during the prior calendar month for the Legal Services. Each invoice shall be allocated 50% to SDCP and 50% to CEA. SDCP and CEA shall each be responsible for payment of the total amount from each of their respective invoices for the Legal Services. Each of Joint Parties shall be responsible for paying their respective invoices. Unless otherwise agreed to in writing, neither of the Joint Clients will be obligated to pay for fees and expenses that cause each Joint Client's share of total invoices for the Legal Services to exceed Thirty-Seven Thousand Five Hundred Dollars (\$37,500.00).

Invoices are due and payable within thirty (30) calendar days. Any unpaid amounts after thirty days will accrue interest at a rate of nine percent (9%) per annum. Fees for Legal Services will be earned as of the time of invoicing. Invoices shall list the matter worked on and provide information on the dates of service, time involved, attorney responsible, and activities undertaken.

4. Termination of K&F's Representation

Either of the Joint Clients may terminate K&F's representation of that individual Joint Client at any time and for any reason. K&F may terminate its representation of the Joint Clients or one of the Joint Clients at any time and for any reason, subject to the California State Bar Rules of Professional Conduct.

5. Miscellaneous

This letter is the entire agreement between the Joint Clients and K&F concerning the joint representation of the Joint Clients in the provision of Legal Services. It does <u>not</u> supersede or replace any prior agreement between K&F and the Joint Clients. This Joint Representation Agreement and the scope of Legal Services provided under it may be amended from time to time by mutual agreement among K&F and the then-current Joint Clients. Amendments shall be in writing and signed by all parties. California law will govern this agreement and any subsequent amendments.

6. Conclusion

If the terms of K&F's representation as explained in this Joint Representation Agreement are satisfactory, please execute a copy of this letter as indicated and return it to me. Please feel free to contact me if you have any questions. We look forward to our representation of the Joint Clients.

Sincerely,

Tim Lindl, Partner Keyes & Fox LLP

Each of the Joint Clients authorize K&F to represent their interests with respect to the Legal Services. Each of the Joint Clients also acknowledge, by signing this letter, that they have had the opportunity to consult with other counsel about the consequences of joint representation and that K&F recommends that they do so. By signing this letter, the signatory affirms that he or she understands and agrees to bind his or her agency, company or organization to the terms set forth in this Joint Representation Agreement. This Joint Representation Agreement shall not take effect, and K&F shall have no obligation to provide the Legal Service described herein, until each of the Joint Clients have returned a signed copy of this letter.

SAN DIEGO COMMUNITY POWER

I have read the foregoing Joint Representation Agreement, understand it and agree to it on behalf of San Diego Community Power.

By:_____

Karin Burns

Chief Executive Officer

Date: _____

CLEAN ENERGY ALLIANCE

I have read the foregoing Joint Representation Agreement, understand it and agree to it on behalf of Clean Energy Alliance.

By:_____

Barbara Boswell

Chief Executive Officer

Date:

Attorneys

Kevin Fox	\$445
Jason Keyes	\$340
Tim Lindl	\$385
Jake Schlesinger	\$340
Scott Dunbar	\$305
Sheridan Pauker	\$395
Mark Valentine	\$350
Beren Argetsinger	\$285
Caryn Lai	\$380
Nikhil Vijaykar	\$315
Lee Ewing	\$260
Julia Kantor	\$280
James Van Nostrand	\$300
Ann Springgate	\$350
David Wooley	\$280

EQ Analysts/Experts

Miriam Makhyoun	\$210/\$255*
Amanda Vanega	\$190
Justin Barnes	\$190/\$280*
Ben Inskeep	\$170/\$240*
Blake Elder	\$150
Doug Pietrucha	\$140
Heather DePouw	\$120
Alicia Zaloga	\$120
James Van Nostrand	\$330/\$375*

* Asterisked rates for EQ personnel are expert witness rates

Travel Policy: Unless special arrangements are made, travel time is billed at the full hourly rate. Every effort will made to work productively on the Joint Clients matters during travel. If work is performed for another client during travel, the Joint Clients will not be billed for that time. All reasonable travel expenses are billable – hotel, airfare, car rental, meals, taxi, public transit, etc.

Work Policy: Reasonable time for filing and service is billed at regular billable rates.

Miscellaneous Expenses Policy: Expenses for postage, photocopying, printing, faxing and other minor expenses directly related to a matter are billable at cost to the Joint Clients.



SAN DIEGO COMMUNITY POWER Staff Report – Item 5

To: San Diego Community Power Board of Directors

From: Laura Fernandez, Director of Regulatory and Legislative Affairs

Via: Karin Burns, Chief Executive Officer

Subject: Approve Amendment to Professional Services Agreement with NewGen Strategies and Solutions, LLC for Regulatory Support and Rate-related Analysis

Date: April 28, 2022

RECOMMENDATIONS

1. Approve Third Amendment to Professional Services Agreement with NewGen Strategies and Solutions, LLC to increase the not-to-exceed amount by \$250,000, extend agreement term through FY 23 and authorize the CEO to execute the amendment.

BACKGROUND

In December 2020, SDCP approved a contract with NewGen Strategies and Solutions, LLC for services related to reviewing SDG&E's 2021 Energy Resource Recovery Account (ERRA) forecast proceeding, the 2021 Power Charge Indifference Adjustment (PCIA) proceeding and the 2020 forecasted year-end Portfolio Allocation Balancing Account (PABA). All of these proceedings impact the cost competitiveness of SDCP's service. In May of 2021, SDCP amended the professional services agreement to expand the scope of work to include the 2022 ERRA Forecast and 2020 ERRA Compliance proceedings as well as support for SDCP programs, such as the Disadvantaged Community-Green Tariff/Community Solar-Green Tariff program and other regulatory and analytical support as requested by SDCP.

ANALYSIS AND DISCUSSION

Staff recommends increasing NewGen Strategies and Solutions, LLC contract by \$250,000 for services through June 30, 2023. The reasons for this increase include expanded scope of work to include the following:

• 2023 ERRA Forecast

• 2021 ERRA Compliance

• Continuing support of development of SDCP programs, such as the Disadvantaged Community-Green Tariff/Community Solar-Green Tariff program

• Additional regulatory and analytical support as requested by SDCP

SDCP intends to conduct a Request for Proposals for these services in 2023.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

Cost of this action includes a total amount not to exceed \$250,000 through June 30, 2023. Funding is available in the proposed FY23 budget.

ATTACHMENTS

Attachment A: Third Amendment to Professional Services Agreement Between San Diego Community Power and NewGen Strategies and Solutions, LLC

THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN SAN DIEGO COMMUNITY POWER AND NEWGEN STRATEGIES AND SOLUTIONS, LLC

THIS THIRD AMENDMENT ("**Third Amendment**") is entered into as of this April 28, 2022 by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority ("**SDCP**") and NEWGEN STRATEGIES AND SOLUTIONS, LLC, a Colorado limited liability company, ("**Consultant**"). SDCP and Consultant are sometimes individually referred to herein as the "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, the Parties entered into that certain Professional Services Agreement, dated July 16, 2020, a First Amendment to the Professional Services Agreement, dated December 23, 2020, and a Second Amendment to the Professional Services Agreement, dated June 8, 2021 (collectively, the "Agreement"); and

WHEREAS, pursuant to the Agreement, Consultant provides certain Services that include community choice aggregation regulatory filing review and analysis services to SDCP for certain California Public Utilities Commission proceedings; and

WHEREAS, the Parties desire to amend the Agreement for Consultant to provide additional regulatory Services for 2022 and 2023 and receive compensation for the additional services.

AGREEMENT

NOW, THEREFORE, it is agreed by and between the Parties as follows:

1. <u>Recitals</u>. The Recitals set forth above are true and correct and are incorporated into the body of this Amendment as though expressly set forth herein.

2. <u>Amendment of Section 1.1.</u> Consultant will provide additional Services related to SDG&E's 2022 ERRA applications. Furthermore, Consultant will provide regulatory and analytical support to SDCP in other matters as requested by SDCP and upon mutual agreement by SDCP and Consultant.

3. <u>Amendment of Section 1.2.</u> Section 1.2 of the Agreement is amended to extend the term of the Agreement to June 30, 2023.

4. <u>Additional Compensation.</u> Consultant shall be entitled to compensation for the additional Services provided under this Third Amendment in an amount not to exceed \$250,000.

5. <u>Amendment of Section 2.4.</u> Section 2.4 of the Agreement is amended to update the key personnel for performance of Services. The key personnel listed in the Agreement are amended to include the following:

Brian Dickman, Executive Consultant Jill Schuepbach, Executive Consultant

6. <u>Effect of Amendment</u>. Except as expressly set forth in this Amendment, all other sections, provisions, exhibits and commitments of the Agreement remain unchanged and in full force and effect.

7. <u>Capitalized Terms:</u> Any capitalized terms not defined herein shall have the meanings set forth in the Agreement.

8. <u>Counterparts</u>. This Amendment may be executed in one or more counterparts, including facsimile counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Third Amendment to the Professional Services Agreement between San Diego Community Power and NewGen Strategies and Solutions, LLC, as of the date first set forth above.

SAN DIEGO COMMUNITY POWER

NEWGEN STRATEGIES AND SOLUTIONS, LLC

Name: Karin Burns Title: Chief Executive Officer Date: Name: Tony Georgis Title: Managing Director Date:

ATTEST:

Secretary, SDCP Board of Directors

APPROVED AS TO FORM:

SDCP General Counsel



SAN DIEGO COMMUNITY POWER Staff Report – Item 6

То:	San Diego Community Power Board of Directors
From:	Lucas Utouh, Director of Data Analytics & Account Services
Via:	Karin Burns, Chief Executive Officer
Subject:	Approval of Debt Collection Professional Services Agreement with Financial Credit Network
Date:	April 28, 2022

RECOMMENDATION

Approve Professional Services Agreement for Debt Collection services with Financial Credit Network (FCN).

BACKGROUND

In December, 2021 the San Diego Community Power (SDCP) Board of Directors adopted a delinquency policy for non-residential customers which outlined the criteria and steps to reduce bad-debt and provide a better experience for our customers. In a tight economic and regulatory framework, load serving entities, such as SDCP, need to minimize and mitigate bad debts for their overall long term financial viability, resiliency and competitiveness.

SDCP issued a Request for Proposals for Debt Collection Services on January 26, 2022 and received three qualified responses. After a thorough competitive grading and interview process, Financial Credit Network (FCN) was selected for award of the contract.

ANALYSIS AND DISCUSSION

Financial Credit Network (FCN) is a mid-sized collection agency located out of Visalia, California. With over 50 years of experience, FCN has served numerous utility clients and has experience working with electric utilities like SDG&E and Community Choice Aggregators, including Clean Energy Alliance.

FCN utilizes a variety of collection methodologies and technologies including *skip tracing* and *dialer advantage* while focusing on maintaining effective and empathetic customer service. FCN has bi-lingual Spanish speaking staff to assist consumers, as well as access to a multi-language program to make sure consumers can use their language of origin if requested.

Per the terms of SDCP's delinquency policy, FCN will not charge interest on the balance of consumer accounts and will not add on any separate fees to the consumer. Consumer payments can be made through a variety of methods including by mail, credit card, ACH, MoneyGram or directly through the FCN website.

For accounts that have outstanding balances of \$750 or more, FCN may, after receiving SDCP approval, take legal action in efforts to recover outstanding balances.

FCN offers a contingency-based fee structure for its collection services. Simply, if FCN is unable to collect, they are not owed anything by SDCP. SDCP and FCN agreed to a negotiated contingency fee structure of 22% for primary placements and 28% for legal action/forwarding placements.

FCN meets SDCP's data privacy requirements and has a robust data management system. FCN maintains an SFTP server dedicated to clients who wish to electronically transmit files to their office and also supports PGP encryption for added security.

Critically, for SDCP, FCN also emphasizes quality assurance through three elements: side-by-side monitoring, silent monitoring, and file review. SDCP would be able to audit customer call interactions with FCN to ensure that they are meeting our high standards of customer service.

COMMITTEE REVIEW

FISCAL IMPACT

FCN's compensation is based on contingency fees charged on recovered debts, so there is no fiscal impact to SDCP. FCN's compensation schedule is outlined below:

COMPENSATION BILLING RATES

Description	Contigency Fee
Primary Placements	22%
Legal Action or Forwarding on Primary Placements	28%

Based on SDCP's estimated bad debt and FCN's historical recovery rates, SDCP could expect to recover anywhere from \$10,000 - \$100,000 annually.

ATTACHMENTS

TAKE IS SET

Attachment A: Professional Services Agreement with Financial Credit Network for Debt Collection Services

Attachment B: SDCP Collections and Delinquent Accounts Handling Policy

SAN DIEGO COMMUNITY POWER PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made and entered into this 28th day of April, 2022, by and between SAN DIEGO COMMUNITY POWER, a California joint powers agency ("SDCP") and FINANCIAL CREDIT NETWORK, INC. (FCN), ("Consultant"). SDCP and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

RECITALS

A. Consultant desires to perform and assume responsibility for the provision of certain professional services required by SDCP on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing **Debt Collection Services**, is licensed and/or authorized to continue to operate in California pending approval of application to continue offering debt collection services by the Department of Financial Protection and Innovation (DFPI), and is familiar with the plans of SDCP.

B. SDCP desires to engage Consultant to render such professional services for the debt collection services for Non-residential customers ("**Project**") as set forth in this Agreement.

AGREEMENT

1. Scope of Services and Term.

1.1 <u>General Scope of Services</u>. Consultant promises and agrees to furnish to SDCP all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the debt collection services for non-residential customers necessary for the Project ("Services"). The Services are more particularly described in and shall be performed in accordance with <u>Exhibit A</u> attached hereto, and which are stated in the proposal to SDCP. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

1.2 <u>Term</u>. The term of this Agreement shall be from **April 28, 2022** to **April 30, 2024**; unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

2. **Responsibilities of Consultant.**

2.1 <u>Control and Payment of Subordinates; Independent Contractor</u>. The Services shall be performed by Consultant. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. SDCP retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of SDCP and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

2.2 <u>Schedule of Services</u>. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Scope and Schedule of Services set forth in <u>Exhibit A</u> attached hereto. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, SDCP shall respond to Consultant's submittals in a timely manner. Upon request of SDCP, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

2.3 <u>Conformance to Applicable Requirements</u>. All work prepared by Consultant shall be subject to the approval of SDCP.

2.4 <u>Substitution of Key Personnel</u>. Consultant has represented to SDCP that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of SDCP. In the event that SDCP and Consultant cannot agree as to the substitution of key personnel, SDCP shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to SDCP, or who are determined by the SDCP to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the SDCP. The key personnel for performance of this Agreement are as follows:

Kris Davisson, Vice President

2.5 <u>SDCP's Representative</u>. SDCP hereby designates its **Director of Data Analytics** and Account Services, or his or her designee, to act as its representative for the performance of this Agreement ("SDCP's Representative"). SDCP's Representative shall have the power to act on behalf of SDCP for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than SDCP's Representative, or designee.

2.6 <u>Consultant's Representative</u>. Consultant hereby designates **Kris Davisson**, or his or her designee, to act as its Representative for the performance of this Agreement ("**Consultant's Representative**"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

2.7 <u>Coordination of Services</u>. Consultant agrees to work closely with SDCP staff in the

performance of Services and shall be available to SDCP's staff, consultants and other staff at all reasonable times.

2.8Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and sub- contractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from SDCP, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subcontractors who is determined by SDCP to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to SDCP, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

2.9 <u>Laws and Regulations</u>. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to SDCP, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold SDCP, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

2.10 <u>Insurance</u>.

2.10.1 <u>Time for Compliance</u>. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to SDCP that it has secured all insurance required under this section, in a form and with insurance companies acceptable to SDCP. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to SDCP that the subcontractor has secured all insurance required under this section.

2.10.2 <u>Minimum Requirements</u>. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant

shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) <u>Minimum Scope of Insurance</u>. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) <u>Minimum Limits of Insurance</u>. Consultant shall maintain limits no less than: (1) *General Liability:* \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

2.10.3 <u>Professional Liability</u>. Consultant shall procure and maintain, and require its subcontractors to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

2.10.4 <u>Insurance Endorsements</u>. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by SDCP to add the following provisions to the insurance policies:

(A) <u>General Liability</u>.

(i) Commercial General Liability Insurance must include coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by

one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(iii) The policy shall give SDCP, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(iv) The additional insured coverage under the policy shall be "primary and non-contributory" and will not seek contribution from SDCP's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(B) <u>Automobile Liability</u>. The automobile liability policy shall be endorsed to state that: (1) SDCP, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects SDCP, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by SDCP, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) <u>Workers' Compensation and Employers Liability Coverage</u>.

(i) Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Consultant will comply with such provisions before commencing work under this Agreement.

(ii) The insurer shall agree to waive all rights of subrogation against SDCP, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) <u>All Coverages</u>. Defense costs shall be payable in addition to the limits set forth hereunder. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to SDCP, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

(i) The limits of insurance required in this Agreement may be

satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of SDCP (if agreed to in a written contract or agreement) before SDCP's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

(ii) Consultant shall provide SDCP at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to SDCP at least ten (10) days prior to the effective date of cancellation or expiration.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by SDCP, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(v) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, SDCP has the right but not the duty to obtain the insurance it deems necessary and any premium paid by SDCP will be promptly reimbursed by Consultant or SDCP will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, SDCP may cancel this Agreement. SDCP may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(vi) Neither SDCP nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

2.10.5 <u>Separation of Insureds; No Special Limitations</u>. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to SDCP, its directors, officials, officers, employees, agents and volunteers.

2.10.6 <u>Deductibles and Self-Insurance Retentions</u>. Any deductibles or self-insured retentions must be declared to and approved by SDCP. Consultant shall guarantee that, at the option of SDCP, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SDCP, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

2.10.7 <u>Acceptability of Insurers</u>. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, licensed to do business in California, and satisfactory to SDCP.

2.10.8 <u>Verification of Coverage</u>. Consultant shall furnish SDCP with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to SDCP. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf and shall be on forms provided by SDCP if requested. All certificates and endorsements must be received and approved by SDCP before work commences. SDCP reserves the right to require complete, certified copies of all required insurance policies, at any time.

2.10.9 <u>Subcontractor Insurance Requirements</u>. Consultant shall not allow any subcontractors to commence work on any subcontract until they have provided evidence satisfactory to SDCP that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors shall be endorsed to name SDCP as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, SDCP may approve different scopes or minimum limits of insurance for particular subcontractors.

2.10.10 <u>Safety</u>. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3. Fees and Payments.

3.1 <u>Compensation</u>. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in <u>Exhibit B</u>, attached hereto. The total compensation shall not exceed the following rate structure:

Description	Contigency Fee
Primary Placements	22%
Legal Action or Forwarding on Primary Placements	28%

without written approval of SDCP's **CEO** or **Interim Executive Officer** and may be subject to review by both parties after the first year. Extra Work may be authorized, as described below, and, if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.2 <u>Reimbursement for Expenses</u>. Consultant shall not be reimbursed for any expenses unless authorized in writing by SDCP.

3.3 <u>Extra Work</u>. At any time during the term of this Agreement, SDCP may request that Consultant perform Extra Work. As used herein, "**Extra Work**" means any work which is determined by SDCP to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from SDCP's Representative.

4. Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of SDCP during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of four (4) years from the date of final payment under this Agreement.

5. General Provisions.

5.1 <u>Termination of Agreement</u>.

5.1.1 <u>Grounds for Termination</u>. SDCP may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to SDCP, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

5.1.2 <u>Effect of Termination</u>. If this Agreement is terminated as provided herein, SDCP may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

5.1.3 <u>Additional Services</u>. In the event this Agreement is terminated in whole or

in part as provided herein, SDCP may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

5.2 <u>Delivery of Notices</u>. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant:	Financial Credit Network, Inc. (FCN) Attn: Kris Davisson Vice President 1300 West Main Street Visalia, CA 93281
SDCP:	San Diego Community Power Attn: Chief Executive Officer PO BOX 12716 San Diego, CA 92112

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

5.3 <u>Ownership of Materials and Confidentiality</u>.

5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for SDCP to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that SDCP is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by SDCP. SDCP shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at SDCP's sole risk.

5.3.2 <u>Intellectual Property</u>. In addition, SDCP shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media ("**Intellectual Property**") prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

SDCP shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by SDCP, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of SDCP.

Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the SDCP.

All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

SDCP further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

5.3.3 <u>Confidentiality</u>. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of SDCP, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use SDCP's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of SDCP.

5.3.4 <u>Infringement Indemnification</u>. Consultant shall defend, indemnify and hold SDCP, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by SDCP of the Documents & Data, including any method, process, product, or concept specified or depicted.

5.4 <u>Cooperation; Further Acts</u>. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

5.5 <u>Attorney's Fees</u>. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

5.6 <u>Indemnification</u>.

To the fullest extent permitted by law, Consultant shall defend (with counsel 5.6.1 of SDCP's choosing), indemnify and hold the SDCP, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against SDCP, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against SDCP or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse SDCP and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the SDCP, its officials, officers, employees, agents, or volunteers. This section shall survive any expiration or termination of this Agreement.

5.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code § 2782.8), then, and only to the extent required by Civil Code § 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

5.7 <u>Entire Agreement</u>. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

5.8 <u>Governing Law</u>. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Diego County.

5.9 <u>Time of Essence</u>. Time is of the essence for each and every provision of this Agreement.

5.10 <u>SDCP's Right to Employ Other Consultants</u>. SDCP reserves right to employ other consultants in connection with this Project.

5.11 <u>Successors and Assigns</u>. This Agreement shall be binding on the successors and assigns of the Parties.

5.12 <u>Assignment or Transfer</u>. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of SDCP. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

5.13 <u>Construction; References; Captions</u>. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to SDCP include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

5.14 <u>Amendment; Modification</u>. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

5.15 <u>Waiver</u>. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

5.16 <u>No Third Party Beneficiaries</u>. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

5.17 <u>Invalidity; Severability</u>. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5.18 <u>Prohibited Interests</u>. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for

Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, SDCP shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of SDCP, during the term of his or her service with SDCP, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

5.19 <u>Equal Opportunity Employment and Subcontracting</u>. Consultant represents that it is an equal opportunity employer and it shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of applicants, employees, subcontractors, vendors, or suppliers. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Further, Consultant shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

5.20 <u>Labor Certification</u>. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation, or to undertake self- insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

5.21 <u>Authority to Enter Agreement</u>. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

5.22 <u>Counterparts</u>. This Agreement may be signed in counterparts, each of which shall constitute an original.

5.23 <u>Subcontracting</u>. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of SDCP. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE TO SAN DIEGO COMMUNITY POWER PROFESSIONAL SERVICES AGREEMENT

IN WITNESS WHEREOF, the Parties have made and executed this Agreement as of the date first written above.

SAN DIEGO COMMUNITY POWER

[INSERT NAME OF CONSULTANT]*

By :	By :
Name:	Name:
Title:	Title:

ATTEST:

[INSERT NAME OF CONSULTANT]*

Secretary, SDCP Board of Directors	Secretary,	SDCP	Board	of Directors
------------------------------------	------------	-------------	-------	--------------

By :	 	
Name:		
Title:		

APPROVED AS TO FORM:

SDCP General Counsel

*A corporation requires the signatures of two corporate officers.

One signature shall be that of the Chairman of Board, the President or any Vice President, and the second signature (on the attest line) shall be that of the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer of such corporation.

If the above persons are not the intended signators, evidence of signature authority shall be provided to SDCP.

EXHIBIT A

SCOPE AND SCHEDULE OF SERVICES

The primary scope of service is to achieve maximum recovery of debts owed to SDCP for electric generation services rendered to customers. SDCP values professionalism, a sense of community, and quality public services. As a result, the Consultant needs to provide debt collection services effectively and empathetically, with care and respect to SDCP's diverse customer base.

The Consultant will perform the debt collection services for non-residential customers for SDCP as follows:

- Consultant shall familiarize itself with <u>SDCP's Collection & Delinquency Accounts</u> <u>Handling Policy</u> and the bad debt minimums listed within the policy.
- Consultant shall accept referrals for non-residential customers from SDCP and/or SDCP's back-office service provider for collection and settlement.
- When directed by SDCP, Consultant may file credit reporting information on the pertinent customers with all applicable agencies.
- Consultant shall demonstrate expertise and experience with debt collection and must be a member of the ACA International (formerly known as American Collectors Association) and/or the Associated Credit Bureaus.
- Consultant shall make contact with all delinquent accounts referred by SDCP under the name of its debt collection agency, not in the name of SDCP.
- Consultant shall submit status reports on a monthly basis and an annual report on a fiscal year based on July 1st through June 30th fiscal year schedule, reflecting the activity for the previous fiscal year. These reports shall include data for each of account detailing the value of the current debt, money received, charges waived, balance due and date of last payment. A financial summary will also be required showing "period to date" and "year to date" totals for pertinent information such as receipts, net accounts receivable, total accounts receivable, and collection percentage. In addition, an aging report should be available in summary and in detail. Consultant shall provide copies of all available reports.
- In accordance with SDCP's Board approved Collections and Delinquent Accounts Handling policy, no accrued interest will be charged on any customer account by the Consultant while collecting on customers' delinquent balances.
- Consultant shall accept automated (digital) or manual (hard copy) transfer of delinquent payment information from SDCP and/or SDCP's designated back-office service

provider. It is expected that the Consultant will work, at no additional cost, with SDCP and/or SDCP's designated back-office service provider to ensure accurate, timely and secured transmission of data.

- In accordance with SDCP's <u>Customer Data Confidentiality Policy</u>, Consultant shall ensure that data flow between SDCP and/or SDCP's designated back-office service provider will be via secured channels such as SFTP, SharePoint etc. and guarantee the confidentiality, security, and safety of all files, documents, computer files, and shall agree to enter into a confidentiality agreement with SDCP.
- Consultant shall perform all work in accordance with the applicable provisions of the Federal Fair Debt Collection Practices Act, as well as all state and local laws and SDCP staff direction.
- The Consultant shall meet periodically with the SDCP staff to discuss all services. The Consultant will also provide recommendations on how SDCP can reduce future bad debt. SDCP will provide overall feedback on the conduct of the collection service, as it will reflect on SDCP's policies and reputation. The Consultant will agree to employ courteous business procedures to the end of maintaining SDCP's goodwill in the community. The Consultant shall also provide updates to SDCP on changes in state and federal laws related to credit and collections.
- The Consultant will be fully responsible for maintaining accurate records of all correspondence, documents, accounting records, transactions and other relative evidence for at least four (4) years in accordance with California's statute of limitations for debt collection. All records and books shall be made available to SDCP for review upon request.
- Any settlement of principal or charges shall be agreed upon between the Consultant and SDCP, prior to acceptance. No legal actions shall be taken against a customer without the express written consent of SDCP.
- The attorney of record on the collections referred that do require litigation, must be a member in active and good standing with the State Bar of California. The Consultant must agree that any litigation commenced for collection of a premium debt be filed in the applicable state or federal courts located in the County of San Diego, California.
- Consultant must adhere to ethical vendor standards including good business practices, environmental track record, and commitment to fair employment practices and compensation.
- Consultant must have the staff capable of meeting the requirements of this agreement. To the extent that Consultant lacks specific expertise in any of the disciplines needed

by SDCP, a professional team of subcontractors or associate firms should be assembled by the Consultant to complement their technical expertise, which shall be subject to approval by SDCP pursuant to Section 5.23 of the Agreement.

EXHIBIT B

COMPENSATION BILLING RATES

Description	Contigency Fee
Primary Placements	22%
Legal Action or Forwarding on Primary Placements	28%



San Diego Community Power

Collections and Delinquent Accounts Handling Policy

Effective Date: December 16, 2021

PURPOSE

This policy establishes a delinquent accounts, collections and write off policy that provides the framework for SDCP staff and Back Office Service provider to better serve our customers and set clear expectations on the handling of past due customer charges.

GENERAL CRITERIA

- 1. Any active SDCP customer who has overdue SDCP charges that exceed \$250 shown on their SDG&E bill will receive a late payment notification letter from SDCP. The letter will be sent after being 60 days past due, with a second letter sent after being 90 days past due, informing the customer of their overdue status and the avenues available to pay the overdue SDCP charges. The customer will be provided 30 days, after the second and final late payment notification letter is sent, to either pay in full or make arrangements to cure the past due balance in installments. If payment in full is not received within the prescribed 30 days, or the terms of an activated payment arrangement are not fulfilled, the delinquent SDCP customer account will be closed and returned to SDG&E bundled generation service on the next account meter read date. SDG&E has discretion to assess the customer an opt out fee in accordance with SDG&E's Schedule CCA ("Transportation of Electric Power for Community Choice Aggregation Customers"). Please see the following exclusion:
 - Customers already on any SDG&E payment arrangement plans who are meeting the payment plan
 requirements will be excluded from receiving late payment notifications and/or being subjected to
 our collections and delinquent accounts handling protocols.
- 2. SDCP will select a local collections agency to enforce this policy for Non-Residential customers.
- 3. Any overdue SDCP charges (120 days or more past due) totaling \$20.00 or more which have not been paid by a customer who is no longer active and being collected by SDG&E may be referred to a collections agency for settlement.
- 4. Any overdue SDCP charges (120 days or more past due) totaling \$19.99 or less which have not been paid by a customer who is no longer active and being collected by SDG&E may be considered bad debt and written off.
- 5. No accrued interest will be charged on any customer account.
- 6. If a customer has not paid within 180 days following the initiation of the collections process, the collection agency may file credit reporting information on the customer with all applicable agencies.
- 7. Under the guidance of SDCP, the collections agency may be authorized to pursue legal action on any customer with an outstanding balance of \$750 or more.
- 8. After a customer has paid all overdue amounts, all collections activity will terminate for that customer.
- 9. Staff will return to the Board with an adjusted policy recommendation for Residential customers after collecting more data in 2022.



SAN DIEGO COMMUNITY POWER Staff Report – Item 7

То:	San Diego Community Power Board of Directors
From:	Eric W. Washington, Chief Financial Officer
Via:	Karin Burns, Chief Executive Officer
Subject:	Approval of Sublease Agreement with Nuvve Holding Corporation for Temporary Space
Date:	April 28, 2022

RECOMMENDATION

Approve Sublease Agreement with Nuvve Holding Corporation for Temporary Office Space for execution by the Chief Financial Officer or the Chief Executive Officer.

BACKGROUND

On October 1, 2019, San Diego Community Power (SDCP) was established through the Joint Powers Agreement (JPA) made by its Founding Members, the cities of San Diego, Chula Vista, La Mesa, Encinitas, and Imperial Beach, pursuant to the provisions of Title 1, Division 7, Chapter 5, Article 1 (Section 6500 et seq.) of the California Government Code relating to the joint exercise of powers among the public agencies. After SDCP was established, its employees worked remotely without a dedicated office space.

Per section 3.2.5 of the JPA, the ability to lease any property is a power which may be exercised at the discretion of the SDCP Board of Directors (Board).

On August 1, 2021, SDCP entered into a Membership Agreement with MRE 31, LLC., doing business as Moniker Commons (Moniker), for office space located at 2829 Historic Decatur Road, San Diego, California, 92106. The term of the Membership Agreement was from August 1, 2021 to May 31, 2022. The membership included two 4-person offices, one 5-person office, and two 6-person offices that could accommodate up to 25 staff members. The monthly cost for the office space is \$14,500.

ANALYSIS AND DISCUSSION

SDCP currently has 18 staff members and five active recruitments. SDCP's current office space can accommodate up to 25 people and resides within a shared area with other companies at 2829 Historic Decatur Road, San Diego, CA 92106. SDCP is nearing the term of the Membership Agreement for the office space on May 31, 2022.

The proposed new office space, located at 2488 Historic Decatur Road, Suite 250, San Diego, California 92106, will accommodate up to 32 staff members. The new space will

include five offices, access to two conference rooms, and a shared community space. The initial term of the sublease agreement is for six months from June 1, 2022 to November 31, 2022, with two 6 – month extension options. The lease rate for the new office space is \$14,500 per month which is the same rate as SDCP's current office space with Moniker Commons. Staff believe that the new office space will accommodate SDCP as it continues to grow and add staff.

Staff therefore recommend that the Board authorize the Chief Financial Officer or Chief Executive Officer to execute the Sublease Agreement with Nuvve Holding Corporation for the proposed new office space located at 2488 Historic Decatur Road, Suite 250, San Diego, California 92106.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

Cost for the new space will remain the same during the term of the lease at \$14,500 per month. Funding is available in the budget to cover the lease payments.

ATTACHMENTS

Attachment A: Sublease Agreement with Nuvve Holding Corp – 2488 Historic Decatur

SUBLEASE AGREEMENT

This Sublease Agreement ("**Sublease**"), dated as of the 1st day of June, 2022 (the "**Effective Date**"), is entered into between Nuvve Holding Corp., a Delaware corporation having its headquarters at 2488 Historic Decatur Road, Suite 200, San Diego, California, 92106 ("**Sublandlord**") and San Diego Community Power, a California joint power agency qualified to do business in the State of California, having an address at 815 E Street, San Diego, Suite 12716, San Diego, California, 92112 ("**Subtenant**" and, together with Sublandlord, collectively referred herein as the "**Parties**" or individually as a "**Party**").

RECITALS

- A. WHEREAS, Sublandlord is the tenant under that certain lease agreement dated May 16, 2021, as amended by that certain First Amendment to Lease, dated as of November 3, 2021, as attached collectively hereto as <u>Annex 1</u>, together, the "Primary Lease") with LVA5 SAN DIEGO LS, L.P. ("Prime Landlord"); and
- **B.** WHEREAS, pursuant to the Primary Lease, Sublandlord leased those certain premises ("Demised Premises") more particularly described in the Primary Lease and located in the building having a street address of 2488 Historic Decatur Road, Suite 200, San Diego, California 92106 ("Building"); and
- **C. WHEREAS**, Sublandlord desires to sublease a portion of its Demised Premises leased under the Primary Lease to Subtenant, and Subtenant desires to sublease a portion of Sublandlord's Demised Premises from Sublandlord, in accordance with the terms and conditions of this Sublease.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Demise**.

Sublandlord hereby leases to Subtenant, and Subtenant hereby leases from Sublandlord, the premises ("**Subleased Premises**") shown on <u>Exhibit A</u> attached to and made a part of this Sublease, located on a portion of the second floor in the Building and comprising a portion of the Demised Premises, containing 4,811 square feet.

2. Term.

(a) The term of this Sublease ("**Term**") of six (6) months shall commence on the date which is the later to occur of: (i) June 1st, 2022; and (ii) the date on which the Prime Landlord Consent (hereinafter defined) is obtained ("**Sublease Commencement Date**"), and shall expire on the date which is the later to occur of: (iii) midnight on November 31st, 2022 or (iv) six (6) months from the date on which the Prime Landlord Consent is obtained ("**Sublease Expiration Date**"), unless sooner terminated or cancelled in accordance with the terms and conditions of this Sublease.

(b) Subtenant shall have the option to extend the Term no more than two (2) times, each for a period of six (6) months (each an "Extended Term") by providing at least 30 days' prior written notice to Sublandlord before the expiration of the Term or a previous Extended Term. Each Extended Term (if any) shall be subject to the terms and conditions applicable to the Term as provided in this Sublease. Notwithstanding the above, Subtenant shall not be entitled to exercise any options to extend or renew the term of the Primary Lease, as these options are expressly retained by Sublandlord and may be exercised or waived by Sublandlord in its sole and absolute discretion.

(c) If for any reason the term of the Primary Lease is terminated prior to the Sublease Expiration Date, this Sublease shall terminate on the date of such termination and Sublandlord shall not be liable to Subtenant for such termination.

3. **Permitted Use**.

Subtenant shall use and occupy the Subleased Premises solely in accordance with, and as permitted under, the terms of the Primary Lease and for no other purpose.

4. **Payment of Base Rent and Additional Rent**.

(a) Throughout the Term of this Sublease, Subtenant shall pay to Sublandlord fixed base rent ("**Base Rent**") at the rate of \$14,500.00 per month, based upon occupancy of no more than 32 persons, from the Sublease Commencement Date to the Sublease Expiration Date. Subtenant shall pay to Sublandlord the first monthly installment of Base Rent at the time of execution and delivery of this Sublease by Subtenant to Sublandlord.

(b) In addition to Base Rent, commencing on the Sublease Commencement Date and continuing throughout the Term of this Sublease, Subtenant shall pay to Sublandlord: (i) 0% of operating expenses ("**Operating Expenses**") for the Demised Premises; (ii) 0% of real estate taxes and assessments ("**Taxes**") for the Demised Premises; (iii) all costs and expenses incurred by Sublandlord in connection with its subleasing of the Subleased Premises to Subtenant; and (iv) all amounts due and payable by Sublandlord under the Primary Lease due or attributable to the Subleased Premises or the actions or omissions of Subtenant (collectively, "**Additional Rent**"). Additional Rent shall be payable to Sublandlord in monthly installments based on estimates provided by Sublandlord no less than 10 days prior to the date same is due under the Primary Lease.

(c) Except for the first monthly installment of Base Rent as described in subsection (a) above, all Base Rent and Additional Rent shall be due and payable on the first day of each and every month, without demand therefor unless otherwise designated by Sublandlord and without any deduction, offset, abatement, counterclaim, or defense. The monthly installments of Base Rent and Additional Rent payable on account of any partial calendar month during the Term of this Sublease, if any, shall be prorated.

5. Security Deposit.

Simultaneously with the execution and delivery of this Sublease, Subtenant shall deposit with Sublandlord a security deposit ("Security Deposit") in the amount of two months' base rent as security for the full and faithful performance by Subtenant of Subtenant's obligations hereunder. The Security Deposit shall be paid in U.S. dollars and in immediately available funds.

6. **Incorporation of Primary Lease by Reference**.

The terms, covenants, and conditions of the Primary Lease, in the form attached hereto as <u>Annex 1</u>, are incorporated herein by reference, except to the extent they are expressly deleted or modified by the provisions of this Sublease. Every term, covenant, and condition of the Primary Lease binding on or inuring to the benefit of Prime Landlord shall, in respect of this Sublease, be binding on or inure to the benefit of Sublandlord and every term, covenant, and condition of the Primary Lease binding on or inuring to the benefit of Sublandlord shall, in respect of this Sublease, be binding on and inure to the benefit of Sublandlord shall, in respect of this Sublease, be binding on and inure to the benefit of Subtenant. Whenever the term "Lessor" or "Landlord" appears in the Primary Lease, the word "Sublandlord" shall be substituted therefor; whenever the term "Lessee" or "Tenant" appears in the Primary Lease, the word "Subtenant" shall be substituted therefor; and whenever the word "Premises" appears in the Primary Lease, the word "Sublease, the word "Sublease, the word "Subtenant" shall be substituted therefor; whenever the term?" shall be substituted therefor; and whenever the word "Premises" appears in the Primary Lease, the word "Sublease Premises" shall be substituted therefor.

7. Subordination to Primary Lease.

This Sublease is subject and subordinate to the Primary Lease. A copy of the Primary Lease is attached hereto as <u>Annex 1</u> and made a part of this Sublease.

8. **Representations of Sublandlord**.

Sublandlord represents and warrants the following is true and correct as of the date

hereof:

(a) Sublandlord is the tenant under the Primary Lease and has the capacity to enter into this Sublease with Subtenant, subject to Prime Landlord's consent.

(b) The Primary Lease attached hereto as <u>Annex 1</u> is a true, correct, and complete copy of the Primary Lease, is in full force and effect, and has not been further modified, amended, or supplemented except as expressly set out herein.

(c) Sublandlord has not received any notice, and has no actual knowledge, of any default by Sublandlord under the Primary Lease.

9. **AS-IS Condition**.

Subtenant accepts the Subleased Premises in its current, "as-is" condition. Sublandlord shall have no obligation to furnish or supply any work, services, furniture, fixtures, equipment, or decorations, except Sublandlord shall deliver the Subleased Premises in broom clean condition. On or before the Sublease Expiration Date or earlier termination or expiration of this Sublease, Subtenant shall

restore the Subleased Premises to the condition existing as of the Sublease Commencement Date, ordinary wear and tear excepted. The obligations of Subtenant hereunder shall survive the expiration or earlier termination of this Sublease.

10. **Performance by Sublandlord**.

Notwithstanding any other provision of this Sublease, Sublandlord shall have no obligation: (a) to furnish or provide, or cause to be furnished or provided, any repairs, restoration, alterations, or other work, or electricity, heating, ventilation, air-conditioning, water, elevator, cleaning, or other utilities or services; or (b) to comply with or perform or, except as expressly provided in this Sublease, to cause the compliance with or performance of, any of the terms and conditions required to be performed by Prime Landlord under the terms of the Primary Lease. Subtenant hereby agrees that Prime Landlord is solely responsible for the performance of the foregoing obligations. Notwithstanding the foregoing, on the written request of Subtenant, Sublandlord shall make a written demand on Prime Landlord to perform its obligations under the Primary Lease with respect to the Subleased Premises if Prime Landlord fails to perform same within the time frame and in the manner required under the Primary Lease; provided, however, Subtenant shall not be required to bring any action against the Prime Landlord to enforce Prime Landlord's obligations. If Sublandlord makes written demand on Prime Landlord or brings an action against Prime Landlord to enforce Prime Landlord's obligations under the Primary Lease with respect to the Subleased Premises, all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred by Sublandlord in connection therewith shall be deemed Additional Rent and shall be due and payable by Subtenant to Sublandlord within 30 days after notice from Sublandlord.

11. No Privity of Estate; No Privity of Contract.

Nothing in this Sublease shall be construed to create privity of estate or privity of contract between Subtenant and Prime Landlord.

12. No Breach of Primary Lease.

Subtenant shall not do or permit to be done any act or thing, or omit to do anything, which may constitute a breach or violation of any term, covenant, or condition of the Primary Lease, notwithstanding such act, thing, or omission is permitted under the terms of this Sublease.

13. Subtenant Defaults.

(a) If Subtenant fails to cure a default under this Sublease within any applicable grace or cure period contained in the Primary Lease, Sublandlord, after 30 days' notice to Subtenant, shall have the right, but not the obligation, to seek to remedy any such default on the behalf of, and at the expense of, Subtenant, provided, however, that in the case of: (i) a life safety or property related emergency; or (ii) a default which must be cured within a time frame set out in the Primary Lease which does not allow sufficient time for prior notice to be given to Subtenant, Sublandlord may remedy any such default without being required first to give notice to Subtenant. Any reasonable cost and expense (including, without limitation, reasonable attorneys' fees and expenses) so incurred by Sublandlord shall be deemed Additional Rent and shall be due and payable by Subtenant to Sublandlord within 30 days after notice from Sublandlord. (b) If Subtenant fails to pay any installment of Base Rent or Additional Rent within 5 days after the due date of such payment, Subtenant shall pay to Sublandlord, as Additional Rent, a "**late charge**" of 5% of the monthly Base Rent for the purposes of defraying the expense of handling such delinquent payment.

(c) If Subtenant fails to pay any installment of Base Rent or Additional Rent within 3 days from the due date of such payment, in addition to the payment of the late charge set out immediately above, Subtenant shall also pay to Sublandlord, as Additional Rent, interest at the Default Rate (hereinafter defined) from the due date of such payment to the date payment is made. "**Default Rate**" shall mean a rate *per annum* equal to the lesser of: (i) 1% in excess of the lowest *Wall Street Journal* Prime Rate, on the due date of such Base Rent or Additional Rent; and (ii) the highest rate of interest permitted by applicable laws.

14. Consents.

Whenever the consent or approval of Sublandlord is required, Subtenant shall also be obligated to obtain the written consent or approval of Prime Landlord, if required under the terms of the Primary Lease. Sublandlord shall promptly make such consent request on behalf of Subtenant and Subtenant shall promptly provide any information or documentation that Prime Landlord may request. Subtenant shall reimburse Sublandlord, not later than 30 days after written demand by Sublandlord, for any fees and disbursements of attorneys, architects, engineers, or others charged by Prime Landlord in connection with any consent or approval. Sublandlord shall have no liability of any kind to Subtenant for Prime Landlord's failure to give its consent or approval.

15. Prime Landlord Consent to Sublease.

This Sublease is expressly conditioned on obtaining the written consent of Prime Landlord and the written consent of any mortgagee, ground lessor, or other third party required under the Primary Lease (collectively, "**Prime Landlord Consent**").

(a) Any fees and expenses incurred by the Prime Landlord or any mortgagee, ground lessor, or other third party in connection with requesting and obtaining the Prime Landlord Consent shall be paid by Sublandlord and shall thereafter be reimbursed by Subtenant to Sublandlord as Additional Rent not later than 30 days after written demand by Sublandlord. Subtenant agrees to cooperate with Prime Landlord and supply all information and documentation requested by Prime Landlord within 15 days of its request therefor. Sublandlord shall not be required to perform any acts, expend any funds, or bring any legal proceedings to obtain the Prime Landlord Consent and Subtenant shall have no right to any claim against Sublandlord if the Prime Landlord Consent is not obtained.

(b) If the Prime Landlord Consent is not obtained within 30 days from the date of this Sublease, either Party may terminate this Sublease on written notice to the other, whereupon Sublandlord shall promptly refund to Subtenant the first month's Base Rent and the Security Deposit paid to Sublandlord, and neither Party shall have any further obligation to the other under this Sublease, except to the extent that the provisions of this Sublease shall expressly survive the termination of this Sublease.

(c) This Section 15 shall survive the expiration or earlier termination of this Sublease.

16. Assignment or Subletting.

Subtenant shall not sublet all or any portion of the Subleased Premises or assign, encumber, mortgage, pledge, or otherwise transfer this Sublease (by operation of law or otherwise) or any interest therein, without the prior written consent of: (a) Sublandlord, which consent may be withheld in its sole and absolute discretion; and (b) Prime Landlord.

17. Indemnity.

Subtenant shall indemnify and hold harmless Sublandlord from any claims, liabilities, and damages that Sublandlord may sustain resulting from a breach by Subtenant of this Sublease.

18. Release.

Subtenant hereby releases Sublandlord or anyone claiming through or under Sublandlord by way of subrogation or otherwise. Subtenant hereby releases Prime Landlord or anyone claiming through or under Prime Landlord by way of subrogation or otherwise to the extent that Sublandlord releases Prime Landlord under the terms of the Primary Lease. Subtenant shall cause its insurance carriers to include any clauses or endorsements in favor of Sublandlord, Prime Landlord, and any additional parties, which Sublandlord is required to provide under the provisions of the Primary Lease.

19. Notices.

All notices and other communications required or permitted under this Sublease shall be given in the same manner as in the Primary Lease. Notices shall be addressed to the addresses set out below:

To Subtenant before the Commencement Date at:	815 E Street, Suite 12716, San Diego, CA 92112 ATTN: Chief Financial Officer
To Subtenant after the Commencement Date at:	815 E Street, Suite 12716, San Diego, CA 92112 ATTN: Chief Financial Officer
With a copy to:	Best Best & Krieger LLP, 18101 Von Karman Avenue, Suite 1000, Irvine, CA 92612, ATTN: Ryan M.F. Baron, Esq., General Counsel
To Sublandlord at:	2488 Historic Decatur Road, Suite 200, San Diego, California 92106 ATTN: Chief Financial Officer
20. Brokers.	

Sublandlord and Subtenant each represent to the other that it has not dealt with any other broker in connection with this Sublease and the transactions contemplated hereby.

21. Entire Agreement.

This Sublease contains the entire agreement between the Parties regarding the subject matter contained herein and all prior negotiations and agreements are merged herein. If any provisions of this Sublease are held to be invalid or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions of this Sublease shall remain unaffected.

22. Amendments and Modifications.

This Sublease may not be modified or amended in any manner other than by a written agreement signed by the Party to be charged.

23. Successors and Assigns.

The covenants and agreements contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and their respective permitted successors and assigns.

24. Counterparts.

This Sublease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument. A signed copy of this Sublease delivered by either DocuSign or email shall be deemed to have the same legal effect as delivery of an original signed copy of this Sublease.

25. **Defined Terms**.

All capitalized terms not otherwise defined in this Sublease shall have the definitions contained in the Primary Lease.

26. **Choice of Law and Venue**.

This Sublease shall be governed by, and construed in accordance with, the laws of the California, without regard to conflict of law rules, and any dispute shall be venued exclusively in the courts sitting in San Diego.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Sublease to be executed as of the Effective Date.

SUBLANDLORD:

NUVVE HOLDING CORP.

By: ______Gregory Poilasne Its: CEO

SUBTENANT:

SAN DIEGO COMMUNITY POWER

By:

Name:

Its:

EXHIBIT A

Sharing a portion of 4811 square feet of the annex office space located at 2488 Historic Decatur Rd., Suite 250, including private office rooms, shared community space and conference room(s)

ANNEX 1

Primary Lease, as amended



SAN DIEGO COMMUNITY POWER Staff Report – 8

To: San Diego Community Power Board of Directors

From: Rita De la Fuente, Director of External Affairs

- Via: Karin Burns, Chief Executive Officer
- Subject: Receive Quarterly Report from the Community Advisory Committee

Date: April 28, 2022

RECOMMENDATION

Receive and file quarterly report from the San Diego Community Power (SDCP) Community Advisory Committee.

BACKGROUND

Section 5.10.3 of the SDCP Joint Powers Authority (JPA) Agreement states that the "primary purpose of the Community Advisory Committee shall be to advice the Board of Directors and provide for a venue for ongoing citizen support and engagement in the strategic direction, goals, and program of [SDCP]."

As the agency has grown and matured, the Community Advisory Committee (CAC) Chair was given the opportunity to provide verbal updates on Board agenda items that were discussed by the CAC. Moving forward, staff received direction from the Chair of SDCP's Board of Directors that quarterly updates on the operations of the CAC shall be given by staff.

ANALYSIS AND DISCUSSION

Since January of this year, the CAC has been busy reviewing and providing input on various items brought to them. Staff has utilized the Fiscal Year 2021-2022 work plan as a starting point for setting agendas and driving conversation. Below are highlights of items discussed during the previous four months from January to March.

 <u>January</u>: The CAC voted to recommend that the Board include a CAC report update as a standing item on the regular meeting agendas of the Board of Directors. The Committee also voted to appoint one CAC representative to join the CEO Ad Hoc Search Committee at the time. They also received and discussed updates to the proposed 2022 rates, as well as the ongoing residential enrollment public relations.

and the

- <u>February</u>: The CAC received an update on the CEO recruitment process, as well as on the CAC membership expansion from National City and unincorporated San Diego County. The Committee also received an update on the proposed Power Procurement Bid Evaluation Criteria where they were given the opportunity to provide feedback.
- <u>March</u>: The CAC had a busy meeting, where they welcomed the new members from National City and unincorporated San Diego County. Among the many items they discussed was receiving an update on the Community Power Plan (CPP) and voted to extend the CAC appointments of Carolyn Scofield (Chula Vista) and Matthew Vasilakis (City of San Diego) to Join the CPP Project Team. Best Best & Krieger (BBK), SDCP's general counsel, presented a Brown Act Training for the new members and as a refresher for the existing ones. An update on the CEO recruitment process was also given, as well as the Phase 3 mass enrollment. As part of their work plan, the CAC also received a Regulatory and Legislative Training, as well as an update on SDCP's draft legislative platform for 2022.

Staff will return to the Board at the start of the second quarter of the year, which will take place in July.

FISCAL IMPACT

There is no fiscal impact associated with this action.

ATTACHMENTS N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 9

To:	San Diego Community Power Board of Directors
From:	Lucas Utouh, Director of Data Analytics and Account Services
Via:	Karin Burns, Chief Executive Officer
Subject:	Update on Back-Office Metrics and Dashboard
Date:	April 28, 2022

RECOMMENDATION

Receive update on various back-office activities.

BACKGROUND

Staff will provide regular updates to the Board of Directors regarding San Diego Community Power's (SDCP) back-office activities centered around tracking opt actions (i.e., opt outs, opt ups and opt downs) as well as customer engagement metrics. The following is a brief overview of items pertaining to back-office operations.

ANALYSIS AND DISCUSSION

A) Phase 3 Enrollment Update

Staff is happy to report that our Phase 3 efforts for Imperial Beach, La Mesa and Net Energy Metering (NEM) customers with a true up month of February and March are now complete. Our Encinitas and April NEM customers' mass enrollment efforts are currently underway and so far as of 4/18/2022, we've added a total of 59,279 accounts. Cumulatively, across Phase 1, 2 and 3 to date we now have 149,099 accounts actively being served under our portfolio.

B) Participation Tracking

Staff and Calpine have worked together to create a reporting summary of customer actions to opt-out, opt-up to Power100 or opt-down from Power100 to PowerOn. The below charts summarize these actions accordingly as of April 18th, 2022:

I. Opt Outs

Opt Outs by Jurisdiction	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	April - MTD	Grand Total
CITY OF CHULA VISTA	2	77	1	150	9	3	11	12	1	0	0	21	19	159	301	766
CITY OF ENCINITAS	0	0	3	32	7	11	5	3	1	1	3	60	304	753	90	1273
CITY OF IMPERIAL BEACH	0	0	0	11	0	1	1	0	0	0	19	129	22	13	8	204
CITY OF LA MESA	0	0	15	51	3	6	3	0	6	0	1	158	372	93	46	754
CITY OF SAN DIEGO	14	10	43	516	51	123	111	131	34	23	21	152	194	1501	2714	5638
Grand Total	16	87	62	760	70	144	131	146	42	24	44	520	911	2519	3159	8635

Opt Outs by Class Code	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	April - MTD	Grand Total
Residential	0	0	0	0	0	0	0	0	0	0	36	501	867	2473	3143	7020
Commercial/Industrial	16	87	62	760	70	144	131	146	42	24	8	19	44	46	16	1615
Grand Total	16	87	62	760	70	144	131	146	42	24	44	520	911	2519	3159	8635

Opt Outs by Reason	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	April - MTD	Grand Total
Concerns about Government-Run Power Agency	0	0	2	15	2	2	2	0	0	0	1	33	53	198	208	516
Concerns about lack of equivalent CCA programs	0	0	0	0	0	0	0	0	0	0	0	3	8	10	22	43
Decline to Provide	0	4	19	11	25	33	31	94	1	1	9	96	152	432	532	1440
Dislike being automatically enrolled	0	0	28	59	23	18	34	16	3	4	17	142	257	743	1070	2414
Have renewable Energy Reliability Concerns	0	0	0	3	0	2	7	0	0	0	1	4	7	49	54	127
Other	1	83	2	667	12	18	3	7	8	3	8	69	126	325	339	1671
Rate or Cost Concerns	15	0	11	5	8	70	50	29	29	16	6	95	174	493	518	1519
Service or Billing Concerns	0	0	0	0	0	1	4	0	1	0	0	17	22	53	70	168
Existing relationship with the utility	0	0	0	0	0	0	0	0	0	0	2	61	112	216	346	737
Grand Total	16	87	62	760	70	144	131	146	42	24	44	520	911	2519	3159	8635
Opt Outs by Method	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	April - MTD	Grand Total

Opt Outs by Method	Feb-21	Iviar-21	Apr-21	iviay-21	Jun-21	Jui-21	Aug-21	Sep-21	Uct-21	NOV-21	Dec-21	Jan-22	Feb-22	iviar-22	April - IVITU	Grand Total
Customer Service Rep (CSR)	0	83	31	681	23	67	73	84	23	17	16	147	259	462	635	2601
Interactive Voice Response (IVR)	0	0	1	8	5	27	22	9	16	4	9	55	45	423	467	1091
Web	16	4	30	71	42	50	36	53	3	3	19	318	607	1634	2057	4943
Grand Total	16	87	62	760	70	144	131	146	42	24	44	520	911	2519	3159	8635

II. Opt Ups to Power100

Opt Ups by Jurisdiction	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	April - MTD	Grand Total
CITY OF CHULA VISTA	0	56	0	0	626	9	4	1	4	1	1	6	3	13	10	734
CITY OF ENCINITAS	0	18	0	0	0	0	0	0	0	0	0	0	0	0	0	18
CITY OF IMPERIAL BEACH	0	0	0	0	0	60	0	0	0	0	0	2	23	1	0	86
CITY OF LA MESA	0	0	12	0	130	3	0	3	0	0	0	6	32	15	7	208
CITY OF SAN DIEGO	0	133	1	2	2922	12	22	10	48	2	11	25	106	172	262	3728
Grand Total	0	207	13	2	3678	84	26	14	52	3	12	39	164	201	279	4774

Opt Ups by Class Code	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	April - MTD	Grand Total
Residential	0	2	0	0	0	0	0	0	0	0	1	15	151	179	274	622
Commercial/Industrial	0	205	13	2	3678	84	26	14	52	3	11	24	13	22	5	4152
Grand Total	0	207	13	2	3678	84	26	14	52	3	12	39	164	201	279	4774

Opt Ups by Method	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	April - MTD	Grand Total
Customer Service Rep (CSR)	0	207	11	1	3668	80	23	12	48	3	7	25	151	47	44	4327
Interactive Voice Response (IVR)	0	0	0	0	3	0	0	0	0	0	1	0	0	4	8	16
Web	0	0	2	1	7	4	3	2	4	0	4	14	13	150	227	431
Grand Total	0	207	13	2	3678	84	26	14	52	3	12	39	164	201	279	4774

III. Opt Downs from Power100

A

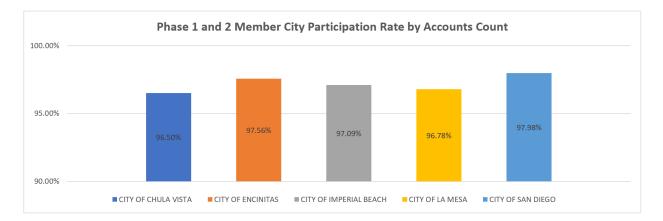
1

Opt Downs by Jurisdiction	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	April - MTD	Grand Total
CITY OF CHULA VISTA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CITY OF ENCINITAS	0	0	0	0	24	8	1	1	1	0	0	5	34	127	27	228
CITY OF IMPERIAL BEACH	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CITY OF LA MESA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CITY OF SAN DIEGO	0	0	0	0	0	0	0	0	0	0	0	0	1	2	2	5
Grand Total	0	0	0	0	24	8	1	1	1	0	0	5	35	129	29	233

Opt Downs by Class Code	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	April - MTD	Grand Total
Residential	0	0	0	0	0	0	0	0	0	0	0	4	31	128	29	192
Commercial/Industrial	0	0	0	0	24	8	1	1	1	0	0	1	4	1	0	41
Grand Total	0	0	0	0	24	8	1	1	1	0	0	5	35	129	29	233

Opt Downs by Method	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	April - MTD	Grand Total
Customer Service Rep (CSR)	0	0	0	0	22	6	1	1	1	0	0	4	30	96	13	174
Interactive Voice Response (IVR)	0	0	0	0	2	2	0	0	0	0	0	0	0	17	1	22
Web	0	0	0	0	0	0	0	0	0	0	0	1	5	16	15	37
Grand Total	0	0	0	0	24	8	1	1	1	0	0	5	35	129	29	233

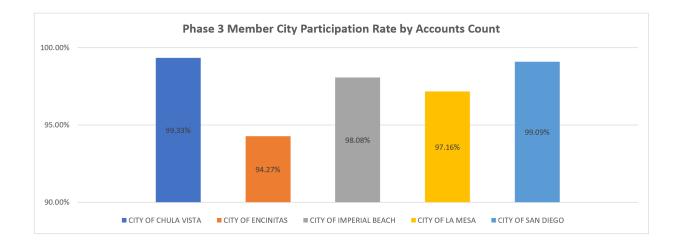
IV. Participation Rate.



Town or Territory	Active	Eligible	Total Opt Outs	Participation Rate by Accounts Count
CITY OF CHULA VISTA	7473	7744	271	96.50%
CITY OF ENCINITAS	3117	3195	78	97.56%
CITY OF IMPERIAL BEACH	534	550	16	97.09%
CITY OF LA MESA	2645	2733	88	96.78%
CITY OF SAN DIEGO	56389	57550	1161	97.98%
Grand Total	70158	71772	1614	97.75%

For Phase 3, this participation rate is fluid and will change as we ramp up mass enrollment across all member cities throughout 2022. The true participation rate will be computed once customers across all member cities are fully enrolled. In the interim, we are reporting on the opt outs and eligible accounts associated with the phase on a rolling basis as of the reporting month:

Town or Territory Phase 3	Active	Eligible	Total Opt Outs	Participation Rate by Accounts Count
CITY OF CHULA VISTA	3191	74303	497	99.33%
CITY OF ENCINITAS	19930	20820	1193	94.27%
CITY OF IMPERIAL BEACH	9570	9774	188	98.08%
CITY OF LA MESA	22737	23486	666	97.16%
CITY OF SAN DIEGO	13871	492189	4477	99.09%
Grand Total	69299	620572	7021	98.87%



C) Contact Center Metrics

Consistent with expectations after our pre-enrollment notice #1 drop in City of San Diego and Chula Vista, call and email volumes have exponentially increased over the last two weeks in March. The chart below summarizes contact made by customers broken down by month through April 18th:

Interactive Voice Response (IVR) and Service Level Agreement (SLA) Metrics														
IVR and SLA Details	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	March	April - MTD	Grand Total
Total Calls to IVR	79	109	103	324	531	349	307	244	243	1154	1538	3302	3674	11957
Total Calls Connected to Agents	49	66	57	205	338	231	191	135	129	654	948	1817	2007	6827
Average Seconds to Answer	0:00:38	0:00:14	0:00:21	0:00:37	0:00:22	0:00:14	0:00:13	0:00:13	0:00:08	0:00:09	0:00:06	0:00:03	0:00:03	
Average Call Duration	0:08:57	0:07:51	0:06:42	0:10:33	0:08:13	0:08:41	0:08:11	0:08:30	0:08:28	0:08:53	0:09:45	0:10:32	0:09:36	
Calls Answered within 60 Seconds (75% SLA)	91.84%	100.00%	89.83%	89.42%	96.46%	99.57%	98.95%	100.00%	100.00%	98.63%	99.26%	100.00%	99.90%	
Abandon Rate	0.00%	0.00%	3.39%	1.44%	0.29%	0.00%	0.00%	0.00%	0.00%	0.46%	0.21%	0.00%	0.00%	

	Customer Service Emails								
	Emails Received	Emails answered or escalated within 24 hours	(%)						
May-21	34	29	85.29%						
Jun-21	43	41	95.35%						
Jul-21	32	31	96.88%						
Aug-21	73	71	97.26%						
Sep-21	34	32	94.12%						
Oct-21	26	25	96.15%						
Nov-21	12	12	100.00%						
Dec-21	18	16	88.89%						
Jan-22	109	92	84.40%						
Feb-22	133	123	92.48%						
March	272	265	97.43%						
April - MTD	192	186	96.88%						

*Does not include junk email

We have a total of 30 Customer Service Representatives staffed at our Contact Center and are also continuing to enforce our robust Quality Assurance (QA) procedures to ensure that our customers are getting a world-class customer experience when they contact us. COMMITTEE REVIEW N/A

FISCAL IMPACT N/A

ATTACHMENTS N/A

ELA AL

10





SAN DIEGO COMMUNITY POWER Staff Report – Item 10

-

To: San Diego Community Power Board of Directors

From: Laura Fernandez, Director of Regulatory and Legislative Affairs

Via: Karin Burns, Chief Executive Officer

Subject: Update on Regulatory and Legislative Affairs

Date: April 28, 2022

RECOMMENDATIONS

1. Receive and file update on regulatory and legislative affairs.

BACKGROUND

Staff will provide regular updates to the Board of Directors regarding SDCP's regulatory and legislative engagement.

ANALYSIS AND DISCUSSION

A) Integrated Resource Planning – Modified Cost Allocation Mechanism

In 2019 with Decision (D.) 19-11-016, the CPUC ordered load-serving entities (LSEs) to procure 3,300 MW of System Resource Adequacy (RA) in three separate tranches, with projects to come online in 2021, 2022 and 2023. The resource need was identified for the entire system, and so the CPUC concluded that all LSEs serving load at the time should share in the responsibility and be allocated a procurement obligation. That obligation was allocated among LSEs using a combination of load forecast and RA requirements. Cost recovery and other issues, including RA credits, were to be addressed by a modified Cost Allocation Mechanism (mCAM) that was to be developed by the CPUC later in time.

On March 29, 2022, the CPUC issued the long awaited <u>proposed decision</u> (PD) on mCAM. The PD addresses three categories of IOU procurement: (1) procurement on behalf of an LSE that opted-out of D. 19-11-016 obligations ("Opt-Out Procurement"); (2) procurement on behalf of an LSE that is deficient in meeting its obligation under D. 19-11-016, D. 21-06-035, and any future procurement requirements ordered in the context of the integrated resource planning (IRP) process ("Backstop Procurement");

and (3) procurement to meet the IOU's own D. 19-11-016 obligations ("Bundled Procurement"). The PD requires that the IOUs assign all above-market Bundle Procurement costs to PCIA vintage year (VY) 2019 for recovery from current IOU customers ("Bundled Service Customers") and from customers who have departed from bundled service since 2019 ("2019 Departed Load Customers"). In addition, the PD adopts a one-time provision that will allow for 2019 Departed Load Customers to access their share of associated resource benefits. Under this provision, an LSE, such as SDCP, that serves customers who departed after 2019 would be required to enter an agreement with the incumbent IOU for the purchase of its share of Bundled Procurement benefits at the applicable market price benchmark (MPB).

On April 18, 2022, SDCP along with Clean Energy Alliance (CEA), Desert Community Energy, the City of Pomona, and Santa Barbara Clean Energy (SBCE) (collectively, "Joint CCA Programs") filed opening comments on the PD. These comments are attached to this staff report. These comments identify certain errors and omissions with the PD, including:

- The PD fails to identify the cost recovery mechanism intended to handle bundled D.19-11-016 procurement and to account for subsequent load departures to CCA programs after 2019.
- The PD fails to address the equitable allocation of accrued costs and benefits associated with online D. 19-11-016 resources.
- The PD unnecessarily prevents Non-IOU LSEs from accessing the relevant local and flexible RA attributes.
- The PD unnecessarily requires a credit support provision that will cause increased contract costs for Non-IOU LSEs.

Accordingly, the Joint CCA programs in comments make certain recommendations, including but not limited to requesting that the PD be revised to: i) address the treatment of accrued bundled procurement costs and ensure departed load does not pay for the accrued benefits retained by bundled service customers; ii) to allow parties to set the pricing terms using the underlying contract price or some other mutually-agreed-upon price other than the market price benchmark; iii) to remove any references to credit support requirements associated with the contracting provisions.

Next Steps: The CPUC could vote on a final mCAM decision as early as May 5, 2022.

B) Resource Adequacy Rulemaking

a fair and the states

On March 24, 2022, SDCP along with Central Coast Community Energy, the City and County of San Francisco, operator of CleanPowerSF, Silicon Valley Clean Energy Authority and Valley Clean Energy Alliance ("the Joint CCAs") filed <u>comments</u> on the future of the Resource Adequacy Working Group Report. In these comments, the Joint CCAs argue that the current and mid-term reliability challenges of the grid can be met by both the 2-slice and the 24-hour slice proposals, but that the 2-slice proposal is more readily implementable. The Joint CCAs also emphasize the importance of addressing the transactability challenges should the CPUC ultimately select the 24-hour slice framework. A proposed decision on these issues of the Reform Track is expected to be issued this summer.

C) Provider of Last Resort Rulemaking

On March 28, 2022, SDCP along with CEA filed post workshop <u>comments</u> in the Provider of Last Resort rulemaking. The comments address Energy Division's proposed framework and financial monitoring of CCA programs. In these comments, SDCP and CEA emphasize the importance of considering impacts of proposals on LSEs, since certain proposals, which are intended to mitigate impacts in the unlikely event of an LSE failure, could in fact substantially increase the risk that an LSE would fail (due to the financial pressures of certain proposals that could be adopted in this proceeding). SDCP and CEA also note concerns regarding the CPUC potentially adopting substantive risk management rules or mandatory financial reporting rules.

D) Assembly Bill 2838 – OPPOSE

Existing law requires investor-owned utilities to administer a green tariff shared renewables program to enable ratepayers to participate directly in offsite electrical generation facilities that use eligible renewable energy resources. Existing law also requires the CPUC to ensure that charges and credits associated with these green tariff programs are set in a manner that ensures nonparticipant ratepayer indifference for the remaining bundled service, direct access, and community choice aggregation customers and ensures that no costs are shifted from participating customers to nonparticipating ratepayers.

AB 2838 is legislation that is sponsored by SDG&E that would authorize the CPUC to allow termination of the green tariff programs and also allow the CPUC to consider whether outstanding program costs may be recovered from non-participating ratepayers.

SDCP will take an oppose position on this bill. AB 2838 turns the ratepayer indifference principle on its head by asking non-participating ratepayers to pay the cost of a program for which they received no benefit.

COMMITTEE REVIEW N/A

FISCAL IMPACT N/A

ATTACHMENTS

Opening Comments of San Diego Community Power, Clean Energy Alliance, Desert Community Energy, City Of Pomona, and Santa Barbara Clean Energy on the Proposed Decision On Modified Cost Allocation Mechanism For Opt-Out And Backstop Procurement Obligations

12

Alle





BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FILED

04/18/22 04:15 PM R2005003

Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes.

R. 20-05-003

OPENING COMMENTS OF SAN DIEGO COMMUNITY POWER, CLEAN ENERGY ALLIANCE, DESERT COMMUNITY ENERGY, CITY OF POMONA, AND SANTA BARBARA CLEAN ENERGY ON THE PROPOSED DECISION ON MODIFIED COST ALLOCATION MECHANISM FOR OPT-OUT AND BACKSTOP PROCUREMENT OBLIGATIONS

Josh Stoops Braun Blaising Smith Wynne, P.C. 555 Capitol Mall, Suite 570 Sacramento, CA 95814 (916) 326-5812 <u>stoops@braunlegal.com</u>

Attorney for the City of Pomona and Santa Barbara Clean Energy Samir Hafez Tosdal, APC 845 15th Street, Suite 103 San Diego, CA 92101 (858) 571-6935 samir@tosdalapc.com

Attorney for San Diego Community Power and Clean Energy Alliance

David Freedman Desert Community Energy 73-710 Fred Waring Drive, Suite 200 Palm Desert, CA 92260 (760) 346-1127 dfreedman@cvag.org

Program Manager for Desert Community Energy

April 18, 2022

TABLE OF CONTENTS

TABL	E OF AUTHORITIESii
SUMM	IARY OF RECOMMENDATIONSiii
I.	INTRODUCTION AND SUMMARY
II.	BACKGROUND
III.	THE PD SHOULD BE REVISED TO CLEARLY STATE THE BILLING MECHANISM AND COST RECOVERY PROCEDURE MEANT TO HANDLE BUNDLED PROCUREMENT AND ACCOUNT FOR DEPARTED LOAD
	 A. The PD Should Be Revised to Clarify that <i>All</i> Above-Market Bundled Procurement Costs Will Be Assigned to PCIA VY 2019
IV.	THE PD MUST ADDRESS THE TREATMENT OF BUNDLED PROCUREMENT COSTS FROM RESOURCES THAT COME ONLINE BEFORE THE MCAM IS IMPLEMENTED
V.	THE PD SHOULD BE REVISED TO PROVIDE FURTHER GUIDANCE ON THE BILATERAL SALES AGREEMENTS BETWEEN THE IOUS AND NEW LSES 10
VI.	CONCLUSION 12
ATTA	CHMENT A 1

TABLE OF AUTHORITIES

California Public Utilities Code	
366.2(g)	
California Public Utilities Commission Decisions	
D. 19-11-016	
D. 21-06-035	
California Public Utilities Commission Rules of Practice and Procedure	
Rule 14.3	5

SUMMARY OF RECOMMENDATIONS

Specifications of Error:

- 1. The Proposed Decision fails to identify the cost recovery mechanism intended to handle bundled procurement under decision ("D.") 19-11-016 and to account for subsequent load departures to community choice aggregation ("CCA") programs after 2019.
- 2. The Proposed Decision fails to address the equitable allocation of accrued costs and benefits associated with online D. 19-11-016 resources.
- 3. The Proposed Decision unnecessarily prevents non-investor-owned utility ("Non-IOU") load serving entities ("LSEs") from accessing the relevant local and flexible resource adequacy attributes.
- 4. The Proposed Decision unnecessarily requires a credit support provision that will cause increased contract costs for Non-IOU LSEs.

Recommended Changes:

- 1. The Proposed Decision should be revised to clearly specify the cost recovery mechanism intended to handle bundled procurement.
- 2. The Proposed Decision should be revised to differentiate between the power charge indifference adjustment ("PCIA") and modified cost allocation mechanism ("MCAM").
- 3. The Proposed Decision should reflect that all above-market bundled procurement costs associated with D. 19-11-016 resources must be assigned to vintage year ("VY") 2019 of the PCIA.
- 4. The Proposed Decision should be revised to address the treatment of accrued bundled procurement costs and ensure departed load does not pay for the accrued benefits retained by bundled service customers.
- 5. The Proposed Decision should be revised to clarify how the contracting requirements set forth in OP 4 should be implemented in a manner that allows Non-IOU LSEs to receive their share of benefits prior to the year-ahead resource adequacy compliance deadline.
- 6. The Proposed Decision should authorize the IOU and Non-IOU LSE to calculate departed load allocations using a mutually agreed-upon load forecast that incorporates accurate load share figures.
- 7. The Proposed Decision should be revised to clarify that the purchase agreements should allow for annual load share adjustments to account for subsequent load migration.

- 8. The Proposed Decision should be revised to ensure that non-IOU LSEs can purchase all relevant resource adequacy ("RA") attributes associated with its share of bundled Procurement.
- 9. The Proposed Decision should be revised to allow parties to set the pricing terms using the underlying contract price or some other mutually-agreed-upon price other than the market price benchmark.
- 10. The Proposed Decision should be revised to remove any references to credit support requirements associated with the contracting provisions.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes.

R. 20-05-003

OPENING COMMENTS OF SAN DIEGO COMMUNITY POWER, CLEAN ENERGY ALLIANCE, DESERT COMMUNITY ENERGY, CITY OF POMONA, AND SANTA BARBARA CLEAN ENERGY ON THE PROPOSED DECISION ON MODIFIED COST ALLOCATION MECHANISM FOR OPT-OUT AND BACKSTOP PROCUREMENT OBLIGATIONS

Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, San Diego Community Power ("SDCP"), Clean Energy Alliance ("CEA"), Desert Community Energy ("DCE"), the City of Pomona ("Pomona"), and Santa Barbara Clean Energy ("SBCE") (collectively, "Joint CCA Programs") hereby submit these Comments on the proposed *Decision on Modified Cost Allocation Mechanism for Opt-Out and Backstop Procurement Obligations* ("PD"), issued March 29, 2022. The Joint CCA Programs began serving load after the Commission ordered procurement and were not named in D. 19-11-016.¹ Accordingly, these Comments address the PD's methodology for allocating the costs and benefits of D. 19-11-016 procurement to the investor-owned utilities' ("IOUs") current bundled service customers and to those customers who have departed from IOU retail service for CCA programs since 2019. Proposed revisions to the PD can be found in Attachment A.

I. INTRODUCTION AND SUMMARY

The Joint CCA Programs appreciate the opportunity to provide these Comments on the PD adopting the modified cost allocation mechanism ("MCAM") and resolving most of the outstanding issues related to IOUs' bundled procurement under D. 19-11-016 and recent load departures. The Joint CCA Programs understand the Commission's desire to use the power charge indifference adjustment ("PCIA") to allocate above-market bundled procurement costs

¹ D. 19-11-016, *Decision Requiring Electric System Reliability Procurement for 2021-2023*, Rulemaking ("R.") 16-02-007.

associated with D. 19-11-016 going forward. However, the PD is unclear and should be revised to clearly specify the intended methodology for recovering costs and accounting for benefits associated with bundled procurement resources that are already in service. In addition, while energy procurement resides within CCA discretion and control, in these circumstances, the Joint CCA Programs support the one-time benefit allocation provision meant to account for recent load departures and request that the Commission revise the PD to provide further guidance concerning the allocation process.

With these Comments, the Joint CCA Programs submit recommended revisions regarding the bundled procurement cost recovery mechanism and alignment of the requirements set forth in the PD with statutory cost-shifting requirements.

II. BACKGROUND

The PD addresses three categories of IOU procurement: (1) procurement on behalf of an LSE that opted-out of D. 19-11-016 obligations ("Opt-Out Procurement"); (2) procurement on behalf of an LSE that is deficient in meeting its obligation under D. 19-11-016, D. 21-06-035, and any future procurement requirements ordered in the context of the integrated resource planning ("IRP") process ("Backstop Procurement"); and (3) procurement to meet the IOU's own D. 19-11-016 obligations ("Bundled Procurement"). The PD requires that the IOUs assign all above-market Bundle Procurement costs to PCIA vintage year ("VY") 2019 for recovery from current IOU customers ("Bundled Service Customers") and from customers who have departed from bundled service since 2019 ("2019 Departed Load Customers").

In addition, the PD adopts a one-time provision that will allow for 2019 Departed Load Customers to access their share of associated resource benefits.² Under this provision, an LSE that serves customers who departed after 2019 would be required to enter an agreement with the incumbent IOU for the purchase of its share of Bundled Procurement benefits at the applicable market price benchmark ("MPB").³ Similarly, the PD appears to require the IOU to pay the MPB for its current customers' share of Bundled Procurement benefits.⁴

² PD at 40.

³ *Id.*, at 42; Ordering Paragraph ("OP") 4.

⁴ PD at 51.

III. THE PD SHOULD BE REVISED TO CLEARLY STATE THE BILLING MECHANISM AND COST RECOVERY PROCEDURE MEANT TO HANDLE BUNDLED PROCUREMENT AND ACCOUNT FOR DEPARTED LOAD

Although D. 19-11-016 indicated that capacity ordered by the decision would be handled through the MCAM and not the PCIA,⁵ the PD significantly narrows the scope of the MCAM to the IOU's Opt-Out and Backstop Procurement costs, but not Bundled Procurement. Concerning IOUs' D. 19-11-016 Bundled Procurement costs, the PD states that cost recovery "is a settled issue" addressed by longstanding Commission policies and that "subsequent load migration also has associated established policy," namely the PCIA.⁶

The Joint CCA Programs interpret this language to mean that, after accounting for Bundled Procurement revenues, the IOUs are required to assign any above-market Bundled Procurement costs to the PCIA for recovery from all bundled and departed load customers. While this methodology aligns with similar procurement orders and established Commission policies, it is not precisely stated in the PD and could be misinterpreted due to the PD's broad use of the term "non-bypassable charge" and other vague and conflicting language. The PD should be revised to refine this vague language and to explicitly state that Bundled Procurement Costs will be recovered from bundled and departed load customers through the PCIA. Proposed revisions intended to reflect this are included in Attachment A.

A. The PD Should Be Revised to Clarify That *All* Above-Market Bundled Procurement Costs Will Be Assigned to PCIA VY 2019

In section 6.4 of the PD, the Commission states that approximately 180 MW of the 3,300 MW procurement requirement set in D. 19-11-016 is associated with load that has departed since 2019, and that "[t]his procurement shall be assigned to 2019 vintage of the PCIA."⁷ This phrase is unclear. Using the phrase "this procurement" in the sentence immediately following the departed load calculation suggests that only the departed load share of procurement should be assigned to PCIA VY 2019, and that the remaining portion of bundled procurement contracts should be vintaged according to the contract date. It seems more likely that, to account for load

⁵ D. 19-11-016 at 67 ("the capacity procured by the IOUs in response to this decision will be allocated on a non-bypassable basis through a modified CAM mechanism and not PCIA.")

⁶ PD at 40.

⁷ *Id.* at 41.

migration, the Commission intends to require *all* Bundled Procurement under D. 19-11-016 – not just the departed load share – be assigned to the 2019 PCIA vintage.

This interpretation would avoid unnecessary complication caused by allocating contract costs amongst different vintages and would align with the cost-recovery method adopted in D. 21-06-035. Notably, the PD states that D. 21-06-035 "more precisely" handles cost recovery for bundled and departed load by assigning all procurement to VY 2021.⁸ The Commission's endorsement of the methodology adopted in that decision suggests it intends to adopt the same methodology here. Thus, the PD should be revised to more clearly reflect that *all* above-market Bundled Procurement costs should be assigned to PCIA VY 2019.

B. The PD Should Be Revised to Differentiate Between the MCAM-Specific Non-Bypassable Charge and the PCIA

The MCAM utilizes a "non-bypassable customer charge" for recovering above-market Opt-Out or Backstop procurement costs displayed as a separate line-item billed to customers of opt-out or deficient LSEs.⁹ In contrast, as demonstrated above, it appears that the Commission intends for bundled and departed load customers to pay for their share of above-market Bundled Procurement costs through PCIA VY 2019. Though both charges allow the IOUs to recover costs from all customers on a non-bypassable *basis*, the PD should employ different terminology when referring to these terms to clearly distinguish between the charges and avoid potential confusion at the implementation stage.

For example, section 7.1 of the PD suggests that Bundled Service and Opt-Out LSE customers will be subject to the same non-bypassable charge after revenues are netted against procurement costs.¹⁰ Though all Bundled Service Customers and Opt-Out/Deficient LSE customers will pay their share of above-market costs on a non-bypassable basis, they will be paying through different mechanisms; Bundled Service and 2019 Departing Load Customers will pay through the PCIA, and Opt-Out/Deficient LSE customers will pay through the MCAM charge. To provide greater clarity, the following revisions should be adopted and are contained in Attachment A:

⁸ See, e.g., PD at 40 ("D. 21-06-035 already specified cost recovery for bundled service and load departure more precisely by vintaging the procurement requirements to 2021.").

⁹ PD at Findings of Fact 12, 13.

¹⁰ PD at 45.

"The remaining net costs (i.e., procurement/administrative and contract costs less System RA MPB, less RPS Adder MPB, if applicable, less actual net CAISO or other revenues) shall be recovered from bundled service <u>through the 2019 vintage</u> of the PCIA and from Opt-Out LSE customers via the MCAM-specific nonbypassable charge."

Further, OP 4 refers to a 2019 vintage but confusingly states that departed load customers will pay for above-market costs through "a non-bypassable charge." Though the PCIA is a type of non-bypassable charge, use of the term here is confusing in the context of a PD that establishes a new non-bypassable charge. To maintain the distinction between the new charge for Opt-Out and Backstop procurement and the PCIA for Bundled Procurement, the following revisions should be adopted and are contained in Attachment A:

<u>"This procurement Any above-market costs that remain shall be assigned a 2019</u> vintage in the PCIA for recovery and the above-market costs shall be collected from all customers of the non-IOU LSEs with on a non-bypassable basis charge."

IV. THE PD MUST ADDRESS THE TREATMENT OF BUNDLED PROCUREMENT COSTS FROM RESOURCES THAT COME ONLINE BEFORE THE MCAM IS IMPLEMENTED

The PD is silent on the disposition of costs and benefits associated with D. 19-11-016 resources that are currently online and providing system capacity, and the Joint CCAs are concerned that 2019 Departed Load Customers will be required pay for benefits solely retained by Bundled Service Customers, in violation of statutory cost-shifting provisions.¹¹ While the MCAM is under deliberation, IOUs have been tracking incremental procurement costs for the resources ordered in D. 19-11-016 in their respective memorandum accounts for future cost recovery.¹² It remains unclear how the IOUs are tracking the benefits associated with these online resources. The PD should be revised to address these accrued costs and benefits and clarify how IOUs should allocate them amongst bundled and departed load customers in a manner that avoids impermissible cost-shifts.

¹¹ See Cal. Pub. Util. Code § 366.2(g).

¹² See, e.g., SDG&E Advice Letter ("AL") 3879-E, October 15, 2021 (seeking confirmation of intent to recover costs associated with 20 MW of the Sentinel Energy contract via the Modified Cost Allocation Mechanism established In Decision 19-11-016).

Timing is an issue. As Tranche 1 resources came online, the Commission's Energy Division began allocating the associated RA benefits to Opt-Out LSEs and to the IOUs on an interim basis for use in RA compliance showings. Since these interim allocations are based on D. 19-11-016 obligations and do not account for load departures, the Joint CCA Programs received no interim RA benefits associated with 2019 Departed Load Customers' share of the Bundled Procurement. The Joint CCA Programs raised this concern in their December 10, 2021 Motion; however the PD is unfortunately silent on the matter and its potential impact on costrecovery.¹³

While the PD allows the Joint CCA Programs to receive allocations of 2019 Departed Load Customers' share of resource benefits on a forward basis, it is unclear how the Commission intends to retroactively allocate the accrued costs and account for the RA benefits that were retained solely by Bundled Service Customers. In accordance with Public Utilities Code section 366.2(g), the PD should be revised to clarify that 2019 Departed Load Customers will *not* be subject to any costs for procurement from which they received no benefits. Alternatively, the Commission could clarify that accrued costs must be reduced by the full value of the benefits retained by the IOU and require that Bundled Service Customers pay the MPB for the accrued value of these resources. This revision is necessary to ensure that 2019 Departed Load Customers do not pay for benefits that only Bundled Service Customers received, in violation of statutory cost-shifting provisions.

V. THE PD SHOULD BE REVISED TO PROVIDE FURTHER GUIDANCE ON THE BILATERAL SALES AGREEMENTS BETWEEN THE IOUS AND NEW LSES

Although energy procurement resides within CCA discretion and control, in these circumstances, the Joint CCA Programs support the one-time contracting provision adopted in OP 4, and request that the Commission provide further guidance as to what the process should entail. To account for load migration since 2019, OP 4 requires the new LSEs to enter into bilateral agreements with the incumbent IOU to purchase "the system resource adequacy capacity and the renewables portfolio standard renewable energy credits at the [MPB]. . ."¹⁴

¹³ See Motion for Clarification and Interim Guidance of San Diego Community Power, Clean Energy Alliance, Desert Community Energy, City of Pomona, and Santa Barbara Clean Energy, R. 20-05-003, December 10, 2021 at 7-8.

¹⁴ OP 4.

Since the order sets forth no additional details or requirements, there remain several outstanding questions surrounding the process.

Although some of these questions might be addressed through advice letter implementation, the PD only addresses an implementation process for the MCAM,¹⁵ which is "not intended to address cost recovery for procurement conducted on behalf of bundled service customers."¹⁶ The PD should be revised to clarify how the bilateral agreements and outstanding details should be addressed and, importantly, ensure that the process allows the non-IOU LSEs to receive relevant RA benefits prior to the year-ahead RA compliance showing deadline in November.

Regardless of the implementation process, the PD must address the process with greater specificity as to ensure that allocations take place in a fair and equitable manner for all LSEs. The Joint CCA Programs provide the following recommendations that the Commission should apply in revisions to the PD. Proposed revisions to the PD are also reflected in Attachment A:

- The Commission should authorize the IOU and non-IOU LSE to calculate departed load allocations using a mutually agreed-upon load forecast that incorporates accurate load share figures. This flexibility would help to avoid any further misallocations and provide each party with its customers' share of Bundled Procurement benefits.
- The Commission should clarify that the purchase agreements should allow for annual load share adjustments to account for subsequent load migration. Though the PD refers to this as a "one-time provision," parties should be allowed to contract for annual adjustments so that benefits can be allocated to customers that migrate from bundled service, and customers who return to bundled service are accounted for, after the agreement is executed.
- The PD should be revised to ensure that non-IOU LSEs can purchase all relevant resource adequacy ("RA") attributes associated with its share of Bundled Procurement. Currently, the PD only authorizes the purchase of System RA and renewables portfolio standard attributes, but the parties should be able to access any associated Local and

¹⁵ OP 8.

¹⁶ PD at 40.

Flexible attributes as well.¹⁷ This revision is necessary to ensure that 2019 Departed Load Customers receive their share of the full benefits associated with the Bundled Procurement.

- The PD should be revised to allow parties to set the pricing terms using the underlying contract price or some other mutually-agreed-upon price other than the MPB, which is a blunt instrument that may not accurately reflect the value of the resources underlying the transactions.
- The PD should be revised to remove the reference to "credit support terms,"¹⁸ since the nature of this transaction does not pose financial risk that would warrant such terms. As long as the incumbent IOU provides transmission and distribution service to the non-IOU LSE customers and also serves as the provider of last resort ("POLR"), it is sufficiently insulated from risk under the agreements. Further, a collateral requirement would necessarily result in increased contracting costs to the CCA, thus requiring 2019 Departed Load Customers to pay more for their share of the resources.

VI. CONCLUSION

The Joint CCA Programs appreciate the Commission's attention to these issues and respectfully request that these proposed revisions be adopted.

Respectfully submitted,

/s/ Josh Stoops

Josh Stoops Braun Blaising Smith Wynne, P.C. 555 Capitol Mall, Suite 570, Sacramento, CA 95814 (916) 326-5812 stoops@braunlegal.com

/s/ Samir Hafez

Samir Hafez Tosdal, APC 845 15th Street, Suite 103 San Diego, CA 92101 (858) 571-6935 <u>samir@tosdalapc.com</u>

 ¹⁷ The Joint CCA Programs note that customers in the SDG&E region are still subject to Local RA requirements due to the lack of Central Procurement Entity ("CPE").
 ¹⁸ PD at 42.

Attorney for City of Pomona and Santa Barbara Clean Energy Attorney for San Diego Community Power and Clean Energy Alliance

/s/ David Freedman

David Freedman Desert Community Energy 73-710 Fred Waring Drive, Suite 200 Palm Desert, CA 92260 (760) 346-1127 dfreedman@cvag.org

Program Manager for Desert Community Energy

April 18, 2022

ATTACHMENT A

PROPOSED CHANGES TO THE PD, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS

In accordance with Rule 14.3(b), the Joint CCA Programs requests that the following changes be made to the PD.

REVISIONS TO SECTION 7.1:

The remaining net costs (i.e., procurement/administrative and contract costs less System RA MPB, less RPS Adder MPB, if applicable, less actual net CAISO or other revenues) shall be recovered from bundled service customers <u>through the 2019 vintage of the PCIA</u> and from Opt-Out LSE customers via <u>a the MCAM-specific</u> non-bypassable charge."

NEW FINDINGS OF FACT:

36. Energy Division Staff has been allocating resource adequacy ("RA") credits from online D. 19-11-016 resources to Opt-Out LSEs and the IOUs. Non-IOU LSEs that formed after 2019 have not received credits associated with their customers' share of online D. 19-11-016.

CONCLUSIONS OF LAW:

- 5. To address the significant load migration that has taken place since the issuance of D.19-11-016, the LSEs with the new load should receive a one-time allocation of the RA capacity and RPS RECs and energy, <u>subject to annual adjustments to account for subsequent migration</u>, to be paid for at the MPB determined in the PCIA pursuant to D.19-10-001, <u>or another mutually agreed upon contract price</u>. The IOU should file all such agreements as Tier 1 advice letters (multiple agreements may be grouped in one advice letter) by no later than October 1, 2022. <u>Above-market costs should be assigned a 2019 vintage</u>.
- 9. The MCAM adopted in this order meets statutory requirements by allocating abovemarket costs to bundled service customers, Opt-Out LSE customers, and Deficient LSE customers on a non-bypassable basis and market costs to Opt-Out or Deficient LSEs-

NEW CONCLUSIONS OF LAW:

- 22. <u>All above-market costs associated with bundled procurement should be recovered from</u> <u>bundled service customers through the 2019 vintage of the PCIA.</u>
- 23. Departed load customers should not be required to pay the above-market costs for D. 19-11-016 resources from which they did not receive any benefits.

- 24. <u>Public Utilities Code section 366.2(g) requires the IOU to reduce net bundled</u> <u>procurement costs by the value of the RA/REC benefits that were retained solely by</u> <u>bundled customers.</u>
- 25. <u>Credit support provisions result in increased contracting prices for non-IOU LSEs and hinder those LSEs' customers from accessing resources at the same price as bundled service customers. Hence, they are not appropriate or authorized under Public Utilities Code section 366.2(g).</u>

ORDERING PARAGRAPHS

4. For procurement conducted on behalf of bundled customers of the investor-owned utilities (IOU) in 2019 in accordance with Decision 19-11-016, where the load has subsequently migrated to service by another load-serving entity (LSE), the LSE with new load shall enter into an agreement with the relevant IOU to purchase the system and resource adequacy capacity and the renewables portfolio standard renewable energy credits at the Market Price Benchmark calculated in accordance with the provisions of Decision 19-10-001, or another mutually agreed upon contract price. The new LSE's share of benefits shall be determined using a mutually agreed upon load forecast that incorporates accurate load share figures. The contracting requirements set forth in this order shall not require credit support provisions. This procurement Any above-market costs that remain shall be assigned a 2019 vintage in the PCIA for recovery and the above-market costs shall be collected from all customers of the non-IOU LSEs with on a non-bypassable basis charge. Once executed, the IOU(s) shall file Tier 1 Advice Letters with all such agreements (one advice letter may contain more than one agreement) by no later than October 1, 2022 to allow parties to apply RA benefits towards to their RA compliance obligations. Ordering Paragraph 8 below does not apply in this situation.

NEW ORDERING PARAGRAPHS

12. <u>The IOUs shall reduce net bundled procurement costs by the value of the RA/REC</u> benefits that were retained solely by bundled customers before assigning accrued bundled procurement costs through the PCIA.



SAN DIEGO COMMUNITY POWER Staff Report – Item 11

To: San Diego Community Power Board of Directors

From: Rita de la Fuente, Director of External Affairs

Via: Karin Burns, Chief Executive Officer

Subject: Residential Enrollment Marketing Public Relations Update

Date: April 28, 2022

RECOMMENDATION

Receive and file update on Phase 3 Marketing and Public Relations (PR) Campaign for residential enrollment.

BACKGROUND

San Diego Community Power (SDCP) is working Civilian, Inc. (Civilian) on an array of marketing activities to drive awareness, spark community engagement, and minimize optouts during the Phase 3 Residential Enrollment period (Residential Enrollment). The Phase 3 Marketing and PR Campaign began in December with direct mail enrollment notices to residents and continues with various tactics to educate and engage new customers.

ANALYSIS AND DISCUSSION

Since February, SDCP has had a successful engagement campaign during the residential enrollment of Imperial Beach, La Mesa and Encinitas. Staff and Civilian are currently gearing up for San Diego and Chula Vista residents to be introduced into SDCP's service in May, the largest month of enrollment.

Public Engagement Events SDCP has recently participated in the following outreach events: 4/7/22 EV Fleet Day 4/9/22 South Bay Earth Day 4/9/22 La Mesa Earth Day Fair 4/10/22 Encinitas Street Fair 4/12/22 San Diego City Council Presentation 4/13/22 San Diego Cleantech Presentation 4/22/22 Rotary Club of Chula Vista Presentation 4/22/22 Scripps Ranch Civic Association Presentation 4/26/22 Chula Vista City Council Presentation SDCP is tentatively scheduled to participate in the following upcoming outreach: 4/30/22 Encinitas Arbor Day 4/30/22 NAACP SD's Climate and Environmental Justice Committee 5/7/22 Sweetwater Union High School District Parent Symposium 5/10/22 Chula Vista Community Collaborative Partners Meeting 5/14/22 SD Loyal vs. Colorado Springs Switchbacks 6/8/22 Gameday sponsor of the Fernando Tatis Jr. Player's Hat Giveaway

In addition to the events listed above, SDCP will have a presence at several local farmers' markets throughout San Diego and Chula Vista. Having staff and ambassadors such as Community Advisory Committee members in the community has been effective in building trust and growing SDCP's strong base of community advocates.

Paid Media

10 100 10

Staff has worked with Civilian to develop creative concepts and behavioral researchbased messaging created to build trust and relatability during Residential Enrollment. These ads will be seen in English and Spanish social media ads (Twitter, Facebook, Instagram, Nextdoor) through June and regionwide digital display through July.

SDCP will also have a presence in print publications including the Union-Tribune, El Latino, Star News, Voice & Viewpoint Filipino Press, Nquoi Viet Tu Do, San Diego Chinese Tribune, and other smaller community publications.

Radio ads began in April and will continue through July. Billboard advertising and convenience store posters have also been introduced, providing an outdoor presence in communities with less access to online technology.





Power100 Champion Comarketing

SDCP has recently announced Sharp HealthCare and the San Diego Padres as our newest Power100 Champions. Sharing the enthusiasm that leading organizations have for clean energy promotes SDCP's reliability and supports regional awareness.

Communications and Outreach Strategy

PR strategies began in February 2022 with press releases and outreach to local, state, and national media when Residential Enrollment is launched. Editorials are also being published in each city's local paper. The local media showed great interest in SDCP's residential launch. Over a dozen outlets reported on SDCP's enrollment launch. Post launch week, subsequent media coverage on SDCP's residential rollout has continued.

The PR outreach has created buzz and introduced SDCP and explained how it works. Since SDCP received coverage in a broad mix of newspapers, TV and radio, as well as online news outlets and Spanish news media, the news reached a wide audience throughout the county. Of note, the announcements and news stories in mainstream media were picked up by community press, and combined with the op-eds published, helped increase familiarity with SDCP and the concept of Community Choice in hyper local markets.

Staff and Civilian continue to provide assets such as speaking points and prepared social media posts to advocates, our strongest instruments of success. Supporters of SDCP have proven to be excellent spokespeople in communicating to the public and targeted groups.

SDCP will soon announce a celebratory event to reveal a successful residential enrollment and our region's overall progress in June 2022.

COMMITTEE REVIEW

This item was reviewed by the Community Advisory Committee on January 14, 2022.

FISCAL IMPACT N/A

ATTACHMENTS N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 12

To:San Diego Community Power Board of DirectorsFrom:Rita De la Fuente, Director of External AffairsVia:Karin Burns, Chief Executive OfficerSubject:Amendment to Professional Services Agreement with Civilian, Inc. for up
to \$2,000,000 for services through FY2024Date:April 28, 2022

RECOMMENDATION

Approve the second amendment to the professional services agreement with Civilian, Inc. to increase the not-to-exceed amount to \$2,000,000, to extend the term through June 30, 2024, and to authorize the Chief Executive Officer or Chief Financial Officer to execute the agreement.

BACKGROUND

On April 30, 2020, San Diego Community Power (SDCP) issued Request for Proposal (RFP) 20-002 for Marketing and Communications Strategy, Public Engagement, Digital and Graphic Design services. The RFP was distributed to hundreds of recipients via the City of San Diego's PlanetBids platform, SDCP email lists, and via social media. Civilian, Inc. (Civilian) received the highest composite score in each of the six evaluation categories and was ultimately selected on the merits of their experience providing marketing and communications services, their ability to tailor their proposal to the needs specified in the RFP, their experience in working with firms located in San Diego County and their experience in working with firms owned or operated by women, minorities, disabled veterans, and lesbian, gay, bi-sexual or transgender persons.

Subsequently, on July 23, 2020, the SDCP Board of Directors (Board) approved the marketing and communications agreement (Agreement) with Civilian for a two-year term beginning August 1, 2020, with a not-to-exceed amount of \$775,680 over the term of the agreement.

Later, on May 27, 2021, the Board approved the first amendment to the Agreement to increase the not-to-exceed amount by \$143,000 to \$918,680. This increase was needed for enhancements to the SDCP website, for costs related to the Municipal Launch Event which were not in the original scope of the Civilian budget, and for additional work and

research in advance of Phase 2 enrollment to ensure a successful roll-out to SDCP's commercial and industrial customers.

As SDCP is in its Phase 3 Residential Enrollment period (Residential Enrollment), SDCP wishes to increase the not-to-exceed amount of the Agreement to cover additional marketing and communications services that educate and engage its new customers in the current fiscal year. Additionally, SDCP wishes to continue its marketing and communications services with Civilian through fiscal year 2024 to ensure consistency in customer experiences and in brand communications and to cover Phase 4 enrollment which was not included in the original scope of services given that the current term of the Agreement is through June 30, 2022. Staff therefore recommend a second amendment to the Agreement to increase the not-to-exceed amount to \$2,000,000, to extend the term through June 30, 2024, and to authorize the Interim Chief Executive Officer or Chief Financial Officer to execute the Agreement.

ANALYSIS AND DISCUSSION

SDCP is working with Civilian on an array of marketing activities to drive awareness, spark community engagement, and minimize opt-outs over the current months during Residential Enrollment. The Phase 3 Marketing and Public Relations Campaign began in December with direct mail enrollment notices to residents being enrolled in February and continues with various tactics to educate and engage new customers.

Creative Concepts and Strategic Messaging

There are two concepts that have been running during Residential Enrollment created to build trust and relatability. Staff has worked with Civilian to develop messaging based on behavioral research performed by See Change Institute to amplify the creative concepts.

Paid Media

The second second

City-specific media is running for two months per city, starting a week prior to Residential Enrollment and running during the month of the rollout and three weeks following. This schedule will coincide with the timing of when people get their bills to continue to build awareness and combat any customer anxiety over bill changes.

In addition to culturally diverse publications such as El Latino and Voice & Viewpoint which were included in the Phase 2 campaign, SDCP will have added presence in the Filipino Press, Nquoi Viet Tu Do, San Diego Chinese Tribune, and other smaller community publications. Billboard advertising and convenience store posters have also been introduced, providing an outdoor presence in communities with less access to online technology.

Communications and Outreach Strategy

PR strategies began in February 2022 with press releases and outreach to local, state, and national media when Residential Enrollment is launched. Editorials are also being published in each city's local paper. The local media showed great interest in SDCP's residential launch. Over a dozen outlets reported on SDCP's enrollment launch.

SDCP's Board of Directors, Community Advisory Committee members, Member Agency staff and other ambassadors received a partner toolkit containing assets such as speaking points and prepared social media posts to help further SDCP's reach.

Finally, at the end of the enrollment phase staff and Civilian are working on a celebratory event to reveal a successful Residential Enrollment and our region's overall progress in June 2022, as well as tactics to keep people engaged beyond the Phase 3 enrollment period.

Staff will continue to partner with Civilian on SDCP's marketing and public outreach campaign to educate and engage its new customers. Given the extensive effort in fiscal year 2022, staff estimate an additional need of \$181,320 for the remaining residential enrollment phase.

Labor Costs in FY23 and FY24 (\$900,000)

Civilian's scope of services outlines the following six tasks:

- 1. Agency Branding, Design, Messaging and Identity
- 2. Web Design, Content Development, and Maintenance
- 3. Community Outreach and Stakeholder Engagement
- 4. Marketing and Advertising Campaign
- 5. Media Relations and Public Affairs
- 6. Project Management/Performance Metrics

The scope and term of the Agreement through June 30, 2022 and does not cover Phase 4 enrollment and additional outreach needed for Phase 1 through Phase 3 customers beyond this period. These services were not anticipated at the time the Agreement was issued. The average monthly burn rate of the Agreement is \$39,700 and is expected to decrease in fiscal year 2023 and fiscal year 2024 as customers become more aware of SDCP. Staff therefore anticipate a maximum monthly burn rate of \$37,500 in fiscal year 2023 and fiscal year 2024 to cover the additional services required.

FISCAL IMPACT

Approval of this amendment will increase the Civilian, Inc. contract by \$1,081,320 to a new total not-to-exceed amount of \$2,000,000. Of the \$1,081,320 increase, \$181,320 is expected to cover additional costs in fiscal year 2022 and is fully funded from cost savings within SDCP's marketing and communications budget. The remaining \$900,000 is expected to cover Civilian's marketing and communications services in fiscal year 2023 and fiscal year 2024 and will be included in the upcoming budgets for SDCP.

ATTACHMENTS

Attachment A: Professional Services Agreement amendment with Civilian, Inc. Attachment B: Civilian Staffing Sheet Attachment C: Civilian SDCP YR 1&2 Brand Launch

SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN SAN DIEGO COMMUNITY POWER AND CIVILIAN, INC.

THIS SECOND AMENDMENT (this "Amendment") is entered into as of this May _____, 2022 by and between SAN DIEGO COMMUNITY POWER, a California joint powers agency ("SDCP") and CIVILIAN, INC., a California corporation, ("Consultant"). SDCP and Consultant are sometimes individually referred to herein as the "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Parties entered into that certain Professional Services Agreement between San Diego Community Power and Civilian, Inc., dated August 1, 2020 (the "Agreement") with a term from August 1, 2020 to June 30, 2022; and

WHEREAS, the Parties amended the Agreement between San Diego Community Power and Civilian, Inc., dated May 1, 2021 (the "First Amendment") to increase the not-to-exceed amount payable by SDCP to Consultant for Consultant's services by \$143,000 (for a total not-to-exceed amount of \$918,680 under the Agreement); and

WHEREAS, pursuant to the Agreement, Consultant provides marketing and communications services to SDCP; and

WHEREAS, the Parties desire to amend the Agreement to increase the maximum compensation amount payable to Consultant for its services and to extend the term of the Agreement.

NOW, THEREFORE, it is agreed by and between the parties as follows:

1. <u>Recitals</u>. The Recitals set forth above are true and correct and are incorporated into the body of this Amendment as though expressly set forth herein.

2. <u>Amendment of Section 1.2</u>. Section 1.2 of the Agreement is amended to update the term of the Agreement from August 1, 2020 to June 30, 2022, to August 1, 2020 to June 30, 2024.

3. <u>Amendment of Section 3.1.</u> Section 3.1 of the Agreement is amended to increase the not-to-exceed amount payable by SDCP to Consultant for Consultant's services by \$1,081,320 (for a total not-to-exceed amount of \$2,000,000 under the Agreement).

4. <u>Effect of Amendment</u>. Except as expressly set forth in this Amendment, all other sections, provisions, exhibits and commitments of the Agreement remain unchanged and in full force and effect.

5. <u>Counterparts</u>. This Amendment may be executed in one or more counterparts, including facsimile counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to the Professional Services Agreement between San Diego Community Power and Civilian, Inc., as of the date first set forth above.

SAN DIEGO COMMUNITY POWER

CIVILIAN, INC.

Name: Karin Burns Title: Chief Executive Officer Date: Name: Stacey Smith Title: Chief Executive Officer Date:

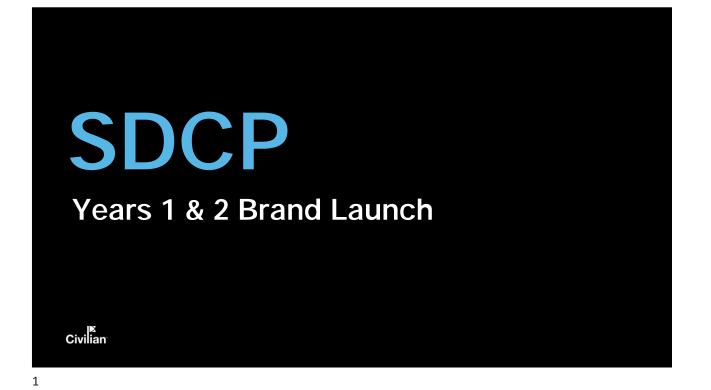
APPROVED AS TO FORM:

SDCP General Counsel

Civilian and San Diego Community Power

Civilian primary staff, roles, rates (effective July 1, 2022)

orvinan primary stan, role			Existing	New		
Account Management			2020-2022 Rate	2022-2024 Rate	% change	Rationale
Account Director	Pete Levine	Client escalation, parternship, strategy	\$175	\$195	11.43%	Cumulative cost-of-living adjustments based on CA rates and future considerations Cumulative cost-of-living adjustments based on CA rates and future
Account Supervisor	Travis Kushner	Brand strategy, client advocate, day-to-day senior lead Day-to-day junior lead, project management,	\$160	\$175	9.38%	considerations Cumulative cost-of-living adjustments based on CA rates and future
Sr. Account Executive	Callan Barr	administrative support, billing	\$160	\$175	9.38%	considerations
Creative						
Senior Art Director	Antonio Saraniero	Creative lead	\$160	\$175	9.38%	Cumulative cost-of-living adjustments based on CA rates and future considerations Promotion to more senior resource, and cumulative cost-of-living
Sr. Graphic Designer	Cristina Lee	Production designer	\$140	\$160	14.29%	adjustments
Media						
Media Services Director	Syed Hussain	Campaign planning and oversight	\$175	\$195	11.43%	Cumulative cost-of-living adjustments based on CA rates and future considerations Promotion to more senior resource, and cumulative cost-of-living
Media Supervisor	Jordan Nelson	Paid media strategy, supervision, implementation	\$160	\$175	9.38%	adjustments Cumulative cost-of-living adjustments based on CA rates and future
Media Services	Zackary Mitchell	Vendor management, reporting	\$140	\$155	10.71%	considerations
Digital						
Director Digital Services	Ron Wesson	Website, social media, and digital oversight	\$175	\$195	11.43%	Cumulative cost-of-living adjustments based on CA rates and future considerations Promotion to more senior resource, and cumulative cost-of-living
Sr. Digital Strategist	Caylee Southland	User experience, content development, organic social	\$160	\$175	9.38%	adjustments
Communications						
Director PR + Comms	Kim Coutts Padma	Owned/earned media lead	\$175	\$195	11.43%	Cumulative cost-of-living adjustments based on CA rates and future considerations
Senior PR Manager	Nagappan	Public relations management and content assistance	\$0	\$160	n/a	New position on staffing plan, previously unaccounted for
Strategy	o					
Founder/CEO	Stacey Nelson Smith	Relationship oversight	\$175	\$0	-100.00%	CEO oversight will not be charged, regardless of involvement Cumulative cost-of-living adjustments based on CA rates and future
Strategy Supervisor	Chris McCracken	Research and strategy	\$160	\$175	9.38%	considerations
				AVERAGE ADJUSTMENT	10.58%]



Phase 1: Municipal Launch

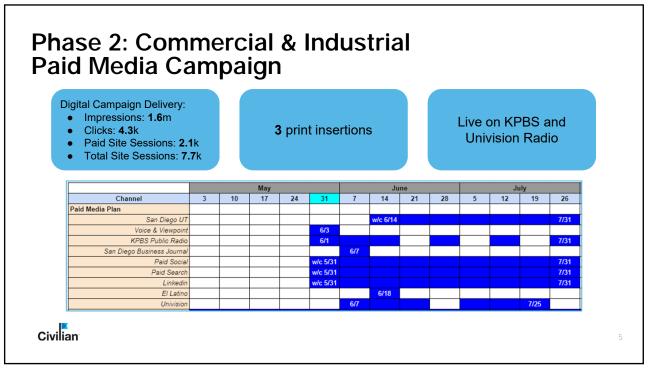
Civilian



3

Phase 2: Commercial and Industrial Launch

Civilian



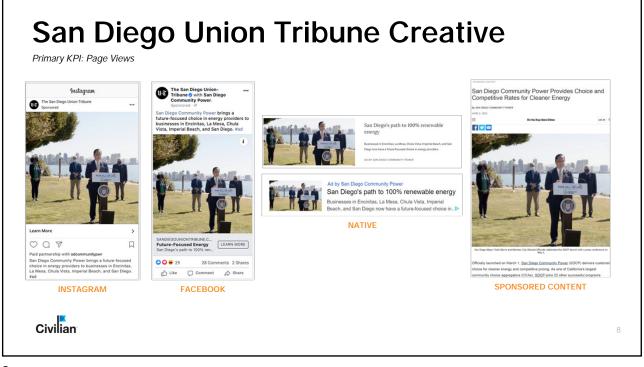
5

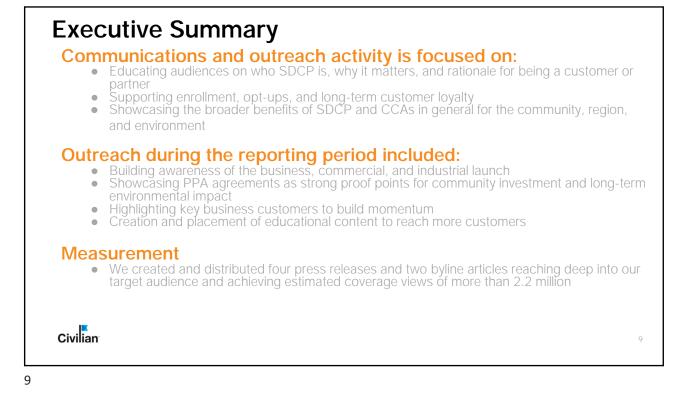
Phase 2: Commercial & Industrial Full Results

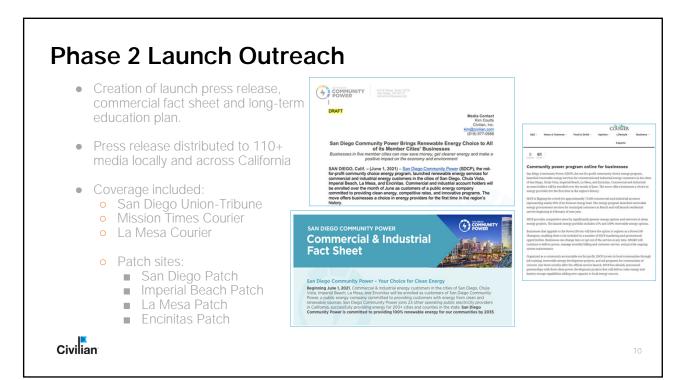
Campaign Performa	100						
TACTIC	IMPRESSIONS	CLICKS	CTR	PAGE SESSIONS	USERS	ARTICLE VIEWS	SPEND
PAID SEARCH*	9,727	745	7.66%	838	522	N/A	\$2,907
FACEBOOK/INSTAGRAM	257,226	2,690	1.05%	1,184	1,122	N/A	\$3,543
LINKEDIN	37,074	113	0.30%	134	108	N/A	\$3,392
SAN DIEGO UNION TRIBUNE	316,327	813	0.26%	N/A	N/A	769	\$5,882
UNIVISION	378,000	N/A	N/A	N/A	N/A	N/A	\$8,235
KPBS	567,000	N/A	N/A	N/A	N/A	N/A	\$10,500
EL LATINO	40,000	N/A	N/A	N/A	N/A	N/A	\$3,353
SAN DIEGO BUSINESS JOURNAL	11,000	N/A	N/A	N/A	N/A	N/A	\$2,647
VOICE AND VIEWPOINT	25,000	N/A	N/A	N/A	N/A	N/A	\$2,414
	1,641,354	4,361	0.70%	2,156	1,752	769	\$42,873
an							

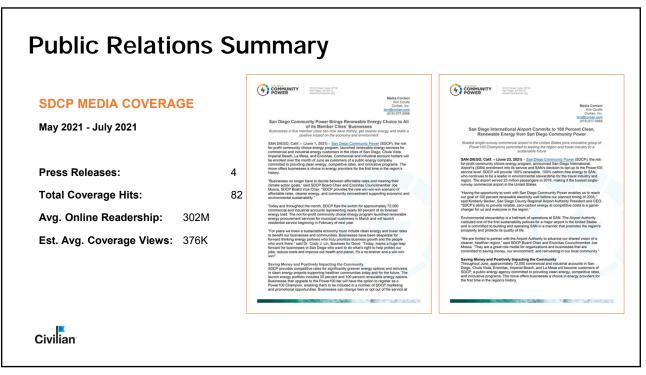
6





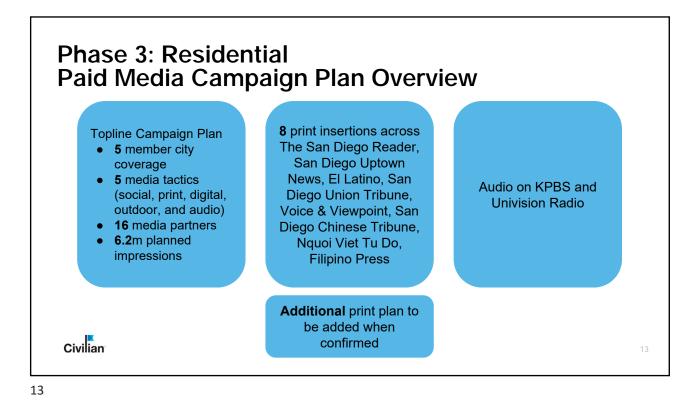


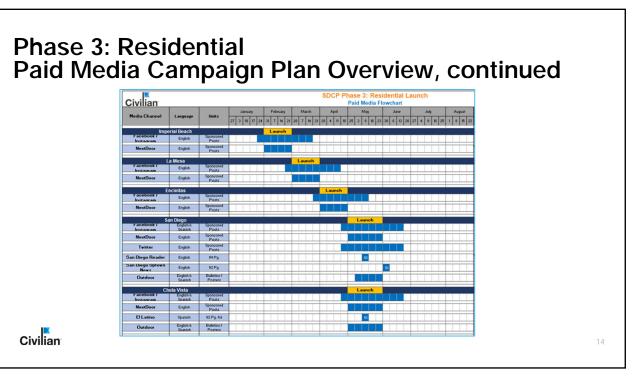


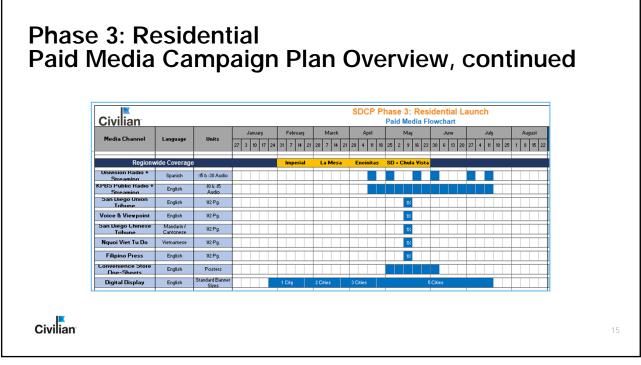


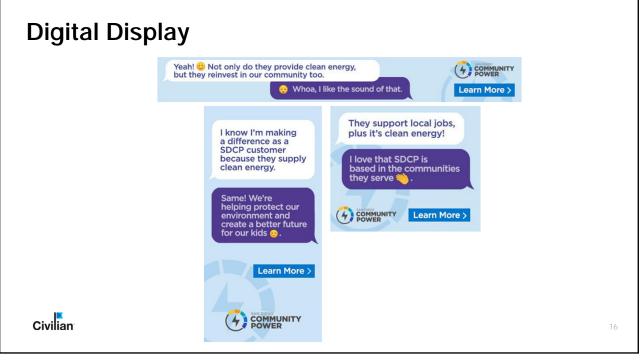
Phase 3: Residential Launch

Civilian

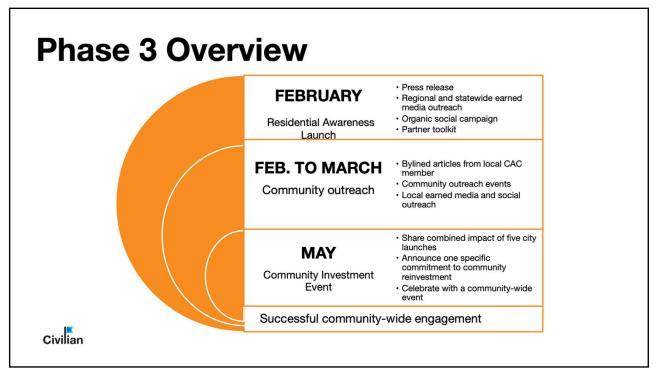


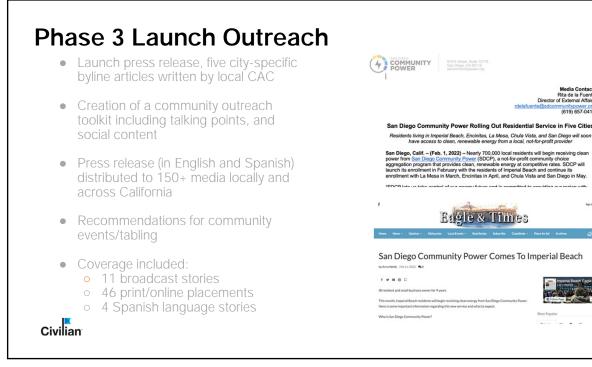


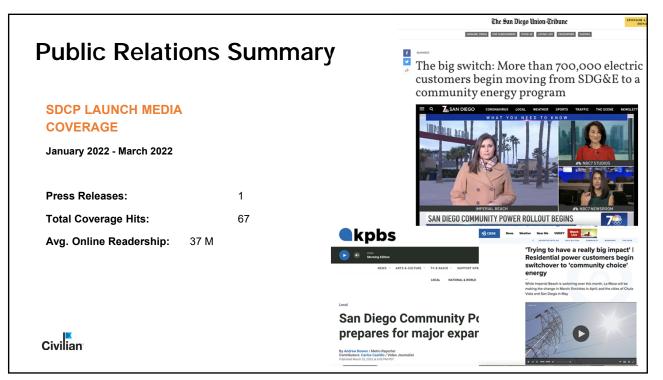


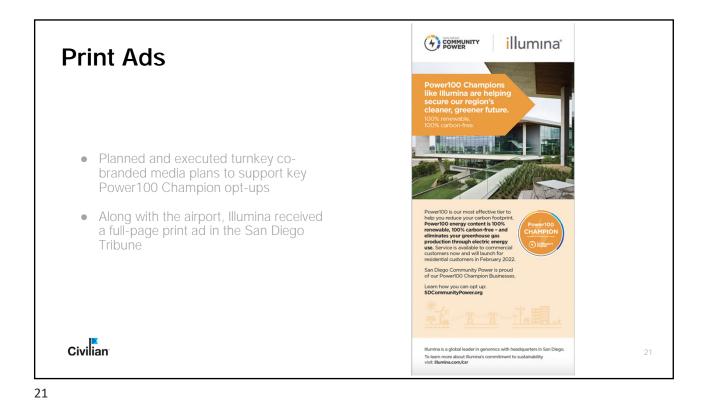


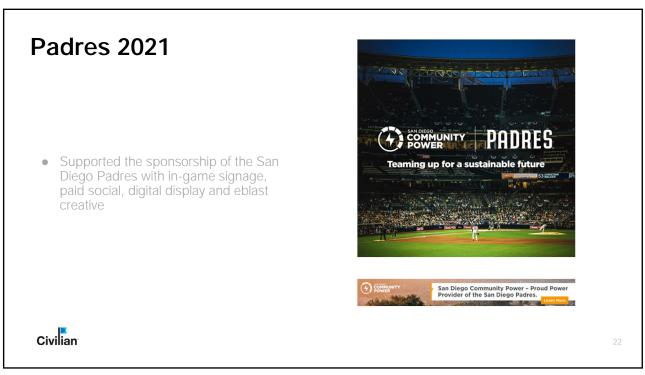








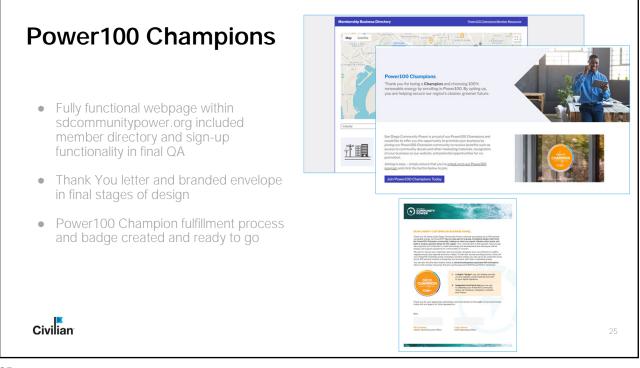


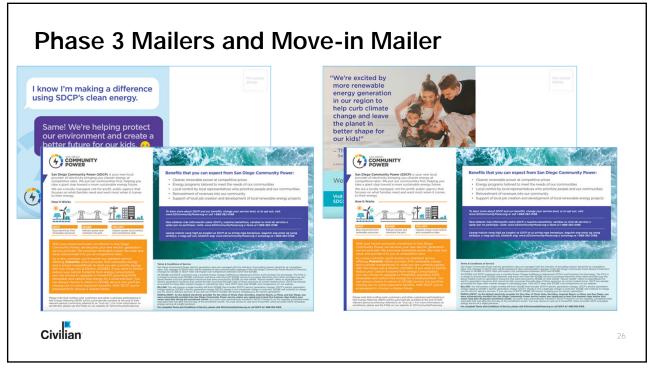


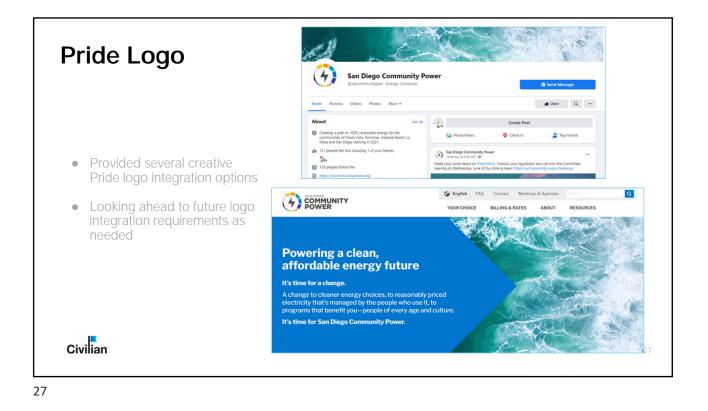




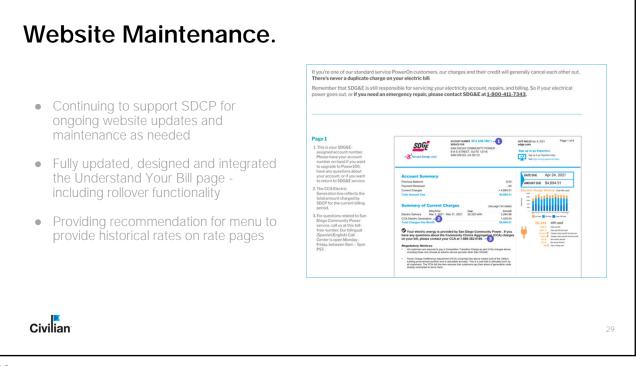


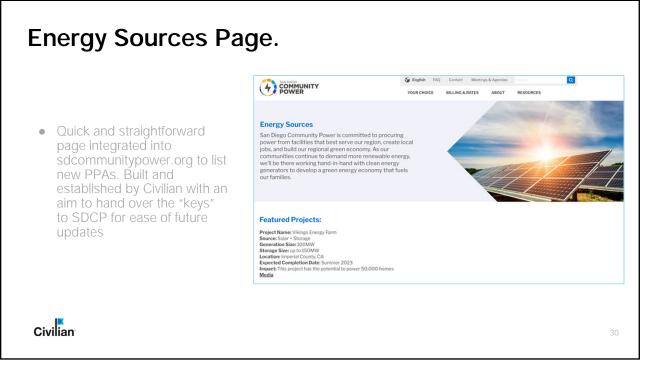


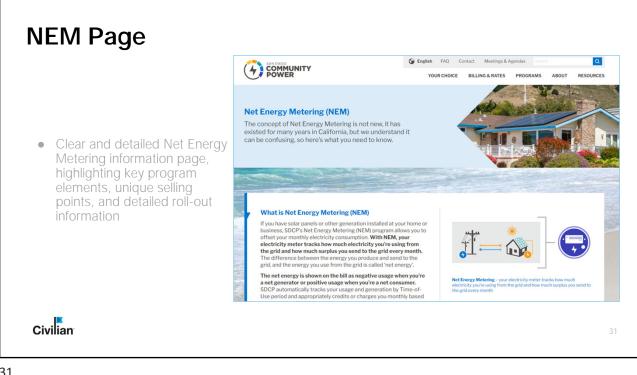




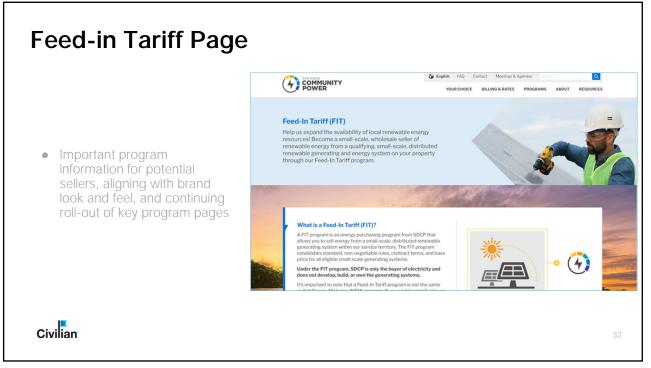


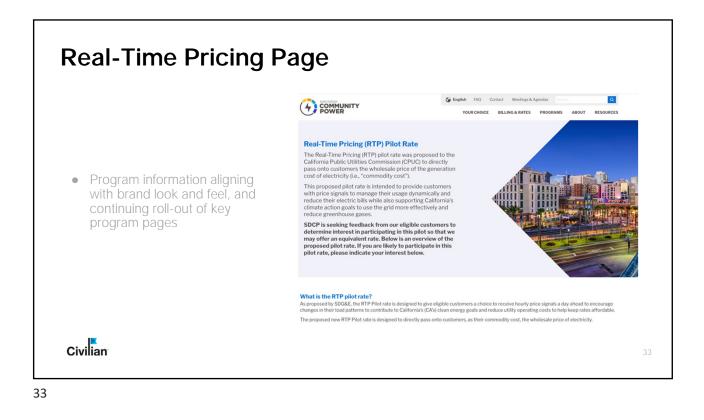


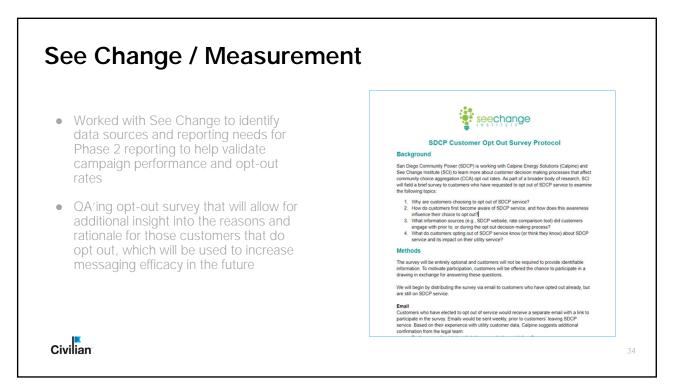














SAN DIEGO COMMUNITY POWER Staff Report – Item 13

- To: San Diego Community Power Board of Directors
- From: Cody Hooven, Chief Operating Officer Eric Washington, Chief Financial Officer
- Via: Karin Burns, Chief Executive Officer
- Subject: Approval of a Market Salary Increase for Employees and Next Steps for a Comprehensive Salary Structure

Date: April 28, 2022

RECOMMENDATION

- 1. Approval of a salary increase of 4.5% for all current SDCP employees other than the Chief Executive Officer, retroactive to January 1, 2022, or the first day of the month an employee was hired, whichever is more recent.
- 2. Direct the Chief Executive Officer to proceed with next steps to retain a human resources firm to support various efforts including development of a comprehensive salary structure.

BACKGROUND

Since the founding of San Diego Community Power (SDCP), staff have grown in numbers and excelled in performance. SDCP staff have successfully litigated complex regulatory actions, established new programs, are building a brand a community presence that is trusted, are enrolling hundreds of thousands of customers, and have procured renewable energy sufficient to meet requirements in a market that has been volatile and challenging. As we enroll our last phase of customers for 2022, we are financially sound and continue to attract talent and interest in our mission.

SDCP currently has 18 staff, with more planned positions to be filled in this fiscal year (FY) as well as additional positions to be requested for FY2022/2023. With a new, permanent CEO also now in place, staff expects to bring on a human resources consultant that will provide compensation support in addition to other human resources support as soon as possible. Until this new consultant is able to perform a market review and salary structure recommendation, help staff develop strategic policies for performance planning and review, and related compensation adjustments, an immediate merit increase is warranted to allow SDCP to continue to attract and retain highly qualified staff.

ANALYSIS AND DISCUSSION

In a labor market that is currently employee-driven, remote work opportunities are increasing, and in a field where expertise is critical to organizational success, a market increase is proposed to ensure continued employee retention and attraction. Aside from several individual salary adjustments, employees have not received any merit or cost of living adjustments (COLA) since December 2020.

We are aware that virtually all the community choice aggregators in California award an annually salary increase in the form of a merit increase and/or a COLA. As a benchmark, Clean Power Alliance, the community choice aggregator in Los Angeles County also awarded a 6.6% COLA effective January 1, 2022 as approved by their Board in February 2022. Other CCAs approved similar, annual increases through their annual budgeting process. Each of our member agencies offers a combination of COLA and various performance-based salary adjustment policies, too. Often the COLA adjustment in a city or county is fixed year-over-year in negotiated multi-year agreements with represented employee associations. In other sectors, COLA is either benchmarked to the U.S. Bureau of Labor Statistics Consumer Price Index (CPI) or supplemented/replaced with a revenue-based approach to salary increases.

There are two components to this agenda item. The first is a market increase of 4.5% to employee salaries to be effective January 1, 2022. This is proposed to be retroactive to January 1, 2022, or the first day of the month an employee was hired, whichever is more recent.

The second component is for staff to move forward with retaining a human resources consultant to conduct a market salary review and assist with a salary structure recommendation, development of strategic policies for performance planning and review, and further compensation adjustments as needed to further ensure SDCP is paying market-based salaries. They will also provide a review of the Employee Handbook and make recommendations for improvements and/or policies in areas such as maternity/paternity leave, workplace flexibility, performance reviews, office conduct, etc. This effort will be expedited to ensure a more comprehensive approach to HR and merit increases, as well as ensure SDCP salaries and policies are transparent, competitive, and fair.

FISCAL IMPACT

The proposed market increase will have an approximate \$75,000 impact to current personnel expenses in fiscal year 2021-2022 (FY21-22). The FY21-22 Amended Budget adopted by the Board on February 24, 2022 included an overall personnel savings of \$861,830. The proposed market increase is available in the amended budget and does not require any further amendments.

ATTACHMENTS N/A



GLOSSARY OF TERMS

CAISO – California Independent System Operator – a non-profit independent system operator that oversees the operation of the California bulk electric power system, transmission lines and electricity market generated and transmitted by its members (~80% of California's electric flow). Its stated mission is to "operate the grid reliably and efficiently, provide fair and open transmission access, promote environmental stewardship and facilitate effective markets and promote infrastructure development. CAISO is regulated by FERC and governed by a five-member governing board appointed by the governor.

CALCCA – California Community Choice Association – Association made up of Community Choice Aggregation (CCA) groups which represents the interests of California's community choice electricity providers.

CARB – **California Air Resources Board** – The CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change in California.

CEC – California Energy Commission

CPUC – California Public Utilities Commission

C&I – Commercial and Industrial – Business customers

CP – Compliance Period – Time period to become RPS compliant, set by the CPUC (California Public Utilities Commission)

DA – **Direct Access** – An option that allows eligible customers to purchase their electricity directly from third party providers known as Electric Service Providers (ESP).

DA Cap – the maximum amount of electric usage that may be allocated to Direct Access customers in California, or more specifically, within an Investor-Owned Utility service territory.

DA Lottery – a random drawing by which DA waitlist customers become eligible to enroll in DA service under the currently-applicable Direct Access Cap.

DA Waitlist – customers that have officially registered their interest in becoming a DA customer but are not yet able to enroll in service because of DA cap limitations.

DAC – Disadvantaged Community

DASR – Direct Access Service Request – Request submitted by C&I to become direct access eligible.

Demand - The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts (kW), megawatts (MW), or gigawatts (GW), at a given instant or averaged over any designated interval of time. Demand should not be confused with Load or Energy.

DER – Distributed Energy Resource – A small-scale physical or virtual asset (e.g. EV charger, smart thermostat, behind-the-meter solar/storage, energy efficiency) that operates locally and is connected to a larger power grid at the distribution level.

Distribution - The delivery of electricity to the retail customer's home or business through low voltage distribution lines.

DLAP – Default Load Aggregation Point – In the CAISO's electricity optimization model, DLAP is the node at which all bids for demand should be submitted and settled. SVCE settles its CAISO load at the PG&E DLAP as SVCE is in the PG&E transmission access charge area.

DR – **Demand Response** - An opportunity for consumers to play a significant role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates or other forms of financial incentives.

DWR – Department of Water Resources – DWR manages California's water resources, systems, and infrastructure in a responsible, sustainable way.

ELCC – Effective Load Carrying Capacity – The additional load met by an incremental generator while maintaining the same level of system reliability. For solar and wind resources the ELCC is the amount of capacity which can be counted for Resource Adequacy purposes.

EPIC – **Electric Program Investment Charge** – The EPIC program was created by the CPUC to support investments in clean energy technologies that provide benefits to the electricity ratepayers of PG&E, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE)

ERRA – Energy Resource Recovery Account – ERRA proceedings are used to determine fuel and purchased power costs which can be recovered in rates. The utilities do not earn a rate of return on these costs, and only recover actual costs. The costs are forecast for the year ahead. If the actual costs are lower than forecast, then the utility gives money back, and vice versa.

ESP – Energy Service Provider - An energy entity that provides service to a retail or end-use customer.

EV – Electric Vehicle

A PARTY TO A

GHG – **Greenhouse gas** - water vapor, carbon dioxide, tropospheric ozone, nitrous oxide, methane, and chlorofluorocarbons (CFCs). A gas that causes the atmosphere to trap heat radiating from the earth. The most common GHG is Carbon Dioxide, though Methane and others have this effect as well.

GRC – General Rate Case – Proceedings used to address the costs of operating and maintaining the utility system and the allocation of those costs among customer classes. For California's three large IOUs, the GRCs are parsed into two phases. Phase I of a GRC determines the total amount the utility is authorized to collect, while Phase II determines the share of the cost each customer class is responsible and the rate schedules for each class. Each large electric utility files a GRC application every three years for review by the Public Advocates Office and interested parties and approval by the CPUC.

GWh – **Gigawatt-hour** - The unit of energy equal to that expended in one hour at a rate of one billion watts. One GWh equals 1,000 megawatt-hours.

IEP – Independent Energy Producers – California's oldest and leading nonprofit trade association, representing the interest of developers and operators of independent energy facilities and independent power marketers.

IOU – Investor-Owned Utility – A private electricity and natural gas provider.

IRP – Integrated Resource Plan – A plan which outlines an electric utility's resource needs in order to meet expected electricity demand long-term.

kW – **Kilowatt** – Measure of power where power (watts) = voltage (volts) x amperage (amps) and 1 kW = 1000 watts

kWh – **Kilowatt-hour** – This is a measure of consumption. It is the amount of electricity that is used over some period of time, typically a one-month period for billing purposes. Customers are charged a rate per kWh of electricity used.

LCFS – **Low Carbon Fuel Standard** – A CARB program designed to encourage the use of cleaner low-carbon fuels in California, encourage the production of those fuels, and therefore, reduce greenhouse gas emissions.

LCR – Local (RA) Capacity Requirements – The amount of Resource Adequacy capacity required to be demonstrated in a specific location or zone.

LMP – Locational Marginal Price – Each generator unit and load pocket is assigned a node in the CAISO optimization model. The model will assign a LMP to the node in both the day- ahead and real time market as it balances the system using the least cost. The LMP is comprised of three components: the marginal cost of energy, congestion and losses. The LMP is used to financially settle transactions in the CAISO.

Load - An end use device or customer that receives power from an energy delivery system. Load should not be confused with Demand, which is the measure of power that a load receives or requires. See Demand.

LSE – Load-serving Entity – Entities that have been granted authority by state, local law or regulation to serve their own load directly through wholesale energy purchases and have chosen to exercise that authority.

NEM – Net Energy Metering – A program in which solar customers receive credit for excess electricity generated by solar panels.

NRDC – Natural Resources Defense Council

OIR – Order Instituting Rulemaking - A procedural document that is issued by the CPUC to start a formal proceeding. A draft OIR is issued for comment by interested parties and made final by vote of the five Commissioners of the CPUC.

MW – **Megawatt** – measure of power. A megawatt equals 1,000 kilowatts or 1 million watts.

MWH – Megawatt-hour – measure of energy

NP-15 – North Path 15 – NP-15 is a CAISO pricing zone usually used to approximate wholesale electricity prices in northern California in PG&E's service territory.

PCC1 – RPS Portfolio Content Category 1 – Bundled renewables where the energy and REC are dynamically scheduled into a California Balancing Authority (CBA) such as the CAISO. Also known as "in-state" renewables

PCC2 – RPS Portfolio Content Category 2 – Bundled renewables where the energy and REC are from out-of-state and not dynamically scheduled to a CBA.

PCC3 – RPS Portfolio Content Category 3 – Unbundled REC

PCIA or "exit fee" - Power Charge Indifference Adjustment (PCIA) is an "exit fee" based on stranded costs of utility generation set by the California Public Utilities Commission. It is calculated annually and assessed to customers of CCAs and paid to the IOU that lost those customers as a result of the formation of a CCA.

PCL – Power Content Label – A user-friendly way of displaying information to California consumers about the energy resources used to generate the electricity they sell, as required by AB 162 (Statue of 2009) and Senate Bill 1305 (Statutes of 1997).

PD – **Proposed Decision** – A procedural document in a CPUC Rulemaking process that is formally commented on by Parties to the proceeding. A PD is a precursor to a final Decision voted on by the five Commissioners of the CPUC.

Pnode – Pricing Node – In the CAISO optimization model, it is a point where a physical injection or withdrawal of energy is modeled and for which a LMP is calculated.

PPA – Power Purchase Agreement – A contract used to purchase the energy, capacity and attributes from a renewable resource project.

RA – Resource Adequacy - Under its Resource Adequacy (RA) program, the California Public Utilities Commission (CPUC) requires load-serving entities—both independently owned utilities and electric service providers—to demonstrate in both monthly and annual filings that they have purchased capacity commitments of no less than 115% of their peak loads.

RE – Renewable Energy - Energy from a source that is not depleted when used, such as wind or solar power.

REC - Renewable Energy Certificate - A REC is the property right to the environmental benefits associated with generating renewable electricity. For instance, homeowners who generate solar electricity are credited with 1 solar REC for every MWh of electricity they produce. Utilities obligated to fulfill an RPS requirement can purchase these RECs on the open market.

RPS - Renewables Portfolio Standard - Law that requires CA utilities and other load serving entities (including CCAs) to provide an escalating percentage of CA qualified renewable power (culminating at 33% by 2020) in their annual energy portfolio.

SCE – Southern California Edison

SDG&E – San Diego Gas & Electric

AND A PART SA

SGIP – Self-Generation Incentive Program – A program which provides incentives to support existing, new, and emerging distributed energy resources (storage, wind turbines, waste heat to power technologies, etc.)

TCR EPS Protocol – The Climate Registry Electric Power Sector Protocol – Online tools and resources provided by The Climate Registry to assist organizations to measure, report, and reduce carbon emissions.

Time-of-Use (TOU) Rates — The pricing of delivered electricity based on the estimated cost of electricity during a particular time-block. Time-of-use rates are usually divided into three or four time-blocks per 24 hour period (on-peak, midpeak, off-peak and sometimes super off-peak) and by seasons of the year (summer and winter). Real time pricing differs from TOU rates in that it is

based on actual (as opposed to forecasted) prices that may fluctuate many times a day and are weather sensitive, rather than varying with a fixed schedule.

TURN – The Utility Reform Network - A ratepayer advocacy group charged with ensuring that California IOUs implement just and reasonable rates.

Unbundled RECs - Renewable energy certificates that verify a purchase of a MWH unit of renewable power where the actual power and the certificate are "unbundled" and sold to different buyers.

VPP – Virtual Power Plant – A cloud-based network that leverages an aggregation of distributed energy resources (DERs) to shift energy demand or provide services to the grid. For example, thousands of EV chargers could charge at a slower speed and hundreds of home batteries could discharge to the grid during a demand peak to significantly reduce the procurement of traditional supply resources.

15 APE ALE



AB	Assembly Bill	ES	Energy Storage		Plans)
AB	Advice Letter	ESA	Energy Storage Agreements	PAC	Public Agency Coalition
AL	Advice Letter Administrative Law Judge	ESA	Electric Service Provider		
	0	ESP		PAM	Portfolio Allocation Methodology
ARB	Air Resources Board		Electric Vehicle	PCE	Peninsula Clean Energy Authority
AReM	Alliance for Retail Energy Markets	FCR	Flexible Capacity Requirements	PCIA	Power Charge Indifference Adjustment
BayREN	Bay Area Regional Energy Network	GHG	Greenhouse Gas	PD	Proposed Decision
CAISO	California Independent System Operator	GRC	General Rate Case	PG&E	Pacific Gas & Electric
CalCCA	California Community Choice Association	GTSR	Green Tariff Shared Renewables	PHC	Prehearing Conference
CALSEIA	California Solar Energy Industries	ICA	Integration Capacity Analysis	PPA	Power Purchase Agreement
	Association	IDER	Integrated Distributed Energy Resources	PRP	Priority Review Project
CALSLA	California City County Street Light	IDSM	Integrated Demand-Side Management	PRRR	Progress On Residential Rate Reform
	Association	IEP	Independent Energy Producers	PUC	Public Utilities Code
CAM	Cost Allocation Mechanism	IMD	Independent Marketing Division	PURPA	Public Utilities Regulatory Policy Act
CARE	California Alternate Rates for Energy	IOU	Investor Owned Utility	RA	Resource Adequacy
CBE	Communities for a Better Environment	IRP	Integrated Resource Planning	RAM	Renewables Auction Mechanism
CCA	Community Choice Aggregator	LCE	Lancaster Choice Energy	REC	Renewable Energy Credit
CCSF	City and County of San Francisco	LCFS	Low Carbon Fuel Standard	RES-BCT	Renewable Energy Self-Generation Bill
CEC	California Energy Commission	LCR	Local (RA) Capacity Requirements		Credit Transfer
CEE	Coalition for Energy Efficiency	LNBA	Locational Net Benefits Analysis	RFO	Request for Offers
CLECA	California Large Energy Consumers	LSE	Load-Serving Entity	RICA	Renewable Integration Cost Adder
	Association	LTPP	Long- Term Procurement Rulemaking	RPS	Renewables Portfolio Standard
CPUC	California Public Utilities Commission	MCE	Marin Clean Energy	SB	Senate Bill
DA	Direct Access	MEO	Marketing, Education And Outreach	SCE	Southern California Edison
DACC	Direct Access Customer Coalition	MW	Megawatt	SCP	Sonoma Clean Power Authority
DER	Distributed Energy Resources	NAESCO	National Association of Energy Service	SDG&E	San Diego Gas & Electric
DR	Demand Response		Companies	SGIP	Self-Generation Incentive Program
DRP	Distributed Resource Plans	NDA	Non-Disclosure Agreement	-	-
DWR	Department of Water Resources	NEM	Net Energy Metering	SUE	Super User Electric
ECR	Enhanced Community Renewable	NBC	Non-Bypassable Charge	SVCE	Silicon Valley Clean Energy
ED	Energy Division	NRDC	Natural Resources Defense Council	TE	Transportation Electrification
EE	Energy Efficiency	OIR	Order Instituting Rulemaking	TM	Tree Mortality
ELCC	Effective Load Carrying Capacity	OSC	Order to Show Cause	TOU	Time-of-Use
EPIC	Electric Program Investment Charge	ORA	Office of Ratepayer Advocates	TURN	The Utility Reform Network
ERRA	Energy Resource Recovery Account	PA	Program Administrator (for EE Business		
	Energy resource recovery recount	IA	Togram Auministrator (for DE Dusiliess		

AB	Assembly Bill	ES	Energy Storage		Plans)
AB	Advice Letter	ESA	Energy Storage Agreements	PAC	Public Agency Coalition
AL	Advice Letter Administrative Law Judge	ESA	Electric Service Provider		
	0	ESP		PAM	Portfolio Allocation Methodology
ARB	Air Resources Board		Electric Vehicle	PCE	Peninsula Clean Energy Authority
AReM	Alliance for Retail Energy Markets	FCR	Flexible Capacity Requirements	PCIA	Power Charge Indifference Adjustment
BayREN	Bay Area Regional Energy Network	GHG	Greenhouse Gas	PD	Proposed Decision
CAISO	California Independent System Operator	GRC	General Rate Case	PG&E	Pacific Gas & Electric
CalCCA	California Community Choice Association	GTSR	Green Tariff Shared Renewables	PHC	Prehearing Conference
CALSEIA	California Solar Energy Industries	ICA	Integration Capacity Analysis	PPA	Power Purchase Agreement
	Association	IDER	Integrated Distributed Energy Resources	PRP	Priority Review Project
CALSLA	California City County Street Light	IDSM	Integrated Demand-Side Management	PRRR	Progress On Residential Rate Reform
	Association	IEP	Independent Energy Producers	PUC	Public Utilities Code
CAM	Cost Allocation Mechanism	IMD	Independent Marketing Division	PURPA	Public Utilities Regulatory Policy Act
CARE	California Alternate Rates for Energy	IOU	Investor Owned Utility	RA	Resource Adequacy
CBE	Communities for a Better Environment	IRP	Integrated Resource Planning	RAM	Renewables Auction Mechanism
CCA	Community Choice Aggregator	LCE	Lancaster Choice Energy	REC	Renewable Energy Credit
CCSF	City and County of San Francisco	LCFS	Low Carbon Fuel Standard	RES-BCT	Renewable Energy Self-Generation Bill
CEC	California Energy Commission	LCR	Local (RA) Capacity Requirements		Credit Transfer
CEE	Coalition for Energy Efficiency	LNBA	Locational Net Benefits Analysis	RFO	Request for Offers
CLECA	California Large Energy Consumers	LSE	Load-Serving Entity	RICA	Renewable Integration Cost Adder
	Association	LTPP	Long- Term Procurement Rulemaking	RPS	Renewables Portfolio Standard
CPUC	California Public Utilities Commission	MCE	Marin Clean Energy	SB	Senate Bill
DA	Direct Access	MEO	Marketing, Education And Outreach	SCE	Southern California Edison
DACC	Direct Access Customer Coalition	MW	Megawatt	SCP	Sonoma Clean Power Authority
DER	Distributed Energy Resources	NAESCO	National Association of Energy Service	SDG&E	San Diego Gas & Electric
DR	Demand Response		Companies	SGIP	Self-Generation Incentive Program
DRP	Distributed Resource Plans	NDA	Non-Disclosure Agreement	-	-
DWR	Department of Water Resources	NEM	Net Energy Metering	SUE	Super User Electric
ECR	Enhanced Community Renewable	NBC	Non-Bypassable Charge	SVCE	Silicon Valley Clean Energy
ED	Energy Division	NRDC	Natural Resources Defense Council	TE	Transportation Electrification
EE	Energy Efficiency	OIR	Order Instituting Rulemaking	TM	Tree Mortality
ELCC	Effective Load Carrying Capacity	OSC	Order to Show Cause	TOU	Time-of-Use
EPIC	Electric Program Investment Charge	ORA	Office of Ratepayer Advocates	TURN	The Utility Reform Network
ERRA	Energy Resource Recovery Account	PA	Program Administrator (for EE Business		
	Energy resource recovery recount	IA	Togram Auministrator (for DE Dusiliess		