



AGENDA

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

April 22, 2021

5:00 p.m.

Due to the public health orders and guidelines in California and in accordance with the Governor's Executive Orders N-25-20 and N-29-20, there will be no location for in-person attendance. SDCP is providing alternatives to in-person attendance for viewing and participating in the meeting. Further details are below.

Note: Any member of the public may provide comments to the SDCP 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:

1. 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.
2. Written Comments. Written public comments must be submitted prior to the start of the meeting by using this ([web form](#)). 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 info@sdcommunitypower.org, who will distribute the information 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 use the web form noted above to provide a comment or request to speak.

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 Agenda for discussion. A member of the public may use the web form noted above to comment on any item on the Consent Calendar.

- 1. Approval of the minutes of the Regular Meeting of the Board of Directors of San Diego Community Power held on March 25, 2021.**
- 2. Treasurer's Report – Presentation of Financial Results for 2020/21 Period ended 2/28/21**
- 3. Approval of SDCP Representative and Alternate to the La Mesa Environmental Sustainability Commission**

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.

4. Operations and Administration Report from the Interim Chief Executive Officer

Recommendation: Receive and file update on various operational and administration activities.

5. Update on Regulatory and Legislative Affairs

Recommendation: Receive and file the update on regulatory and legislative affairs.

6. Committee Reports

Recommendation:

1. Receive and file update from the Finance and Risk Management Committee.
2. Receive and file update from the Community Advisory Committee.

7. Approval of an Updated Rate Schedule to be Effective June 1, 2021

Recommendation: Adopt the updated rate schedule to become effective June 1, 2021.

8. Phase 3 Customer Enrollment Schedule

Recommendation: Adopt the proposed phase-in schedule for Phase 3 customer enrollment.

9. Renewable Power Purchase Agreement with Vikings Energy Farm, LLC

Recommendation: Adopt the Long-term Renewable Power Purchase Agreement with Vikings Energy Farm, LLC.

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.

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.

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 available for public review as required by law. Previously, public records were available for inspection at the City of San Diego Sustainability Department, located at 1200 Third Ave., Suite 1800, San Diego, CA 92101. 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 2

To: San Diego Community Power Board of Directors

From: Michael Maher, Maher Accountancy

Subject: Treasurer's Report - Presentation of Financial Results for 2020/21 Period ended 2/28/21

Date: April 22, 2021

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 financial statements for the period ended February 28, 2021 as well as a budgetary comparison statement for the same period.

ANALYSIS AND DISCUSSION

Financial Comments:

- SDCP's main source of funding at this point is its Line of Credit with River City Bank (RCB).
- As planned, SDCP is running a deficit balance and will continue to do so until sufficient revenues from retail customers occur during the latter half of the fiscal year.

Budget Comments:

- SDCP staff intends to bring an amended 2020/21 (current year) budget to the Board for approval in the May 2021 meeting. This amendment is intended better align the budget to current forecasts of revenues and expenses
- SDCP staff intends to bring the proposed 2021/22 (next year) budget for the Board's review in the May 2021 meeting, with final approval of the budget occurring in the June 2021 meeting.

FISCAL IMPACT

Not applicable

ATTACHMENTS

Attachment A: 2020/21 Period Ended 2/28/21 Financial Statements

Attachment B: 2020/21 Period Ended 2/28/21 Budgetary Comparison Statement





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, 2021, 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 31, 2021

SAN DIEGO COMMUNITY POWER
STATEMENT OF NET POSITION
As of February 28, 2021

ASSETS

Current assets	
Cash and cash equivalents	\$ 486,108
Miscellaneous receivables	251,821
Deposits	850,000
Total current assets	<u>1,587,929</u>
Noncurrent assets	
Restricted cash	7,500,000
Total assets	<u>9,087,929</u>

LIABILITIES

Current liabilities	
Accrued cost of energy	2,833,446
Accounts payable	313,589
Payroll liabilities	54,293
Other accrued liabilities	100,000
Security deposits	1,581,000
Interest payable	87,020
Total current liabilities	<u>4,969,348</u>
Noncurrent liabilities	
Other noncurrent liabilities	582,176
Bank note payable	6,290,082
Loans payable	5,000,000
Total noncurrent liabilities	<u>11,872,258</u>
Total liabilities	<u>16,841,606</u>

NET POSITION

Unrestricted (deficit)	<u>(7,753,677)</u>
Total net position	<u><u>\$ (7,753,677)</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
July 1, 2020 through February 28, 2021

OPERATING REVENUES

Sales for resale	\$ 1,073,434
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OPERATING EXPENSES

Cost of energy	5,810,651
Contract services	1,347,135
Staff compensation	288,140
General and administration	220,469
Total operating expenses	<u>7,666,395</u>
Operating income (loss)	<u>(6,592,961)</u>

NONOPERATING EXPENSES

Interest and financing expense	<u>90,606</u>
Total nonoperating expenses	<u>90,606</u>

CHANGE IN NET POSITION

	(6,683,567)
Net position at beginning of period	<u>(1,070,110)</u>
Net position at end of period	<u><u>\$ (7,753,677)</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS
July 1, 2020 through February 28, 2021

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts of supplier collateral	\$ 1,581,000
Payments to suppliers for electricity	(2,155,592)
Payments for goods and services	(1,577,190)
Payments to employees for services	(233,847)
Payments for deposits and collateral	(750,000)
Net cash provided (used) by operating activities	<u>(3,135,629)</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Proceeds from loans	5,300,000
Interest and related expense payments	<u>(17,245)</u>
Net cash provided (used) by non-capital financing activities	<u>5,282,755</u>

Net change in cash and cash equivalents	2,147,126
Cash and cash equivalents at beginning of period	<u>5,838,982</u>
Cash and cash equivalents at end of period	<u><u>\$ 7,986,108</u></u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	486,108
Restricted cash	<u>7,500,000</u>
Cash and cash equivalents	<u><u>\$ 7,986,108</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS (continued)
July 1, 2020 through February 28, 2021

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

Operating income (loss)	\$ (6,592,961)
Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities	
(Increase) decrease in:	
Other receivables	(251,821)
Prepaid expenses	25,000
Deposits	(750,000)
Increase (decrease) in:	
Accrued cost of electricity	2,833,446
Accounts payable	(16,453)
Payroll liabilities	54,293
Other accrued liabilities	(18,133)
Supplier security deposits	1,581,000
Net cash provided (used) by operating activities	<u><u>\$ (3,135,629)</u></u>



ACCOUNTANTS' COMPILATION REPORT

Board of Directors
San Diego Community Power

Management is responsible for the accompanying special purpose statement of San Diego Community Power (SDCP), a California Joint Powers Authority, which comprise the budgetary comparison schedule for the period ended February 28, 2021, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. 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 statement 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, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of SDCP.

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. SDCP's annual audited financial statements will include the note disclosures omitted from these interim 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 SDCP because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
March 31, 2021

SAN DIEGO COMMUNITY POWER
BUDGETARY COMPARISON SCHEDULE
July 1, 2020 through February 28, 2021

	2020/21 YTD Budget	2020/21 YTD Actual	2020/21 YTD Budget Variance (Under) Over	2020/21 YTD Actual/ Budget %	2020/21 Annual Budget	2020/21 Budget Remaining
REVENUES AND OTHER SOURCES						
Working capital from River City Bank	\$ 22,500,000	5,300,000	\$ (17,200,000)	24%	\$ 24,600,000	\$ 19,300,000
Ratepayer revenues	-	-	-	0%	22,688,892	22,688,892
Less uncollectibles	-	-	-	0%	(56,722)	(56,722)
Total Revenues and Other Sources	<u>22,500,000</u>	<u>5,300,000</u>	<u>(17,200,000)</u>		<u>47,232,170</u>	<u>41,932,170</u>
OPERATING EXPENSES						
Operations and Administration						
Professional fees	233,333	195,051	(38,282)	84%	350,000	154,949
Board and Committee Expenses	10,000	-	(10,000)	0%	15,000	15,000
Staffing	489,501	288,140	(201,361)	59%	1,500,000	1,211,860
General and Administrative	233,333	90,283	(143,050)	39%	350,000	259,717
Debt Service and Bank Fees	280,000	90,606	(189,394)	32%	1,048,000	957,394
Total Operations and Administration	<u>1,246,167</u>	<u>664,080</u>	<u>(582,087)</u>		<u>3,263,000</u>	<u>2,598,920</u>
CAISO/Utility Fees						
CAISO deposit	500,000	-	(500,000)	0%	500,000	500,000
Financial Security Bond (CPUC)	50,000	-	(50,000)	0%	50,000	50,000
SDG&E billing service fees	-	-	-	0%	5,768	5,768
Total CAISO/Utility Fees	<u>550,000</u>	<u>-</u>	<u>(550,000)</u>		<u>555,768</u>	<u>555,768</u>
Technical and Energy Services						
Power contracting, portfolio and rate design	154,000	181,035	27,035	118%	273,000	91,965
Scheduling Fees	-	-	-	0%	8,000	8,000
Cost of Power	4,404,185	4,737,217	333,032	108%	32,511,279	27,774,062
Collateral/Lockbox reserves	5,000,000	-	(5,000,000)	0%	5,000,000	5,000,000
Total Technical and Energy Services	<u>9,558,185</u>	<u>4,918,252</u>	<u>(4,639,933)</u>		<u>37,792,279</u>	<u>32,874,027</u>
Communications & Customer Enrollment						
Marketing strategy and branding	65,000	341,913	276,913	526%	65,000	(276,913)
Permanent Website + Maintenance	45,000	-	(45,000)	0%	45,000	45,000
Collateral Design/Video	30,000	-	(30,000)	0%	60,000	60,000
PR/Advertising Campaign	75,000	-	(75,000)	0%	150,000	150,000
Community Engagement	62,500	-	(62,500)	0%	125,000	125,000
Materials for tabling and events (design/print)	15,000	-	(15,000)	0%	30,000	30,000
Customer Notifications (@ \$0.80 each)	24,500	-	(24,500)	0%	49,000	49,000
Community Sponsorships, etc.	25,000	7,500	(17,500)	30%	25,000	17,500
Total Communications & Customer Enrollment	<u>342,000</u>	<u>349,413</u>	<u>7,413</u>		<u>549,000</u>	<u>199,587</u>
Legal						
General Counsel Services	80,000	290,307	210,307	363%	120,000	(170,307)
Legal review of power supply & other contracts	80,000	-	(80,000)	0%	120,000	120,000
Total Legal	<u>160,000</u>	<u>290,307</u>	<u>130,307</u>		<u>240,000</u>	<u>(50,307)</u>
Regulatory Legislative						
Cal-CCA Membership	37,500	17,686	(19,814)	47%	50,000	32,314
Regulatory Monitoring and Reporting	133,333	338,828	205,495	254%	200,000	(138,828)
Participation in Regulatory /Compliance Matters	66,667	-	(66,667)	0%	100,000	100,000
Lobbyist	40,000	-	(40,000)	0%	60,000	60,000
Total Regulatory Legislative	<u>277,500</u>	<u>356,514</u>	<u>79,014</u>		<u>410,000</u>	<u>53,486</u>
Total Operating Expenses	<u>12,133,852</u>	<u>6,578,566</u>	<u>(5,555,286)</u>		<u>42,810,047</u>	<u>36,231,481</u>
NET SURPLUS (DEFICIT)	<u>\$ 10,366,148</u>	<u>\$ (1,278,566)</u>	<u>\$ (11,644,714)</u>		<u>\$ 4,422,123</u>	<u>\$ 5,700,689</u>

This budget does not include: 1) Reimbursable expenses for City of San Diego, La Mesa, and Encinitas, 2) Local Programs, and 3) Reserve Funds.



SAN DIEGO COMMUNITY POWER Staff Report – Item 3

To: San Diego Community Power Board of Directors

From: Bill Carnahan, Interim CEO

Subject: Approval of SDCP Representative and Alternate to the City of La Mesa Environmental Sustainability Commission

Date: April 22, 2021

RECOMMENDATION

Approve appointment of SDCP Representative and Alternate to the City of La Mesa Environmental Sustainability Commission.

BACKGROUND

The City of La Mesa's Environmental Sustainability Commission serves as an advisory body to their City Council on how actions and policies of the city may preserve and enhance the quality of La Mesa's environment. The Commission also serves to address the effects of climate change and assist in the identification of measures that will improve environmental sustainability in La Mesa and the region.

La Mesa staff have requested SDCP staff participation as a non-voting member of the Commission and the city has amended Chapter 2.85.010 of the La Mesa Municipal Code to add SDCP as a non-voting representative of the Environmental Sustainability Commission, pending an appointment from the Board of Directors of San Diego Community Power. The first and second reading of this ordinance is found as Attachment A and B, respectively.

If fully approved, the Commission makeup would be seven members as residents of the City of La Mesa with voting privileges and six members as advisory in nature from the business community without voting privileges. The six non-voting members are made up of representatives from the City of La Mesa's water utility, franchise waste and recycling hauler, electricity and gas utility, high school, and elementary/middle school district.

ANALYSIS AND DISCUSSION

Per their request, staff recommends appointing staff to a non-voting member role on La Mesa's Environmental Sustainability Commission in order to contribute to sustainability thought leadership and seek opportunities for collaboration within one of our member cities. By engaging in this local effort, staff sees value in building programmatic efforts and better understanding the unique electricity goals and needs of La Mesa.



If approved, SDCP's CEO will appoint Sebastian Sarria, Policy and Program Manager, to serve as SDCP's primary representative and Nelson Lomeli, Program Manager, to serve as the alternate representative.

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: SDCP ESC Member Staff Report First Reading 2021

Attachment B: SDCP ESC Member Staff Report Second Reading 2021

Attachment C: Draft Appointment Letter from SDCP



**STAFF REPORT**

REPORT to the MAYOR and MEMBERS of the CITY COUNCIL
From the CITY MANAGER

DATE: March 9, 2021

SUBJECT: First Reading of an Ordinance Amending Chapter 2.85.010 of the La Mesa Municipal Code to Add a San Diego Community Power Representative as a Non-voting Member of the Environmental Sustainability Commission

ISSUING DEPARTMENT: CITY MANAGER

SUMMARY:

Issue:

Should the City Council approve the introduction and First Reading of an ordinance amending Chapter 2.85.010 of the La Mesa Municipal Code to add a San Diego Community Power representative as a non-voting member of the Environmental Sustainability Commission?

Recommendation:

Staff recommends the City Council approve the introduction and First Reading of an ordinance amending Chapter 2.85.010 of the La Mesa Municipal Code to add a San Diego Community Power representative as a non-voting member of the Environmental Sustainability Commission.

Fiscal Impact:

There is no fiscal impact associated with the staff recommendation.

BACKGROUND:

In September of 2019, the cities of San Diego, Chula Vista, La Mesa, Encinitas, and Imperial Beach adopted an ordinance and resolution to form San Diego Community Power ("SDCP"). SDCP is a Community Choice Energy and California joint powers agency that, in partnership with San Diego Gas and Electric ("SDGE"), will provide reliable, affordable clean energy from renewable sources to approximately 770,000 total customers in these five cities. SDCP will begin serving municipal customers in March 2021 with commercial and industrial customers starting in June of 2021 and residential customers beginning in January 2022.

DISCUSSION:

At the February 9th Council meeting, the Chair of the Environmental Sustainability Commission presented an update on the progress of the Commission's 2021 Work Plan. As part of the presentation, the Chair recommended that the City Council amend Section 2.85.010 of the La Mesa Municipal Code to add a non-voting member from SDCP to the Commission. Prior to the February 9th meeting, staff reached out to SDCP and confirmed the organization would be interested in becoming a non-voting member. At the February 23rd Council meeting, the Council directed staff to bring back an ordinance amending Section 2.85.010 to add the SDCP representative to the Commission.

To effectuate the City Council's direction, the adoption of a draft ordinance amending Section 2.85.010 of the La Mesa Municipal Code is necessary and is attached to this report as Attachment "A". If the City Council approves the introduction and First Reading of the draft ordinance, the item would return to the City Council on March 23, 2021, for the Second Reading and adoption. If the Second Reading is approved and the draft ordinance is adopted, it would become effective thirty (30) days thereafter and the SDCP representative would assume appointment to the Commission at the next regularly scheduled meeting.

CONCLUSION:

Staff recommends the City Council approve the introduction and First Reading of an ordinance amending Chapter 2.85.010 of the La Mesa Municipal Code to add a San Diego Community Power representative as a non-voting member of the Environmental Sustainability Commission.

Reviewed by:



Greg Humora
City Manager

Respectfully submitted by:



Carlo Tomaino
Assistant City Manager



on behalf of
Lyn Dedmon

Senior Management Analyst

Attachment A. Amended Ordinance

ORDINANCE NO. 2021-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA MESA
AMENDING SECTION 2.85.010 OF THE LA MESA MUNICIPAL CODE TO ADD
A SAN DIEGO COMMUNITY POWER REPRESENTATIVE AS A NON-VOTING
MEMBER OF THE ENVIRONMENTAL SUSTAINABILITY COMMISSION

THE CITY COUNCIL OF THE CITY OF LA MESA DOES ORDAIN AS FOLLOWS:

SECTION 1: Section 2.85.010 of the La Mesa Municipal Code is hereby amended to read as follows:

"There is hereby created the Environmental Sustainability Commission (Commission) of the City of La Mesa. The Commission shall consist of thirteen members. Seven members shall be residents of the City of La Mesa with voting privileges and six members shall be advisory members from the business community without voting privileges. The seven members that are residents of the City of La Mesa shall be comprised as follows: two members from the general populous; three members with professional experience related to environmental sustainability; one member representing the senior adult population (at the time of appointment shall be not less than fifty-five years of age); and one member representing the youth population (at the time of appointment or reappointment shall be not more than twenty-one years of age). Each of the seven members shall be entitled to one vote on matters before the Commission. The six members from the business community shall be representatives from the City's water utility, franchise waste and recycling hauler, electricity and gas utility, San Diego Community Power, high school, and elementary/middle school district. These six members shall not be required to be residents of the City, but shall act as advisory members on the commission and shall not be entitled to vote."

SECTION 2: This Ordinance shall be effective 30 days after its adoption and the City Clerk shall certify to the adoption of this Ordinance and cause the same to be published at least once in the Daily Transcript within 15 days of its adoption.

INTRODUCED AND FIRST READ at a Regular meeting of the City Council of the City of La Mesa, California, held the 9th day of March 2021, and thereafter PASSED AND ADOPTED at a Regular meeting of said City Council held the 23rd day of March 2021, by the following vote, to wit:

AYES:

NOES:

ABSENT:

APPROVED:

MARK ARAPOSTATHIS, Mayor

ATTEST:

MEGAN WIEGELMAN, CMC, City Clerk

CERTIFICATE OF CITY CLERK

I, MEGAN WIEGELMAN, City Clerk of the City of La Mesa, California, do hereby certify the foregoing to be a true and correct copy of Ordinance No. 2021-_____ duly passed and adopted by the City Council of said City on the date and by the vote therein recited and that the same has been duly published according to law.

MEGAN WIEGELMAN, CMC, City Clerk

(SEAL OF CITY)



CITY OF
LA MESA
JEWEL of the HILLS

INTEROFFICE MEMO

DATE: March 23, 2021

TO: Mayor and Members of the City Council

FROM: Megan Wiegelman, City Clerk *MW*

VIA: Greg Humora, City Manager *GH*
Glenn Sabine, City Attorney *GS*

SUBJECT: Second Reading and Adoption of an Ordinance of the City Council of the City of La Mesa Amending Section 2.85.010 of the La Mesa Municipal Code ("LMMC") to add a San Diego Community Power Representative as a Non-Voting Member of the Environmental Sustainability Commission

At the Council meeting of March 9, 2021, the Council unanimously approved the introduction and first reading of the Ordinance amending Section 2.85.010 of the LMMC to add a San Diego Community Power representative as a non-voting member of the Environmental Sustainability Commission.

Staff recommends the Council approve the second reading and adoption of the Ordinance amending Section 2.85.010 of the LMMC.

ORDINANCE NO. 2021-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA MESA
AMENDING SECTION 2.85.010 OF THE LA MESA MUNICIPAL CODE TO ADD
A SAN DIEGO COMMUNITY POWER REPRESENTATIVE AS A NON-VOTING
MEMBER OF THE ENVIRONMENTAL SUSTAINABILITY COMMISSION

THE CITY COUNCIL OF THE CITY OF LA MESA DOES ORDAIN AS FOLLOWS:

SECTION 1: Section 2.85.010 of the La Mesa Municipal Code is hereby amended to read as follows:

"There is hereby created the Environmental Sustainability Commission (Commission) of the City of La Mesa. The Commission shall consist of thirteen members. Seven members shall be residents of the City of La Mesa with voting privileges and six members shall be advisory members from the business community without voting privileges. The seven members that are residents of the City of La Mesa shall be comprised as follows: two members from the general populous; three members with professional experience related to environmental sustainability; one member representing the senior adult population (at the time of appointment shall be not less than fifty-five years of age); and one member representing the youth population (at the time of appointment or reappointment shall be not more than twenty-one years of age). Each of the seven members shall be entitled to one vote on matters before the Commission. The six members from the business community shall be representatives from the City's water utility, franchise waste and recycling hauler, electricity and gas utility, San Diego Community Power, high school, and elementary/middle school district. These six members shall not be required to be residents of the City, but shall act as advisory members on the commission and shall not be entitled to vote."

SECTION 2: This Ordinance shall be effective 30 days after its adoption and the City Clerk shall certify to the adoption of this Ordinance and cause the same to be published at least once in the Daily Transcript within 15 days of its adoption.

INTRODUCED AND FIRST READ at a Regular meeting of the City Council of the City of La Mesa, California, held the 9th day of March 2021, and thereafter PASSED AND ADOPTED at a Regular meeting of said City Council held the 23rd day of March 2021, by the following vote, to wit:

AYES:

NOES:

ABSENT:

APPROVED:

MARK ARAPOSTATHIS, Mayor

ATTEST:

MEGAN WIEGELMAN, CMC, City Clerk

CERTIFICATE OF CITY CLERK

I, MEGAN WIEGELMAN, City Clerk of the City of La Mesa, California, do hereby certify the foregoing to be a true and correct copy of Ordinance No. 2021-_____ duly passed and adopted by the City Council of said City on the date and by the vote therein recited and that the same has been duly published according to law.

MEGAN WIEGELMAN, CMC, City Clerk

(SEAL OF CITY)



815 E Street, Suite 12716
San Diego, CA 92112
sdcommunitypower.org

April 22, 2021

City of La Mesa
Mayor and City Council
8130 Allison Avenue
La Mesa, CA 91942

RE: SDCP Representative and Alternate to the Environmental Sustainability Commission

Dear Mayor and City Council,

On behalf of the San Diego Community Power (SDCP) Board of Directors, Sebastian Sarria, Policy and Program Manager, and Nelson Lomeli, Program Manager, have been appointed to the La Mesa Environmental Sustainability Commission as SDCP's primary and alternate representatives, respectively. We appreciate the inclusion of SDCP in this important group to your local environmental affairs.

Sincerely,

Bill Carnahan
Interim CEO





SAN DIEGO COMMUNITY POWER Staff Report – Item 4

To: San Diego Community Power Board of Directors

From: Bill Carnahan, Interim CEO

Subject: Operations and Administration Report from the Interim Chief Executive Officer

Date: April 22, 2021

RECOMMENDATION

Receive and file update on various operational and administration activities.

BACKGROUND

Staff will provide regular updates to the Board of Directors regarding San Diego Community Power's (SDCP) organizational development, administration, start-up and operating activities. The following is a brief overview of this month's discussion items, which are informational only.

ANALYSIS AND DISCUSSION

A) General Administrative Updates

San Diego County – As reported in the media, the San Diego County Board of Supervisors took a step toward having unincorporated areas of the county to join one of the two community choice aggregation programs in the region, one being San Diego Community Power. The Supervisors adopted a set of six principles that would make up any Joint Powers Authority the county would sign with a prospective CCA. The SDCP Interim CEO and COO cosigned a letter stating that SDCP "is looking forward to talking to the county. The proposed Guiding Principles largely mirror SDCP's own principles."

A few days after the Supervisor's actions, the SDCP Interim CEO received a call from Charles Marchesano, Chief, Energy and Sustainability Program, Department of General Services, indicating we will be receiving a formal notice of the County's intent to act as a starting point for discussions. As of the writing of this report, the letter has not been received, but is expected any day.

Since we do not have the formal request in time for the agenda deadline, we expect no action item but have a discussion from staff regarding our preliminary efforts such as data gathering to determine the impacts of adding the County as a member to be reported back at the May SDCP Board meeting.

- **Strategic Planning** – We have been discussing for some time now about the need to hold our first strategic planning effort in conjunction with the budget preparation. Staff has been discussing qualifications and proposals for a firm to facilitate this process, including interviews with the Board, staff and Community Advisory Board members as well as conducting what is anticipated to be a day-long strategic planning meeting.

At this writing, the analysis is not complete so no recommendation is ready. Staff expects to have the decision made by the time of Board meeting and since the amount of the contract is below the Interim CEO's approval authority the chosen firm will be announced at the Board meeting.

The strategic planning effort is also important as it relates to policies and procedures regarding requests from potential new members asking to join.

B) Staffing

The most recent staff addition is Eric Washington who will be taking on the role of Chief Financial Officer in the next few weeks. He has lived in the San Diego area for many years. Along with 15 years of service in the Navy, Eric's career has been in the banking business in the San Diego area for over 25 years. He has earned a Bachelor's Degree management from Southern Illinois University, a Masters Degree in Business Administration from Webster University and a Doctorate in Educational Leadership from San Diego State University.

We have been very pleased with the staff we have hired so far and expect to continue that trend in the future. We are either advertising currently or will be advertising soon for:

- **Resources Group** – Power Services Portfolio Manager
- **Finance Group** – Finance Manager
- **External Affairs Group** – Director of External Affairs

C) Power Resources

Renewable Energy:

Negotiations for short-listed contracts selected through SDCP's long-term renewables portfolio standard solicitation are nearing completion. Three long-term contracts were reviewed with FRMC last week. One of them is presented for your Board's approval as Agenda Item #9 during this meeting. The other two will be presented in May, potentially followed by another long-term contract or two to round out negotiation of contracts that originated in last year's Long-term RPS RFO.

Staff continue to negotiate an EEI Master Agreement with and purchase of renewable energy from SDG&E pursuant to bilateral discussions and consistent with previous direction from the Board.



Staff completed solicitations for short-term renewable, carbon-free energy to meet a portion of SDCP's near-term energy needs while the new-build facilities its currently negotiating with are under development. Contracting pursuant to that solicitation is underway.

Resource Adequacy:

As previously discussed, SDCP filed a request with the CPUC seeking a waiver of penalties for year-ahead Local RA obligations that SDCP was not able to fulfill. The CPUC granted SDCP's Waiver request on Dec 30, 2020.

Staff completed a solicitation for short-term resource adequacy to meet a portion of SDCP's "balance of 2021" capacity needs. Contracting pursuant to that solicitation is underway, and SDCP continues procurement efforts as necessary to close short positions. SDCP's ability to comply with RA requirements is subject to availability constraints in the San Diego area market.

Risk Management:

Consistent with its Energy Risk Management Policy, SDCP has contracted for a significant majority of its market energy needs for 2021 and has started layering in some purchases for 2022-2024.

D) Back Office Operations

As our back-office data manager, Calpine has worked collaboratively with SDG&E to ensure a successful implementation of Envision, their new Customer Information System (CIS), earlier this month. To assist us with our Phase 2 customer outreach efforts Calpine has also deployed an online bill comparison tool for our most prominent commercial and industrial rates. This tool is currently available for customers to use on our website via:

<https://sdcommunitypower.org/your-choice/compare-service-plans/>

There will also be a bill comparison tool developed and supported by Calpine ahead of our residential phase in 2022. From an operational perspective, SDCP staff and Calpine have worked together to create a reporting dashboard of customer actions to opt-out or opt-up to Power100. The below charts summarize these actions accordingly:



Opt Outs

Opt Outs by City	February	March	April - MTD	2021 YTD Grand Total
CITY OF CHULA VISTA	2	32	1	35
CITY OF ENCINITAS	0	0	0	0
CITY OF IMPERIAL BEACH	0	0	0	0
CITY OF LA MESA	0	0	0	0
CITY OF SAN DIEGO	14	7	20	41
Grand Total	16	39	21	76

Opt Outs by Class Code	February	March	April - MTD	2021 YTD Grand Total
Residential	0	0	0	0
Commercial/Industrial	16	39	21	76
Grand Total	16	39	21	76

Opt Outs by Reason	February	March	April - MTD	2021 YTD Grand Total
Concerns about Government-Run Power Agency	0	0	0	0
Decline to Provide	0	4	6	10
Dislike being automatically enrolled	0	0	3	3
Have renewable Energy Reliability Concerns	0	0	0	0
Other	1	35	2	38
Rate or Cost Concerns	15	0	10	25
Service or Billing Concerns	0	0	0	0
Grand Total	16	39	21	76

Opt Outs by Method	February	March	April - MTD	2021 YTD Grand Total
Contact Center	0	35	9	44
IVR	0	0	0	0
Web	16	4	12	32
Grand Total	16	39	21	76

Opt Ups to Power100

Opt Ups by City	February	March	April - MTD	2021 - YTD Grand Total
CITY OF CHULA VISTA\MONTGOMERY	0	0	0	0
CITY OF CHULA VISTA\REMAINDER	0	65	0	65
CITY OF ENCINITAS	0	18	0	18
CITY OF IMPERIAL BEACH	0	0	0	0
CITY OF LA MESA	0	0	10	10
CITY OF SAN DIEGO	0	134	1	135
Grand Total	0	217	11	228

Opt Ups by Class Code	February	March	April - MTD	2021 - YTD Grand Total
Residential	0	2	0	2
Commercial/Industrial	0	215	11	226
Grand Total	0	217	11	228



Opt Ups by Method	February	March	April - MTD	2021 - YTD Grand Total
Contact Center	0	217	11	228
IVR	0	0	0	0
Web	0	0	0	0
Grand Total	0	217	11	228

FISCAL IMPACT

N/A

ATTACHMENTS

- A. San Diego County Letter Request for CCE Information
- B. Minutes Re: San Diego County Updating CCE Energy Guiding Principles
- C. SDCP Organizational Chart





County of San Diego

DEPARTMENT OF GENERAL SERVICES

5560 OVERLAND AVENUE, SUITE 410, SAN DIEGO, CA 92123

MARKO MEDVED, PE, CEM
DIRECTOR
(858) 694-2527

NICOLE J. ALEJANDRE
ASSISTANT DIRECTOR
(858) 694-3885

April 18, 2021

Bill Carnahan
Interim CEO
San Diego Community Power

RE: Request for CCE Information

Mr. Carnahan,

On April 6, 2021, the County Board of Supervisors approved a new set of CCE Guiding Principles and directed County staff to begin discussions with the two recently formed local CCEs (San Diego Community Power and Clean Energy Alliance) about a possible partnership. To commence discussions with San Diego Community Power, we are writing to formally request information relevant to our Board of Supervisors' consideration of how to best effectuate its CCE Guiding Principles.

County staff intends to return to the Board of Supervisors this summer with an analysis of options for joining one of the existing local CCEs in accordance with the Guiding Principles. This would allow our Board the opportunity to decide whether the County should join one of the CCEs in 2021, with a launch of unincorporated accounts in 2023. To facilitate this decision, the County requests the following information.

Please provide information detailing how your Joint Powers Agreement, Board-approved policies, and any other relevant official documents and Board actions support the following County Guiding Principles:

Guiding Principles

1. Prioritize social equity and environmental stewardship.
2. Provide cost competitiveness compared to the incumbent utility.



3. Achieve 100% renewable electricity by 2030; encourage within-County buildout of renewable energy, battery storage, and energy efficiency programs; and prioritize Category 1 renewable energy.
4. Support requirements for prevailing wages, as defined in California Labor Code section 1770 et seq., and skilled and trained workforce, as defined in California Public Contract Code section 2601, for CCE-owned generation, feed-in-tariff, and energy efficiency projects.
5. Encourage the development of an equitable jobs pipeline for individuals from communities of concern; the use of a bid evaluation policy prioritizing the selection of new local renewable energy and storage projects; and the workforce development criteria prioritizing the use of State-certified apprenticeship and proper assignment of work to crafts that traditionally perform the work, as permitted by applicable law.
6. Limit General Fund Liability.

In addition, we have the following specific questions:

1. What are your anticipated rate discounts versus SDGE?
2. What is the anticipated “membership fee”, if any, that would be required under Section 2.4.3 of the Joint Powers Agreement? Are there any other payment requirements to join?
3. Aside from any payments required in connection with joining the JPA, are there any current or anticipated payment obligations of JPA Members?
4. What liabilities would the County be expected to incur by joining the JPA?
5. Will you offer the same rate for all members or is there going to be a “newcomers” rate?
6. Please explain the process and any deadlines for the County to join in 2021?
7. If the County were to join in 2021, how do you anticipate the rollout going in 2023? All at once or in phases?
8. What functions would County staff be expected to perform after joining the JPA?
9. Please provide your most recent proforma budget.

If possible, please respond with the requested information prior to June 1, 2021. All responses should be emailed to Charles.marchesano@sdcounty.ca.gov. Please also feel free to contact me at (858) 699-3502.

Sincerely,

Charles Marchesano

Charley Marchesano
Chief, Energy and Sustainability Program
Department of General Services
County of San Diego
(858) 694-2987 office (858) 699-3502 cell

**COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS
TUESDAY, APRIL 06, 2021**

MINUTE ORDER NO. 20

**SUBJECT: UPDATING COMMUNITY CHOICE ENERGY GUIDING PRINCIPLES
(DISTRICTS: ALL)**

OVERVIEW

Community Choice Energy (CCE) is an energy supply program that allows cities and counties to meet local energy needs by aggregating the buying power of individual customers within a defined area to secure alternative energy supplies. The pooling of purchasing power to buy or generate electricity gives ratepayers the choice of where to purchase their power. Choice and competition are the bedrock of CCE. Today, there are twenty-three CCEs operating throughout the State, serving more than ten million customers, including two CCEs in San Diego County.

In 2019, the Board of Supervisors adopted an ordinance stating our intent to join a CCE. The Board also adopted five Guiding Principles setting County terms to establish a County CCE or to join others in forming a Joint Powers Authority (JPA). However, these Guiding Principles are not reflective of the ideals of the current board. The Guiding Principles that lead this program should align with our commitment to renewable energy, good-paying jobs, and environmental and social justice. As such, we are proposing the adoption of the following Revised Guiding Principles.

Revised Guiding Principles

1. Prioritize social equity and environmental stewardship.
2. Provide cost competitiveness compared to the incumbent utility.
3. Achieve 100% renewable electricity by 2030; encourage within-County buildout of renewable energy, battery storage, and energy efficiency programs; and prioritize Category 1 renewable energy.
4. Support requirements for prevailing wages, as defined in California Labor Code section 1770 et seq., and skilled and trained workforce, as defined in California Public Contract Code section 2601, for CCE-owned generation, feed-in-tariff, and energy efficiency projects.
5. Encourage the development of an equitable jobs pipeline for individuals from communities of concern; the use of a bid evaluation policy prioritizing the selection of new local renewable energy and storage projects; and the workforce development criteria prioritizing the use of State-certified apprenticeship and proper assignment of work to crafts that traditionally perform the work, as permitted by applicable law.
6. Limit General Fund Liability.

Today's action revokes the previously adopted County Governance Guiding Principles, replaces them with the Revised Guiding Principles, and directs staff to discuss the County's potential participation with a local existing CCE Joint Powers Authority (JPA) and return to the Board with options for such participation based on the Revised Guiding Principles.

RECOMMENDATION(S)

CHAIR NATHAN FLETCHER AND SUPERVISOR TERRA LAWSON-REMER

1. Revoke the previously adopted set of County Governance Guiding Principles and adopt the Revised Guiding Principles.
2. Direct the Chief Administrative Officer to engage in discussions with the San Diego Community Power and the Clean Energy Alliance CCE JPAs and return to the Board with options for potential County participation in those CCE JPAs consistent with the Revised Guiding Principles by August 2021.

FISCAL IMPACT

There is no fiscal impact associated with today's recommendations. Prior funding was allocated to the Department of General Services to support the development of the Feasibility Analysis and to support negotiations with Community Choice Energy providers.

BUSINESS IMPACT

N/A

ACTION:

ON MOTION of Supervisor Fletcher, seconded by Supervisor Lawson Remer, the Board of Supervisors took action as recommended, revising Guiding Principle 2 to read: "Provide cost competitiveness and reliability compared to the incumbent utility."

AYES: Vargas, Anderson, Lawson-Remer, Fletcher

NOES: Desmond

State of California)

County of San Diego) §

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER

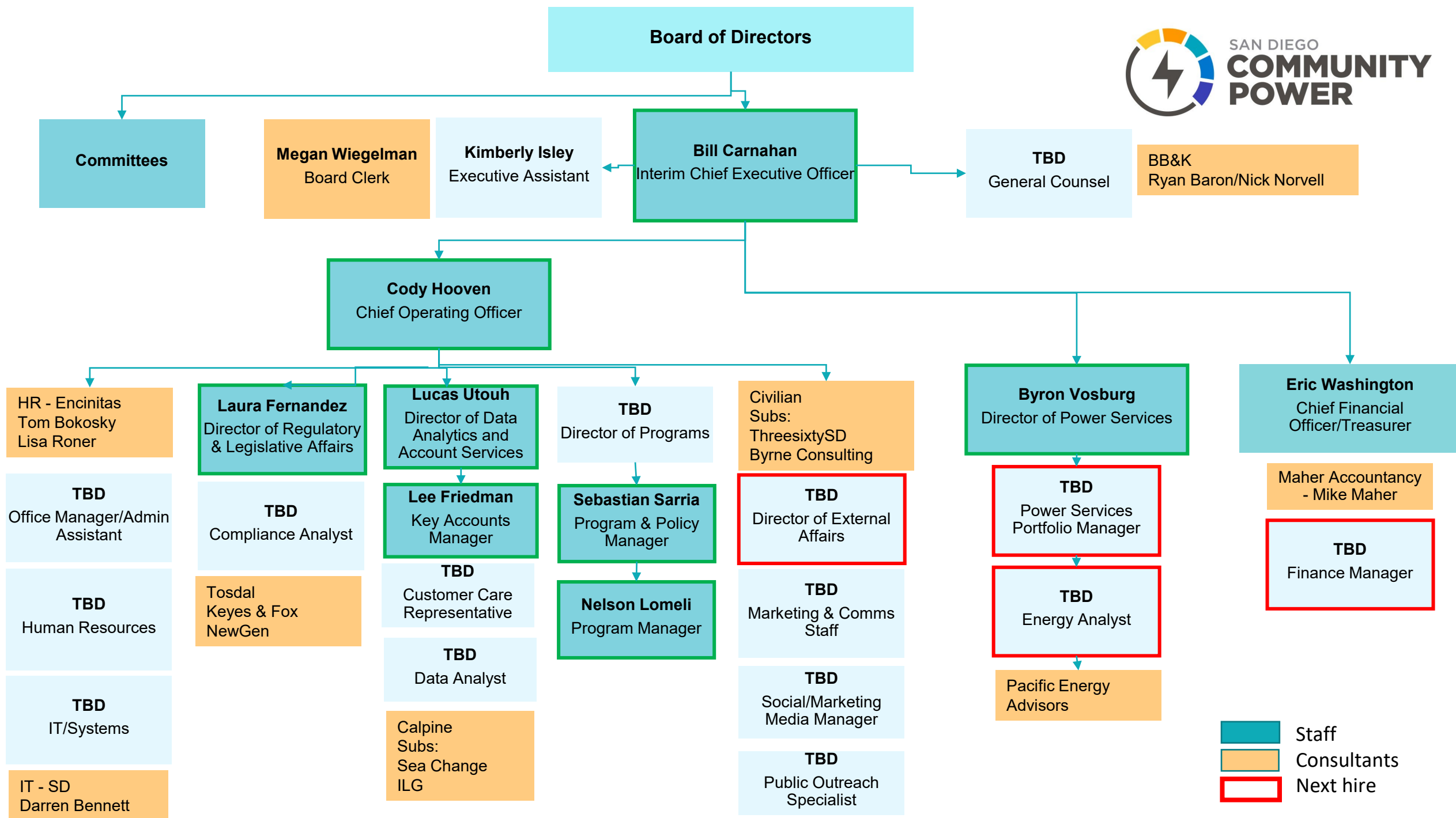
Clerk of the Board of Supervisors



Signed

by Andrew Potter





Staff
 Consultants
 Next hire



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
Subject: Update on Regulatory and Legislative Affairs
Date: April 22, 2021

RECOMMENDATION

Receive and file update on regulatory and legislative affairs.

BACKGROUND

The California Public Utilities Commission (CPUC) has broad regulatory authority over the energy sector in California, including partial jurisdiction over Community Choice Aggregation (CCA) programs. San Diego Community Power (SDCP) and other CCA programs are regularly affected by CPUC decisions regarding power resources, rates, financial obligations and data retention among other things. SDCP continues to engage in regulatory matters in order to establish a position on key issues and/or provide input on various decisions or actions being considered by the CPUC. SDCP is also coordinating legislative engagement through the California Community Choice Association (CalCCA). With CalCCA's assistance, SDCP is monitoring 40 bills that are currently moving through the legislative process in Sacramento. These bills touch on a variety of topics from the Power Charge Indifference Adjustment (PCIA), to Net Energy Metering (NEM), Microgrids, etc.

Staff will provide regular updates to the Board of Directors regarding SDCP's regulatory and legislative engagement. The following is an overview of this month's discussion items, which are informational only.

A) Proposed Decision Issued in PCIA Proceeding

The PCIA is a surcharge on all customers that is intended to collect the above-market costs of the investor-owned utilities' (IOU) legacy resources. The PCIA is intended to reflect the difference between the IOUs' above-market costs related to legacy power supply commitments, including third-party energy contracts and operating costs for utility owned generation, and today's market value for those resources. While CCA and direct access customers continue to pay a significant share of the costs for these resources, their ability to access the benefits depends on the willingness of the IOU – at its sole discretion – to sell or allocate the resource.

The inequity surrounding access to the benefits of the legacy resources has been long recognized by regulators and stakeholders. The CPUC first initiated a proceeding to resolve this issue in 2017 and identified optimization of IOU portfolio management to minimize stranded costs as one of the issues to be addressed. The CPUC directed CalCCA, Southern California Edison, and Commercial Energy (the “co-chairs” of what was called Working Group 3) to develop a joint proposal that represented their respective groups. The [joint proposal](#) was presented to the CPUC in February 2020 and was not given any procedural consideration for over one year.

On April 5, 2021, the CPUC issued the long-awaited Phase 2 [Proposed Decision](#) (PD) on the PCIA Cap and Portfolio Optimization track after more than one year since the Working Group 3 (WG3) co-chairs filed the joint proposal. The PD purports to resolve the issues from the WG3 (Portfolio Optimization) proposal that was submitted to the CPUC in February of 2020. The PD:

- Adopts voluntary allocation market offer (VAMO) of Renewable Portfolio Standard (RPS) allocations for 2023 implementation;
- Declines to adopt the WG3 proposal for Resource Adequacy (RA);
- Declines to approve the WG3 proposal on greenhouse-gas (GHG)-free resources.

According to the PD, only IOU customers have the right to access the resources in the PCIA portfolio, even though CCA and direct access customers are paying for those resources and the resources are no longer needed to serve IOU customers (i.e., excess resources). The PD states: “Our approach to PCIA solutions enable[s] alternative providers to manage their own portfolios, rather than creating rights of alternative providers to resources in the utilities’ PCIA portfolios.”

Opening Comments on the PD are due April 26, 2021. Reply comments are due May 3. SDCP is coordinating comments on the PD through CalCCA. The gist of the comments will be that the PD falls short of establishing ratepayer equity. The PD will be heard at the earliest, at the CPUC’s May 6, 2021 Business Meeting.

B) SB 612 (Ratepayer Equity Act) -- Will Be Heard in Committee April 26

As discussed during the last SDCP Board meeting, while all customers bear cost responsibility for legacy resources, only IOU customers have the right to access *the benefits* of these resources, such as renewable energy, GHG-free energy, and RA. [SB 612](#) would resolve this inequity by enshrining equal access to benefits into statute. Given that the PD discussed above rejects the majority of the WG3 joint proposal and falls short of creating ratepayer equity, legislative action is the only way to ensure fair and equitable outcomes for all ratepayers, not just IOU bundled customers. SB 612 ensures fair and equal access to the benefits of legacy contracts resources for all customers and ensures that IOU portfolios are managed to maximize value and reduce unnecessary costs for all customers. Specifically, SB 612:



- 1) Provides customers equal access to the legacy products they are paying for in proportion to what they are paying.
- 2) Requires the CPUC to recognize the value of GHG-free energy in the same way renewable energy or RA products are recognized.
- 3) Requires IOUs to annually sell any remaining excess legacy resource products not taken by former customers to the wholesale market.

SB 612 was amended earlier this month to remove the provision that would have required the IOUs to transparently solicit interest from legacy resource contract holders in re-negotiating, buying out, or otherwise reducing costs from these contracts.

CalCCA is sponsoring the bill and seeking support from all CCAs and their member agencies. Last month, SDCP voted to take a support position for SB 612. The cities of La Mesa, Encinitas, Chula Vista and Imperial Beach have also submitted support letters for SB 612.

The PCIA represents approximately 37% of operating costs (before financing) for fiscal year 2021, 42% of operating costs for fiscal year 2022, and 44% of operating costs for fiscal year 2023. SB 612 would reduce overall costs by ensuring that SDCP is able to access legacy resources that are currently being paid for through the PCIA.

More information can be found here: <https://cal-cca.org/sb-612/>.

SDCP needs additional support to ensure that SB 612 will have enough support votes to make it out of the Senate Energy, Utilities and Communications Committee. The bill will be heard on April 26, 2021. Letters of support should be submitted here: <https://calegislation.lc.ca.gov/Advocates/> by April 21, 2021 at noon. Additionally, advocates can call in in support of the bill utilizing the information provided here: <https://seuc.senate.ca.gov/>.

[Senator Ben Hueso](#), who represents the cities of Imperial Beach, Chula Vista and portions of San Diego, is the Chair of the Senate Energy, Utilities and Communications Committee. SDCP urges supporters to contact Senator Hueso to ask him to vote in favor of SB 612.

C) Energy Agency Actions and Processes Regarding Summer Reliability

On January 13, 2021, the California Independent System Operator (CAISO), the CPUC, and the California Energy Commission (CEC) (collectively, the “Joint Agencies”) issued the [Final Root Cause Analysis](#) (“Final Analysis”) of the Mid-August 2020 Extreme Heat Wave. The Final Analysis is a follow-up to the Preliminary Report that was issued on October 6, 2020 and generally confirms the findings of the Preliminary Report that three major factors contributed to the rotating power outages that occurred in the CAISO territory on August 14 and 15, 2020. Those factors were: (1) extreme weather conditions; (2) RA and planning processes; and (3) market practices.



According to the Final Analysis, certain energy market practices “contributed to the inability to obtain or prioritize energy to serve CAISO load in the day-ahead market that could otherwise have relieved the strained conditions.” Those practices included “under-scheduling of demand in the day-ahead market by load serving entities or their scheduling coordinators and convergence bidding.” Additionally, the Final Analysis reports that a CAISO market enhancement inadvertently caused issues.

In addition to reporting the root causes of the outages, the Final Analysis detailed the actions that each of the Joint Agencies have taken in response in order to prepare for Summer 2021 so as to avoid the need for rotating outages. Those actions include:

1. The CPUC Emergency Reliability rulemaking ([R.20-11-003](#)) to procure additional resources to meet California’s electricity demand in summer 2021.
 - a. Two decisions have been issued in this rulemaking ([D.21-02-028](#) and [D.21-03-056](#)).
2. CAISO analysis to support an increase to the CPUC’s RA program procurement targets. Based on this analysis, the CAISO recommended that the targets apply to both the gross peak and the critical hour of the net demand peak during the months of June through October 2021.
3. The CAISO expedited a stakeholder process, entitled [Market Enhancements for Summer 2021 Readiness](#), to consider market rule and practice changes by June 2021 that will ensure the CAISO’s market mechanisms accurately reflect the actual balance of supply and demand during stressed operating conditions.
 - a. CalCCA has been following this initiative as it attempts to address market design issues that exacerbated the outages in the summer of 2020. Chief among the issues is the prioritization of imports compared to wheeling transactions (the use of the CAISO transmission system to transmit power from a source and sink both outside of the CAISO control area). In 2020, the wheels were given a higher priority under certain circumstances and this may have impacted the ability to import power as well as use in-state transmission to meet California’s own reliability needs. The CAISO is changing this to place imports and wheels on a more equal footing. CalCCA has been supportive of this change, but believes that even more should be done. CalCCA is engaging in other CAISO initiatives to seek further improvements to CAISO processes (see additional information below). Comments are complete in the Summer 2021 Readiness process, and there is a tariff filing pending.
4. The CPUC is tracking progress on generation and battery storage projects that are currently under construction in California to ensure there are no CPUC-related regulatory barriers that would prevent them from being completed by their targeted online dates.
5. The CAISO and CEC indicated they would coordinate with non-CPUC jurisdictional entities to encourage additional necessary procurement by such entities.



6. The CEC is conducting probabilistic studies that evaluate the loss of load expectation on the California System to determine the amount of capacity that needs to be installed to meet the desired service reliability targets.

In addition to the Market Enhancements for Summer 2021 Readiness initiative, CalCCA is either involved in, or will become involved in the following CAISO stakeholder processes:

- Maximum Import Capability Enhancements
- Hybrid Resources
- Energy Storage Enhancements
- Resource Adequacy Enhancements
- Extended Day Ahead Market, Day Ahead Market Enhancements, and Governance Review Committee of the Energy Imbalance Market (EIM)

SDCP will continue to coordinate through CalCCA on these initiatives.

D) Critical Peak Pricing (CPP)

CPP is a program whereby a utility or load serving entity (LSE) charges a higher price for consumption of electricity during peak hours on selected days, referred to as critical peak days or event days. Currently the three large electric IOUs all have active CPP programs, although the design elements for each individual large electric IOU differ. The most recent decision ([D.21-03-056](#)) in the CPUC Emergency Reliability rulemaking adopted modifications and expansions to the CPP program, to be in place for the summer of 2021. However, since SDG&E is upgrading and stabilizing its billing system in 2021, it is not able or required to modify its CPP program until 2022.

D.21-03-056 directed the three large electric IOUs to host a workshop on non-IOU CPP programs by April 7, 2021, to facilitate a peer knowledge exchange on the topic for summer 2021 and to identify barriers and solutions to non-IOU LSE program expansion looking ahead to summer 2022. CPUC President Marybel Batjer indicated that the purpose of the workshop was to examine opportunities for CCAs to contribute to load shed in summer 2021 and beyond. CPUC staff has specifically requested that CCAs adopt CPP programs to be in effect for summer 2021 as well as take other steps to address energy usage, including:

- (1) encourage customers to take part in IOU load shedding programs; and
- (2) articulate to the CPUC their strategies for decreasing energy demand in summer 2021.

During the workshop, the following Program Year 2020 Ex-Post Load Impact for a Typical Event Day was shared presented:



Program Year 2020 Ex-Post Load Impact: Typical Event Day

Utility	# Enrolled	Ref. Load (MW)	Load Impact (MW)	% Load Impact	Avg. Event Temp.
PG&E - PDP	101,629	807	16.1	2.0%	94.8
SCE - CPP	244,091	1,283	12.5	1.0%	84.6
SDG&E - CPP	13,675	624	5.5	0.9%	89.2
Statewide	359,395	2,714	34.1	1.3%	87.7

SDCP has met with CPUC staff and SDG&E staff multiple times in order to explore potentially developing an SDCP CPP program. SDCP has learned that although SDG&E would be able to provide some information that is necessary to establish a CPP program (capacity reservation information and event notification form information), SDG&E is unable to provide meter interval data in a timely manner. SDG&E currently provides SDCP with interval data on a monthly basis. This means that SDCP would not be able to observe or report on customer performance during an event day until weeks after the event occurs. SDG&E has confirmed it will not be able to provide more frequent interval data in 2021 due to its billing system upgrade and freeze.

SDCP has determined that it does not possess and would not be able to obtain sufficient data to establish an impactful CPP program. Without more frequent meter interval data, SDCP would not be able to forecast or plan sufficiently, nor track the effectiveness of the effort. SDCP has requested interval data in a more timely manner, which would enable SDCP to potentially establish a number of demand response programs in the future. SDCP also notes that with just 5.5 megawatt (MW) of load impact on a typical event day for CPP in SDG&E service area, there may be other more impactful and more cost-effective programs that could be established beyond CPP.

SDCP has a vested interest in contributing to overall system reliability, and is currently exploring other options for decreasing energy demand during peak hours. For example, SDCP intends to leverage its social media platforms and website in order to promote energy saving tips as well as Flex Alerts.

E) Net Energy Metering (NEM)

The NEM program is designed to support the installation of customer-sited renewable generation. It was originally established in California with the adoption of Senate Bill (SB) 656 (Alquist, Stats. 1995, ch. 369), codified in Section 2827 of the Public Utilities Code. Importantly, Public Utilities Code Section 2827.1 only applies to large electrical corporations, and thereby excludes CCAs such as SDCP. This is because CCAs are legally entitled to set their own electricity generation rates. CCAs therefore determine their own rate policies, including NEM policies.

Under the original NEM program, customers who install and operate small (1MW or less) renewable generation facilities (referred to as “customer-generators”) may participate. Previously, under the original NEM rate, customer-generators received a full retail rate bill credit for power generated by their onsite systems that was fed back into the power grid during times when generation exceeded onsite energy demand. These credits were used to offset customers’ electricity bills, and could be rolled over to subsequent bills for up to a year.

[AB 327](#) (Perea, 2013) directed each large IOU to switch over to the current NEM tariff on July 1, 2017 or after their NEM capacity exceeded 5% aggregated customer peak demand, whichever came first. SDG&E transferred to the current NEM tariff on June 29, 2016. Customer-generators that interconnected their systems to the grid prior to this date were grandfathered into the former NEM rate, pursuant to Decision [\(D.\)14-03-041](#). These customer-generators are allowed to remain on the former rate for 20 years from the date they interconnected, or they are permitted to switch to the current NEM rate. The former NEM rate is sometimes referred to as "NEM 1.0", and the current NEM rate as "NEM 2.0" or "NEM Successor Tariff."

The current NEM program was adopted by the CPUC in [D.16-01-044](#) on January 28, 2016 and is available to customers of the large IOUs. The program provides customer-generators full retail rate credits for energy exported to the grid and requires them to pay a few charges that align NEM customer costs more closely with non-NEM customer costs. Any customer-generator applying for NEM will:

- Pay a one-time interconnection fee: Customer-generators with facilities under 1 MW must pay a pre-approved one-time interconnection fee based on each IOU's historic interconnection costs. SDG&E's is \$132.
- Pay non-bypassable charges: Customer-generators, similar to other utility customers, will pay small charges on each kilowatt-hour (kWh) of electricity they consume from the grid. These charges fund important programs such as low-income and energy efficiency programs.
- Transfer to a time-of-use (TOU) rate. If a customer-generator is not already on one, they will be required to take service on a time-of-use (TOU) rate to participate in NEM.

D.16-01-044 also established the CPUC’s commitment to review the NEM 2.0 tariff in 2019 (or later) citing interactive, yet unresolved, policy movements within the CPUC, but outside the scope of that proceeding. On September 3, 2020 the CPUC initiated a new rulemaking (R.) [20-08-020](#) in order to address the development of a successor to the existing NEM 2.0 tariffs. This proceeding is known as the NEM 3.0 proceeding.

SDCP is a party to the NEM 3.0 rulemaking and filed [comments](#) on a proposed decision earlier this year along with other CCA parties in the proceeding.



On March 15, 2021, eighteen proposals for a successor to the current NEM tariff were filed by a wide range of parties in the proceeding, including the Joint IOUs, Sierra Club, The Utility Reform Network, Natural Resources Defense Council, Solar Energy Industries Association, Vote Solar, Small Business Utility Advocates, Coalition for Community Solar Access, Protect Our Communities Foundation, GRID Alternatives, among others. An SDCP representative monitored a workshop on these proposals that was held on March 23 and 24.

Following these workshops, the Assigned Administrative Law (ALJ) Judge issued a ruling that noted that “it is clear the proposals are not complete to allow for a cost-effectiveness analysis. In order to ensure transparency of the cost-effectiveness analysis by the Commission, additional information is needed. Accordingly, a virtual workshop will be held on Thursday, April 22, 2021 beginning at 1:00 pm, to further discuss the proposals and determine what inputs are needed to accurately perform the analysis.” This ruling also delayed the proceeding schedule in order to “provide parties the results of the Commission’s cost-effectiveness analysis prior to the service of opening testimony.” The following is the revised schedule for the NEM 3.0 proceeding:

Activity	Original Date	Revised Date
Second Workshop on Proposals	n/a	April 22, 2021 at 1:00 pm
Cost Effectiveness Analysis Results Provided to Parties	n/a	May 28, 2021
Opening Testimony Served	April 23, 2021	June 18, 2021
Rebuttal Testimony Served	May 21, 2021	July 16, 2021
Evidentiary Hearing Held on Issues 3 – 6	June 7-18, 2021	July 26 to August 6, 2021
Opening Brief on Issues 2-5 Filed	July 9, 2021	August 27, 2021
Completion of Settlement Talks	July 9, 2021	August 27, 2021
Closing Brief Filed	July 19, 2021	September 10, 2021
Proposed Decision Issued	No later than 90 days following filing of Closing Briefs	No later than 90 days following filing of Closing Briefs

SDCP is currently coordinating with the other CCA programs in the proceeding (Marin Clean Energy, Sonoma Clean Power, East Bay Community Energy, Peninsula Clean Energy, Clean Power Alliance and Silicon Valley Clean Energy) to determine next steps for engagement in the proceeding. SDCP staff is currently reviewing and evaluating the various proposals in the proceeding.

F) Assembly Bill 1139 (Gonzalez) - Solar Equity and Ratepayer Relief Act (Reform NEM)

Assemblywoman Lorena Gonzalez (D-San Diego) is the author of AB 1139. If signed into law, this bill would impact the NEM 3.0 Rulemaking (R.20-08-020) that is concurrently ongoing at the CPUC and is described above. This bill would modify CPUC authority to set California Alternate Rates for Energy (CARE) discount rates from the existing average effective CARE discount of not less than 30% or more than 35% to not less than 40% or

more than 45% of the revenues that would have been produced for the same billed usage by non-CARE customers. This significantly increases the CARE discount rate by 10-15% for electrical corporations of 100,000 or more customer accounts in California (such as SDG&E, SCE, and PG&E). The most recent amendment to the bill adds language that would require 25% of CARE program costs be paid for exclusively by residential customers. This changes existing law that does prohibits the cost of CARE from being borne solely by any single class of customer.

This bill would also strike existing NEM provisions and require all IOUs to submit, by advice letter, a standard NEM contract or tariff that would take effect beginning on July 1, 2022, and apply to all customer self-generators and replace all prior standard contracts and tariffs (i.e., NEM 1.0 and NEM 2.0). While the CPUC has traditionally “grandfathered” customers participating in NEM, meaning they were allowed to remain on their original rate schedules, the bill would force existing NEM customers onto new rate schedules. The bill would require that the new NEM contract or tariff credit the customer self-generator for any electricity exported by the customer self-generator to the distribution system or transmission system at a rate equal to the hourly wholesale market rate applicable at the time of the export and the location of the customer self-generator. The bill would also require that the customer self-generator would be charged for electricity imported from the distribution system or transmission system at a rate equal to the otherwise applicable tariff for customers in the same class of service who are not customer self-generators.

Any customer self-generator that previously began service under a NEM contract or tariff prior to January 1, 2022, may continue to take service under that contract or tariff as follows:

Original Date of Interconnection	Sunset of Existing Tariff/Interconnection Agreement on:
Prior to January 1, 2014	Then may continue to take service under that contract or tariff until July 1, 2022.
After January 1, 2014 but prior to January 1, 2017	Then may continue to take service under that contract or tariff until July 1, 2023.
After January 1, 2017 but prior to January 1, 2022	Then may continue to take service under that contract or tariff until July 1, 2024.

Importantly, for customer self-generators taking energy supply service from a CCA, the bill would authorize the CCA to determine to provide credits and charges in different amounts (see proposed California Public Utilities Code § 2827 (b)(3) as drafted in the April 8, 2021 amended bill language).



The bill would also require that a customer self-generator be charged a monthly grid access charge equal to the costs attributable to the customer's gross electricity usage billed at the otherwise applicable rates for all elements of retail service except for generation, minus the amount the customer paid for nongeneration elements of retail service paid as part of the rate for imported electricity.

Finally, the bill would expand access to renewable energy for CARE customers in three ways. The cost for these programs would be collected from ratepayers in the form of a new nonbypassable charge on the distribution side of the bill. Beginning July 1, 2022, this bill would require the CPUC to annually allocate up to the following amounts, divided proportionately among the electrical corporations based on the number of residential customers of each electrical corporation, for the following purposes:

- i. \$300,000,000 for residential customer self-generators who both participate in the CARE program and live in multifamily housing or in underserved communities to discount the initial purchase cost for a renewable electrical generation facility;
- ii. \$300,000,000 to eliminate any rate premium required and provide an additional 10% discount for residential customers who participate in the CARE program to participate in a 100% solar option under the Green Tariff Shared Renewables Program, and;
- iii. \$500,000,000 for facilities serving public buildings to discount the initial purchase cost for the renewable electrical generation facility.

The bill is expected to be heard in the Assembly Committee on Utilities and Energy on April 21, 2021. Additional amendments are expected if this bill moves through committee and each chamber.

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 7

To: San Diego Community Power Board of Directors

From: Lucas Utouh, Director of Data Analytics and Account Services.
John Dalessi, Pacific Energy Advisors, Inc.

CC: Bill Carnahan, Interim CEO

Subject: Approval of an Updated Rate Schedule to be Effective June 1, 2021

Date: April 22, 2021

RECOMMENDATION

Adopt the updated rate schedule (Attachment A) to become effective June 1, 2021.

BACKGROUND

San Diego Community Power (SDCP) began serving its first phase of customers in March 2021. These customers formerly received bundled (generation and delivery) electric service from SDG&E under a wide variety of rate schedules. Since beginning receiving generation service from SDCP, these customers are charged SDCP's rates for generation service and SDG&E's rates for delivery services. SDG&E will include SDCP's generation charges in the bills sent to these customers and collect and remit the funds to SDCP.

Consistent with good utility practice, rates must produce the revenue needed to operate a viable enterprise. Fiscal Year 2022 was used as the proforma "test year" for rate setting purposes, meaning that the rates were designed to recover a revenue requirement consistent with estimated FY 2022 sales and expenditures. The proposed rates were designed to yield revenues sufficient to collect SDCP's projected annual power supply and other operating costs, debt service costs, plus a planned reserve margin contribution, designed to begin accrual of reserves to provide a buffer against unplanned variances in revenues and/or operating costs. This 5% planned reserve margin contribution is at the low end of the recommended range, given the challenging competitive rate environment anticipated when SDCP commenced service in 2021.

ANALYSIS AND DISCUSSION

The Board provided direction in March to adjust generation rates to target 1% generation discount with a planned reserve margin of at least 5%. In order to implement this update, staff and our consultant Pacific Energy Advisors, Inc. have analyzed SDG&E's 2021 rate changes accordingly to determine associated SDCP rates prior to

our enrollment phase in June. In our analysis, we observed an increase of SDG&E's base generation rates by 14% on average between their February and March 2021 rate changes across all customer types. We also saw Power Charge Indifference Adjustment (PCIA, or above market costs) increase on average by 16.4% between SDG&E's February and March 2021 rate changes for Vintage Year 2020 (correlating to the year the load departs SDG&E service). Notwithstanding volatility in SDG&E rate changes, our proposed June rates would provide a 1% discount with a planned reserve margin of at least 5% yield with projected revenues of \$26.5 million for the remainder of FY 2021 and \$318.3 million in FY 2022, using electric load forecasts reflective of the planned phased-in customer enrollment schedule. Operating costs were projected based on contracts SDCP has executed to date and the expected cost of procuring energy and other wholesale services needed to supply SDCP's customers with a default resource mix of 50% renewable energy and an additional 5% greenhouse gas free power.

The pro forma projections of annual SDCP revenues and expenses including adoption of the June rates are shown in Figure 1.

Annual Pro Forma Projections
San Diego Community Power
14-Apr-21

Year Ending:	2021	2022	2023	2024	2025
I. Revenue					
Base Retail Revenue	26,427,830	316,478,007	464,498,372	465,392,704	467,719,667
Power100 Premium	124,602	1,842,853	2,834,530	2,841,319	2,855,526
Subtotal Operating Revenue	26,552,433	318,320,860	467,332,902	468,234,023	470,575,193
II. Operating Expenses					
Power Supply	28,032,174	279,883,227	397,916,220	387,507,435	381,160,075
Staff	1,500,000	4,500,000	4,635,000	4,774,050	4,917,272
Professional/Technical services	630,120	831,306	909,753	932,574	956,493
Legal	240,000	300,000	309,000	318,270	327,818
Communications, Mktg, Enrollment	687,998	3,315,021	1,660,276	1,677,597	1,698,317
Other General and Administrative	365,000	420,000	432,600	445,578	458,945
Regulatory and CalCCA Fees	410,000	895,000	921,850	949,506	977,991
Data Management	-	1,621,251	8,190,524	8,771,773	8,902,686
Utility Service Fees	23,664	768,508	3,046,375	3,145,725	3,256,294
Uncollectibles/Other	79,015	1,462,672	2,090,108	2,042,613	2,013,279
Subtotal Operating Expenses	31,967,970	293,996,985	420,111,705	410,565,120	404,669,170
Operating Margin	(5,415,537)	24,323,876	47,221,197	57,668,903	65,906,023
III. Financing					
Interest	375,000	857,820	715,471	545,067	370,354
Principal	-	2,752,650	6,724,411	6,894,461	7,068,812
Subtotal Financing	375,000	3,610,470	7,439,883	7,439,528	7,439,165
Operating Margin Less Financing	(5,790,537)	20,713,405	39,781,314	50,229,374	58,466,858
IV. Cash From Financing	35,000,000	-	-	-	-
V. Other Uses					
CPUC and CAISO Deposits	1,275,000	-	-	-	-
Collateral Deposits	5,000,000	-	-	-	-
Subtotal Other Uses	6,275,000	-	-	-	-
VI. Net Surplus/(Deficit)	22,934,463	20,713,405	39,781,314	50,229,374	58,466,858
VII. Cumulative Net Surplus	22,231,963	42,945,368	82,726,682	132,956,056	191,422,914
VIII. Program Average Rate (\$/MWh)	111.9	90.7	86.6	86.5	86.5
IX. Power Supply (\$/MWh)	118.1	79.7	73.7	71.6	70.1
X. Program Average Cost (\$/MWh)	162.7	84.8	79.2	77.2	75.8
XI. Annual Sales (MWh)	237,338	3,510,197	5,399,104	5,412,037	5,439,097

The SDCP rates for the PowerOn product (i.e. base portfolio offering) are structured like SDG&E's generation rates with most of the same rate schedules, time-of-use periods, and mix of energy and demand charges. This rate design approach is typical for CCA programs and has the advantages of ensuring comparability and compatibility with SDG&E's billing process.

For customers electing the Power100 100% renewable energy portfolio offering, an additional charge of 0.75 cents per kWh will apply. This premium is based on the estimated incremental cost to SDCP of offering a 100% renewable energy product relative to the default PowerOn product. The SDCP Power100 generation rate would be about 9% on average more than the PowerOn rate, and the impact to a customer's total electric bill (including SDCP generation charges and SDG&E delivery charges) would be approximately 3%.

FISCAL IMPACT

Adoption of the updated rates would yield projected revenues of \$26.5 million during the current fiscal year ending June 30, 2021.

ATTACHMENTS

Attachment A: SDCP Rates Effective June 1, 2021



SDCP Rates Effective 6/1/2021

SDCP Rate Name	Season	Charge Type	Time of Use Period	PowerOn	Power100
DR	Summer	Generation	Total	0.12833	0.13583
DR	Winter	Generation	Total	0.04701	0.05451
DR-LI-MB	Summer	Generation	Total	0.12833	0.13583
DR-LI-MB	Winter	Generation	Total	0.04701	0.05451
E-LI-TOU	Summer	Generation	Total	0.04743	0.05493
E-LI-TOU	Winter	Generation	Total	0.02841	0.03591
E-LI-NR	Summer	Generation	Total	0.05821	0.06571
E-LI-NR	Winter	Generation	Total	0.03584	0.04334
DR-SES	Summer	Generation	On-Peak	0.34851	0.35601
DR-SES	Summer	Generation	Off-Peak	0.08606	0.09356
DR-SES	Summer	Generation	Super Off-Peak	0.02548	0.03298
DR-SES	Winter	Generation	On-Peak	0.04630	0.05380
DR-SES	Winter	Generation	Off-Peak	0.03685	0.04435
DR-SES	Winter	Generation	Super Off-Peak	0.02638	0.03388
EV-TOU	Summer	Generation	On-Peak	0.34851	0.35601
EV-TOU	Summer	Generation	Off-Peak	0.08606	0.09356
EV-TOU	Summer	Generation	Super Off-Peak	0.02548	0.03298
EV-TOU	Winter	Generation	On-Peak	0.04630	0.05380
EV-TOU	Winter	Generation	Off-Peak	0.03685	0.04435
EV-TOU	Winter	Generation	Super Off-Peak	0.02638	0.03388
EV-TOU-2	Summer	Generation	On-Peak	0.34851	0.35601
EV-TOU-2	Summer	Generation	Off-Peak	0.08606	0.09356
EV-TOU-2	Summer	Generation	Super Off-Peak	0.02548	0.03298
EV-TOU-2	Winter	Generation	On-Peak	0.04630	0.05380
EV-TOU-2	Winter	Generation	Off-Peak	0.03685	0.04435
EV-TOU-2	Winter	Generation	Super Off-Peak	0.02638	0.03388
EV-TOU-5	Summer	Generation	On-Peak	0.34851	0.35601
EV-TOU-5	Summer	Generation	Off-Peak	0.08606	0.09356
EV-TOU-5	Summer	Generation	Super Off-Peak	0.02548	0.03298
EV-TOU-5	Winter	Generation	On-Peak	0.04630	0.05380
EV-TOU-5	Winter	Generation	Off-Peak	0.03685	0.04435
EV-TOU-5	Winter	Generation	Super Off-Peak	0.02638	0.03388
TOU-DR-1	Summer	Generation	On-Peak	0.31879	0.32629
TOU-DR-1	Summer	Generation	Off-Peak	0.07664	0.08414
TOU-DR-1	Summer	Generation	Super Off-Peak	0.02069	0.02819

TOU-DR-1	Winter	Generation	On-Peak	0.05872	0.06622
TOU-DR-1	Winter	Generation	Off-Peak	0.04789	0.05539
TOU-DR-1	Winter	Generation	Super Off-Peak	0.03586	0.04336
TOU-DR-2	Summer	Generation	On-Peak	0.31879	0.32629
TOU-DR-2	Summer	Generation	Off-Peak	0.05543	0.06293
TOU-DR-2	Winter	Generation	On-Peak	0.05872	0.06622
TOU-DR-2	Winter	Generation	Off-Peak	0.04258	0.05008
TOU-DR	Summer	Generation	On-Peak	0.20217	0.20967
TOU-DR	Summer	Generation	Off-Peak	0.14192	0.14942
TOU-DR	Summer	Generation	Super Off-Peak	0.08226	0.08976
TOU-DR	Winter	Generation	On-Peak	0.04570	0.05320
TOU-DR	Winter	Generation	Off-Peak	0.03632	0.04382
TOU-DR	Winter	Generation	Super Off-Peak	0.02592	0.03342
TOU-A-S	Summer	Generation	On-Peak	0.20513	0.21263
TOU-A-S	Summer	Generation	Off-Peak	0.09700	0.10450
TOU-A-S	Winter	Generation	On-Peak	0.05404	0.06154
TOU-A-S	Winter	Generation	Off-Peak	0.03872	0.04622
TOU-A-P	Summer	Generation	On-Peak	0.20395	0.21145
TOU-A-P	Summer	Generation	Off-Peak	0.09635	0.10385
TOU-A-P	Winter	Generation	On-Peak	0.05363	0.06113
TOU-A-P	Winter	Generation	Off-Peak	0.03845	0.04595
TOU-A-2-S	Summer	Generation	On-Peak	0.27463	0.28213
TOU-A-2-S	Summer	Generation	Off-Peak	0.08540	0.09290
TOU-A-2-S	Summer	Generation	Super Off-Peak	0.03195	0.03945
TOU-A-2-S	Winter	Generation	On-Peak	0.05219	0.05969
TOU-A-2-S	Winter	Generation	Off-Peak	0.04266	0.05016
TOU-A-2-S	Winter	Generation	Super Off-Peak	0.03198	0.03948
TOU-A-2-P	Summer	Generation	On-Peak	0.27315	0.28065
TOU-A-2-P	Summer	Generation	Off-Peak	0.08484	0.09234
TOU-A-2-P	Summer	Generation	Super Off-Peak	0.03165	0.03915
TOU-A-2-P	Winter	Generation	On-Peak	0.05181	0.05931
TOU-A-2-P	Winter	Generation	Off-Peak	0.04235	0.04985
TOU-A-2-P	Winter	Generation	Super Off-Peak	0.03178	0.03928
TOU-A-3-S	Summer	Generation	On-Peak	0.20853	0.21603
TOU-A-3-S	Summer	Generation	Off-Peak	0.11561	0.12311
TOU-A-3-S	Summer	Generation	Super Off-Peak	0.03161	0.03911
TOU-A-3-S	Winter	Generation	On-Peak	0.05220	0.05970
TOU-A-3-S	Winter	Generation	Off-Peak	0.04267	0.05017
TOU-A-3-S	Winter	Generation	Super Off-Peak	0.03199	0.03949

TOU-A-3-P	Summer	Generation	On-Peak	0.20737	0.21487
TOU-A-3-P	Summer	Generation	Off-Peak	0.11489	0.12239
TOU-A-3-P	Summer	Generation	Super Off-Peak	0.03131	0.03881
TOU-A-3-P	Winter	Generation	On-Peak	0.05182	0.05932
TOU-A-3-P	Winter	Generation	Off-Peak	0.04236	0.04986
TOU-A-3-P	Winter	Generation	Super Off-Peak	0.03179	0.03929
A-TC	Summer	Generation	Total	0.04269	0.05019
A-TC	Winter	Generation	Total	0.04269	0.05019
TOU-M	Summer	Generation	On-Peak	0.27781	0.28531
TOU-M	Summer	Generation	Off-Peak	0.08613	0.09363
TOU-M	Summer	Generation	Super Off-Peak	0.03298	0.04048
TOU-M	Winter	Generation	On-Peak	0.05239	0.05989
TOU-M	Winter	Generation	Off-Peak	0.04283	0.05033
TOU-M	Winter	Generation	Super Off-Peak	0.03214	0.03964
OL-TOU	Summer	Generation	On-Peak	0.36845	0.37595
OL-TOU	Summer	Generation	Off-Peak	0.11391	0.12141
OL-TOU	Summer	Generation	Super Off-Peak	0.04263	0.05013
OL-TOU	Winter	Generation	On-Peak	0.06825	0.07575
OL-TOU	Winter	Generation	Off-Peak	0.05662	0.06412
OL-TOU	Winter	Generation	Super Off-Peak	0.04374	0.05124
AL-TOU-S	Summer	Demand	On-Peak	12.35	12.35
AL-TOU-S	Summer	Generation	On-Peak	0.11622	0.12372
AL-TOU-S	Summer	Generation	Off-Peak	0.09129	0.09879
AL-TOU-S	Summer	Generation	Super Off-Peak	0.06189	0.06939
AL-TOU-S	Winter	Generation	On-Peak	0.09388	0.10138
AL-TOU-S	Winter	Generation	Off-Peak	0.07936	0.08686
AL-TOU-S	Winter	Generation	Super Off-Peak	0.06325	0.07075
AL-TOU-P	Summer	Demand	On-Peak	12.29	12.29
AL-TOU-P	Summer	Generation	On-Peak	0.11550	0.12300
AL-TOU-P	Summer	Generation	Off-Peak	0.09070	0.09820
AL-TOU-P	Summer	Generation	Super Off-Peak	0.06156	0.06906
AL-TOU-P	Winter	Generation	On-Peak	0.09328	0.10078
AL-TOU-P	Winter	Generation	Off-Peak	0.07889	0.08639
AL-TOU-P	Winter	Generation	Super Off-Peak	0.06293	0.07043
AL-TOU-T	Summer	Demand	On-Peak	11.76	11.76
AL-TOU-T	Summer	Generation	On-Peak	0.10903	0.11653
AL-TOU-T	Summer	Generation	Off-Peak	0.08534	0.09284
AL-TOU-T	Summer	Generation	Super Off-Peak	0.05765	0.06515
AL-TOU-T	Winter	Generation	On-Peak	0.08788	0.09538
AL-TOU-T	Winter	Generation	Off-Peak	0.07420	0.08170
AL-TOU-T	Winter	Generation	Super Off-Peak	0.05898	0.06648

AL-TOU-2-S	Summer	Demand	On-Peak	21.59	21.59
AL-TOU-2-S	Summer	Generation	On-Peak	0.10294	0.11044
AL-TOU-2-S	Summer	Generation	Off-Peak	0.08025	0.08775
AL-TOU-2-S	Summer	Generation	Super Off-Peak	0.05286	0.06036
AL-TOU-2-S	Winter	Generation	On-Peak	0.08188	0.08938
AL-TOU-2-S	Winter	Generation	Off-Peak	0.06871	0.07621
AL-TOU-2-S	Winter	Generation	Super Off-Peak	0.05410	0.06160
AL-TOU-2-P	Summer	Demand	On-Peak	21.48	21.48
AL-TOU-2-P	Summer	Generation	On-Peak	0.10227	0.10977
AL-TOU-2-P	Summer	Generation	Off-Peak	0.07971	0.08721
AL-TOU-2-P	Summer	Generation	Super Off-Peak	0.05256	0.06006
AL-TOU-2-P	Winter	Generation	On-Peak	0.08134	0.08884
AL-TOU-2-P	Winter	Generation	Off-Peak	0.06828	0.07578
AL-TOU-2-P	Winter	Generation	Super Off-Peak	0.05380	0.06130
AL-TOU-2-T	Summer	Demand	On-Peak	20.56	20.56
AL-TOU-2-T	Summer	Generation	On-Peak	0.09637	0.10387
AL-TOU-2-T	Summer	Generation	Off-Peak	0.07483	0.08233
AL-TOU-2-T	Summer	Generation	Super Off-Peak	0.04902	0.05652
AL-TOU-2-T	Winter	Generation	On-Peak	0.07643	0.08393
AL-TOU-2-T	Winter	Generation	Off-Peak	0.06403	0.07153
AL-TOU-2-T	Winter	Generation	Super Off-Peak	0.05022	0.05772
DG-R-S	Summer	Generation	On-Peak	0.36723	0.37473
DG-R-S	Summer	Generation	Off-Peak	0.17463	0.18213
DG-R-S	Summer	Generation	Super Off-Peak	0.10246	0.10996
DG-R-S	Winter	Generation	On-Peak	0.06831	0.07581
DG-R-S	Winter	Generation	Off-Peak	0.05666	0.06416
DG-R-S	Winter	Generation	Super Off-Peak	0.04375	0.05125
DG-R-P	Summer	Generation	On-Peak	0.36663	0.37413
DG-R-P	Summer	Generation	Off-Peak	0.17395	0.18145
DG-R-P	Summer	Generation	Super Off-Peak	0.10219	0.10969
DG-R-P	Winter	Generation	On-Peak	0.06783	0.07533
DG-R-P	Winter	Generation	Off-Peak	0.05628	0.06378
DG-R-P	Winter	Generation	Super Off-Peak	0.04349	0.05099
DG-R-T	Summer	Generation	On-Peak	0.36138	0.36888
DG-R-T	Summer	Generation	Off-Peak	0.16777	0.17527
DG-R-T	Summer	Generation	Super Off-Peak	0.09907	0.10657
DG-R-T	Winter	Generation	On-Peak	0.06349	0.07099
DG-R-T	Winter	Generation	Off-Peak	0.05252	0.06002
DG-R-T	Winter	Generation	Super Off-Peak	0.04032	0.04782
A6-TOU-P	Summer	Demand	Total	12.29	12.29

A6-TOU-P	Summer	Generation	On-Peak	0.1155	0.12300
A6-TOU-P	Summer	Generation	Off-Peak	0.0907	0.09820
A6-TOU-P	Summer	Generation	Super Off-Peak	0.06156	0.06906
A6-TOU-P	Winter	Generation	On-Peak	0.09328	0.10078
A6-TOU-P	Winter	Generation	Off-Peak	0.07889	0.08639
A6-TOU-P	Winter	Generation	Super Off-Peak	0.06293	0.07043
A6-TOU-T	Summer	Demand	Total	11.76	11.76
A6-TOU-T	Summer	Generation	On-Peak	0.10903	0.11653
A6-TOU-T	Summer	Generation	Off-Peak	0.08534	0.09284
A6-TOU-T	Summer	Generation	Super Off-Peak	0.05765	0.06515
A6-TOU-T	Winter	Generation	On-Peak	0.08788	0.09538
A6-TOU-T	Winter	Generation	Off-Peak	0.07420	0.08170
A6-TOU-T	Winter	Generation	Super Off-Peak	0.05898	0.06648
TOU-PA-S	Summer	Generation	On-Peak	0.16216	0.16966
TOU-PA-S	Summer	Generation	Off-Peak	0.07772	0.08522
TOU-PA-S	Winter	Generation	On-Peak	0.04429	0.05179
TOU-PA-S	Winter	Generation	Off-Peak	0.03088	0.03838
TOU-PA-P	Summer	Generation	On-Peak	0.16122	0.16872
TOU-PA-P	Summer	Generation	Off-Peak	0.0772	0.08470
TOU-PA-P	Winter	Generation	On-Peak	0.04396	0.05146
TOU-PA-P	Winter	Generation	Off-Peak	0.03066	0.03816
TOU-PA-2-S	Summer	Demand	On-Peak	8.87	8.87
TOU-PA-2-S	Summer	Generation	On-Peak	0.06564	0.07314
TOU-PA-2-S	Summer	Generation	Off-Peak	0.04995	0.05745
TOU-PA-2-S	Summer	Generation	Super Off-Peak	0.03544	0.04294
TOU-PA-2-S	Winter	Generation	On-Peak	0.05586	0.06336
TOU-PA-2-S	Winter	Generation	Off-Peak	0.04658	0.05408
TOU-PA-2-S	Winter	Generation	Super Off-Peak	0.03631	0.04381
TOU-PA-2-P	Summer	Demand	On-Peak	8.83	8.83
TOU-PA-2-P	Summer	Generation	On-Peak	0.06521	0.07271
TOU-PA-2-P	Summer	Generation	Off-Peak	0.04959	0.05709
TOU-PA-2-P	Summer	Generation	Super Off-Peak	0.03514	0.04264
TOU-PA-2-P	Winter	Generation	On-Peak	0.05547	0.06297
TOU-PA-2-P	Winter	Generation	Off-Peak	0.04628	0.05378
TOU-PA-2-P	Winter	Generation	Super Off-Peak	0.03611	0.04361
TOU-PA-3-S <20kW	Summer	Generation	On-Peak	0.19056	0.19806
TOU-PA-3-S <20kW	Summer	Generation	Off-Peak	0.08549	0.09299
TOU-PA-3-S <20kW	Summer	Generation	Super Off-Peak	0.02944	0.03694
TOU-PA-3-S <20kW	Winter	Generation	On-Peak	0.04298	0.05048
TOU-PA-3-S <20kW	Winter	Generation	Off-Peak	0.03516	0.04266
TOU-PA-3-S <20kW	Winter	Generation	Super Off-Peak	0.02649	0.03399

TOU-PA-3-P <20kW	Summer	Generation	On-Peak	0.18951	0.19701
TOU-PA-3-P <20kW	Summer	Generation	Off-Peak	0.08495	0.09245
TOU-PA-3-P <20kW	Summer	Generation	Super Off-Peak	0.02917	0.03667
TOU-PA-3-P <20kW	Winter	Generation	On-Peak	0.04266	0.05016
TOU-PA-3-P <20kW	Winter	Generation	Off-Peak	0.03490	0.04240
TOU-PA-3-P <20kW	Winter	Generation	Super Off-Peak	0.02631	0.03381
TOU-PA-3-S >=20kW	Summer	Demand	On-Peak	2.10	2.10
TOU-PA-3-S >=20kW	Summer	Generation	On-Peak	0.11985	0.12735
TOU-PA-3-S >=20kW	Summer	Generation	Off-Peak	0.09119	0.09869
TOU-PA-3-S >=20kW	Summer	Generation	Super Off-Peak	0.02094	0.02844
TOU-PA-3-S >=20kW	Winter	Generation	On-Peak	0.05638	0.06388
TOU-PA-3-S >=20kW	Winter	Generation	Off-Peak	0.04706	0.05456
TOU-PA-3-S >=20kW	Winter	Generation	Super Off-Peak	0.03671	0.04421
TOU-PA-3-P >=20kW	Summer	Demand	On-Peak	2.09	2.09
TOU-PA-3-P >=20kW	Summer	Generation	On-Peak	0.11916	0.12666
TOU-PA-3-P >=20kW	Summer	Generation	Off-Peak	0.09062	0.09812
TOU-PA-3-P >=20kW	Summer	Generation	Super Off-Peak	0.02071	0.02821
TOU-PA-3-P >=20kW	Winter	Generation	On-Peak	0.056	0.06350
TOU-PA-3-P >=20kW	Winter	Generation	Off-Peak	0.04675	0.05425
TOU-PA-3-P >=20kW	Winter	Generation	Super Off-Peak	0.03651	0.04401
PA-T-1-S	Summer	Demand	On-Peak	4.93	4.93
PA-T-1-S	Summer	Generation	On-Peak	0.07582	0.08332
PA-T-1-S	Summer	Generation	Off-Peak	0.05852	0.06602
PA-T-1-S	Summer	Generation	Super Off-Peak	0.04262	0.05012
PA-T-1-S	Winter	Generation	On-Peak	0.06541	0.07291
PA-T-1-S	Winter	Generation	Off-Peak	0.05506	0.06256
PA-T-1-S	Winter	Generation	Super Off-Peak	0.0436	0.05110
PA-T-1-P	Summer	Demand	On-Peak	4.92	4.92
PA-T-1-P	Summer	Generation	On-Peak	0.07533	0.08283
PA-T-1-P	Summer	Generation	Off-Peak	0.05813	0.06563
PA-T-1-P	Summer	Generation	Super Off-Peak	0.04238	0.04988
PA-T-1-P	Winter	Generation	On-Peak	0.06499	0.07249
PA-T-1-P	Winter	Generation	Off-Peak	0.05473	0.06223
PA-T-1-P	Winter	Generation	Super Off-Peak	0.04337	0.05087
PA-T-1-T	Summer	Demand	On-Peak	4.70	4.70
PA-T-1-T	Summer	Generation	On-Peak	0.07096	0.07846
PA-T-1-T	Summer	Generation	Off-Peak	0.05452	0.06202
PA-T-1-T	Summer	Generation	Super Off-Peak	0.03960	0.04710
PA-T-1-T	Winter	Generation	On-Peak	0.06113	0.06863
PA-T-1-T	Winter	Generation	Off-Peak	0.05139	0.05889
PA-T-1-T	Winter	Generation	Super Off-Peak	0.04055	0.04805

LS	All	Generation	Total	0.05442	0.06192
OL-2	All	Generation	Total	0.06528	0.07278
LS-2-AD	Summer	Generation	On-Peak	0.21541	0.22291
LS-2-AD	Summer	Generation	Off-Peak	0.12249	0.12999
LS-2-AD	Summer	Generation	Super Off-Peak	0.03849	0.04599
LS-2-AD	Winter	Generation	On-Peak	0.05908	0.06658
LS-2-AD	Winter	Generation	Off-Peak	0.04955	0.05705
LS-2-AD	Winter	Generation	Super Off-Peak	0.03887	0.04637
G-DR-SES	Summer	Generation	On-Peak	0.34550	0.35300
G-DR-SES	Summer	Generation	Semi-Peak	0.34548	0.35298
G-DR-SES	Summer	Generation	Off-Peak	0.08909	0.09659
G-DR-SES	Winter	Generation	Semi-Peak	0.0817	0.08920
G-DR-SES	Winter	Generation	Off-Peak	0.07453	0.08203
G-EV-TOU	Summer	Generation	On-Peak	0.29803	0.30553
G-EV-TOU	Summer	Generation	Off-Peak	0.27878	0.28628
G-EV-TOU	Summer	Generation	Super Off-Peak	0.05244	0.05994
G-EV-TOU	Winter	Generation	On-Peak	0.07030	0.07780
G-EV-TOU	Winter	Generation	Off-Peak	0.06245	0.06995
G-EV-TOU	Winter	Generation	Super Off-Peak	0.05125	0.05875
G-EV-TOU-2	Summer	Generation	On-Peak	0.29377	0.30127
G-EV-TOU-2	Summer	Generation	Off-Peak	0.25617	0.26367
G-EV-TOU-2	Summer	Generation	Super Off-Peak	0.05244	0.05994
G-EV-TOU-2	Winter	Generation	On-Peak	0.06638	0.07388
G-EV-TOU-2	Winter	Generation	Off-Peak	0.06546	0.07296
G-EV-TOU-2	Winter	Generation	Super Off-Peak	0.05125	0.05875
G-TOU-DR	Summer	Generation	On-Peak	0.24328	0.25078
G-TOU-DR	Summer	Generation	Semi-Peak	0.14651	0.15401
G-TOU-DR	Summer	Generation	Off-Peak	0.10285	0.11035
G-TOU-DR	Winter	Generation	On-Peak	0.05436	0.06186
G-TOU-DR	Winter	Generation	Semi-Peak	0.04052	0.04802
G-TOU-DR	Winter	Generation	Off-Peak	0.03211	0.03961
G-TOU-M	Summer	Generation	On-Peak	0.17433	0.18183
G-TOU-M	Summer	Generation	Semi-Peak	0.16877	0.17627
G-TOU-M	Summer	Generation	Off-Peak	0.04191	0.04941
G-TOU-M	Winter	Generation	On-Peak	0.06125	0.06875
G-TOU-M	Winter	Generation	Semi-Peak	0.04728	0.05478
G-TOU-M	Winter	Generation	Off-Peak	0.03846	0.04596
G-OL-TOU	Summer	Generation	On-Peak	0.23145	0.23895

G-OL-TOU	Summer	Generation	Semi-Peak	0.21449	0.22199
G-OL-TOU	Summer	Generation	Off-Peak	0.05865	0.06615
G-OL-TOU	Winter	Generation	On-Peak	0.07544	0.08294
G-OL-TOU	Winter	Generation	Semi-Peak	0.05883	0.06633
G-OL-TOU	Winter	Generation	Off-Peak	0.04871	0.05621
G-TOU-A-S	Summer	Generation	On-Peak	0.22118	0.22868
G-TOU-A-S	Summer	Generation	Semi-Peak	0.11597	0.12347
G-TOU-A-S	Summer	Generation	Off-Peak	0.03497	0.04247
G-TOU-A-S	Winter	Generation	On-Peak	0.05846	0.06596
G-TOU-A-S	Winter	Generation	Semi-Peak	0.04492	0.05242
G-TOU-A-S	Winter	Generation	Off-Peak	0.03635	0.04385
G-TOU-A-P	Summer	Generation	On-Peak	0.21985	0.22735
G-TOU-A-P	Summer	Generation	Semi-Peak	0.1152	0.12270
G-TOU-A-P	Summer	Generation	Off-Peak	0.03463	0.04213
G-TOU-A-P	Winter	Generation	On-Peak	0.05802	0.06552
G-TOU-A-P	Winter	Generation	Semi-Peak	0.04457	0.05207
G-TOU-A-P	Winter	Generation	Off-Peak	0.03612	0.04362
G-AL-TOU-S	Summer	Demand	On-Peak	7.03	7.03
G-AL-TOU-S	Summer	Generation	On-Peak	0.10995	0.11745
G-AL-TOU-S	Summer	Generation	Semi-Peak	0.10265	0.11015
G-AL-TOU-S	Summer	Generation	Off-Peak	0.07443	0.08193
G-AL-TOU-S	Winter	Generation	On-Peak	0.10601	0.11351
G-AL-TOU-S	Winter	Generation	Semi-Peak	0.08478	0.09228
G-AL-TOU-S	Winter	Generation	Off-Peak	0.07186	0.07936
G-AL-TOU-P	Summer	Demand	On-Peak	6.99	6.99
G-AL-TOU-P	Summer	Generation	On-Peak	0.10918	0.11668
G-AL-TOU-P	Summer	Generation	Semi-Peak	0.10201	0.10951
G-AL-TOU-P	Summer	Generation	Off-Peak	0.07403	0.08153
G-AL-TOU-P	Winter	Generation	On-Peak	0.10534	0.11284
G-AL-TOU-P	Winter	Generation	Semi-Peak	0.08426	0.09176
G-AL-TOU-P	Winter	Generation	Off-Peak	0.07150	0.07900
G-AL-TOU-T	Summer	Demand	On-Peak	6.68	6.68
G-AL-TOU-T	Summer	Generation	On-Peak	0.10279	0.11029
G-AL-TOU-T	Summer	Generation	Semi-Peak	0.09618	0.10368
G-AL-TOU-T	Summer	Generation	Off-Peak	0.06961	0.07711
G-AL-TOU-T	Winter	Generation	On-Peak	0.09931	0.10681
G-AL-TOU-T	Winter	Generation	Semi-Peak	0.07929	0.08679
G-AL-TOU-T	Winter	Generation	Off-Peak	0.06720	0.07470
G-DG-R-S	Summer	Generation	On-Peak	0.23950	0.24700
G-DG-R-S	Summer	Generation	Semi-Peak	0.22524	0.23274
G-DG-R-S	Summer	Generation	Off-Peak	0.09821	0.10571

G-DG-R-S	Winter	Generation	On-Peak	0.08003	0.08753
G-DG-R-S	Winter	Generation	Semi-Peak	0.06270	0.07020
G-DG-R-S	Winter	Generation	Off-Peak	0.05216	0.05966
G-DG-R-P	Summer	Generation	On-Peak	0.23887	0.24637
G-DG-R-P	Summer	Generation	Semi-Peak	0.22461	0.23211
G-DG-R-P	Summer	Generation	Off-Peak	0.09786	0.10536
G-DG-R-P	Winter	Generation	On-Peak	0.07947	0.08697
G-DG-R-P	Winter	Generation	Semi-Peak	0.06227	0.06977
G-DG-R-P	Winter	Generation	Off-Peak	0.05186	0.05936
G-DG-R-T	Summer	Generation	On-Peak	0.23357	0.24107
G-DG-R-T	Summer	Generation	Semi-Peak	0.21936	0.22686
G-DG-R-T	Summer	Generation	Off-Peak	0.09391	0.10141
G-DG-R-T	Winter	Generation	On-Peak	0.07455	0.08205
G-DG-R-T	Winter	Generation	Semi-Peak	0.05822	0.06572
G-DG-R-T	Winter	Generation	Off-Peak	0.04835	0.05585
G-A6-TOU-P	Summer	Demand	Total	6.99	6.99
G-A6-TOU-P	Summer	Generation	On-Peak	0.10918	0.11668
G-A6-TOU-P	Summer	Generation	Semi-Peak	0.10201	0.10951
G-A6-TOU-P	Summer	Generation	Off-Peak	0.07403	0.08153
G-A6-TOU-P	Winter	Generation	On-Peak	0.10534	0.11284
G-A6-TOU-P	Winter	Generation	Semi-Peak	0.08426	0.09176
G-A6-TOU-P	Winter	Generation	Off-Peak	0.07150	0.07900
G-A6-TOU-T	Summer	Demand	Total	6.68	6.68
G-A6-TOU-T	Summer	Generation	On-Peak	0.10279	0.11029
G-A6-TOU-T	Summer	Generation	Semi-Peak	0.09618	0.10368
G-A6-TOU-T	Summer	Generation	Off-Peak	0.06961	0.07711
G-A6-TOU-T	Winter	Generation	On-Peak	0.09931	0.10681
G-A6-TOU-T	Winter	Generation	Semi-Peak	0.07929	0.08679
G-A6-TOU-T	Winter	Generation	Off-Peak	0.0672	0.07470
G-PA-T-1-S	Summer	Demand	On-Peak	2.4	2.4
G-PA-T-1-S	Summer	Generation	On-Peak	0.07036	0.07786
G-PA-T-1-S	Summer	Generation	Semi-Peak	0.06571	0.07321
G-PA-T-1-S	Summer	Generation	Off-Peak	0.05151	0.05901
G-PA-T-1-S	Winter	Generation	On-Peak	0.074	0.08150
G-PA-T-1-S	Winter	Generation	Semi-Peak	0.05888	0.06638
G-PA-T-1-S	Winter	Generation	Off-Peak	0.04969	0.05719
G-PA-T-1-P	Summer	Demand	On-Peak	2.39	2.39
G-PA-T-1-P	Summer	Generation	On-Peak	0.06985	0.07735
G-PA-T-1-P	Summer	Generation	Semi-Peak	0.06528	0.07278
G-PA-T-1-P	Summer	Generation	Off-Peak	0.05123	0.05873
G-PA-T-1-P	Winter	Generation	On-Peak	0.07351	0.08101

G-PA-T-1-P	Winter	Generation	Semi-Peak	0.05851	0.06601
G-PA-T-1-P	Winter	Generation	Off-Peak	0.04942	0.05692
G-PA-T-1-T	Summer	Demand	On-Peak	2.28	2.28
G-PA-T-1-T	Summer	Generation	On-Peak	0.06558	0.07308
G-PA-T-1-T	Summer	Generation	Semi-Peak	0.06139	0.06889
G-PA-T-1-T	Summer	Generation	Off-Peak	0.04808	0.05558
G-PA-T-1-T	Winter	Generation	On-Peak	0.06922	0.07672
G-PA-T-1-T	Winter	Generation	Semi-Peak	0.05497	0.06247
G-PA-T-1-T	Winter	Generation	Off-Peak	0.04637	0.05387
G-TOU-PA-S	Summer	Generation	On-Peak	0.20597	0.21347
G-TOU-PA-S	Summer	Generation	Semi-Peak	0.08274	0.09024
G-TOU-PA-S	Summer	Generation	Off-Peak	0.03347	0.04097
G-TOU-PA-S	Winter	Generation	On-Peak	0.04677	0.05427
G-TOU-PA-S	Winter	Generation	Semi-Peak	0.03575	0.04325
G-TOU-PA-S	Winter	Generation	Off-Peak	0.02905	0.03655
G-TOU-PA-P	Summer	Generation	On-Peak	0.20475	0.21225
G-TOU-PA-P	Summer	Generation	Semi-Peak	0.08216	0.08966
G-TOU-PA-P	Summer	Generation	Off-Peak	0.03316	0.04066
G-TOU-PA-P	Winter	Generation	On-Peak	0.04642	0.05392
G-TOU-PA-P	Winter	Generation	Semi-Peak	0.03548	0.04298
G-TOU-PA-P	Winter	Generation	Off-Peak	0.02886	0.03636
G-TOU-PA-2-S	Summer	Demand	On-Peak	0.99	0.99
G-TOU-PA-2-S	Summer	Generation	On-Peak	0.15964	0.16714
G-TOU-PA-2-S	Summer	Generation	Semi-Peak	0.08346	0.09096
G-TOU-PA-2-S	Summer	Generation	Off-Peak	0.02584	0.03334
G-TOU-PA-2-S	Winter	Generation	On-Peak	0.06535	0.07285
G-TOU-PA-2-S	Winter	Generation	Semi-Peak	0.05155	0.05905
G-TOU-PA-2-S	Winter	Generation	Off-Peak	0.04314	0.05064
G-TOU-PA-2-P	Summer	Demand	On-Peak	0.98	0.98
G-TOU-PA-2-P	Summer	Generation	On-Peak	0.15866	0.16616
G-TOU-PA-2-P	Summer	Generation	Semi-Peak	0.08288	0.09038
G-TOU-PA-2-P	Summer	Generation	Off-Peak	0.02556	0.03306
G-TOU-PA-2-P	Winter	Generation	On-Peak	0.06491	0.07241
G-TOU-PA-2-P	Winter	Generation	Semi-Peak	0.05119	0.05869
G-TOU-PA-2-P	Winter	Generation	Off-Peak	0.0429	0.05040



SAN DIEGO COMMUNITY POWER Staff Report – Item 8

To: San Diego Community Power Board of Directors
From: Byron Vosburg, Director of Power Services
CC: Bill Carnahan, Interim CEO
Subject: Phase 3 Customer Enrollment Schedule
Date: April 22, 2021

RECOMMENDATION

Adopt the proposed phase-in schedule for Phase 3 customer enrollment.

BACKGROUND

San Diego Community Power (SDCP) began serving its first phase of customers on March 1, 2021. Consistent with SDCP's Implementation Plan (December 2019), the first customers to receive service ("Phase 1") include the municipal accounts of SDCP's member communities. The balance of SDCP's customers are expected to transfer to SDCP service during two additional phases. Phase 2, which includes the large majority of SDCP's commercial and industrial customers, will occur during June 2021; SDCP's Implementation Plan estimated this to occur in July 2021, but Phase 2 enrollment was pulled forward by a month in early 2020 per discussion with your Board and creation of a Financing Plan with River City Bank. Phase 3, which includes residential customers and any remaining customers yet to be transitioned to SDCP service was originally scheduled for November 2021 and then rescheduled to January 2022 upon consideration of a number of financial, regulatory, and technological factors. SDCP staff have continuously monitored market and regulatory conditions, and – in conjunction with revised generation rates and a corresponding pro forma financial analysis – recommend that SDCP incorporate Phase 3 customers over the months of February through May 2022.

ANALYSIS AND DISCUSSION

While evaluating the pro forma financial model and conducting high-level scenario analysis, SDCP considered postponing Phase 3 enrollment from January 2022 to May 2022, which would result in ~\$14,000,000 additional net revenue to SDCP in Fiscal Year 2021-2022. In order to fine-tune options and pursue a similar financial outcome – while honoring Board, community, and staff interest in launching residential service as early as possible in 2022 – staff devised the following schedule, which it proposes that your Board adopt for enrollment of SDCP's Phase 3 customers:

- February 2022: Imperial Beach
- March 2022: La Mesa
- April 2022: Encinitas
- May 2022: Chula Vista and San Diego

Staff expect this staggered enrollment of Phase 3 customers to result in projected reserves of approximately ~\$90,000 less than the initial alternative of delaying all Phase 3 accounts to May 2022. Staff considers this cost to be worthwhile in order to phase customers in more gradually over a longer enrollment period while still beginning residential service for SDCP customers early in 2022.

SDCP, like other community choice aggregators, has the ability to adjust the launch of various customer segments dependent on financial, customer, or operational needs. Staff recommend formalizing this updated schedule for Phase 3 enrolment in order confirm our 2022 electricity load forecast for regulatory and planning purposes.

FISCAL IMPACT

Approval of the proposed phase-in schedule would increase projected revenues during Fiscal Year 2021-2022 by approximately \$14,000,000.

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 9

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Director of Power Services

Subject: Renewable Power Purchase Agreement with Vikings Energy Farm, LLC.

Date: April 22, 2021

RECOMMENDATION

Adopt the Long-term Renewable Power Purchase Agreement with Vikings Energy Farm, LLC.

BACKGROUND

As SDCP strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) of at least 10 years in duration will become integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term PPAs lock in renewable energy supply around which SDCP can build its power supply portfolio while also providing power supply cost certainty around which SDCP can develop its pro forma financial model.

In response to last year's Long-term Renewable Energy Request for Offers (RFO), SDCP staff received offers from thirty-two suppliers or developers to purchase renewable energy from eighty-four unique project configurations. Staff reviewed these responses with the Ad Hoc Contracts Committee on August 4, 2020 and narrowed them down on August 18, 2020 to a "short-list" of potential projects with which to enter PPA negotiations. Vikings Energy Farm is the first of those shortlisted projects to complete contract negotiations and was reviewed – along with two additional PPAs that staff expect to review with the Board in May – with the Finance and Risk Management Committee on April 15, 2021.

ANALYSIS AND DISCUSSION

Staff negotiated the attached PPA for the purchase of renewable energy and resource adequacy from Vikings Energy Farm, which is a solar-plus-battery-storage project to be developed just outside of Holtville, CA in Imperial County by RAI Energy International, Inc. ("RAI Energy").

The project has a guaranteed capacity of 100 MW of solar production and up to 150 MW of battery storage capacity. The storage capacity will be determined by the Import Allocation that SDCP is able to secure via an annual CAISO process that will allow SDCP to claim the capacity as Resource Adequacy and, likely, toward incremental capacity procurement requirements currently under development at the CPUC. As previously reviewed with the Ad Hoc Contracts Committee, the contract offers competitive energy and capacity prices.

Renewable energy produced by the facility will be an important ~271 GWh/year foundation of long-term renewable energy deliveries within SDCP's power supply portfolio (~5,400 GWh/year once fully enrolled).

Below is additional information regarding RAI Energy and the draft PPA.

Background – RAI Energy International, Inc. (“RAI Energy”)

- Headquartered in San Jose, CA
- Established in 2006
- Developed 50 MW Seville Solar in Imperial County, which has delivered under PPA to SD&E and IID since 2012 and 2013, respectively
- Developed 60 MW of utility scale solar projects in Jordan
- Actively developing over 500 MW of solar capacity and over 750 MW of battery storage capacity in CA and AZ

Contract Overview – Vikings Energy Farm, LLC

- Project:
 - 100 MW Solar
 - Up to 150 MW/600 MWh – Lithium-ion battery energy storage system
- Project location: Holtville, Imperial Co, CA
- Guaranteed commercial operation date: June 30, 2023
- Contract term: 20 years
- Expected annual energy production: approximately 271,000 MWhs
- Guaranteed energy production: 85% of projected annual deliveries
- Energy price:
 - Solar – Fixed energy price applicable to the full term of the agreement
 - BESS – Fixed capacity price adjusted for efficiency, availability and verified capacity
- No credit or collateral obligations for SDCP
- SDCP would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones

FISCAL IMPACT

The competitive energy and capacity pricing of the PPA are confidential, but the long-term purchase of renewable energy and capacity will provide SDCP with significant value and cost certainty over the term of this PPA



ATTACHMENTS

Attachment A: Renewable Power Purchase Agreement with Vikings Energy Farm, LLC



RENEWABLE POWER PURCHASE AGREEMENT**COVER SHEET****Seller:** Vikings Energy Farm, LLC**Buyer:** San Diego Community Power, a California joint powers authority**Description of Facility:** 100 MW Solar PV and 150 MW / 600 MWh Battery Energy Storage**Milestones:**

Milestone	Date for Completion
Evidence of Site Control	October 2020
Executed Interconnection Agreement	██████████
CEC Pre-Certification Obtained	██████████
Conditional Use Permit	██████████
Network Upgrades Completed	██████████
Pseudo Tie Resource Status Obtained	██████████
Initial Synchronization	██████████
Expected Commercial Operation Date	██████████
Guaranteed Commercial Operation Date	██████████

Delivery Term: The period for Product delivery will be for twenty (20) Contract Years.**Expected Energy:**

Contract Year	Expected Energy (MWh)
1	██████████
2	██████████
3	██████████
4	██████████
5	██████████

6	████████
7	████████
8	████████
9	████████
10	████████
11	████████
12	████████
13	████████
14	████████
15	████████
16	████████
17	████████
18	████████
19	████████
20	████████

Guaranteed Capacity: 100 MW of Solar PV and the 150 MW / 600 MWh Battery Energy Storage, subject to adjustment pursuant to Section 3.8 below.

Storage Contract Capacity: 150 MW / 600 MWh

Resource Adequacy Benefits: System RA based on a Pseudo-Tie Resource with the Facility or the designation of the Facility as a Dynamic System Resource.

Delivery Point: (For Energy) SP15; (For RECS) Delivery via WREGIS or its successor system, and measured at point of injection; (For Resource Adequacy Benefits) Delivery via prevailing CAISO mechanism

Contract Price

The Contract Price shall be the sum of the Energy Price (as defined herein), the REC Rate and the Capacity Rate (as set forth below).

Contract Year	REC Rate
1 – 20	\$██████/MWh

The Capacity Rate shall be:

Contract Year	Capacity Rate
1 – 20	\$[REDACTED]/kW per month

Product:

- ☒ PV Energy
- ☐ Wind Energy
- ☐ Discharging Energy*
- ☒ Green Attributes (Portfolio Content Category 1)
- ☐ Storage Capacity
- ☒ Resource Adequacy Benefits defined in this Cover Sheet (select options below as applicable)
 - ☐ Energy Only Status
 - ☐ Full Capacity Deliverability Status (completed)
- ☐ Ancillary Services
- ☐ Bridge Product

Scheduling Coordinator: Seller or Seller's designee

Development Security: \$[REDACTED] (\$[REDACTED].00/kW of Guaranteed Capacity)

Performance Security: \$[REDACTED] (\$[REDACTED].00/kW of Guaranteed Capacity)-

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of _____, 2021 (the “**Effective Date**”), between San Diego Community Power, a California joint powers authority (“**Buyer**”) and Vikings Energy Farm, LLC, a California limited liability company (“**Seller**”). Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own or otherwise control, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 DEFINITIONS

1.1 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12.

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“Ancillary Services” means those Ancillary Services, as defined in the CAISO Tariff, that can be produced from the Storage Facility at any relevant time consistent with the terms and conditions of this Agreement, the Operating Restrictions and Prudent Operating Practice. For clarity, “Ancillary Services” as used herein does not include, at any relevant time, any ancillary services that the Facility is not actually physically capable of providing consistent with the terms and conditions of this Agreement, the Operating Restrictions and Prudent Operating Practice.

“Annual Vendor Test” means the annual tests that the Seller performs pursuant to the warranty compliance for the battery energy storage facility.

“Available Generating Capacity” means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” means San Diego Community Power, a California joint powers authority.

“Buyer Default” means a failure by Buyer (or its agents) to perform Buyer’s obligations hereunder, and includes an Event of Default of Buyer.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Operating Order” means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Damages” has the meaning set forth in Exhibit B.

“Capacity Rate” has the meaning set forth on the Cover Sheet.

“CEC” means the California Energy Commission, or any successor agency performing similar statutory functions.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified, as such date may be extended pursuant to Section 3.9) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“CEQA” means the California Environmental Quality Act.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means all Energy generated using photovoltaic cells at the Generating Facility and delivered to the Storage Facility, as measured at the Storage Facility Metering Points by the Storage Facility Meter.

“Claim” has the meaning set forth in Section 16.2(a).

“COD Certificate” has the meaning set forth in Exhibit B.

“Commercial Operation” has the meaning set forth in Exhibit B.

“Commercial Operation Date” has the meaning set forth in Exhibit B.

“Commercial Operation Delay Damages” means an amount equal to [REDACTED].

“Compliance Actions” has the meaning set forth in Section 3.12.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.12.

“Confidential Information” has the meaning set forth in Section 18.1.

“Construction Start” has the meaning set forth in Exhibit B.

“Construction Start Date” has the meaning set forth in Exhibit B.

“Contract Price” has the meaning set forth on the Cover Sheet. To be clear, the Contract Price is each of the Energy Price, the REC Rate and the Capacity Rate.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“**CPUC**” means the California Public Utilities Commission or any successor agency performing similar statutory functions.

“**Credit Rating**” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“**Curtailment Cap**” is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Installed Capacity.

“**Curtailment Order**” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, that such Party is required to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Facility Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller’s obligations or limitations under its Interconnection Agreement with the CAISO, Participating Transmission Owner or distribution operator, including limitations on transfer capability under the Interconnection Agreement; or

(e) a curtailment resulting from the operation of any Storage Facility capacity in excess of the Storage Contract Capacity installed pursuant to Section 4.5(f).

“**Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which Facility Energy from the Facility is reduced pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“**Damage Payment**” means the dollar amount that equals [REDACTED].

“Day-Ahead Forecast” has the meaning set forth in Section 4.3(c).

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“Deemed Delivered Capacity” means the amount of Net Qualifying Capacity expressed in MW that the Facility would have delivered to the Delivery Point, but for Buyer’s failure to obtain Import Capability sufficient to allow for the importation of such capacity into the CAISO.

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Deficient Month” has the meaning set forth in Section 4.10(e).

“Delivery Point” has the meaning set forth on the Cover Sheet.

“Delivery Term” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

“Development Security” means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, net of the Electrical Losses, as measured at the Storage Facility Metering Points by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“Dynamic System Resource” has the meaning set forth in the CAISO Tariff.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Effective Date” has the meaning set forth on the Preamble.

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with (i) delivery of Energy to the Delivery Point, (ii) delivery of Charging Energy to the Storage Facility, (iii) conversion of Charging Energy into Discharging Energy, and (iv) delivery of Discharging Energy to the Delivery Point, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy generated by the Generating Facility.

“Energy Management System” or **“EMS”** means the Facility’s energy management system.

“Energy Price” means, with respect to any Settlement Period, the CAISO day-ahead market price at SP15 during such Settlement Period.

“Energy Supply Bid” has the meaning set forth in the CAISO Tariff.

“Event of Default” has the meaning set forth in Section 11.1.

“Excess MWh” has the meaning set forth in Exhibit C.

“Executed Interconnection Agreement Milestone” means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.

“Expected Commercial Operation Date” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

“Expected Construction Start Date” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

“Expected Energy” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year or other time period (assuming no Charging Energy or Discharging Energy during such Contract Year or time period) in the quantity specified on the Cover Sheet.

“Facility” means the Generating Facility and the Storage Facility.

“Facility Energy” means the sum of (i) PV Energy and (ii) Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, for the avoidance of doubt, each as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

“Facility Meter” means the CAISO Approved Meter that will measure all Facility Energy.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, or (ii) investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Resource Adequacy Benefits.

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, (ii) Charging Energy to the Storage Facility; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by

trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Guaranteed Capacity” means the amount of generating capacity of the Generating Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 5(a) of Exhibit B or with respect to Resource Adequacy Benefits, the proportion of the Facility that has been allocated to Buyer as determined in accordance with Section 3.8.

“Guaranteed Commercial Operation Date” means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

“Guaranteed Energy Production” means an amount of Facility Energy, as measured in MWh, equal to the product of the Guaranteed Energy Production Percentage and the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

“Guaranteed Energy Production Percentage” means ■%.

“Guarantor” means, with respect to Seller, any Person that (i) (ii) has an Investment Grade Credit Rating, (iii) has a tangible net worth of at least One Hundred Fifty Million Dollars (\$150,000,000), (iv) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (v) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

“**IID**” means the Imperial Irrigation District or any successor entity performing similar functions.

“**Imbalance Energy**” means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“**Import Capacity Award**” has the meaning set forth in Section 3.8(b)(ii).

“**Import Capability**” means that portion of the Maximum Import Capability allocated by the CAISO that is necessary to support the importation of the Resource Adequacy Benefits from the Facility into the CAISO Market.

“**Indemnifiable Loss(es)**” has the meaning set forth in Section 16.1.

“**Indemnified Group**” has the meaning set forth in Section 16.1.

“**Initial Synchronization**” means the initial delivery of Facility Energy to the Delivery Point.

“**Installed Capacity**” means the sum of (x) the Installed PV Capacity and (y) the Installed Battery Capacity.

“**Installed Battery Capacity**” means the maximum dependable operating capability of the Storage Facility to discharge electric energy, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“**Installed PV Capacity**” means the actual PV generating capacity of the Generating Facility, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, as demonstrated by a performance test, adjusted for ambient conditions on the date of the performance test, and evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“**Interconnection Agreement**” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“**Interest Rate**” has the meaning set forth in Section 8.2.

“**Interim Deliverability Status**” has the meaning set forth in the CAISO Tariff.

“Inter-SC Trade” or **“IST”** has the meaning set forth in the CAISO Tariff.

“Investment Grade Credit Rating” means a Credit Rating of BBB- or higher by S&P or Fitch or Baa3 or higher by Moody’s.

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“Joint Powers Agreement” means that certain Joint Powers Agreement dated October 30, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any Person directly or indirectly providing financing or refinancing for the Facility, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resources” has the meaning set forth in the CAISO Tariff.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information

supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Resource Adequacy Benefits, and Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Section 4.7.

“Major Project Development Milestone” has the meaning set forth in in Exhibit B.

“Master File” has the meaning set forth in the CAISO Tariff.

“Maximum Capacity” has the meaning set forth in Section 3.8(b)(i).

“Maximum Charging Capacity” has the meaning set forth in in Exhibit A.

“Maximum Discharging Capacity” has the meaning set forth in in Exhibit A.

“Maximum Import Capability” has the meaning set forth in the Tariff.

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“Monthly Delivery Forecast” has the meaning set forth in Section 4.3(b).

“Moody’s” means Moody’s Investors Service, Inc., or its successors.

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“NERC” means the North American Electric Reliability Corporation or any successor entity performing similar functions.

“Net Qualifying Capacity” or **“NQC”** means the net qualifying capacity, as defined by the CAISO Tariff, of the Facility, as such value is set forth on the NQC list maintained on the CAISO website, multiplied by the proportion of the Facility that is allocated to serve the Guaranteed Capacity for Resource Adequacy Benefits. For example, if 100 MW out of 150 MW of the Facility is used to serve Guaranteed Capacity for Resource Adequacy Benefits, then the total NQC of the facility would be multiplied by 66.67%.

“Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Non-Defaulting Party” has the meaning set forth in Section 11.2.

“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“Notice of Claim” has the meaning set forth in Section 16.2.

“On-Peak Hour” means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

“Operating Restrictions” means those rules, requirements, and procedures set forth on Exhibit O.

“Participating Transmission Owner” or **“PTO”** means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

“Party” or **“Parties”** has the meaning set forth in the Preamble.

“Performance Measurement Period” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. For the avoidance of doubt, Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; provided, however, that a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

“Performance Security” means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth on the Cover Sheet.

“Permitted Transferee” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than one hundred million dollars (\$100,000,000) or an Investment Grade Credit Rating; and

(b) At least three (3) years of experience as of the Commercial Operation Date in the ownership or operations of power generation facilities or two (2) years of experience as of the Commercial Operation Date in the ownership or operations of energy storage facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“PNode” has the meaning set forth in the CAISO Tariff.

“Planned Outage” has the meaning set forth in Section 4.6(a).

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical

Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“Pseudo-Tie Resource” means a generating facility that is party to a FERC-approved Pseudo-Tie Participating Generator Agreement with the CAISO which allows for Resource Adequacy Benefits from the generating facility to be imported into the CAISO as “unit-specific” or “resource specific” import RA Capacity pursuant to applicable decisions of the CPUC.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“PV Energy” means Energy that is generated using photo-voltaic cells at the Generating Facility and delivered directly to the Delivery Point, net of Electrical Losses, and is not Charging Energy or Discharging Energy.

“RA Shortfall” means the amount by which the Resource Adequacy Benefits provided for any Settlement Period plus the Resource Adequacy Benefits of any Deemed Delivered Capacity are less than the Resource Adequacy Benefits that are available from the Facility capacity, applicable to that Settlement Period.

“REC Rate” has the meaning set forth on the Cover Sheet.

“Remedial Action Plan” has the meaning in Section 2.4.

“Renewable Energy Credit” or **“REC”** has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which an RA Shortfall occurs.

“Resource Adequacy Benefits” means the rights and privileges attached to the Guaranteed Capacity at the Facility that satisfy any entity’s resource adequacy obligations, as further specified on the Cover Sheet or the prevailing Net Qualifying Capacity, as applicable for the relevant timeframe.

“Resource Adequacy Rulings” means all CPUC rulings and decisions governing resource adequacy that are currently in effect and applicable to the performance of this Agreement and any future ruling or decision, or any other resource adequacy Law, however

described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

“**S&P**” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“**SCADA Systems**” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

“**Schedule**” has the meaning set forth in the CAISO Tariff, and “**Scheduled**” has a corollary meaning.

“**Scheduled Energy**” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“**Scheduling Coordinator**” or “**SC**” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“**Security Interest**” has the meaning set forth in Section 8.8.

“**Self-Schedule**” has the meaning set forth in the CAISO Tariff.

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.10(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Settlement Interval**” has the meaning set forth in the CAISO Tariff.

“**Settlement Period**” has the meaning set forth in the CAISO Tariff.

“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A.

“**Site Control**” means that Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“**Station Use**” means:

(a) The Energy produced or discharged by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced or discharged by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

“**Storage Capacity**” means (a) the maximum dependable operating capability of the Storage Facility to discharge electric energy that can be sustained for four (4) consecutive hours and (b) any other products that may be developed or evolve from time to time during the Term that the Storage Facility is able to provide as the Facility is configured on the Commercial Operation Date and that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy

“**Storage Capacity Test**” means any test or retest of the capacity of the Storage Facility that Seller may conduct pursuant to Prudent Operating Procedures.

“**Storage Contract Capacity**” means the total capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted in accordance with Section 5(b) of Exhibit B.

“**Storage Facility**” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

“**Storage Facility Meter**” means the bi-directional CAISO Approved Meter, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Points and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Points” means the locations of the Storage Facility Meters shown on Exhibit P.

“Storage Product” means (a) Discharging Energy, (b) Resource Adequacy Benefits, if any, (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Storage Facility.

“Stored Energy Level” means, at a particular time, the amount of electric energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Tax Credits” means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

“Terminated Transaction” has the meaning set forth in Section 11.2(a).

“Termination Payment” has the meaning set forth in Section 11.3.

“Transformer Failure” means a failure of all or part of the Facility’s generator step-up transformer(s) or the Interconnection Facilities that was not caused by any action or inaction of Seller and that results in Seller being unable to deliver Energy from the Facility to the Delivery Point.

“Transmission Provider” means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service within the CAISO grid from the Delivery Point.

“Ultimate Parent” means [TBD]

“Variable Energy Resource” or **“VER”** has the meaning set forth in the CAISO Tariff.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.10(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); provided, however, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii)- a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Pseudo-tie Participating Generator Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, or the Seller has elected to become a Dynamic System Resource and a copy of each such agreement delivered to Buyer; provided that this condition precedent shall be deemed to have been satisfied if and when Seller provides notice to Buyer pursuant to Section 3.7 that despite Seller's best efforts it has not been able to qualify the Facility as a Pseudo-Tie Resource for the delivery of Resource Adequacy Benefits, and has not elected to become a Dynamic System Resource and has paid the applicable Capacity Damages.

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all required conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(h) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Commercial Operation Delay Damages.

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and shall be available to hold regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E, and shall include such additional information as may be reasonably requested by Buyer from time to time. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller (a) misses three (3) or more Milestones, or (b) misses any one (1) Milestone by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days

after the occurrence of (a), (b) or (c), a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility (net of applicable losses). At its sole discretion, Buyer may during the Delivery Term re-sell all or a portion of the Product, provided that no such re-sale shall relieve Buyer of any obligations hereunder, and provided further that in no event shall Seller make, or be deemed to make, any retail sale under this Agreement. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Subject to Buyer’s obligation to purchase Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility.

3.3 **Reserved.**

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller’s sole expense, in Seller’s efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives. The Parties intend for the Facility (including the Storage Facility) to maintain eligibility for all available Renewable Energy Incentives and Tax Credits, including ITC, and Buyer and Seller each agree to cooperate reasonably as required to maintain such

eligibility and to avoid risk of recapture of any Renewable Energy Incentives or Tax Credits, including ITC; provided that Buyer shall not be required to incur any associated third party costs unless Seller agrees to reimburse Buyer for such costs, and provided further that Buyer's cooperation shall not require it to make any material modifications to this Agreement.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Section 3.5(b), in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller's decision not to take action or incur costs to allow for such Future Environmental Attributes shall not be considered an Event of Default or otherwise give rise to any Seller liability. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility or the operation of the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); *provided*, that the Parties acknowledge and agree such terms are not intended to alter the other material terms of this Agreement.

3.6 **Reserved.**

3.7 **Resource Adequacy Benefits.** Prior to the Delivery Term, Seller shall use best efforts to seek to qualify the Facility as a Pseudo-Tie Resource with the CAISO pursuant to the CAISO's New Resource Implementation process. Seller shall provide periodic progress reports to Buyer on the status of these efforts. If the CAISO rejects the Facility as a Pseudo-Tie Resource notwithstanding the commercially reasonable efforts of Seller, then Seller shall have up to one hundred and twenty (120) days from receiving notice of such rejection from CAISO to cure the rejection and obtain CAISO approval of the Facility as a Pseudo-Tie Resource. If and when Seller provides written notice to Buyer that it has been unable to qualify the Facility as a Pseudo-Tie Resource after this one-hundred and twenty day cure period, Seller may elect to become a Dynamic System Resource. If Seller fails to elect to become a Dynamic System Resource, then Seller will pay to Buyer any applicable Capacity Damages and the obligations of Buyer and Seller under this Agreement with respect to the purchase and sale of Resource Adequacy Benefits will terminate.

(b) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Resource Adequacy Benefits from the Facility and Seller and its Scheduling Coordinator will take all steps necessary pursuant to Section 3.7(e) to ensure that Buyer can take delivery of the Resource Adequacy Benefits. Assuming that the Facility has been qualified by the CAISO as a Pseudo-Tie Resource or a Dynamic System Resource for the delivery of the Resource Adequacy Benefits pursuant to Section 3.7(a) and no event excusing Seller's delivery obligation has occurred pursuant to Section 3.7(c), then in the event of an RA Shortfall, Seller will be obligated to deliver to Buyer Replacement RA in the amount of the RA Shortfall. If Seller is unable to deliver Replacement RA, then Buyer may acquire such Replacement RA, and Seller shall pay to Buyer the cost it incurred to acquire such Replacement RA, to extent such costs are commercially reasonable. Seller will not be obligated to provide Replacement RA for any portion of an RA Shortfall that is the result of Lost Output. If neither Seller or Buyer provide Replacement RA for all or some portion of the RA Shortfall, Seller shall reimburse Buyer for the unreplaced portion of the RA Shortfall, if any, at the Capacity Rate.

(c) Throughout the Delivery Term, and subject to the cost cap set forth in Section 3.12, Seller shall use commercially reasonable efforts to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all of the Resource Adequacy Benefits to Buyer. If at any time during the Delivery Term, Seller is not able to qualify or maintain the qualification of the Facility as a Pseudo-Tie Resource, Dynamic System Resource or similar regulatory designation providing Resource Adequacy Benefits, then until such time as the qualification is restored, Seller shall have no obligation to deliver the Resource Adequacy Benefits and Buyer will have no obligation to pay the Capacity Rate.

(d) Pursuant to the CAISO's available import commitment process described in the CAISO Business Practice Manual for Reliability Requirements and subject to Section 3.8, Buyer shall use commercially reasonable efforts to obtain and maintain the Import Capability necessary to support the importation of the entire amount of Guaranteed Capacity of Resource Adequacy Benefits from the Facility into the CAISO. To the extent Buyer does not or cannot maintain Import Capability necessary to support the importation of the Guaranteed Capacity of Resource Adequacy Benefits from the Facility into the CAISO for reasons other than a Seller failure under this Agreement or the inability of Seller to maintain the Facility as a Pseudo-Tie Resource, Dynamic System Resource or similar regulatory designation, the capacity that is not imported shall constitute Deemed Delivered Capacity. For the avoidance of doubt, Seller shall be compensated for Resource Adequacy Benefits associated with the Deemed Delivered Capacity.

(e) For the duration of the Delivery Term, Seller shall take all commercially reasonable administrative actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Resource Adequacy Benefits committed by Seller to Buyer pursuant to this Agreement.

3.8 **Determination of Resource Adequacy Benefits .**

(a) Buyer will have a firm obligation to obtain the Import Capability necessary for the importation of [REDACTED].

(b) In addition to Buyer's commitment in Section 3.8(a), it is the intent of Buyer and Seller that Buyer will attempt to acquire sufficient Import Capability to import [REDACTED]:

[REDACTED]

[REDACTED]

(iii) In the event that the Guaranteed Capacity for Resource Adequacy Benefits as determined in Section 3.8(b)(ii) is not in excess of [REDACTED] MW, then the Capacity Rate payable by Buyer will be adjusted to [REDACTED] per kW- month (flat) with no escalation for the entire Delivery Term.

(iv) The Parties acknowledge and agree that Seller has the right to offer for sale to third parties any additional volumes of Resource Adequacy Benefits available from

the Facility that are greater than the Guaranteed Capacity.

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Delivery Term, including compliance with all requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor) that are applicable to the Facility. Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and (subject to Section 3.12) maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification, which deadline will be extended on a day-for-day basis if there is a delay in CEC Certification and Verification and that delay is caused by any reason other than an act or omission of Seller. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification.

3.10 **Reserved.**

3.11 **RPS Standard Terms and Conditions.**

(a) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement.

(b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.11 means efforts consistent with and subject to Section 3.12.

(c) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.12 **Compliance Expenditure Cap.**

(a) If a change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [REDACTED] per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**"). Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating, Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

(b) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

(c) If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated Compliance Costs.

(d) If the Compliance Costs exceed the Compliance Expenditure Cap, then Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time: (1) agree with Seller on an agreed allocation of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**") on terms and conditions to be set forth in a written amendment to this Agreement, or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions described in the Notice. If Buyer agrees to pay for all or a portion of the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed, the Accepted Compliance Costs, in accordance with the payment terms agreed upon by the Parties.

3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities (including enabling the Storage Facility to be charged from the grid); provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties (and Seller's Lenders) as set forth in a written agreement executed by the Parties.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled with the CAISO by Seller (or Seller's designated Scheduling Coordinator for the Facility) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with the Facility Energy during the Delivery Term are exclusively dedicated to and will be conveyed to Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility Energy, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) **Green Attributes.** Title to and risk of loss related to the Green Attributes associated with the Facility Energy shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each month's Expected Energy, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer. To the extent there is a reduction in the Expected Energy for any given month in excess of ten percent (10%) during the Contract Year, Seller will promptly provide Buyer with an updated forecast.

4.4 **Notification of Forced Facility Outages.** Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer of any Forced Facility Outages that

Seller reasonably expects will reduce Expected Energy for any given month in excess of five percent (5%), and Seller shall keep Buyer informed of any developments that will materially affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

4.5 **Reserved.**

4.6 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility (a “**Planned Outage**”).

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) Buyer Default. Seller shall be permitted to reduce deliveries of Product during any period in which there is Buyer Default.

(f) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production.** Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Storage Capacity Tests, Buyer’s Default or other failure to perform, and Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Storage Capacity Tests, Buyer’s Default or other failure to perform, and Curtailment Periods (“**Lost Output**”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; provided that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP15 within ninety (90) days after the conclusion of the applicable Performance Measurement Period and within the same calendar year in the event Seller fails to deliver the Guaranteed Energy Production during any Performance Measurement Period. On a day ahead basis, Seller shall

provide a notice via e-mail to Buyer's "scheduling" contact identified in Exhibit N identifying the electric generating facility(ies) that will provide Replacement Product for the following day and the volume of Replacement Product to be provided by each such facility, which may be expressed as a percentage of the applicable facility's output. Buyer will pay Seller for all such Replacement Product pursuant to Exhibit C.

4.8 **Reserved.**

4.9 **Storage Capacity Tests.** Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test. Thereafter, Seller shall provide Buyer with all Annual Vendor Tests. In the event that an Annual Vendor Test is not performed for any reason, then Buyer will have the right to require an annual test that is reasonably satisfactory to Buyer.

4.10 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller or any differences in day-ahead Scheduled Energy and Facility Energy. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then any such WREGIS Certificate Deficit shall be subtracted from the Facility Energy for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) delivered to SP 15 EZ Gen Hub as Scheduled Energy within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If (i) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, or (ii) the Parties enable the Storage Facility to be charged from the grid in accordance with Section 3.13, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

ARTICLE 5

TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available the Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the Delivery Point (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend,

and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy or Discharging Energy to Buyer.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7 METERING

7.1 **Metering**. Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. All meters will be operated pursuant to applicable calculation methodologies and maintained as Seller's cost. The meters shall be programmed to adjust for Electrical Losses and Station Use from the Facility to the Delivery Point in a manner subject to

Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; provided, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by WREGIS.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall reflect (a) records of transaction data sufficient to document and verify the amount of Product delivered by Seller to Buyer during the preceding month, the amount of Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Capacity, and such information necessary to calculate the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice, provided, however, that Seller will give Buyer no less than ten (10) days notice of any account change with respect to the place of payment. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice or the end of the prior monthly billing period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing

statement. Such late payment charge shall be calculated based on the prime rate published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twenty-four (24) months after the invoice is rendered or subsequently adjusted, except in the event of intentional fraud or misrepresentation by the Seller or to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twenty-four-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within one hundred (120) days of the Effective Date. Subject to Section 11.7, Seller shall maintain the Development Security in full force and effect; provided, however, that Seller shall not have any obligation to replenish the Development Security after any draw thereon. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security

Interest”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

8.11 **Buyer’s Financial Statements.** During any period during the Term when Buyer does not have or maintain an Investment Grade Credit Rating, Buyer shall provide to Seller, both upon request and as indicated below: (a) within ninety (90) days following the end of each fiscal quarter, unaudited quarterly financial statement of Buyer (including a balance sheet and statements of income and cash flows) prepared in accordance with generally accepted accounting principles as promulgated by the Government Accounting Standards Board in the United States, consistently applied; (b) within one hundred and eighty (180) days following the end of each fiscal year, annual financial statements of Buyer (including a balance sheet and statements of income and cash flows) prepared in accordance with the requirements of California law applicable to Joint Powers Authorities; (c) [REDACTED]



ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Except as provided in Exhibit D, any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; or (b) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (c) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition.**

(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil

disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take reasonable actions.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any

liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (1) failure to deliver Resource Adequacy Benefits, the exclusive remedies for which are set forth in Section 3.7, and (2) failures to achieve the Guaranteed Energy Production that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.7;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.1 or 14.2, as applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to achieve Commercial Operation within one hundred twenty (120) days after the Guaranteed Commercial Operation Date;

(iii) if not remedied within ten (10) Business Days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4;

(iv) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within fifteen (15) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within fifteen (15) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one-hundred eighty (180) days;

(v) if, in any Contract Year during the Delivery Term, the Adjusted Energy Production amount is not at least [REDACTED] of the Expected Energy amount;

(vi) if, in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount is not at least [REDACTED] of the Expected Energy amount;

provided that, notwithstanding Section 11.1(b)(iv) – (vi), there shall be no Event of Default by Seller if the reason that the Adjusted Energy Production was not at least equal to the percentages set forth in Sections 11.1(b)(iv) – (vi) is due to a Transformer Failure.

(vii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

(viii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(ix) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than thirty (30) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)) subject to the limitations in Section 11.7, or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for the Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and

appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.

11.7 **Seller Pre-COD Liability Limitations.** Notwithstanding any other provision of this Agreement, Seller's aggregate liability under or arising out of a termination of this Agreement prior to the Commercial Operation Date shall be limited to an amount equal to the Damage Payment.

11.8 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar adjusted to account for the costs to complete construction of the Facility to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN OR A THIRD-PARTY CLAIM SUBJECT TO INDEMNIFICATION HEREUNDER, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS [3.7, 4.7, 11.2 AND 11.3], AND AS PROVIDED IN EXHIBIT B and EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY

WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility.

13.2 **Buyer's Representations and Warranties** As of the Effective Date,

Buyer represents and warrants as follows: Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim and affirmatively waives immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is limited within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals and permits necessary for the operation of the Facility and for each Party to legally perform their obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage.** Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any (“**Prevailing Wage Requirement**”). Buyer agrees that Seller’s obligations under this Section 13.4 with respect to the Prevailing Wage Requirement will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall be responsible for the other Party’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys’ fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“**Collateral Assignment Agreement**”). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must be:

(a) consistent in all material respects with this Agreement; and

(b) not adversely affect any of Buyer’s rights and obligations under this Agreement; *provided* that a provision in the documents requested to effectuate such assignment

obligating Buyer to provide a Lender notice of Event of Default and an opportunity to cure of a duration no greater than commercially reasonable for such agreements shall not be considered as adversely affecting Buyer for purposes of this subsection (b).

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of laws. To the extent enforceable, at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

15.2 **Venue.** The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Diego County, California.

15.3 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall have the option but not the requirement to submit the dispute to non-binding mediation prior to seeking any and all remedies available to it at Law in or equity, provided, however, that a dispute as to whether an Event of Default has occurred pursuant to Article 11 shall not be subject to mediation unless the Parties mutually agree. If non-binding mediation is agreed to by the Parties, the Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16 INDEMNIFICATION

16.1 Mutual Indemnity.

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, employees and representatives (each an "**Indemnified Party**" and collectively, the "**Indemnified Group**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees, for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the

negligence, fraud or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents (collectively, “**Indemnifiable Losses**”).

(b) Nothing in this Section shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 (“**Claim**”). The Notice is referred to as a “Notice of Claim”. A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.

16.3 **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 **Defense of Claims.** If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to

such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

16.5 **Subrogation of Rights.** Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17 INSURANCE

17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance with a minimum of liability limits in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. Coverage shall include products and completed operations, personal & advertising injury insurance, contractual liability, specifically covering Seller's obligations under this Agreement. The policy shall include Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller. Defense costs shall be provided as an additional benefit and not included with the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Umbrella or Excess Liability Insurance.** Seller shall maintain, or cause to be maintained at its sole expense, an Umbrella or Excess Liability Insurance policy in a minimum amount of liability of Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate.

(c) **Workers Compensation Insurance.** Seller, if it has employees, shall also maintain at all times during the Contract Term Workers' Compensation and Employers' Liability insurance coverage in accordance with applicable requirements of California Law. Employer's Liability insurance shall be One Million Dollars (\$1,000,000.00) for injury or death

occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(d) **Business Auto Liability Insurance.** Seller shall maintain at all times during the Contract Term Business Auto Liability insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) **Construction All-Risk Insurance.** Seller shall maintain or cause to be maintained during the construction of the Facility, but only after major electrical generating equipment as arrived at the Facility, prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Lender (if any) as the loss payee where its interest may appear.

(f) **Pollution Legal Liability.** Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate. Such insurance shall include coverage for bodily injury and property damage, including clean-up costs and defense costs, resulting from sudden & accidental or new gradual pollution conditions.

(g) **Subcontractor Insurance.** Seller shall require all of its subcontractors with contracts with a value in excess of \$1,000,000 to carry the same levels of insurance as Seller except where Seller has reasonably determined that no exposure exists. All subcontractors shall include Seller as an additional insured to (i) Commercial General Liability insurance; (ii) Employers' Liability coverage; and (iii) Business Auto Liability insurance for bodily injury and property damage. All subcontractors shall provide a primary and non-contributory endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) **Evidence of Insurance.** Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any cancellation of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as

a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq).

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth in this Article 18. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of their Affiliates, and Seller’s actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Public Records Act.** Seller and Buyer acknowledge and agree that this Agreement and any documents, notices or confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Cal. Government Code § 6250

et seq.). Buyer acknowledges that Seller may submit information to Buyer that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code § 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Cal. Government Code §§ 6254 and 6255). Seller acknowledges that Buyer may submit to Seller information that Buyer considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement (“**Requestor**”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “**Disclosing Party**”), the Party receiving such request (the “**Receiving Party**”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

18.6 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender) or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic, facsimile or scanned signatures as originals.

19.8 **Electronic Delivery.** Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights

and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

**Vikings Energy Farm, LLC, a
California limited liability company**

By: _____
Name: _____
Title: _____

**SAN DIEGO COMMUNITY POWER, a
California joint powers authority**

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name:

Site includes all or some of the following APNs: APNs 050-070-018 and 050-070-019

County: Imperial County

CEQA Lead Agency: Imperial County

Type of Generating Facility: Solar PV and BESS

Operating Characteristics of Generating Facility:

Type of Storage Facility: Battery

Operating Characteristics of Storage Facility;

Maximum Stored Energy Level at COD (MWh):

Maximum Charging Capacity at COD:

Maximum Discharging Capacity at COD:

Operating Restrictions of Storage Facility: See Exhibit O

Guaranteed Capacity: See definition in Section 1.1

Storage Contract Capacity: See definition in Section 1.1

Delivery Point: See Cover Sheet

Facility Meter: See Exhibit P

Storage Facility Meter Locations: See Exhibit P

Facility Interconnection Point:

Participating Transmission Owner:

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. Major Project Development Milestones.

(a) “**Construction Start**” will occur upon Seller’s execution of an engineering, procurement, and construction contract (or similar agreement) and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein by Seller shall be the “**Construction Start Date**.”

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when (i) Seller has provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”), and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation. The “**Commercial Operation Date**” shall be the later of (x) sixty (60) days before the Guaranteed Commercial Operation Date or (y) the date specified in the COD Certificate.

(a) Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.

(b) Reserved

(c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1.

3. Termination for Failure to Achieve Commercial Operation. If the Facility has not achieved Commercial Operation within one hundred and twenty (120) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. Extension of the Guaranteed Dates. The Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically

extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances:

(a) Seller has not acquired all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility, and to permit the Seller and Facility to make available and sell Product by the Guaranteed Commercial Operation Date, despite the exercise of continued best efforts by Seller to acquire all such permits, consents, licenses, approvals, or authorizations ; or

(b) a Force Majeure Event occurs; or

(c) either (i) the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of commercially reasonable efforts by Seller or (ii) Seller is unable to finalize interconnection as a result of delays caused by IID or CAISO that are outside of the control of Seller (such as a suspension of interconnection work due to high temperature or weather conditions), but not as a result of a delay by Seller to take any action required by IID or CAISO to finalize the interconnection. With respect to the foregoing, it is acknowledged that IID historically imposes a blackout period on interconnections during the summer months and Seller will use reasonable efforts to schedule completion of the interconnection before such blackout commences unless Seller is delayed and becomes subject to the blackout due to other circumstances that would be eligible for an extension; or

(d) Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under Sections 4(a), 4(b) and 4(c) above under the Development Cure Period shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller’s failure to take all reasonable actions to meet its requirements and deadlines. Notwithstanding anything to the contrary, no extension under the Development Cure Period shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take reasonable actions.

5. **Failure to Reach Guaranteed Capacity.**

(a) *Guaranteed Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to the product of (i) [REDACTED] and (ii) each MW (or portion thereof) that the Guaranteed Capacity exceeds the Installed PV Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

(b) *Guaranteed Capacity for Resource Adequacy Benefits.* If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Guaranteed Capacity with respect to Resource Adequacy Benefits, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Capacity with respect to Resource Adequacy Benefits, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Battery Capacity. If Seller fails to construct the Guaranteed Capacity with respect to Resource Adequacy Benefits by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to the product of (i) [REDACTED] and (ii) each MW (or portion thereof) that the Guaranteed Capacity with respect to Resource Adequacy Benefits exceeds the Installed Battery Capacity, and the Guaranteed Capacity with respect to Resource Adequacy Benefits and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C

COMPENSATION

Throughout the Delivery Term, Buyer shall compensate Seller for the Product in accordance with this Exhibit C:

(a) Energy Payment. For each MWh of Facility Energy in each Settlement Period on or after the Commercial Operation Date, Buyer shall pay Seller in accordance with Section 8.1, for each MWh of Facility Energy delivered by Seller and received by Buyer during such month in accordance with the terms herein and all other Products associated with such Facility Energy, an amount equal to the sum of, for each Settlement Period, the product of (x) the Facility Energy delivered during such Settlement Period, and (y) the Energy Price (the “**Energy Payment**”);

(b) REC Payment. For each MWh of Facility Energy in each Settlement Period, Buyer shall pay the REC Rate.

(c) Capacity Payment. For each Settlement Period, Buyer shall pay Seller the product of: (a) the current Net Qualifying Capacity, (b) the Capacity Rate, and (c) 1,000.

(d) Reserved.

(e) Netting. Seller, through its Scheduling Coordinator, shall receive (and is entitled to retain) payment for Facility Energy from CAISO for such delivery based on the applicable Energy Price, as published by CAISO. Consequently, Buyer and Seller hereby agree to net the payment for Facility Energy Seller receives from CAISO against the Energy Payment payable by Buyer hereunder, such that the net payment Seller shall receive from Buyer for Facility Energy shall net to zero (\$0.00) during each Settlement Period during which Facility Energy is delivered pursuant to this Agreement, and the net payment Seller shall receive from Buyer for the Products shall net to the sum of the REC Rate for all RECs delivered in such Settlement Period and the Capacity Rate for all Resource Adequacy Benefits delivered in such Settlement Period. For avoidance of doubt, Buyer is purchasing a bundled product and Seller’s receipt of payment directly via CAISO settlements is for the Parties’ mutual convenience.

(f) Curtailment Payments. Seller shall receive no compensation from Buyer for Facility Energy provided in violation of a Curtailment Order.

(d) Tax Credits. The Parties agree that the neither the REC Rate nor the Capacity Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(a) Seller as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid and through the end of the Delivery Term, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services for the Facility for the delivery and the receipt of the Product at the Delivery Point and for the purposes of conducting Storage Capacity Tests. On and after Initial Synchronization of the Facility, Seller shall submit Schedules to the CAISO in accordance with this Agreement and the applicable Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Seller in its sole discretion.

(b) CAISO/IID Costs and Revenues. Seller (as Scheduling Coordinator for the Facility) shall be responsible for CAISO and/or IID costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO and/or IID revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO/IID dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO or IID penalties resulting from any failure by Seller to abide by the CAISO or IID Tariffs, respectively, or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties under this Agreement). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility.

(c) CAISO Settlements. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Seller shall render a separate invoice to Buyer for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Buyer is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any such CAISO charges. Notwithstanding the foregoing, Buyer acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Seller will review, validate, and if requested by Buyer under paragraph (d) below, dispute any charges that are the responsibility of Buyer in a timely manner and consistent with Seller's existing settlement processes for charges that are Seller's responsibilities. Subject to Buyer's right to dispute and to have Seller pursue the dispute of any such invoices, Buyer shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Buyer's receipt of the CAISO Charges Invoice. If Buyer fails to pay such CAISO Charges Invoice within that period, Seller may net or

offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Buyer under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(d) Dispute Costs. Seller (as the Facility's SC) may be required by Buyer to dispute CAISO settlements in respect of the Facility. Buyer agrees to pay Seller's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Buyer with respect to the Facility that Buyer has directed Seller to dispute.

(e) Master File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, such consent not to be unreasonably withheld.

(f) NERC Reliability Standards. Buyer shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Seller (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Seller (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items (as applicable):

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Gantt chart schedule showing progress on achieving each of the Milestones.
5. Description of any material planned changes to the Facility or the site.
6. Summary of activities during the previous calendar quarter or month, as applicable.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. If applicable, prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

AVERAGE EXPECTED ENERGY

	MWh
JAN	
FEB	
MAR	
APR	
MAY	
JUN	
JUL	
AUG	
SEP	
OCT	
NOV	
DEC	

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-2

AVAILABLE CAPACITY

The following tables are provided for informational purposes only, and shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Available Generating Capacity, MW Per Month

	MW
JAN	
FEB	
MAR	
APR	
MAY	
JUN	
JUL	
AUG	
SEP	
OCT	
NOV	
DEC	

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = the average replacement price for Replacement Green Attributes for the Performance Measurement Period, in \$/MWh, which, with respect to any Replacement Green Attribute, is the lesser of (a) the market value for such Replacement Green Attribute and (b) \$40. Buyer is not required to enter into a replacement transaction in order to determine this amount.

D = the REC Rate for the Contract Year, in \$/MWh

“Adjusted Energy Production” shall mean the sum of the following: Facility Energy + Lost Output + Replacement Product.

“Lost Output” has the meaning given in Section 4.7 of the Agreement. Lost Output shall be calculated, in any given period, as the sum of (a) the Real-Time Production Capability of the Generating Facility during such period minus (b) the sum of Facility Energy delivered during such period.

“Real-Time Production Capability” means the amount of Energy production capability of the Facility taking into account (a) the actual 10-minute (or more frequent) solar data (interpolated over time intervals, if necessary) measured by weather monitoring equipment located at the Facility that was available for operation for the duration of the period in question or prorated accordingly, or, if such monitoring equipment is unavailable during a relevant period, then using other available data or interpolated data determined using industry standard practices, as reasonably acceptable to Seller and Buyer, and (b) the generation determined by the power curve provided by the manufacturer of the solar photovoltaic panels and inverters installed at the Facility reflecting the Energy that would be produced by such solar photovoltaic panels and inverters (adjusted based on the results of the latest power curve test, if any), as applied to the solar data referred to in clause (a), as adjusted for line and step-up transformer losses to the Delivery Point, using historical data compiled by Seller and reasonably agreed or confirmed by Buyer.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

“Replacement Product” means (a) Replacement Energy, and (b) Replacement Green Attributes.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____ [*licensed professional engineer*] ("**Engineer**") to San Diego Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [_____] ("**Seller**") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _[DATE]_, Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety five percent (95%) of the Guaranteed Capacity.
3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety five percent (95%) of the Storage Contract Capacity.
4. The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than ninety percent (90%) of the Guaranteed Capacity for the Generating Facility at the Delivery Point, adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [*peak output in MW*].
5. The Storage Facility is fully capable of charging, storing and Discharging Energy up to no less than ninety five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.
6. Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [Name of Participating Transmission Owner as appropriate] on _[DATE]_.
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _[DATE]_.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _[DATE]_.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to San Diego Community Power, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [_____] ("**Seller**") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

1. The performance test for the Generating Facility demonstrated peak electrical output of ___ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ;
2. The Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of ___ MW AC to the Delivery Point, (the "**Installed Battery Capacity**") ; and
3. The sum of 1. and 2. is ___ MW AC and shall be the "**Installed Capacity**".

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [_____] (“**Seller**”) to San Diego Community Power, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
2. the Construction Start Date occurred on _____ (the “Construction Start Date”); and
3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: _____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ____ day of _____.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXX]
Expiry Date:

Beneficiary:

San Diego Community Power, a California joint powers authority

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (“Letter of Credit”) in favor of San Diego Community Power, a California joint powers authority] (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (“Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (“Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [*bank email address*] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [*bank email address*]] Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit shall be subject to the provisions (to the extent that such provisions are not inconsistent with this Letter of Credit) of the International Chamber of Commerce International Standby Practices (ICC publication no. 590, 1998) (the "ISP98") with regard to all matters not provided for herein, and, to the extent not inconsistent with the ISP98, this Letter of Credit shall be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to any choice of law rules that would require the application of laws of another jurisdiction.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

[Bank Name]

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

The undersigned, a duly authorized representative of San Diego Community Power, a California joint powers authority, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of _____ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of San Diego Community Power, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to San Diego Community Power, a California joint powers authority, by wire transfer in immediately available funds to the following account:

[Specify account information]

San Diego Community Power
a California joint powers authority

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [_____] (the “**Effective Date**”) by and between [_____] a [_____] (“**Guarantor**”), and San Diego Community Power, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and [SELLER ENTITY], a _____ (“**Seller**”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “**PPA**”) dated as of [____], 20____.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “**Guaranteed Amount**”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such

failure (the “**Demand Notice**”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “**Payment Demand**”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer.

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

16. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

17. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*][*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding

on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

18. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at
Attn:
Fax:

If delivered to Guarantor, to it at
Attn:
Fax:

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Diego County, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable

Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By:_____

Printed Name:_____

Title:_____

BUYER:

[_____]

By:_____

Printed Name:_____

Title:_____

By:_____

Printed Name:_____

Title:_____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to San Diego Community Power, a California joint powers authority] (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.7(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

RAI Energy International, Inc. or Vikings Energy Farm LLC ("Seller")	San Diego Community Power, a California joint powers authority ("Buyer")
All Notices: Street: 210 North Fourth Street, Suite 350 City: San Jose, CA 95112 Attn: President & CEO Phone: (408) 286-2393 Email: mohammed@raienergy.com With a copy to: Street: 604 Sutter street, Suite 250 City: Folsom, CA 95630 Attn: Vice President Operations Phone: (916) 985-9461 Email: kcoffee@zglobal.biz	All Notices: San Diego Community Power Attn: Chief Executive Officer San Diego Community Power 815 E Street, Suite 12716 San Diego, CA 92112 Phone: (619) 236-6563 E-mail: bcarnahan@sdcommunitypower.org
Reference Numbers: Duns: Federal Tax ID Number:	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Kevin Coffee Phone: (916) 985-9461 E-mail: kcoffee@zglobal.biz	Invoices: Attn: Michael Maher Phone: (415) 526-3020 Email: mmaher@mahercpa.com
Scheduling: ZGlobal Inc. Attn: Kevin Coffee Phone: (916) 985-9461 E-mail: kcoffee@zglobal.biz	Scheduling: Tenaska Power Services CO. Attn: Kara Whillock, Tenaska Power Services Co. Phone: 972-333-6122 Email: kwhillock@tnsk.com Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104

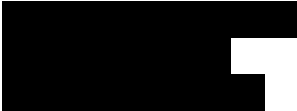
RAI Energy International, Inc. or Vikings Energy Farm LLC ("Seller")	San Diego Community Power, a California joint powers authority ("Buyer")
Confirmations: Attn: President & CEO Phone: (408) 286-2393 E-mail: mohammed@raienergy.com	Confirmations: Attn: Chief Executive Officer San Diego Community Power 815 E Street, Suite 12716 San Diego, CA 92112 Phone: (619) 236-6563 E-mail: bcarnahan@sdcommunitypower.org
Payments: kcoffee@zglobal.biz Attn: Kevin Coffee Phone: (916) 985-9461 E-mail: kcoffee@zglobal.biz	Payments: Attn: Michael Maher Phone: (415) 526-3020 Email: mmaher@mahercca.com
Wire Transfer: BNK: ABA: ACCT:	Wire Transfer: 
With additional Notices of an Event of Default to: Attn: Patrick Ferguson Davis Wright Tremaine LLP Phone: (415) 276-6563 E-mail: patrickferguson@dwt.com With a copy to:	With additional Notices of an Event of Default to: Ryan Baron, Best Best & Krieger LLP 18101 Von Karman Ave., Suite 1000 Irvine CA 92612 Phone: (949) 263-6568 Email: ryan.baron@bbklaw.com
Emergency Contact: Attn: President & CEO Phone: (408) 286-2393 E-mail: mohammed@raienergy.com	Emergency Contact: Attn: Chief Executive Officer San Diego Community Power 815 E Street, Suite 12716 San Diego, CA 92112 Phone: (619) 236-6563 E-mail: bcarnahan@sdcommunitypower.org

EXHIBIT O
OPERATING RESTRICTIONS

EXHIBIT P
METERING DIAGRAM

[Seller to provide]