



AGENDA

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

April 25, 2024
5:00 p.m.

City of San Diego Metropolitan Operations Complex (MOC II) Auditorium
9192 Topaz Way, San Diego, CA 92123

The meeting will be held in person at the above date, time and location. Board of Directors Members and members of the public may attend in person. Under certain circumstances, Directors may also attend and participate in the meeting virtually pursuant to the Brown Act (Gov. Code § 54953). As a convenience to the public, SDCP provides a call-in option and internet-based option for members of the public to virtually observe and provide public comments at its meetings. Additional details on in-person and virtual public participation are below. Please note that, in the event of a technical issue causing a disruption in the call-in option or internet-based option, the meeting will continue unless otherwise required by law, such as when a Board Member is attending the meeting virtually pursuant to certain provisions of the Brown Act.

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

1. **Providing Oral Comments During Meeting.** Anyone attending in person desiring to address the Board of Directors is asked to fill out a speaker's slip and present it to the Clerk of the Board or the Secretary. To provide remote 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 Comment Form](#). Please indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided to the Board members in writing. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting. Comments read at the meeting will

AGENDA – BOARD OF DIRECTORS – SAN DIEGO COMMUNITY POWER

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 and it will be distributed to the Members.

The public may participate using the following remote options:

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

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

WELCOME

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

SPECIAL PRESENTATIONS AND INTRODUCTIONS

ITEMS TO BE ADDED, WITHDRAWN, OR REORDERED ON THE AGENDA

PUBLIC COMMENTS

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

CONSENT CALENDAR

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

1. [Approve March 28, 2024, Meeting Minutes](#)
2. [Receive and File Treasurer's Report for Period Ending February 29, 2024](#)
3. [Receive and File Update on Programs](#)
4. [Receive and File Update on Power Services](#)
5. [Receive and File Update on Human Resources](#)
6. [Receive and File Update on Customer Operations](#)
7. [Receive and File Update on Marketing, Public Relations, and Local Government Affairs](#)
8. [Receive and File Community Advisory Committee Monthly Report](#)
9. [Receive and File Update on Regulatory and Legislative Affairs](#)
10. [Approve Sixth Amendment to Professional Services Agreement with NewGen Strategies and Solutions](#)
11. [Adopt Resolution Appointing an SDCP Secretary](#)

12. Approve Fifth Amendment to Professional Services Agreement with Brentech Inc. for up to \$316,680 for Computer and IT-Related Services through June 30, 2024

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.

13. Update on Vehicle-Grid Integration Strategy Overview

Recommendation: Receive and File Vehicle-Grid Integration Strategy Overview.

14. Quarterly Report on Community Advisory Committee

Recommendation: Receive and file the Quarterly Report on the Community Advisory Committee.

15. Approve First Amendment to the EEI Transaction Confirmation for Modified CAM Resource Adequacy between SDCP and SDG&E

Recommendation: Approve the First Amendment to the EEI Transaction Confirmation for Modified CAM Resource Adequacy between SDCP and SDG&E and authorize the CEO to execute the agreement in substantially similar form.

16. Approve Amended and Restated Power Purchase Agreement (PPA) with Pelicans Jaw Solar, LLC

Recommendation: Approve a 15-year Amended and Restated Renewable Power Purchase Agreement with Pelicans Jaw Solar, LLC for a 440 MW solar photovoltaic electric (PV) generation facility and 238.5 MW (4-hour) Battery Energy System Storage (BESS) facility.

REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

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

DIRECTOR COMMENTS

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

ADJOURNMENT

Compliance with the Americans with Disabilities Act

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

Availability of Board Documents

Copies of the agenda and agenda packet are available at <https://sdcommunitypower.org/resources/meeting-notes/>. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are available for public review as required by law. Public records, including agenda-related documents, can be requested electronically at info@sdcommunitypower.org or by mail to SDCP, PO BOX 12716, San Diego, CA 92112. The documents may also be posted at the above website. Such public records are also available for inspection, by appointment, at San Diego Community Power, 2305 Historic Decatur Road, Suite 200, San Diego, CA 92106. Please contact info@sdcommunitypower.org to arrange an appointment.



**SAN DIEGO COMMUNITY POWER (SDCP)
BOARD OF DIRECTORS**

City of San Diego Metropolitan Operations Complex (MOC II) Auditorium
9192 Topaz Way
San Diego, CA 92123

MINUTES
March 28, 2024

The Board minutes are prepared and ordered to correspond to the Board Agenda. Agenda Items can be taken out of order during the meeting.

The Agenda Items were considered in the order presented.

WELCOME

CALL TO ORDER

Chair LaCava (City of San Diego) called the SDCP Board of Directors meeting to order at 5:04 p.m.

ROLL CALL

PRESENT: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach) (arrived at 5:09 p.m.), and Director Parent (La Mesa)

ABSENT: Vice Chair Lawson-Remer (County of San Diego) and Director Yamane (National City)

Also Present: Chief Executive Officer (CEO) Burns, Chief Operating Officer (COO) Clark, General Counsel Tyagi, Interim Board Clerk Wiegelman

PLEDGE OF ALLEGIANCE

Chair LaCava (City of San Diego) led the Pledge of Allegiance.

SPECIAL PRESENTATIONS AND INTRODUCTIONS

Chair LaCava (City of San Diego) acknowledged the Kumeyaay Nation and all the original stewards of the land.

Chair LaCava (City of San Diego) introduced the following new SDCP staff member:

Linda Robertson, IT Manager

ITEMS TO BE ADDED, WITHDRAWN, OR REORDERED ON THE AGENDA

There were no items added, withdrawn, or reordered on the agenda.

PUBLIC COMMENTS

There were no public comments.

CONSENT CALENDAR

(Items 1 through 10)

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Hinze (Encinitas) to approve Consent Calendar Items 1 through 10. The motion carried by the following vote:

Vote: 4-0

Yes: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), and Director Parent (La Mesa)

No: None

Abstained: None

Absent: Vice Chair Lawson-Remer (County of San Diego), Director Aguirre (Imperial Beach), and Director Yamane (National City)

1. Approve February 22, 2024 Meeting Minutes

Approved.

2. Receive and File Treasurer's Report for Period Ending January 31, 2024

Received and filed.

3. Receive and File Update on Programs

Received and filed.

4. Receive and File Update on Power Services

Received and filed.

5. Receive and File Update on Human Resources

Received and filed.

6. Receive and File Update on Customer Operations

Received and filed.

7. Receive and File Update on Marketing, Public Relations, and Government Affairs

Received and filed.

8. Receive and File Community Advisory Committee Monthly Report

Received and filed.

9. Receive and File Update on Regulatory and Legislative Affairs

Received and filed.

10. Approve Proposed Election to Participate in State Disability Insurance

Approved.

REGULAR AGENDA

11. Update on Residential Solar + Storage Program

Senior Program Manager Fisher provided a PowerPoint presentation on the Residential Solar + Storage Program (Program), highlighting the analysis of Net Billing Tariff (NBT), the flexible load strategy, the Program goals, the research done for the development of the Program, the Program incentives and estimated cost, the fiscal impacts, and next steps.

Director Aguirre (Imperial Beach) arrived at the meeting at 5:09 p.m.

Following Board questions and comments, no action was taken.

12. Approve Amendments to SDCP Legislative & Regulatory Policy Platform

Senior Legislative Manager Welch provided a PowerPoint presentation on SDCP's Legislative & Regulatory Policy Platform, highlighting the proposed amendments and clarifying changes.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Aguirre (Imperial Beach) to approve amendments to SDCP's Legislative & Regulatory Platform. The motion carried by the following vote:

Vote: 5-0

Yes: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), and Director Parent (La Mesa)
No: None
Abstained: None
Absent: Vice Chair Lawson-Remer (County of San Diego) and Director Yamane (National City)

13. Approve Resource Adequacy (RA) Agreement with 90FI 8me LLC

Managing Director of Power Services Vosburg provided a PowerPoint presentation on the 90FI 8me, LLC RA Agreement, highlighting the project type, staff's analysis of the project, and the project's location, product, pricing timeline, deliverability, workforce development, and community benefits.

ACTION: Motioned by Director Hinze (Encinitas) and seconded by Director McCann (Chula Vista) to approve the proposed 5-year RA Agreement with 90FI 8me, LLC for up to 74 MW of (4-hour) Battery Energy System Storage (BESS) capacity and authorize the CEO to execute the agreement. The motion carried by the following vote:

Vote: 5-0

Yes: Chair LaCava (City of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), and Director Parent (La Mesa)
No: None
Abstained: None
Absent: Vice Chair Lawson-Remer (County of San Diego) and Director Yamane (National City)

REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

CEO Burns reported on SDCP's ongoing efforts and recent activities and events.

DIRECTOR COMMENTS

There were no Director comments.

ADJOURNMENT

Chair LaCava (City of San Diego) adjourned the meeting at 5:37 p.m.

Megan Wiegelman
Interim Board Clerk



SAN DIEGO COMMUNITY POWER Staff Report – Item 2

To: San Diego Community Power Board of Directors
From: Eric W. Washington, Chief Financial Officer
Via: Karin Burns, Chief Executive Officer
Subject: Review of Treasurer's Report for Period Ending 2/29/2024
Date: April 25, 2024

RECOMMENDATION

Receive and File Treasurer's Report for Period Ending 02/29/24.

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 its year-to-date financial statements for the period ended February 29, 2024, along with budgetary comparisons.

SDCP additionally reports monthly metrics during its Board meetings as part of its Update on Back-Office Operations. As part of the Treasurer's Report, certain key metrics related to risk are to be presented during Financial and Risk Management Committee (FRMC) meetings.

On February 22, 2024, the SDCP Board of Directors (Board) approved a mid-year budget amendment for Fiscal Year 2023-24 that included net operating revenues of \$1,304,274,067, total expenses of \$1,071,601,284, and a resulting net position of \$232,672,783. Given that the Board approval occurred on February 22, 2024, the review of the Treasurer's Report for period ending February 29, 2024, is a comparison against the original Fiscal Year 2023-24 budget adopted by the Board on June 22, 2023. Next month's Treasurer's Report for period ending March 31, 2024, will include a comparison against the mid-year budget amendment adopted by the Board on February 22, 2024.

ANALYSIS AND DISCUSSION

Actual financial results for the period ended 02/29/24: \$945.30 million in net operating revenues were reported compared to \$985.59 million budgeted for the period. \$732.67 million in total expenses were reported (including \$714.42 million in energy costs) compared to \$717.52 million budgeted for the period (including \$681.34 million budgeted for energy costs). After expenses, SDCP's change in net position of \$212.63 million was

reported for Fiscal Year 2023-24. The following is a summary of the actual results compared to the Fiscal Year 2023-24 Adopted Budget.

Table 1: Budget Comparison Versus Actual Results

Budget Comparison					
	YTD FY24 as of 02/29/24 (8 mos)	FY24 YTD Budget	Budget Variance (\$)	Budget (%)	
Net Operating Revenues	\$ 945,301,062	\$ 985,591,771	\$ (40,290,709)	96%	
Total Expenses	\$ 732,671,313	\$ 717,517,113	\$ 15,154,200	102%	
Change in Net Position	\$ 212,629,749	\$ 268,074,658	\$ (55,444,909)	-21%	

- Net operating revenues finished \$40.29 million (or 4.0 percentage points) under the budget primarily due to lower-than-expected customer load correlated with cooler weather during the summer months of 2023.
- Operating expenses finished \$15.15 million (or 2.0 percentage points) over the budget primarily due to higher-than-expected energy costs and higher usage in the winter months.

Financial results for the period underperformed the projections presented in the year-to-date proforma. SDCP's change in net position was 21% under the projection primarily due to actual energy costs being higher than projected.

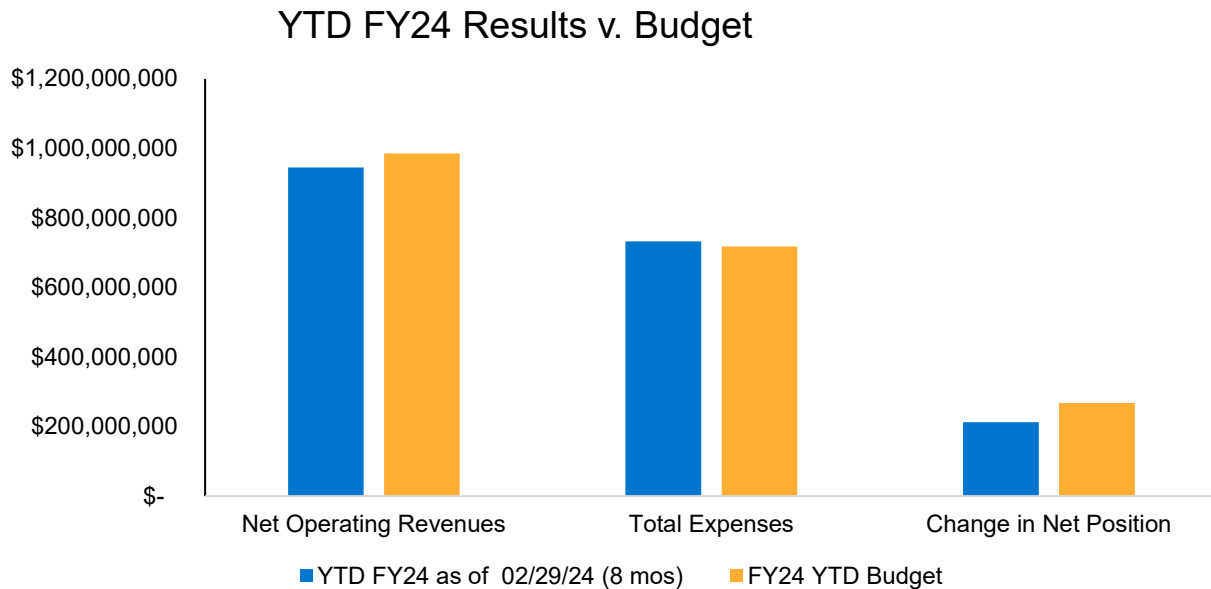
The following is a summary to actual results compared to the fiscal year-to-date proforma.

Table 2: Proforma Comparison Versus Actual Results

Proforma Comparison					
	YTD FY24 as of 02/29/24 (8 mos)	FY24 YTD ProForma	ProForma Variance (\$)	Proforma (%)	
Net Operating Revenues	\$ 945,301,062	\$ 985,591,771	\$ (40,290,709)	-4%	
Total Expenses	\$ 732,671,313	\$ 716,535,213	\$ 16,136,100	2%	
Change in Net Position	\$ 212,629,749	\$ 269,056,558	\$ (56,426,809)	-21%	

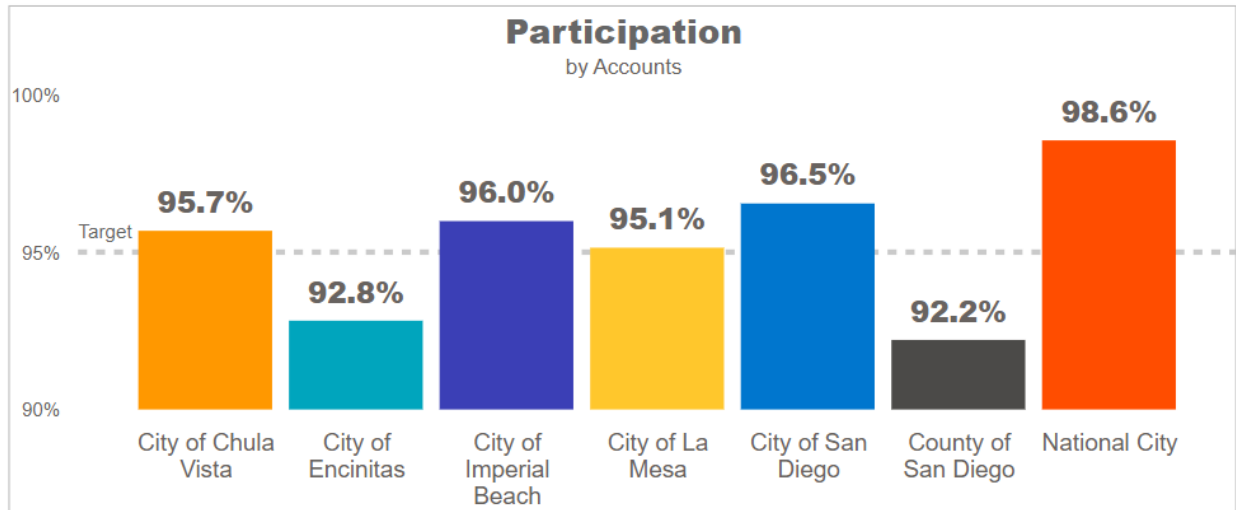


Figure 1: Proforma versus Actual Results



For the period ending 2/29/24, SDCP contributed \$212,629,749 to its net position compared to the expected gain of \$268,074,658 per the Fiscal Year 2023-24 adopted budget. Total SDCP reserves at the end of the period were \$383,260,342 based on cash and cash equivalents – unrestricted, and total available liquidity (including lines of credit) was \$533,260,342. SDCP has a total Fiscal Year 2023-24 year-end reserve target of \$491,079,452, which is equivalent to 180-days of total operating expenses as set in SDCP’s Reserve Policy and Strategic Goals.

Figure 2: Participation Rates as of 3/28/2024



Jurisdiction	Active	Eligible	Opt Outs	Participation
City of Chula Vista	93,825	98,062	4,237	95.7%
City of Encinitas	26,407	28,449	2,042	92.8%
City of Imperial Beach	10,501	10,940	439	96.0%
City of La Mesa	28,022	29,453	1,431	95.1%
City of San Diego	600,853	622,348	21,495	96.5%
County of San Diego	174,678	190,238	14,819	92.2%
National City	19,265	19,555	283	98.6%
Total	953,551	999,045	44,746	95.5%

Phase 4 mass enrollment process in National City and Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers was officially completed as of May 2023. The participation rate for this new phase is fluid and will change as we continue with our enrollment of Net Energy Metering (NEM) customers from April 2023 through March 2024. In the interim, we are reporting on the opt outs and eligible accounts associated with the phase based on those accounts that we have noticed for enrollment on a rolling basis as of the reporting month.

Staff are also presenting State of SDCP Arrearages related to financial risk for FRMC consideration and for regular review. Additional metrics can be added by request. The below arrearage data includes SDCP's Receivables aged 120+ Days as of 3/1/2024.

Figure 3: State of SDCP Arrearages as of 3/01/2024

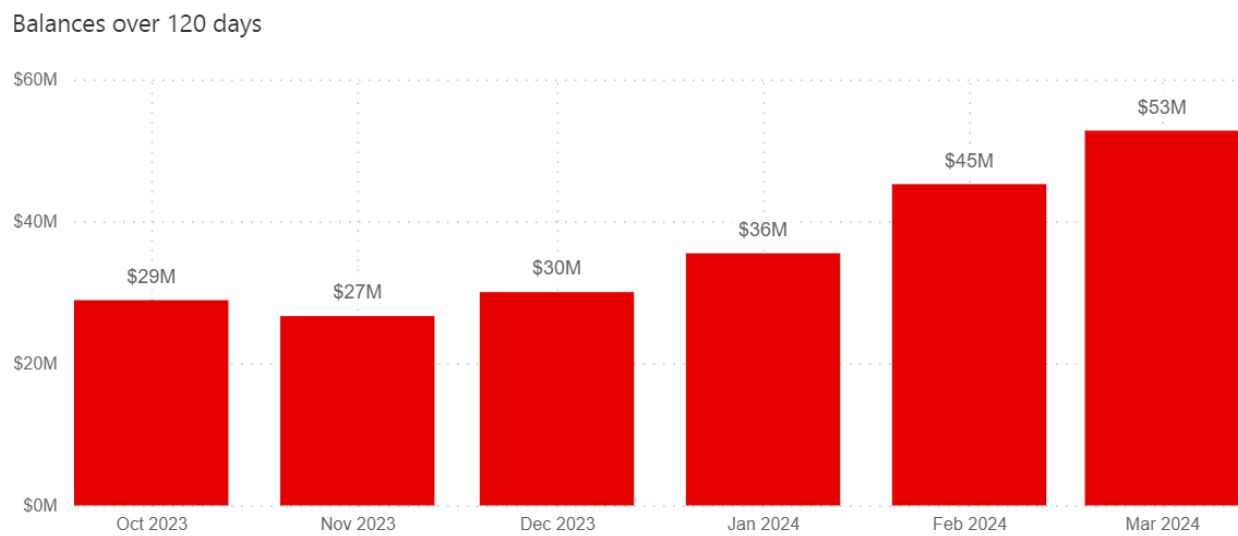
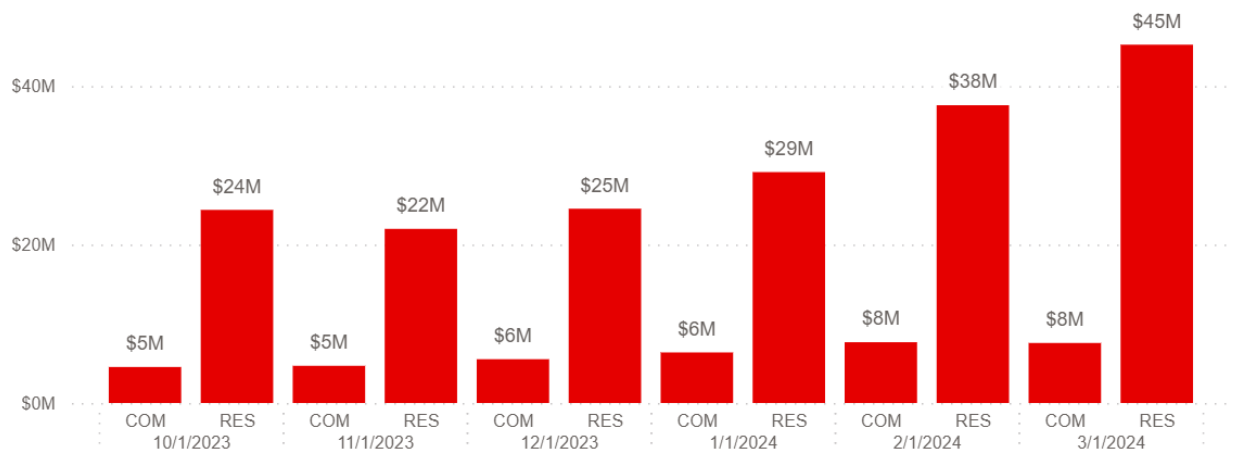


Figure 4: State of SDCP Arrearages Residential vs Commercial as of 3/01/2024

Balances over 120 days - RES vs COM



COMMITTEE REVIEW

The report was reviewed by the Finance and Risk Management Committee (FRMC) on April 11, 2024.

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: 2024 Year-to-Date Period Ended 2/29/24 Financial Statements



ACCOUNTANTS' COMPILATION REPORT

Management
San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of February 29, 2024, 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. San Diego Community Power's annual audited financial statements 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 the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
March 25, 2024

SAN DIEGO COMMUNITY POWER
STATEMENT OF NET POSITION
As of February 29, 2024

ASSETS

Current assets	
Cash and cash equivalents - unrestricted	\$ 383,260,342
Cash and cash equivalents - restricted	500,000
Accounts receivable, net of allowance	89,250,486
Accrued revenue	39,673,779
Prepaid expenses	2,896,570
Other receivables	451,927
Deposits	4,634,907
Total current assets	<u>520,668,011</u>
Noncurrent assets	
Cash and cash equivalents - restricted	1,147,000
Lease asset, net of amortization	1,418,819
Capital assets, net of depreciation	135,551
Total noncurrent assets	<u>2,701,370</u>
Total assets	<u>523,369,381</u>

LIABILITIES

Current liabilities	
Accrued cost of electricity	110,351,390
Accounts payable	1,053,392
Other accrued liabilities	5,355,524
State surcharges payable	404,247
Deposits - energy suppliers	5,312,500
Interest and finance costs payable	193,164
Lease liability	850,666
Total current liabilities	<u>123,520,883</u>
Noncurrent liabilities	
Supplier security deposits	624,000
Lease liability	702,718
Total noncurrent liabilities	<u>1,326,718</u>
Total liabilities	<u>124,847,601</u>

NET POSITION

Restricted for collateral	1,647,000
Unrestricted	396,874,780
Total net position	<u>\$ 398,521,780</u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
Eight Months Ended February 29, 2024

OPERATING REVENUES

Electricity sales, net	\$ 944,221,312
Grant revenue	807,250
Other income	322,200
Total operating revenues	<u>945,350,762</u>

OPERATING EXPENSES

Cost of electricity	714,621,854
Contract services	12,277,201
Staff compensation	7,134,637
Other operating expenses	2,252,491
Depreciation and amortization	432,041
Total operating expenses	<u>736,718,224</u>
Operating income	<u>208,632,538</u>

NON-OPERATING REVENUES (EXPENSES)

Interest income	5,174,982
Interest and financing expense	(1,298,071)
Nonoperating revenues (expenses), net	<u>3,876,911</u>

CHANGE IN NET POSITION

	212,509,449
Net position at beginning of year	186,012,331
Net position at end of year	<u><u>\$ 398,521,780</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS
Eight Months Ended February 29, 2024

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 1,006,250,136
Receipts of supplier security deposits	31,759,733
Receipts from wholesale sales	14,871,895
Other operating receipts	1,129,450
Payments to suppliers for electricity	(679,805,003)
Payments for goods and services	(12,890,784)
Payments of staff compensation and benefits	(6,852,195)
Payments for deposits and collateral	(2,804,693)
Payments of state surcharges	(1,742,916)
Net cash provided by operating activities	<u>349,915,623</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Principal payments - bank note	(35,730,000)
Interest and related expense payments	(1,627,931)
Net cash provided (used) by non-capital financing activities	<u>(37,357,931)</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Payments of lease liability	(317,235)
Payments to acquire capital assets	(71,550)
Net cash (used) by capital and related financing activities	<u>(388,785)</u>

CASH FLOWS FROM INVESTING ACTIVITIES

Interest income received	<u>4,907,555</u>
Net change in cash and cash equivalents	317,076,462
Cash and cash equivalents at beginning of year	67,830,880
Cash and cash equivalents at end of year	<u>\$ 384,907,342</u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	\$ 383,260,342
Restricted cash - current	500,000
Restricted cash - noncurrent	1,147,000
Cash and cash equivalents	<u>\$ 384,907,342</u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS (continued)
Eight Months Ended February 29, 2024

**RECONCILIATION OF OPERATING INCOME TO NET
CASH PROVIDED BY OPERATING ACTIVITIES**

Operating income	\$ 208,632,538
Adjustments to reconcile operating income to net cash provided by operating activities	
Depreciation and amortization expense	432,041
(Increase) decrease in:	
Accounts receivable, net	21,263,245
Accrued revenue	39,119,005
Prepaid expenses	27,630,928
Other receivables	49,215
Deposits	13,021,443
Increase (decrease) in:	
Accrued cost of electricity	33,006,047
Accounts payable	614,126
Other accrued liabilities	1,560,877
State surcharges payable	(96,342)
Supplier security deposits	4,682,500
Net cash provided by operating activities	<u><u>\$ 349,915,623</u></u>



ACCOUNTANTS' COMPILATION REPORT

Board of Directors
San Diego Community Power

Management is responsible for the accompanying special purpose operating fund budgetary comparison schedule of San Diego Community Power (SDCP), a California Joint Powers Authority, for the period ended February 29, 2024, 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 25, 2024

**SAN DIEGO COMMUNITY POWER
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
Eight Months Ended February 29, 2024**

	2023/24 YTD Budget	2023/24 YTD Actual	2023/24 YTD Budget Variance (Under) Over	2023/24 YTD Actual/ Budget %	2023/24 Annual Budget	2023/24 Budget Remaining
REVENUES AND OTHER SOURCES						
Gross Ratepayer Revenues	1,026,658,095	\$ 983,563,867	(43,094,228)	96%	\$ 1,346,325,552	\$ 362,761,685
Less: Uncollectible Customer Accounts	(41,066,324)	(39,342,555)	1,723,769	96%	(53,853,022)	(14,510,467)
Grant Revenue	-	807,250	807,250		-	(807,250)
Other income		272,500	272,500		-	(272,500)
Total Revenues and Other Sources	<u>985,591,771</u>	<u>945,301,062</u>	<u>(40,290,709)</u>		<u>1,292,472,530</u>	<u>347,171,468</u>
OPERATING EXPENSES						
Cost of Energy	681,343,128	714,572,154	33,229,026	105%	948,529,425	233,957,271
Professional Services and Consultants	15,655,384	11,739,478	(3,915,906)	75%	22,939,626	11,200,148
Personnel Costs	8,644,596	7,134,637	(1,509,959)	83%	13,178,031	6,043,394
Marketing and Outreach	2,029,756	1,423,451	(606,305)	70%	2,973,829	1,550,378
General and Administration	5,469,283	1,497,825	(3,971,458)	27%	7,861,973	6,364,148
Programs	189,917	177,346	(12,571)	93%	278,250	100,904
Total Operating Expenses	<u>713,332,064</u>	<u>736,544,891</u>	<u>23,212,827</u>		<u>995,761,134</u>	<u>259,216,243</u>
Operating Income (Loss)	<u>272,259,707</u>	<u>208,756,171</u>	<u>(63,503,536)</u>		<u>296,711,396</u>	<u>87,955,225</u>
NON-OPERATING REVENUES (EXPENSES)						
Investment Income	-	5,174,982	5,174,982		-	(5,174,982)
Interest and Related Expenses	(1,625,049)	(1,301,404)	323,645	80%	(2,437,574)	(1,136,170)
Transfer to Capital Investment Program	(2,560,000)	-	2,560,000	0%	(3,840,002)	(3,840,002)
Total Non-Operating Revenues (Expenses)	<u>(4,185,049)</u>	<u>3,873,578</u>	<u>8,058,627</u>		<u>(6,277,576)</u>	<u>(10,151,154)</u>
NET INCREASE (DECREASE)	<u>\$ 268,074,658</u>	<u>\$ 212,629,749</u>	<u>\$ (55,444,909)</u>		<u>\$ 290,433,820</u>	<u>\$ 77,804,071</u>

See accountants' compilation report.



SAN DIEGO COMMUNITY POWER Staff Report – Item 3

To: San Diego Community Power Board of Directors
From: Colin Santulli, Director of Programs
Via: Jack Clark, Chief Operating Officer
Subject: Update on Programs
Date: April 25, 2024

RECOMMENDATIONS

Receive and file update on customer energy programs.

BACKGROUND

Staff will provide regular updates to the Board of Directors (“Board”) regarding the following SDCP customer energy programs: Building Electrification, Energy Education, Energy Efficiency, Flexible Load, Grant Programs, and Solar and Energy Storage.

ANALYSIS AND DISCUSSION

Updates on customer energy programs are detailed below.

Building Electrification

California Energy Commission (“CEC”) Equitable Building Decarbonization Program

Please refer to [Item 3](#) of the March 2024 Board staff report for the most recent update on this program.

U.S. Environmental Protection Agency (“EPA”) Climate Pollution Reduction Grant (“CPRG”) Program

Please refer to [Item 3](#) of the March 2024 Board staff report for the most recent update on this program.

Energy Education

Energy Education Website

Please refer to [Item 3](#) of the February 2024 Board staff report for the most recent update on this program.

Energy Efficiency

California Department of Food and Agriculture (“CDFA”) Healthy Refrigeration Grant Program

Please refer to [Item 3](#) of the February 2024 Board staff report for the most recent update on this program.

FLEXmarket Pilot

Please refer to [Item 3](#) of the March 2024 Board staff report for the most recent update on this program.

Regional Energy Network (“REN”) Formation

Please refer to [Item 3](#) of the January 2024 Board staff report for the most recent update on this program.

Flexible Load

Flexible Load Strategy

Status: In Q1 2024, Staff contracted with a consultant to support with the Distributed Energy Resources Management Systems (“DERMS”) procurement process. Staff are currently developing a software requirements document to guide the procurement and collecting responses from other public agency DERMS Request for Proposal (“RFP”) processes.

Next Steps: Staff plan to complete the requirements documentation in April and begin reviewing existing bids from other RFP processes. Staff still anticipate the DERMS software architecture will be identified and under contract by Q3 CY 2024, for funding in FY 2024-25.

Vehicle-Grid Integration (“VGI”) Strategy

Status: Staff have been developing a VGI strategy to guide development of SDCP’s V1G and V2X programs portfolio. Staff presented an overview of the strategy at the April CAC 2024 meeting and will present the same update at the April 2024 Board meeting.

Next Steps: Staff plan on designing and launching the associated pilot(s) beginning in Q3 CY 2024.

Grant Programs

Community Clean Energy Grant Program

Status: The [FY 2023-24 grant cycle](#) was open between February 26 and April 5, 2024. SDCP and San Diego Foundation (the program administrator) promoted the grant cycle through a press release, news interview, direct outreach to organizations, website, social media, and newsletter updates.



Next Steps: The grant evaluation process will take place throughout April and May 2024. Staff anticipate grant agreements to be executed and grant awards to be made by June 2024.

Member Agency Grant Program

Status: SDCP's FY 2023-24 Member Agency Grant Program was open between February 5 and April 12, 2024. During the application period, San Diego Regional Climate Collaborative (the program administrator) worked directly with SDCP member agency staff to provide project development support and technical assistance. All seven of SDCP's member agencies submitted grant applications.

Next Steps: Staff anticipate grant agreements to be executed and grant awards to be made by June 2024.

Solar and Energy Storage

Net Energy Metering ("NEM") and Net Billing Tariff ("NBT")

Please refer to [Item 2](#) of the December 2023 Board staff report for the most recent update on this program. Staff anticipate bringing back an item to the Board in Q2/Q3 CY 2024 to update the tariff with support for virtual and aggregation versions of NBT.

Residential Solar + Storage Program

Please refer to [Item 3](#) of the March 2024 Board staff report for the most recent update on this program.

Disadvantaged Communities–Single-Family Affordable Solar Homes ("DAC-SASH") Readiness Pilot

Please refer to [Item 20](#) of the February 2024 Board staff report for the most recent update on this program.

Solar for Our Communities

Status: The Disadvantaged Communities Green Tariff ("DAC-GT") and Community Solar Green Tariff ("CSGT") Request for Offer ("RFO") closed on February 24, 2024. Staff received a total of 10 bids from two developers. The proposed project site locations are all within eligible Disadvantaged Communities ("DACs") in SDCP's or SDG&E's service territory. The proposed site locations are in the cities of Chula Vista, El Cajon, Lemon Grove, National City, and San Diego. Staff are currently reviewing all submitted offers as well as reviewing a recent Proposed Decision by the California Public Utilities Commission ("CPUC") that has potential impacts to the existing programs.

Next Steps: Staff will present awarded bids to the Board for approval prior to submitting executed Power Purchase Agreements ("PPAs") to the CPUC via a Tier 2 Advice Letter for approval no later than 180 days following the notification of selected bidders. Once given approval, Staff expects to enroll eligible customers in both programs by Q1 CY 2025.



AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 4

To: San Diego Community Power Board of Directors
From: Byron Vosburg, Managing Director of Power Services
Via: Karin Burns, Chief Executive Officer
Subject: Update on Power Resources
Date: April 25, 2024

RECOMMENDATION

Recommendation Receive and file update on Power Resources.

BACKGROUND

Staff provides the updates below to the Board of Directors regarding SDCP's power energy procurement activities.

ANALYSIS AND DISCUSSION

Power Services Staffing

Building out a team of experienced, knowledgeable energy professionals has long been a top priority and allows SDCP not only to solicit, negotiate, and administer contracts for energy supply effectively, but also to monitor market activity, manage risk, bring in-house several activities that have historically been completed by consultants, and to dedicate additional resources to local and distributed energy procurement and development efforts. The SDCP Power Services team is now ten people strong, currently in the hiring process for a Settlements Analyst, and excited to continue stable, prudent growth through 2024.

To help manage the risks associated with its growing power portfolio and financial & budget processes, staff issued an RFP for Professional Services for Energy Trading Risk Management (ETRM) in January 2024. The range of ETRM functions may include deal capture, position tracking and management, valuation, reporting, risk analysis, settlements, and budget integration. Staff is currently interviewing shortlisted submissions and is targeting board review of selected vendor(s) contracts in July 2024 for implementation by Q1 2025.

Long-term Renewable Energy RFPs



As SDCP strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) are becoming 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. Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that SDCP provide 65% of its RPS-required renewable energy from contracts of at least ten years in length. Finally, in D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental generation facilities that will achieve commercial operation during 2023 through 2026 for purposes of “Mid Term Reliability” (MTR). These requirements have been augmented and extended into 2026 and 2027 via D.23-02-040.

In pursuit of long-term contracts for renewable energy, over the past 18 months, staff released two RFPs for eligible Renewable Energy resources, an RFP for Stand Alone Storage projects, and evaluated other contracting opportunities to meet SDCP’s procurement goals. The SDCP Board has approved resulting contracts for over 1,000 MW of renewable generation and over 650 MW of storage capacity. Staff remain in negotiations with several other developers for additional resources that are expected to be online between 2025 and 2028. Staff and the Energy Contracts Working Group (ECWG) evaluate all RFP submissions prior to entering negotiations with selected participants. Assuming that Staff and shortlisted developer(s) are able to agree to mutually agreeable contracts consistent with terms authorized by the ECWG, Staff then review draft terms with the SDCP Board for approval and authorization to execute the relevant documents.

Local Development

SDCP’s rolling Local RFI remains open and, in the last twelve months, has yielded eight board-approved contracts for local generation and storage facilities. SDCP also released an RFO for distributed renewable energy resources (DERs) for which offers were due on December 22nd, and which focuses on a broad range of distribution-level renewable projects within San Diego County. Staff have notified shortlisted participants and hope to present resulting PPAs to the Board in the coming months. Additional ongoing local initiatives include a Feed-in-Tariff Program revamp and expansion, expected midyear, and continued collaboration with member agency staff to identify strategic opportunities to further infill development in 2024.

As Program Administrators of the CPUC’s Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs, SDCP launched the RFP solicitation for respective program resources on August 26th, proposals for which were due February 24, 2024. Staff is currently reviewing all submitted offers as well as



reviewing a recent Proposed Decision by the CPUC that has potential impacts to the existing programs.

SDCP's Local RFI and Feed-in Tariff remain open. More information is available about each at the links below.

- <https://sdcommunitypower.org/resources/solicitations/>
- <https://sdcommunitypower.org/programs/feed-in-tariff/>

Short-Term RPS Procurement

SDCP staff continues to actively manage its environmental portfolio and closely monitor the market for opportunities to optimize its renewable and carbon-free portfolios. SDCP will continue to prioritize environmental targets while also ensuring value for our customers.

Market Update

Due to limited resource availability in the broader Western Interconnection and lingering effects of the COVID-19 pandemic, namely inflation and heavily impacted commodity supply chains that have delayed development of new-build energy resources expected to be online over the last two years, the market for renewable energy and resource adequacy (RA) resources continues to be exceptionally tight and expensive. Staff are working with developers, industry groups, the CPUC, and CA Governor's Office and legislators to develop near-term solutions while also actively procuring short-term energy and capacity products and long-term energy resources to meet SDCP's portfolio needs practically and cost-effectively and ii) to establish a portfolio of resources that will provide value to SDCP and California's clean, reliable energy needs into the future.

Near-term California power markets continue to soften due to declining power and gas markets throughout the US, a mild California winter, significant Sierra snowpack, and robust spring-time renewable generation, all of which have so far offset the impacts of drought in the Pacific Northwest and resource scarcity throughout WECC.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 5

To: San Diego Community Power Board of Directors
From: Chandra Pugh, Director of People Operations
Via: Karin Burns, Chief Executive Officer
Subject: Update on Human Resources
Date: April 25, 2024

RECOMMENDATION

Receive and file the update on Human Resources.

DISCUSSION AND ANALYSIS

Human Resources (HR) has been working on the following priorities:

Hiring

This month, SDCP welcomes Maricela Hernandez, Clerk of the Board.

Current open positions include:

Strategic Policy Manager / Sr
Strategic Policy Manager
Settlements Analyst
Project Operations and Proposal
Manager
Community Engagement Associate
Marketing Manager

Updates:

Leadership and staff have been discussing goals as a logical next step in setting our performance expectations for the year. The Human Resources team is working to



ensure total adoption of goal setting in line with our strategic plan and cascaded to the employee level.

Human Resources is also working with the Leadership team to create career pathing for the organization. Career pathing helps employees and managers illuminate pathways towards potential career advancement and highlight areas for professional growth. Our commitment to motivating and retaining our staff while upskilling for the organization will be a priority for the next several months with an anticipated roll out in June.

Lastly, Human Resources is reviewing current policies to ensure equitable practices in line with our mission and values and in alignment with industry norms.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS:

N/A

SAN DIEGO COMMUNITY POWER

Staff Report – Item 6

To: San Diego Community Power Board of Directors

From: Lucas Utouh, Senior Director of Data Analytics and Customer Operations

Via: Karin Burns, Chief Executive Officer

Subject: Update on Customer Operations

Date: April 25, 2024

RECOMMENDATION

Receive and file an update on various customer operations.

BACKGROUND

Staff will provide regular updates to the Board of Directors centered around tracking opt actions (i.e., opt outs, opt ups and opt downs) as well as customer engagement metrics. The following is a brief overview of items pertaining to customer operations.

ANALYSIS AND DISCUSSION

A) Mass Enrollment Update

Phase 4:

Mass enrollment for Non-Net Energy Metering (NEM) customers in National City and Unincorporated County of San Diego was officially completed as of May 3, 2023. As of March 25th, 2024, SDCP is serving a cumulative total count of **953,551** active accounts. There are **174,678** active accounts currently enrolled in Unincorporated County of San Diego and **19,265** in National City.

Accounts on Net Energy Metering (NEM) within Phase 4 in National City and Unincorporated County of San Diego began enrollment into SDCP service in April 2023 and continued through customers' true-up date through the end of March 2024. Enrolled customers received 2 post enrollment notices through the mail at their mailing address on file within 60 days of their account switching over to SDCP service.

B) Customer Participation Tracking



Staff and Calpine have worked together to create a reporting summary of customer actions to opt out of SDCP service, opt up to Power100, or opt down from Power100 to PowerOn. The below charts summarize these actions accordingly as of March 25th, 2024:

I. Total Opt Outs - Including Active and Inactive

- **Active** - accounts still active at same premise
- **Inactive** - accounts that have moved out, or premise is terminated

Opt Outs by Jurisdiction	2021	2022	2023	2024-01	2024-02	2024-03	Total
City of Chula Vista	266	3,472	748	43	39	31	4,599
City of Encinitas	66	1,886	229	15	14	9	2,219
City of Imperial Beach	32	345	99	15	4	5	500
City of La Mesa	85	1,272	235	14	17	6	1,628
City of San Diego	1,077	19,278	3,187	200	174	130	24,043
County of San Diego			13,597	698	422	186	14,903
National City			284	11	5	5	305
Total	1,526	26,253	18,379	996	675	372	48,197

Opt Outs by Class Code	2021	2022	2023	2024-01	2024-02	2024-03	Total
Residential	36	25,717	16,762	957	628	347	44,443
Commercial/Industrial	1,490	536	1,617	39	47	25	3,754
Total	1,526	26,253	18,379	996	675	372	48,197

Opt Outs by Reason	2021	2022	2023	2024-01	2024-02	2024-03	Total
Concerns about government-run power agency	24	1,496	963	24	25	12	2,544
Concerns about lack of equivalent CCA programs		132	89	2	4	1	228
Decline to provide	227	3,596	2,528	102	73	30	6,556
Dislike being automatically enrolled	203	7,214	5,474	254	171	85	13,401
Existing relationship with the utility	2	2,394	1,968	108	65	19	4,556
Have grid reliability concerns	1	292	252	6	5	2	558
Have renewable Energy Reliability Concerns	6						6
Other	818	2,653	1,547	88	64	28	5,198
Rate or additional cost concerns	6	7,754	4,905	376	236	178	13,453
Rate or Cost Concerns	233						233
Service or billing concerns	6	724	655	36	32	17	1,470
Total	1,526	26,253	18,379	996	675	372	48,197

Opt Outs by Method	2021	2022	2023	2024-01	2024-02	2024-03	Total
Customer Service Rep (CSR)	1,098	7,002	4,380	270	179	110	13,038
Interactive Voice Response (IVR)	101	4,899	3,792	215	168	102	9,277
Web	327	14,353	10,208	511	328	160	25,886
Total	1,526	26,253	18,379	996	675	372	48,197

**Historical opt outs including inactive accounts as of 03/25/2024.*

II. Opt Ups to Power 100 - Including Active and Inactive

Opt Ups by Jurisdiction	2021	2022	2023	2024-01	2024-02	2024-03	Total
City of Chula Vista	701	168	55	3	1	1	929
City of Encinitas	18	1	1				20
City of Imperial Beach	60	29	11	1	1		102
City of La Mesa	148	118	19	1	2		288
City of San Diego	3,163	2,868	484	20	27	20	6,568
County of San Diego			200	10	8		218
National City			11		17		28
Total	4,090	3,184	781	35	56	21	8,152

Opt Ups by Class Code	2021	2022	2023	2024-01	2024-02	2024-03	Total
Residential	3	2,895	550	30	22	13	3,511
Commercial/Industrial	4,087	290	231	5	34	8	4,642
Total	4,090	3,184	781	35	56	21	8,152

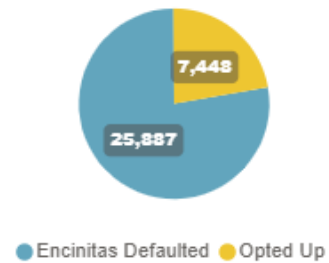
Opt Ups by Method	2021	2022	2023	2024-01	2024-02	2024-03	Total
Customer Service Rep (CSR)	4,059	1,369	301	9	30	11	5,766
Interactive Voice Response (IVR)	4	81	78	8	13		184
Web	27	1,738	402	18	13	10	2,206
Total	4,090	3,184	781	35	56	21	8,152

Current Active Power100 Accounts

Active Power100 Accounts

TownOrTerritory	Count
City of Encinitas	25,887
City of San Diego	6,009
City of Chula Vista	874
City of La Mesa	254
County of San Diego	208
City of Imperial Beach	77
City of National City	26
Total	33,335

Active Power100 Opt vs Defaulted



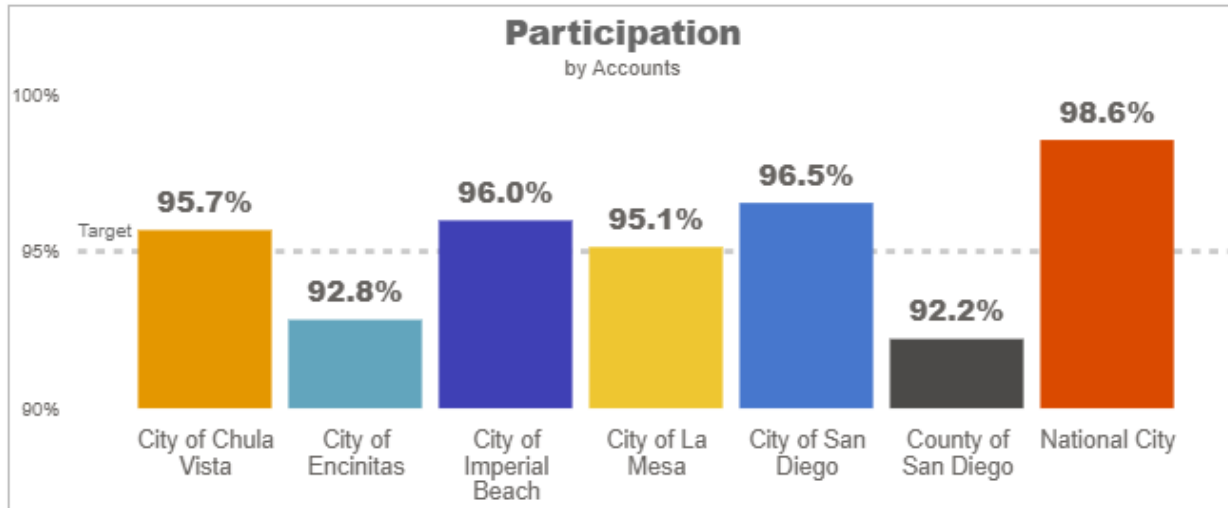
III. Opt Downs from Power100 - Including Active and Inactive

Opt Downs by Jurisdiction	2021	2022	2023	2024-01	2024-02	2024-03	Total
City of Chula Vista		1	4				5
City of Encinitas	35	425	71	6	3	2	542
City of Imperial Beach		1					1
City of La Mesa		2					2
City of San Diego		26	13	2			41
County of San Diego			5				5
Total	35	455	93	8	3	2	596

Opt Downs by Class Code	2021	2022	2023	2024-01	2024-02	2024-03	Total
Residential		433	84	7	3	2	529
Commercial/Industrial	35	22	9	1			67
Total	35	455	93	8	3	2	596

Opt Downs by Method	2021	2022	2023	2024-01	2024-02	2024-03	Total
Customer Service Rep (CSR)	31	305	62	4	3	2	407
Interactive Voice Response (IVR)	4	26	3	1			34
Web		124	28	3			155
Total	35	455	93	8	3	2	596

Participation by Jurisdiction



Jurisdiction	Active	Eligible	Opt Outs	Participation
City of Chula Vista	93,825	98,062	4,237	95.7%
City of Encinitas	26,407	28,449	2,042	92.8%
City of Imperial Beach	10,501	10,940	439	96.0%
City of La Mesa	28,022	29,453	1,431	95.1%
City of San Diego	600,853	622,348	21,495	96.5%
County of San Diego	174,678	190,238	14,819	92.2%
National City	19,265	19,555	283	98.6%
Total	953,551	999,045	44,746	95.5%

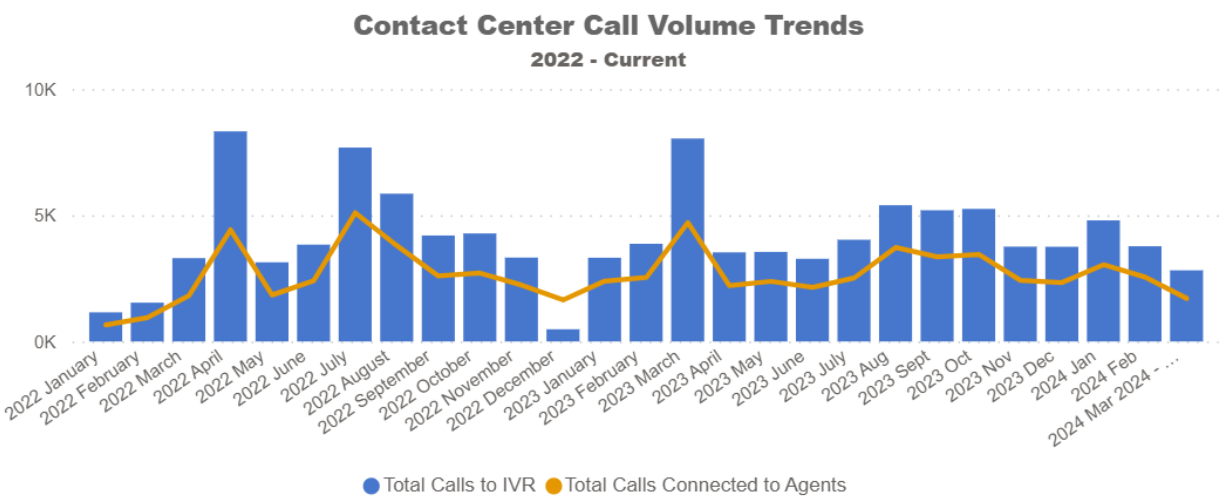
Phase 4 mass enrollment process in National City and Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers completed in May 2023. Net Energy Metering (NEM) customers were enrolled from April 2023 through March 2024 based on their true-up date.

C) Contact Center Metrics

Call volumes in February and March month-to-date have remained steady. With the transition to Board-approved rates effective as of February 1st, 2024, call volumes are expected to likely increase.

The chart below summarizes contact made by customers into the Contact Center broken down by month through March 2024:

V. Contact Center Metrics



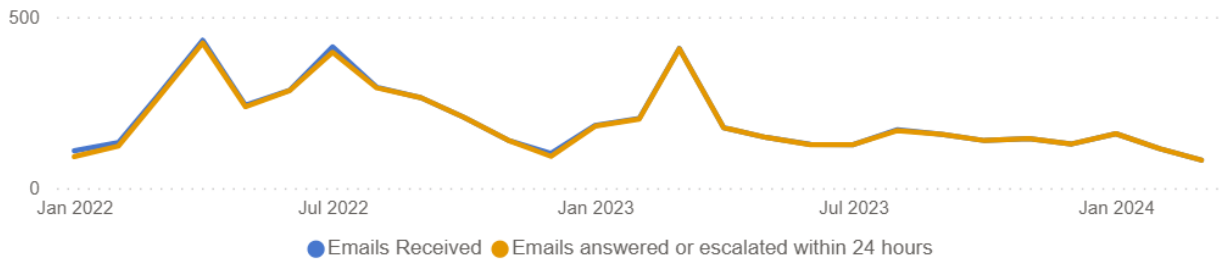
Interactive Voice Response (IVR) and Service Level Agreement (SLA) Metrics

	Total						
	2021	2022	2023	2024-01	2024-02	2024-03	Total
Total Calls to IVR	2,289	47,118	52,977	4,798	3,774	2,818	113,774
Total Calls Connected to Agents	1,401	30,174	34,173	3,041	2,552	1,708	73,049
Avg Seconds to Answer	20	12	7	11	16	15	12
Avg Call Duration (Minutes)	8.5	9.8	9.6	9.8	9.3	9.2	9.4
Calls Answered within 60 Seconds (75% SLA)	96.23%	95.50%	97.57%	95.48%	92.62%	92.96%	96.22%
Abandon Rate	0.57%	0.36%	0.19%	0.46%	0.35%	0.58%	0.36%

Similar to other CCAs’ service territories, SDCP anticipates the trend of customers calling into the Contact Center’s Interactive Voice Response (IVR) system tree and being able to self-serve their opt actions using the recorded prompts as well as utilizing SDCP’s website for processing opt actions to continue accounting for over 65% of all instances. The remaining portion of customer calls are connected to Customer Service Representatives to answer additional questions, assist with account support, or process opt actions.

D) Customer Service Email Trends

Contact Center Call Volume Trends
2022 - Current



Customer Service Emails

Total							
	2021	2022	2023	2024-01	2024-02	2024-03	Total
Emails Received	272	2,894	2,116	159	115	82	5,638
Emails answered or escalated within 24 hours	257	2,821	2,107	159	115	82	5,541
Completion (%)	94%	96%	100%	100%	100%	100%	97%

As of this latest reporting month, SDCP still has a total of 13 Dedicated Customer Service Representatives staffed at the Contact Center and 2 Supervisors. Robust Quality Assurance (QA) procedures are firmly in place to ensure that customers are getting a world-class customer experience when they contact SDCP.

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A

SAN DIEGO COMMUNITY POWER

Staff Report – Item 7

To: San Diego Community Power Board of Directors

From: Jen Lebron, Director of Public Affairs

Via: Karin Burns, Chief Executive Officer

Subject: Marketing, Public Relations, and Local Government Affairs

Date: April 25, 2024

RECOMMENDATION

Receive and file an update on marketing, public relations, and local government affairs activities for San Diego Community Power (SDCP).

BACKGROUND

SDCP has engaged in a variety of public relations, marketing, community outreach, and local government affairs activities to drive awareness, spark community engagement, and maintain high customer enrollment.

ANALYSIS AND DISCUSSION

SDCP's Public Affairs Department has been participating in events across our member agencies as it aims to increase general awareness and answer questions in a friendly, helpful manner.

Recent and Upcoming Public Engagement Events

Family Health Centers Spirit of the Barrio Luncheon
San Diego Festival of Science and Engineering
San Diego Women's Week
The Association of Women in Water, Energy and Environment
National City Community Breakfast
SDSU Sustainable Career Fair
Juniper Canyon Cleanup
SunCoast Farmers' Market
Goodwill Employment Center Resource and Job Fair
"Understanding Your Bill" Virtual Workshop
Rolando Library
San Diego Wave Fútbol Club Home Opener Fan Fest
Carmel Mountain Ranch Library

Habitat Restoration - San Diego River Park Foundation
Urban Collaborative Project Transportation Expo
City Heights Library
Julian Community Trade Show
South Bay Earth Day
Progressive Labor Summit
Spring Valley Library
Biocom Earth Day Festival
La Mesa Earth Day
Sony Electronics Earth Day
UCSD Climate Education Day
Imperial Beach Library
South County Economic Development Annual Economic Summit
Downtown San Diego Partnership C Street Goes Green
San Pascual Earth Day
Uplift Institute Sustainable 'Hood Education Expo
Equality Awards
Moonlight State Beach Cleanup
Imperial Beach Chamber of Commerce

Marketing, Communications and Outreach

SDCP has been working with local media to provide the public with information about its renewable power procurement efforts. It is also working with partner organizations on press releases regarding long-term power purchase agreements that will provide customers with reliable, affordable power when new projects come online within the next few years.

The Community Engagement division of the Public Affairs department worked closely with the Customer Operations team to lead SDCP's first "Understanding Your Bill" virtual workshop on March 20. This webinar is the first of a series of online and in-person workshops that will be aimed at answering customer questions and connecting customers with programs and practices that can save them money. Additional workshops are being planned for the remainder of the year that will focus on topics including solar customer billing and the benefits of SDCP service for large commercial and industrial customers.

The Public Affairs team has been working diligently behind the scenes to support soon-to-be-launched programmatic efforts, including rooftop solar and battery storage incentives, a program that helps customers repair their roofs to be ready for solar installations, and another that will distribute grants to small businesses that would benefit from more efficient refrigerators. The Public Affairs team is working closely with internal and external stakeholders to encourage participation in these programs and leveraging relationships with community partners to amplify our marketing and outreach efforts.



SDCP has continued its efforts to connect with local leaders through meetings and at community events.

The Public Affairs team will continue to develop new strategies, processes and capacity over the next several months to conduct more community outreach, expand marketing and brand awareness efforts, and provide timely, accurate information across multiple channels.

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 8

To: San Diego Community Power Board of Directors
From: Xiomalys Crespo, Community Engagement Manager
Via: Karin Burns, Chief Executive Officer
Subject: Receive and File Community Advisory Committee Monthly Report
Date: April 25, 2024

RECOMMENDATION

Receive and file the Community Advisory Committee (CAC) monthly report.

BACKGROUND

Per Section 5.10.3 of the San Diego Community Power (SDCP) Joint Powers Authority (JPA) Agreement:

The Board shall establish a Community Advisory Committee comprised of non-Board members. The primary purpose of the Community Advisory Committee shall be to advise the Board of Directors and provide for a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of the Authority.

At the direction of the Chief Executive Officer, the CAC provides quarterly presentations to the Board of Directors in the regular agenda, and monthly reports in the consent agenda. The next quarterly presentation will take place during the April 25, 2024 Board of Directors meeting.

ANALYSIS AND DISCUSSION

During the April 11, 2024 regular CAC meeting:

- Chair Vasilakis (City of San Diego) welcomed new IT Manager Linda Robertson , who will directly support the CAC moving forward, and officially announced Anna Webb's (formerly of Imperial Beach) resignation.
- The CAC approved the consent agenda, which included the February meeting minutes and updates on Marketing, Public Relations, and Local Government



Affairs; Customer Operations; Regulatory and Legislative Affairs; and Programs. Members received staff reports and briefings for all items.

- The CAC heard a presentation on SDCP's Vehicle-Grid Integration Strategy Overview. Members asked questions around permitting costs, battery life, technology reliability during planned blackouts, and impacts to Resource Adequacy requirements. Members also encouraged staff to collaborate with the Committee to identify pilot program participants.
- The CAC also heard an update from the Power100 Ad-Hoc Committee, in which Members Castañeda (National City), Cazares (La Mesa), Petersen (County of San Diego), Hammond (Encinitas), and Sandoval (Imperial Beach) met to discuss the scope of the committee and to learn about the Power100 premium, current energy sources, and the Power100 Champions program.
- Committee members had no recommendations on potential agenda items for the Board of Directors. Announcements included community events and announcements around future vacancies.

As of April 16, 2024, the CAC has three vacancies representing the County of San Diego (unincorporated), the City of Chula Vista, and the City of Imperial Beach. Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically. The vacancies have been advertised at meetings, community events, and through SDCP's social media.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

There is no fiscal impact associated with this item.

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 9

To: San Diego Community Power Board of Directors

From: Laura Fernandez, Director of Regulatory & Legislative Affairs
Aisha Cissna, Senior Policy Manager
Patrick Welch, Senior Legislative Manager
Stephen Gunther, Senior Regulatory Analyst

Via: Karin Burns, Chief Executive Officer

Subject: Update on Regulatory and Legislative Affairs

Date: April 25, 2024

RECOMMENDATIONS

Receive and file update on regulatory and legislative affairs.

BACKGROUND

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

ANALYSIS AND DISCUSSION

A) Regulatory Updates

Green Access Programs

As outlined in the regulatory and legislative staff report for the March 2024 meeting of the Board of Directors ([see pages 49-51](#)), on March 5, 2024, the California Public Utilities Commission (CPUC) issued a [Proposed Decision](#) that evaluates and modifies the current Green Access Program (GAP) tariffs as well as adopts a new community renewable energy program.

On March 24, 2024, a group of CCAs, including SDCP, that administer the Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs within their service areas, filed [opening comments](#) on the Proposed Decision. The Joint CCA comments focused on modifications to the DAC-GT program as well as clarifying that CCAs have a pathway to participate in any newly adopted community

renewable energy program. Specifically, the Joint CCAs made the following recommendations:

- Clarify how interested CCAs should participate in the newly adopted community renewable energy program.
- Increase the DAC-GT capacity cap for all CCA Program Administrators, not just those with contracted new capacity as of October 2023.
- Ensure the consolidation of the DAC-GT and CSGT programs protects existing CSGT customers and projects.
- Remove the creation of a central marketing website.
- Clarify that investor-owned utility (IOU) and CCA tariffs need not be uniform.
- Remove the adoption of auto-enrollment for the modified DAC-GT.
- Clarify timing and applicability of existing program rules.

Moreover, SDCP also filed [opening comments](#) jointly with Clean Energy Alliance (CEA) on issues specific to San Diego Gas & Electric's (SDG&E) service area. These issues included addressing outstanding questions regarding cost recovery of SDG&E's Green Tariff Shared Renewables (GTSR) under collection balances and expanding the definition of an eligible disadvantaged community in SDG&E's service area.

On April 2, the Joint CCAs filed [reply comments](#) to clarify and reiterate previous arguments. The earliest the CPUC can vote on a Final Decision is April 18, 2024.

Income-Graduated Fixed Charges

Background

On March 27, 2024, the CPUC issued a [Proposed Decision](#) within Phase 1, Track A of the Demand Flexibility Rulemaking (R.22-07-005) to address the income-graduated fixed charges (IGFC) and other requirements of Assembly Bill 205 (Stats. 2022, ch. 61.).

AB 205 authorizes IOUs to change the structure of residential customer bills by shifting a portion of fixed costs currently recovered through volumetric rates into a separate fixed monthly charge. This change is confined to distribution and transmission costs and therefore impacts charges that are currently recovered from SDCP customers by SDG&E but does not impact generation rates nor CCA competitiveness. The intended result is to more closely align residential bills with the underlying utility cost structure, i.e., a greater share of fixed costs are recovered through fixed charges. As a result, total costs recovered by the utility will remain unchanged and the volumetric per-kWh charge will decrease, but the amount charged on residential utility bills will be less sensitive to changes in consumption.



For additional background leading up to the Proposed Decision, see the regulatory and legislative staff report for the September 2023 meeting of the Board of Directors, [pages 56-58](#).

Proposed Approach

The Proposed Decision adopts a gradual, incremental approach to implementing AB 205 requirements, including IGFCs. The billing structure will offer discounts based on existing income-verification processes such as the California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance (FERA) programs, and the Commission will consider improvements to the billing structure based on the initial implementation results and a working group proposal in the next phase of the proceeding. Additionally, the CARE discount calculation methodology used by the large electric utilities is also adjusted in the Proposed Decision.

Tiers and Income Verification

Southern California Edison (SCE) and SDG&E must begin to apply the adopted changes to residential customer bills during Q4 2025. IGFCs will be implemented by the large electric utilities via advice letter in the following three tiers:

- **Tier 1:** Customers enrolled in the CARE program shall automatically pay the lowest discounted fixed amount (approximately \$6 per month).
- **Tier 2:** Customers enrolled in the FERA program or who live in affordable housing restricted to residents with incomes at or below 80% of Area Median Income shall automatically pay a discounted fixed amount (approximately \$12 per month).
- **Tier 3:** All other customers will pay a fixed amount of \$24.15 per month.

Within SDG&E's service area, the fixed charges paired with reductions in volumetric distribution rates (i.e., \$0.068/kWh) are estimated to have the following impacts shown below in Table A-6 (Proposed Decision, Attachment A, page 4).



Table A-6: Estimated Impact of Adopted Fixed Charges on Average Monthly Bills of SDG&E Customers With Average Usage

Climate Zone	CARE	FERA*	Non-CARE/FERA**
Inland	\$ (6.63)	\$(10.31)	\$ 0.74
Coastal	\$ (3.78)	\$ (5.94)	\$ 2.39
Desert	\$(17.97)	\$(27.50)	\$ 0.33
Mountain	\$(19.79)	\$(30.89)	\$ (6.79)

* FERA customers were modeled in the Public Tool as all non-CARE customers in the two lowest income quantiles.

** Non-CARE/FERA customers were modeled in the Public Tool as all non-CARE customers except those in the two lowest income quantiles.

The initial implementation of the IGFCs will rely on utilities' existing CARE and FERA income verification processes, but the Commission may revisit income verification approaches in the future. For future improvement of the IGFCs and related processes, the Commission is establishing a working group to develop a proposal to improve IGFC processes.

Next Steps

While the proposed changes do not impact the generation portion of a customer's bill, SDCP is analyzing the potential impacts on customers as well as coordinating with CalCCA. Opening comments on the Proposed Decision are due April 16 and reply comments are due April 22, 2024. The Proposed Decision may be heard as soon as the May 9, 2024, Commission meeting.

Provider of Last Resort

On April 3, 2024, CalCCA filed opening comments on the recently issued [Proposed Decision](#) within Phase I of the Provider of Last Resort (POLR) rulemaking (please see the regulatory and legislative staff report for the March 2024 meeting of the Board of Directors, [pages 51-52](#), for details on the Proposed Decision). CalCCA's extensive [opening comments](#) include recommendations on the Financial Security Requirement (FSR) calculation, timing of the FSR calculations and posting, and modifications to the new financial monitoring requirements. CalCCA filed [reply comments](#) on April 8, 2024, and the Proposed Decision may be heard as early as the April 18, 2024, Commission meeting.

Self-Generation Incentive Program

Background



The CPUC's Self-Generation Incentive Program (SGIP) provides incentives for the installation of eligible behind-the-meter distributed generation and energy storage technologies that meet all or a portion of a customer's electricity needs. There are several SGIP Program Administrators (PAs) throughout the State of California: Pacific Gas and Electric, Southern California Gas, Southern California Edison, the Los Angeles Department of Water and Power (newly added PA), and the Center for Sustainable Energy (CSE). CSE administers the program on behalf of SDG&E in SDG&E's service area.

Within SGIP, there are several budget categories:

- Large-scale storage
- Small residential storage
- Residential storage equity
- Non-residential storage equity
- Equity resiliency
- San Joaquin Valley Residential
- San Joaquin Valley Non-Residential
- Generation
- Heat pump water heaters

The "Equity" category is designed to serve Californians who are low-income or live in disadvantaged communities. The "Resiliency" category is intended to serve Californians who are impacted by wildfires or who are medically vulnerable. There are SGIP incentives for heat pump water heaters; however, this decision did not discuss that incentive category.

Summary: Decision Implementing Assembly Bill 209 and Improving SGIP Equity Outcomes (Adopted March 21, 2024)

Key outcomes from this decision include:

- Allocation of AB 209 Funds: This decision allocates \$280M from the State's Greenhouse Gas Reduction Fund to the Residential Solar and Storage Equity budget. This budget category was previously termed the "Residential Storage Equity Budget"; however, this decision changed the name to reflect the inclusion of solar technologies alongside storage technologies within the equity budget. Of this \$280M, \$22M is allocated to CSE to administer on behalf of SDG&E. The table below is from the decision.



Program Administrator	Total FY 23 Funds (in \$ millions)	Percentage, rounded (%)
Pacific Gas and Electric Company	\$110	39%
Southern California Edison Company	\$97	35%
Los Angeles Department of Water and Power	\$36	13%
San Diego Gas and Electric Company	\$22	8%
Southern California Gas Company	\$15	5%
Total	\$280	100%

- Program Administration: This decision adds a new Program Administrator, LADWP. This decision also allocates funds to each of the PAs using a new methodology which relies on the CalEnviroScreen 'Poverty' indicator.
- Eligibility Criteria Modification for Low-Income Customers: The eligibility criteria for low-income residential customers are modified to simplify access to the program and expand the pool of eligible customers. For example, customers who are enrolled in CARE, FERA, and ESA now have categorical eligibility.
- Incentive levels: The decision raises the maximum storage incentive level for the Residential Solar and Storage Equity budget from \$0.85/Wh to \$1.10/Wh and sets a solar incentive at \$3.10/W for both single-family and multi-family projects. The table below is from the decision and documents updated incentive levels.

Table 5: Updated Equity Solar and Storage Incentive Levels

Budget Category	Incentive Rate	Funds
Equity Resiliency	Storage: \$1.00/Wh	Ratepayer
Non-Residential Storage Equity	Storage \$0.85/Wh	Ratepayer
San Joaquin Valley Non-Residential	Storage: \$1.00/Wh	Ratepayer
Residential Solar and Storage Equity	Storage: \$1.10/Wh	AB 209 / Ratepayer
	Solar: \$3.10/W	AB 209
San Joaquin Valley Residential	Storage: \$1.10/Wh	Ratepayer

- Other Program Modifications: The decision directs SGIP PAs to develop a proposal to provide 50% upfront payments to SGIP projects and set aside 2% of SGIP funding for tribal customers. It also requires the transition to NBT of NEM 1 and 2 customers who apply for SGIP incentives (except for Residential Solar and Storage Equity SGIP, low-income qualified Equity Resiliency residential, and San Joaquin Valley Residential SGIP customers). Additionally,



this decision requires all new SGIP incentive recipients to be enrolled in an approved qualified demand response program.

CCA Engagement and Impacts

SDCP contributed to Joint CCA [comments](#) submitted in February 2024 on the [Proposed Decision](#). The Joint CCA comments focused on demand response (DR) program participation and evaluation of eligible incentive costs.

SGIP incentive recipients must enroll in a qualified DR program and maintain enrollment for ten years. The Joint CCAs proposed that the CPUC issue a decision to make it easier for CCA programs to be included on the SGIP's list of qualified DR programs. However, the final [decision](#) implemented a more complex procedure for CCAs to add programs, which SDCP intends to navigate for its forthcoming battery incentive program. Additionally, the Joint CCAs sought clarification from the CPUC to allow recipients the flexibility to switch among qualified DR programs during the ten-year period, which was approved. They also advocated for additional evaluation through workshops to consider expanding the range of project costs eligible for SGIP incentives. This recommendation was also approved by the CPUC.

While this decision authorized additional SGIP solar and storage funding for low-income customers, overall SGIP funding is low. SDCP will continue to track and engage in SGIP developments as it impacts our customers' ability to adopt storage and other distributed energy technologies, and also informs SDCP program design.

ERRA Compliance

On Friday, April 12, SDCP along with CEA filed an Opening Brief in the 2022 Energy Resource Recovery Account (ERRA) Compliance proceeding. In this brief, SDCP and CEA highlight that while the State of California has invested over \$3 billion to ensure sufficient capacity at peak times and under particularly stressful events impacting the electric grid, SDG&E has simultaneously been afforded significant discretion in determining when and how to sell excess Resource Adequacy (RA) due to its vague and open-ended Bundled Procurement Plan (BPP). As explained in the Opening Brief, SDG&E opted to follow an overly conservative approach to selling excess RA in 2022. This resulted in lost opportunities to reduce costs to customers and further squeezed an already constrained RA market. In fact, SDG&E's conservative approach to its sales of Excess RA contributed to an average of 484 MW of Unsold RA capacity from Power Charge Indifference Adjustment eligible resources per month during the 2022 record year.



To remedy these issues and ensure that SDG&E's Excess RA methodology is aligned with State policies and priorities, SDCP and CEA offered the following recommendations in the Opening Brief:

- The Commission should find that SDG&E's BPP is overly vague as to how SDG&E approaches its sales of Excess RA.
- The Commission should order that SDG&E's BPP be revisited in the Integrated Resource Planning (IRP) docket to be more prescriptive as to SDG&E's sales of Excess RA.

Reply Briefs will be filed on May 3, 2024. The Opening Brief is attached to this staff report as Attachment A.

B) State Legislative Activities Update

Update on Legislation

The Legislature is currently holding policy committee hearings on newly introduced bills. SDCP staff has been analyzing bills that impact or support SDCP operations and goals, and in line with SDCP's Board approved Legislative and Regulatory Policy Platform, is currently supporting the following pieces of legislation:

- [ACR 153 \(Petrie-Norris\)](#), which declares March 14 of every year as California Utility Workers Appreciation Day. Successfully achieving SDCP's 100% renewable energy requirement relies on a strong utility workforce and ACR 153 (Petrie-Norris) is an opportunity for SDCP to express gratitude and appreciation for California's utility workers.
- [SB 1165 \(Padilla\)](#), which would allow transmission developers to elect the California Energy Commission (CEC) to conduct a California Environmental Quality Act (CEQA) review instead of the California Public Utilities Commission (CPUC). This is consistent with the opt-in permitting process for eligible energy facilities that was established by the Legislature and Governor via AB 205 (2022). SB 1165 is a reintroduction of SB 619 (Padilla) from last year. SDCP supported SB 619, which was ultimately vetoed by Governor Newsom over concerns about agency coordination. Senator Padilla hopes to be successful with the legislation this year.
- [AB 2891 \(Friedman\)](#) which would direct the CEC to set up technical requirements and load automation protocols to provide an option for CCAs and other load-serving entities to reduce or modify their electric demand forecast through flexible load strategies. The CEC currently does not have such protocols in place, which is a barrier to SDCP realizing tangible resource adequacy (RA) cost benefits through the flexible load strategy that has been presented to the Board in prior



meetings, most recently in March. AB 2891 would allow SDCP to reliably lower its demand forecast based on our prospective flexible load strategy and therefore lower the amount of forward RA procurement we need to do. This could have financial potential for SDCP and its customers because there is a shortage of RA that has driven up costs significantly.

SDCP plans to support [AB 817 \(Pacheco\)](#) once it is set for a hearing in summer. The bill is sponsored by the California League of Cities and would make reasonable changes to agenda posting requirements under the Brown Act to better facilitate virtual participation in a subsidiary body – such as the SDCP Community Advisory Committee – meetings.

SDCP staff is also still assessing various transmission-related legislation that could help reduce regulatory timelines for the approval of transmission investments needed to reliably meet renewable and clean energy requirements. Some of the additional bills being assessed include:

- [AB 2292 \(Petrie-Norris\)](#), which would potentially eliminate a transmission assessment process at the CPUC that some argue is duplicative of a process at the California Independent System Operator (CAISO). The bill was recently approved by the Assembly Utilities & Energy Committee.
- [AB 2779 \(Petrie-Norris\)](#), which would task the CAISO with producing a report on the new uses of grid enhancing technologies (GETs) in its transmission planning process. GETs are a suite of advanced transmission technologies that can, in some cases, increase capacity and reduce congestion on existing transmission powerlines. The bill is scheduled to be heard in the Assembly Utilities & Energy Committee on April 17.
- [AB 3238 \(Garcia\)](#) is sponsored by SDG&E. It has two main provisions. The first codifies a proposed transmission process improvement settlement that is being held up at the CPUC. The second provision creates new and limited CEQA exemptions under certain circumstances, and state/federal species alignment. SDCP staff recently met with SDG&E staff to be briefed on the bill, which was recently approved by the Assembly Utilities & Energy Committee.
- [AB 3246 \(Garcia\)](#), which would provide an exemption from needing to obtain a specific CPUC permit for using advanced conductors on existing transmission towers. Typical transmission lines are made of steel and as more power flows through them they heat up and sag, which acts as a physical cap on capacity. This is known as a line's thermal limit. Advanced conductors, which are a type of GET, use composite cores and have higher thermal thresholds, meaning they don't heat up or sag as much as steel core lines and can therefore carry more power. Some utilities have started to replace traditional transmission powerlines with this newer technology to increase capacity without needing to build a wholly new powerline. The bill is scheduled to be heard in the Assembly Utilities & Energy Committee on April 17.



- [SB 1006 \(Padilla\)](#), which would require the investor-owned utilities (IOUs) to jointly prepare a GETs strategic plan and to include progress reports on implementation in each IOU's integrated resource plan filed with the CPUC. The bill would also require each IOU to evaluate which of its transmission and distribution lines can be reconducted with advanced conductors in a cost-effective manner. The bill is scheduled to be heard in the Senate Energy, Utilities and Communications Committee on April 16.

Finally, SDCP is coordinating with CalCCA to assess [SB 1508 \(Stern\)](#), which is scheduled to be heard in the Senate Energy, Utilities and Communications Committee on April 22. The bill would direct the CPUC to establish new energy storage procurement requirements for load-serving entities (LSEs). Specifically, the bill would create new procurement requirements for long-durations energy storage (LDES), multi-day storage technologies, and emerging technologies. SDCP staff has not determined a position on the bill but recognizes that cost-effectiveness and operational concerns can arise through a mandated approach to procurement. At the same time, SDCP staff is interested in energy storage technologies beyond lithium-ion batteries since other storage technologies, once cost-effective, could aid grid reliability and complement SDCP's procurement activities. We are discussing balancing these priorities with CalCCA and the author's office.

Update on State Budget Condition & Climate Funding

On Thursday, April 11, the Legislature adopted [AB 106 \(Gabriel\)](#), which reflects an agreement between the Governor, Senate, and Assembly for an Early Action Plan worth \$17 billion of budget savings to address the State's projected \$38-68 billion budget deficit for fiscal year 2024-25. The billions in budget savings come from use of the state's reserves, deferrals and delays in one-time spending that was approved in prior years, internal borrowing, and prediction of additional revenues. Relevant to SDCP, the approved plan reduces climate spending by \$2.9 billion. This reduction is from [the California Climate Commitment](#), a suite of programmatic funding approved in recent years that previously totaled \$54 billion. However, it's not a true reduction in spending because much of the climate savings come from replacing state General Funds with special funds. The agreement reduces the Distributed Electricity Backup Assets Program at the CEC by \$50 million. This is a program that SDCP is tracking as it could fund distribution level battery storage projects. But even with the delay in spending, over \$400 million remains in the program. SDCP expects additional budget legislation this summer after the Governor releases his May Revision proposal next month.

C) Federal Legislative Activities Update

Summary of Joint-CCA Advocacy Trip to Washington D.C.



Laura Fernandez and Patrick Welch, on behalf of SDCP, joined staff from MCE, Ava Community Energy, the Orange County Power Authority, Clean Power Alliance, and Peninsula Clean Energy on a trip to Washington D.C. to advocate on issues related to transmission, program development, and affordability. Jointly, staff met with the offices of Senator Padilla and Butler, staff for the House Sustainable Energy and Environment Coalition, the House Committee on Energy & Commerce, the Senate Committee on Energy & Natural Resources, and the Department of Energy.

SDCP staff also met with staff from the offices of Representatives Levin, Peters, Issa, Vargas, and Jacobs. SDCP provided information on our recent procurement efforts, the issue of growing customer arrearages, and expressed SDCP's support for the Clean Energy and Transmission Acceleration (CETA) Act authored by Rep. Levin and the Building Integrated Grids with Inter-Regional Energy Supply (BIG WIRES) Act authored by Rep. Peters.

It was a successful trip that provided the opportunity for CCA representatives to connect with California's congressional delegation and other congressional leaders on evolving energy policy matters, and to highlight the successes and challenges of CCAs.

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: Opening Brief of San Diego Community Power and Clean Energy Alliance



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least-Cost Dispatch and Power Procurement Activities in 2022, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Portfolio Allocation Balancing Account, Power Charge Indifference Adjustment Undercollection Balancing Account, Transition Cost Balancing Account, and Local Generating Balancing Account in 2022, and (iii) Costs Recorded in Related Regulatory Accounts in 2022.

Application 23-06-002
(Filed June 1, 2023)

**OPENING BRIEF OF SAN DIEGO
COMMUNITY POWER AND CLEAN ENERGY ALLIANCE**

PUBLIC VERSION

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April 12, 2024

*On behalf of San Diego Community
Power and Clean Energy Alliance*

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SUMMARY OF RECOMMENDATIONS

After experiencing rotating outages during the summer of 2020, the State of California has invested over \$3 billion to ensure sufficient capacity at peak times and under particularly stressful events impacting the electric grid. While the State has enacted extraordinary measures to achieve this goal, San Diego Gas & Electric Company (“SDG&E”) has simultaneously been afforded significant discretion in determining when and how to sell Excess Resource Adequacy (“RA”) due to its vague and open-ended Bundled Procurement Plan (“BPP”).

During the 2022 record period, SDG&E opted to follow an overly conservative approach to selling Excess RA [REDACTED]

[REDACTED] SDG&E’s “gut feeling” approach to selling RA does not rely on any quantifiable methodology, conflicts with Commission guidance in D.19-10-001, as well as Pacific Gas & Electric Company’s methodology, and is so vague that it provides no criteria by which the Commission could review SDG&E’s actions. In 2022, this resulted in lost opportunities to reduce costs to customers and further squeezed an already constrained RA market. As discussed below, SDG&E’s conservative approach to its sales of Excess RA contributed to an average of 484 MW of Unsold RA capacity from Power Charge Indifference Adjustment eligible resources per month during the 2022 record year. During the particularly RA-constrained months of July, August, and October 2022, SDG&E reported 738, 301, and 476 MWs of Unsold RA, respectively.

To remedy these issues and ensure that SDG&E’s Excess RA methodology is aligned with State policies and priorities, San Diego Community Power and Clean Energy Alliance offer the following recommendations:

- The Commission should find that SDG&E's BPP is overly vague as to how SDG&E approaches its sales of Excess RA.
- The Commission should order that SDG&E's BPP be revisited in the Integrated Resource Planning ("IRP") docket to be more prescriptive as to SDG&E's sales of Excess RA.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least-Cost Dispatch and Power Procurement Activities in 2022, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Portfolio Allocation Balancing Account, Power Charge Indifference Adjustment Undercollection Balancing Account, Transition Cost Balancing Account, and Local Generating Balancing Account in 2022, and (iii) Costs Recorded in Related Regulatory Accounts in 2022.

Application 23-06-002
(Filed June 1, 2023)

**OPENING BRIEF OF SAN DIEGO COMMUNITY POWER
AND CLEAN ENERGY ALLIANCE**

Pursuant to Rule 13.12 of the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”) and the December 6, 2023 *Email Ruling in Response to Request by San Diego Gas & Electric Company, San Diego Community Power, Clean Energy Alliance, and the Public Advocates’ Office to Revise the Procedural Schedule*,¹ San Diego Community Power² (“SDCP”) and Clean Energy Alliance³ (“CEA”) (together, the “CCA Parties”) hereby submit this Opening Brief regarding the *Application of San Diego Gas & Electric Company (U 902-E) for Approval of: (i) Contract Administration, Least-Cost Dispatch and Power Procurement Activities in 2022, (ii) Costs Related to those Activities Recorded to the Energy Resource Recovery Account, Portfolio Allocation Balancing Account, Power Charge Indifference*

¹ Application (“A.”) 23-06-002, *Email Ruling in Response to Request by San Diego Gas & Electric Company, San Diego Community Power, Clean Energy Alliance, and the Public Advocates’ Office to Revise the Procedural Schedule* (Dec. 6, 2023).

² SDCP is the Community Choice Aggregator (“CCA”) for the cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, National City, and San Diego, and the unincorporated areas of San Diego County.

³ CEA is the CCA for the cities of Carlsbad, Del Mar, Solana Beach, Escondido, San Marcos, Oceanside, and Vista.

Adjustment Undercollection Balancing Account, Transition Cost Balancing Account, and Local Generating Balancing Account in 2022, and (iii) Costs Recorded in Related Regulatory Accounts in 2022 (“Application”).

Since the summer of 2020, the State of California has taken extraordinary measures to ensure electric reliability, with the primary goal of ensuring that there is sufficient capacity on the grid at peak times and under stressful conditions.⁴ However, during the 2022 record period, San Diego Gas & Electric Company (“SDG&E”) adopted an overly conservative approach to offering its Excess Resource Adequacy (“RA”), *i.e.*, RA not needed for its own compliance obligations, to the market. A more reasonable approach to the sales of Excess RA would have reduced costs to customers, as well as helped to ensure that other load-serving entities (“LSEs”) facing a severely constrained RA market could have met their RA obligations.

While it appears that SDG&E did not act in customers’ best interests during the 2022 record period with regard to its sales of Excess RA, there are currently administrative roadblocks in place preventing the Commission from formally reaching this conclusion within this proceeding. Specifically, SDG&E’s Excess RA sales practices are governed by its Bundled Procurement Plan

⁴ For example, AB 205 established the \$3.3 billion Strategic Reliability Reserve, which was designed to “ensure electricity reliability during this period of heightened risk” and to maintain “sufficient capacity of new and existing generation assets.” The Strategic Reliability Reserve is comprised of the Department of Water Resources Electricity Supply Strategic Reliability Reserve Program (“ESSRRP”), the California Energy Commission (“CEC”) Demand Side Grid Support (“DSGS”) program, and the CEC Distributed Electricity Backup Assets (“DEBA”) program. Notably, the ESSRRP was justified as a means to “bring additional energy and resource adequacy into California” (Budget Change Proposal, DF-46). Further, SB 846 (Chapter 239, Statutes of 2022) also extended the life of the Diablo Canyon Nuclear Power Plant, which otherwise would have been retired in 2025. The bill was enacted “to improve statewide energy system reliability and to reduce the emissions of greenhouse gases while additional renewable energy and zero-carbon resources come online, until those new renewable energy and zero-carbon resources are adequate to meet demand.” Extending the plant was another extraordinary measure to ensure grid reliability and sufficient capacity. Finally, in September 2022, Governor Newsom took the extraordinary measure to use the State’s wireless emergency alert system to push an energy conservation alert to over 27 million Californians. This reduced demand on the grid by a reported 2,600 MWs, reducing the need for capacity that wasn’t available.

(“BPP”), which is remarkably vague on the process SDG&E will follow to ensure the maximum amount of capacity is made available to the market. As a result, SDG&E has been afforded significant leeway in its decisions regarding when and how to sell Excess RA, with no firm standards by which the Commission may hold it accountable. This opacity not only undermines transparency and accountability but poses a barrier to remedying the adverse impacts of SDG&E’s RA sales practices on the market: further squeezing an RA market that is already tight. In light of these circumstances, the Commission should order that SDG&E’s BPP be revised in the Integrated Resource Planning (“IRP”) proceeding to create firmer standards to safeguard customers and ensure that regional RA needs can be met.

I. LEGAL STANDARDS AND PERMISSIBLE SCOPE OF REVIEW

SDG&E, as the applicant, bears the burden of establishing the reasonableness of all aspects of its Application,⁵ and that burden of proof generally is measured based upon a preponderance of the evidence.⁶ In addition, pursuant to Public Utilities Code Section 451:

All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.⁷

As described above, SDG&E’s RA solicitations are governed by its BPP.⁸ As such, SDG&E contends that under § 454.5 of the California Public Utilities Code, its RA sales and solicitations

⁵ Rulemaking (“R.”) 11-02-019, *Decision Mandating Pipeline Safety Implementation Plan, Disallowing Costs, Allocating Risk of Inefficient Construction Management to Shareholders, and Requiring Ongoing Improvement in Safety Engineering*, p. 42 (Dec. 28, 2012) (“D.12-12-030”); Cal. Pub. Util. Code § 451 (requiring that rates be “just and reasonable”).

⁶ D.12-11-051, p. 9; D.09-03-025, p. 8.

⁷ Cal. Pub. Util. Code § 451.

⁸ See A.23-06-002, Exhibit CCA-01: Prepared Direct Testimony of Carlo Bencomo-Jasso on Behalf of San Diego Community Power and Clean Energy Alliance in San Diego Gas & Electric Company’s 2022 ERRR Compliance Proceeding (Corrected Errata Version), Attachment D (Dec. 22, 2023).

are not subject to an after-the-fact reasonableness review.⁹ However, SDG&E's arguments improperly limit the scope of permissible Commission review in an Energy Resource Recovery Account ("ERRA") Compliance proceeding.

First, parties can contest, and the Commission can review through the ERRA Compliance application process whether SDG&E's actions during the record year were in compliance with its BPP. This review extends to actions both prescribed and permitted by the BPP. Independent of the question of consistency with the BPP, parties to the ERRA Compliance proceeding can contest, and the Commission can review the appropriateness of SDG&E's RA sales, as those sales directly impact entries to the Portfolio Allocation Balancing Account ("PABA").¹⁰ If the Commission found that SDG&E's sales of Excess RA were not appropriate, or were out of line with Commission directives, the ERRA Compliance proceeding would be the venue in which the Commission could order adjustments to the PABA. Finally, the ERRA Compliance application process allows the Commission to scrutinize SDG&E's Excess RA sales since those sales are directly relevant to whether SDG&E prudently managed its generation portfolio. In fact, if the issue involves actions that SDG&E should have taken, but did not pursue, the only available venue is the ERRA Compliance application and review process. Consequently, the Commission must review both (1) the accounting and tracking of SDG&E's RA sales, and (2) whether SDG&E prudently managed its portfolio in making those sales in the present proceeding.

⁹ A.23-06-002, Exhibit SDGE-10: Prepared Rebuttal Testimony of Josh Chassé on Behalf of San Diego Gas & Electric Company, pp. JC-9:32-33, JC-10:1 (Feb. 23, 2024).

¹⁰ Exhibit CCA-01 at 4:5-6.

II. SDG&E’S APPROACH TO SELLING RA IN THE RECORD YEAR WAS FAR TOO CONSERVATIVE, LEAVING SUBSTANTIAL QUANTITIES OF RA CAPACITY UNAVAILABLE TO THE MARKET IN A YEAR IN WHICH RA WAS SCARCE.

SDG&E’s Application requests, among other things, review and approval of costs related to activities recorded to the ERRA and the PABA.¹¹ Community choice aggregation (“CCA”) and other unbundled customers are subject to several non-bypassable charges (“NBCs”), including Power Charge Indifference Adjustment (“PCIA”) rates to recover the above-market costs of the utility’s PCIA-eligible resources and the Local Generation Charge to recover Cost Allocation Mechanism costs.¹²

SDG&E’s PCIA rates are set in the ERRA Forecast proceeding based on: (1) the Indifference Amount (the difference in the forecast year between the cost of the IOU’s supply portfolio and the market value of the IOU’s supply portfolio); and (2) the year-end balance in the PABA.¹³ The Indifference Amount and the year-end PABA over- or under-collection are added together to form the PABA revenue requirement underlying PCIA rates.¹⁴

For bundled customers, the PCIA-related costs are included in the commodity revenue requirement and recovered through a bundled commodity rate, which is also set in the ERRA Forecast case. Costs to meet bundled customers’ energy and ancillary service requirements through the California Independent System Operator (“CAISO”) market, along with costs of resources not eligible for recovery in the PABA or CAM, are recovered via the ERRA.¹⁵ The total bundled

¹¹ See generally, Exhibit SDGE-02: Prepared Direct Testimony of Joe Bautista on Behalf of San Diego Gas & Electric Company (June 1, 2023).

¹² See Exhibit CCA-01 at 1:13-15, 3:23-25, 4:1.

¹³ See D.19-10-001, pp. 10-1.

¹⁴ See, e.g., D.22-12-012, p. 54 (explaining this generally applicable methodology in the context of Southern California Edison Company).

¹⁵ Exhibit SDGE-02 at 3.

customer commodity revenue requirement is calculated by combining ERRA costs with bundled customers' share of above market cost of PCIA-eligible contracts and utility owned resources.

SDG&E tracks actual costs and revenues incurred over the course of the year for PCIA-eligible resources in the PABA.¹⁶ Costs to meet bundled customers' energy and ancillary service requirements are recorded and tracked in the ERRA balancing account during the record year.¹⁷ The result in both balancing accounts is SDG&E recording either an under- or over-collection based on many factors tied to actual market costs, actual market revenues, and actual customer revenues from retail sales. The resulting under- or over-collection is then included in the revenue requirement for the following year's ERRA and PCIA rates.¹⁸ For example, customers in 2023 pay the under- and over-collections that SDG&E recorded over the course of 2022.

One important factor in whether an over- or under-collection exists in the PABA is the actual amount of RA capacity SDG&E sold during the record year compared to the amount of RA it forecasted it would sell.¹⁹ SDG&E, like other investor-owned utilities ("IOUs"), sells its Excess RA to other LSEs that must also meet RA compliance obligations.²⁰ The revenues from SDG&E's sales of Excess RA are an important offset to the costs recorded to the PABA during the record year, which are recovered from bundled and unbundled customers.²¹

Excess RA that is not sold to third parties is classified as Unsold RA and valued at \$0 in the PABA,²² thereby providing no financial benefit to customers. SDG&E's sales of Excess RA

¹⁶ Exhibit CCA-01 at 4:1-3.

¹⁷ See D.22-05-006, p. 6.

¹⁸ Exhibit CCA-01 at 4:3-5 (explaining that the 2022 PABA undercollection will be recovered from SDG&E's bundled and unbundled customers); see also D.19-10-001, p. 11; see e.g., D.23-12-021, p. 11.

¹⁹ Exhibit CCA-01 at 4:5-6 (explaining that revenues from sales of Excess RA offset costs recorded in the PABA during the record period).

²⁰ *Id.* at 6:4-9.

²¹ *Id.* at 4:5-6.

²² *Id.* at 4:6-8.

also have larger implications for LSEs in its service territory, which faced a severely constrained RA market during the summer of 2022.²³ Given these market conditions, LSEs faced difficulty in procuring sufficient RA to meet compliance obligations.²⁴ When the CCA Parties raised these facts in opening testimony, SDG&E did not dispute them.²⁵

As discussed in more depth below, SDG&E determines the amount of Excess RA it will offer to the market based on subjective and ill-defined factors, which at times allowed it to [REDACTED]. [REDACTED] The vagueness of SDG&E's Excess RA sales practices also extends to its [REDACTED], which is opaque and equally discretionary. Ultimately, SDG&E's conservative approach to its sales of Excess RA contributed to an average of 484 MW of Unsold RA capacity from PCIA-eligible resources per month during the 2022 record year.²⁷ During the particularly constrained months of July, August, and October 2022, SDG&E reported 738, 301, and 476 MWs of Unsold RA, respectively.²⁸

A. SDG&E Did Not Make All of its Excess RA Available to the Market in 2022.

SDG&E primarily sells Excess RA through quarterly and multi-year solicitations, and may also sell Excess RA through other processes such as Requests for Offers ("RFOs") and bilateral sales.²⁹ SDG&E previously stated that it seeks to make all Excess RA available to the market.³⁰ Notwithstanding SDG&E's prior statements, for each solicitation during the 2022 record period,

²³ *Id.* at 4:18-21.

²⁴ *Id.* at 4:18-21, 5:1-10. The Commission's Enforcement Actions Spreadsheet tracks and reports RA citations issued to entities for deficiencies in meeting RA compliance obligations. In 2019, there was a sharp increase in the number of citations for RA-deficient LSEs, with elevated levels continuing through 2022.

²⁵ *See id.* at 1-5; *see generally* A.23-06-002, Exhibit SDGE-10: Rebuttal Testimony of Josh Chasse on Behalf of SDG&E (Feb. 23, 2024).

²⁶ A.23-06-002, Exhibit CCA-01C: Confidential Prepared Direct Testimony of Carlo Bencomo-Jasso on Behalf of San Diego Community Power and Clean Energy Alliance in San Diego Gas & Electric Company's 2022 ERRRA Compliance Proceeding (Corrected Errata Version), p. 8:2-4 (Dec. 22, 2023).

²⁷ Exhibit CCA-01 at 4:8-12.

²⁸ *Id.* at 4, Table 1.

²⁹ *Id.* at 6:12-17; Exhibit SDGE-10 at JC-16:10-19.

³⁰ Exhibit CCA-01 at 6:2-12, Attachment C.

SDG&E [REDACTED] In particular, the amounts of System Excess RA that SDG&E offered in each solicitation were [REDACTED].³² During several months in 2022, the quantity of Excess System RA SDG&E offered to the market [REDACTED]³³

SDG&E employs a three-part methodology to identify its available Excess RA at any given time.³⁴ First, SDG&E determines its overall RA portfolio position.³⁵ SDG&E explained in testimony that it makes this baseline determination based on already conservative estimations.³⁶ Second, SDG&E identifies its year-ahead and monthly RA compliance requirements.³⁷ Finally, SDG&E calculates its Excess RA position, which is the delta between its RA position and its RA compliance requirements, less any RA SDG&E decides to hold back.³⁸

To determine the quantity of Excess RA to hold back, SDG&E states that it considers several operational factors such as resource outages and gas curtailments, as well as changes to the Net Qualifying Capacity (“NQC”) of its resources, operational constraints, battery storage derates, and “other considerations.”³⁹ In testimony, SDG&E explained [REDACTED]

[REDACTED].⁴⁰

³¹ Exhibit CCA-01C at 6:17-20, 7:1-12.

³² *Id.* at 7:9-12.

³³ *Id.* at 7:10-12. While SDG&E contends that the CCA Parties fail to understand the dependencies between System, Local, and Flex RA (*see* Exhibit SDGE-10 at JC-15:3-9), SDG&E was unable to demonstrate how its Local and Flex RA positions at the time of each solicitation referenced in Table 2 and Table 3 of Exhibit CCA-01 would affect the System RA available for sale as depicted in those Tables (*see* Exhibit CCA-02 at SDG&E Response to SDCP and CEA DR 3.05).

³⁴ Exhibit SDGE-10 at JC-14:2:3.

³⁵ *Id.* at JC-14:3-13.

³⁶ *Id.* at JC-14:3-13.

³⁷ *Id.* at JC-14:13-15.

³⁸ *Id.* at JC-14:15-19.

³⁹ A.23-06-002, Exhibit CCA-02: SDG&E Responses to SDCP/CEA Data Request Set 3, SDG&E Response to SDCP/CEA 3.01 (Mar. 22, 2024); Exhibit SDGE-10 at JC-14:15-21.

⁴⁰ Exhibit SDGE-10 at JC-15:10-11; A.23-06-002, Exhibit CCA-02C, Confidential SDG&E Responses to SDCP/CEA Data Request Set 3, SDG&E Response to SDCP/CEA 3.03 (Mar. 22, 2024). [REDACTED]

However, SDG&E provided no explanation tying the above-mentioned operational considerations to [REDACTED]. That is, there is no clear methodology for quantifying SDG&E's "gut feeling" on what is the right amount of RA to sell.

[REDACTED]

[REDACTED]

[REDACTED] SDG&E's subjective justifications, coupled with undefined "other considerations" that influence its decision-making contribute to the overall opacity and ambiguity that underlie SDG&E's Excess RA sales practices. These haphazard considerations do not rise to the level of reasonable, objective, and measurable criteria by which SDG&E should base its approach to selling Excess RA.⁴³

To further underscore the informality of SDG&E's practices, SDG&E keeps no records that itemize the specific quantities of RA held back from the market at the time of each solicitation.⁴⁴ Rather, SDG&E's determination of the appropriate amount of Excess RA that should be offered in a given solicitation is simply discussed in an informal and sparsely documented conversation with the Procurement Review Group ("PRG").⁴⁵ [REDACTED]

⁴¹ Exhibit CCA-01C at 7:17, 8:1-4.

⁴² *Id.* at 8:2-4.

⁴³ *Id.* at 8:4-7.

⁴⁴ Exhibit CCA-02 at SDG&E Response to SDGP/CEA DR 3.02.

⁴⁵ Exhibit CCA-02 at SDG&E Responses to SDGP and CEA DRs 3.02 and 3.04.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁴⁸ This haphazard approach is illustrated by SDG&E's 2021-2023 multiyear year-ahead solicitation, in which SDG&E decided to hold back 10% of its available Excess RA, plus an additional 50 MW during the summer months.⁴⁹ SDG&E was unable to provide any numerical justification to support these numbers, nor any explanation to demonstrate that this determination was based on more than intuition.

While SDG&E's decision to [REDACTED] appears to lack sufficient justification, it is challenging to contest the prudence of SDG&E's actions as its approach to its 2022 RA solicitations was approved by the PRG.⁵⁰ The PRG is an advisory group of non-market participants that review the IOUs' procurement activity.⁵¹ The PRG consults with the IOUs and reviews strategy and transactions to ensure compliance with Commission policies on procurement practices,⁵² including the BPP. However, as discussed in Section III below, SDG&E's BPP is entirely devoid of detail surrounding SDG&E's Excess RA

⁴⁶ Exhibit CCA-02C at Attachment "Meeting of SDG&E's Procurement Review Group" dated October 15, 2021.

⁴⁷ Exhibit CCA-02C at Attachment "Meeting of SDG&E's Procurement Review Group" dated May 20, 2022.

⁴⁸ *Id.*

⁴⁹ Exhibit CCA-02 at SDG&E Response to SDGP/CEA DR 3.02.

⁵⁰ See Exhibit SDGE-10 at JC-16:3-9.

⁵¹ See D.20-06-002, p. 57.

⁵² *Id.*

methodology. As a result, SDG&E's PRG has no firm standards by which it can advise SDG&E on the decision to withhold Excess RA from a given solicitation.

B. SDG&E Improperly Limited Excess RA Sales Based on Price.

In the solicitations of Excess RA SDG&E did offer to the market in 2022, SDG&E utilized a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Solicitation documents from the 2022 record period indicate that in following this methodology, [REDACTED], thereby passing along higher net costs to customers.⁵⁹

⁵³ A.23-06-002, Exhibit SDGE-10C: Prepared Rebuttal Testimony of Josh Chassé on Behalf of San Diego Gas & Electric Company, p. JC-21:4-5 (Feb. 23, 2024).

⁵⁴ Exhibit CCA-01C at 13:13-15.

⁵⁵ *Id.* at 12, Figure 2.

⁵⁶ *See id.* at 12, Figure 2; *id.* at 9:1-4.

⁵⁷ *See id.* at 10:4-16.

⁵⁸ *Id.* at 9:5-6.

⁵⁹ *Id.* at 8:17-20.

⁶⁰ Exhibit SDGE-10C at JC-21:10-12.

⁶¹ Exhibit CCA-02C at SDG&E Response to SDGP/CEA DR 3.10. [REDACTED]

[REDACTED]

[REDACTED]⁶² Consequently, the only source of information bidders had regarding SDG&E's [REDACTED] is one sentence in its overly vague BPP. [REDACTED]

[REDACTED]

[REDACTED]⁶³

In addition, [REDACTED] is inconsistent with Commission guidance and the practices of other IOUs. In D.19-10-001, the Commission found that:

“An investor-owned utility may decide not to sell RA below [a] floor price because the possible California Independent System Operator penalties for doing so could require the IOU to recover costs in excess of the floor price from both bundled service and departing load customers.”⁶⁴

In accordance with D.19-10-001, Appendix S of Pacific Gas & Electric Company's ("PG&E") BPP prescribes a methodology for calculating a price supply curve to determine floor prices.⁶⁵ PG&E's price floor evaluates the potential CAISO penalties a generating unit may receive, calculated as a function of the probability of a generating unit receiving a penalty and the associated penalty cost.⁶⁶

Although the outcome of the 2022 record period and the practices of other IOUs denote the shortcomings of SDG&E's [REDACTED], parties again face obstacles to challenging the prudence of SDG&E's decisions because its [REDACTED].⁶⁷ However, SDG&E's BPP does not follow the guidance in D.19-10-

⁶² See Exhibit CCA-02C at SDG&E Response to SDCP/CEA DR 3.10 [REDACTED]

[REDACTED]
Exhibit CCA-01C at 14:13-16.

⁶⁴ D.19-10-001, Finding of Fact 29.

⁶⁵ A.24-02-012, Pacific Gas & Electric Company Prepared Testimony, Chapter 8, p. 8-8 (Feb. 28, 2024).

⁶⁶ *Id.*

⁶⁷ Exhibit SDGE-10C at JC-21:3-4.

001, conflicts with PG&E’s methodology, and is so vague as it relates to [REDACTED] that it provides no criteria by which the PRG *could* advise alternative approaches.

Ultimately, SDG&E adopted an overly conservative approach to its sales of Excess RA in 2022, leaving substantial quantities of RA capacity unavailable to the market and [REDACTED] in a year in which RA was scarce. SDG&E’s overly vague BPP enabled this outcome, which must be revised to establish firm standards by which the PRG and the Commission can evaluate SDG&E’s Excess RA methodology. The CCA Parties’ recommendation for a path forward to revise SDG&E’s BPP is set forth in Section III below.

III. THE COMMISSION SHOULD REVISIT SDG&E’S BPP IN THE IRP PROCEEDING.

As noted by SDG&E, a Commission-approved BPP establishes the “upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation before the execution of the transaction.”⁶⁸ However, SDG&E’s BPP is remarkably vague as it relates to sales of Excess RA and contains no real requirements or guidelines for maximizing RA sales to benefit customers.⁶⁹ In fact, all references to RA sales in SDG&E’s BPP consist of “may” statements, *i.e.*, what the utility might do, leaving no firm standard against which the Commission can measure SDG&E’s actions.⁷⁰

This ambiguity provides SDG&E with significant leeway to sell or withhold RA from the market based on its discretion. Indeed, SDG&E withholds RA from solicitations for far more reasons than those identified in the BPP, including unidentified “other considerations.”⁷¹ The lack

⁶⁸ Exhibit SDGE-10 at JC-25:7-11 (citing Cal. Pub. Util. Code § 454.5(b)(7)).

⁶⁹ Exhibit CCA-01 at 15:16-17, Attachment D; Exhibit CCA-02 at SDG&E Response to SDCP/CEA DR 3.10.

⁷⁰ Exhibit CCA-01 at 15:16-22, 16:1-2, Attachment D.

⁷¹ Exhibit CCA-02 at SDG&E Response to SDCP/CEA DR 3.01.

of detail contained in SDG&E's BPP is unlike that of other similarly situated IOUs, whose BPPs are generally far more prescriptive on this topic.

Much of the detail needed to create a more effective BPP was provided by SDG&E through testimony. For instance, SDG&E's BPP should describe its three-part methodology to identify its Excess RA position but should include firm and objective standards by which SDG&E determines to hold back Excess RA from solicitations. SDG&E's BPP should also identify procedures for specific scenarios identified by SDG&E, including situations in which SDG&E may bring additional RA to the market given sufficient bidder interest.⁷² Further, SDG&E's BPP should clearly define the methodology by which SDG&E [REDACTED], which should be set in accordance with [REDACTED].⁷³

The Commission can, in this proceeding, order that SDG&E's BPP be revisited in the IRP docket.⁷⁴ The IRP docket, as the successor to the Long-Term Procurement Plan dockets that gave rise to the most recent, full BPPs, is the appropriate vehicle to evaluate the BPP revisions contemplated herein. Specifically, the initial Order Instituting Rulemaking ("OIR") issued in the current IRP docket stated explicitly that the IRP docket was the correct venue for BPP revisions.⁷⁵ This notion was reaffirmed by the Preliminary Scoping Memo included in the OIR.⁷⁶ Further, the Amended Scoping Memo, which currently controls the IRP docket, states that the IRP docket is anchored by, among other things, "[c]onsideration of the need for procurement by LSEs of

⁷² See Exhibit SDGE-10 at JC-19:1-4 (explaining that if there were market priced offers for more RA than the Excess RA offered in the solicitation, SDG&E may consider whether it was prudent to bring those RA volumes back to the solicitation); *but see* Exhibit CCA-02 at SDG&E Response to SDCP/CEA DR 3.06 (explaining that SDG&E does not have specific procedures in place to make this determination or to carry out this process).

⁷³ Exhibit CCA-01C at 14:7-9.

⁷⁴ California PUC Docket No. R.20-05-003.

⁷⁵ R.20-05-003, Order Instituting Rulemaking, p. 2 (May 14, 2020).

⁷⁶ *Id.*, p. 10.

electricity resources,” and that the current scope includes issues related to “[e]stablishing a process and cadence for performing reliability analysis and setting reliability planning and procurement requirements for LSEs . . . involv[ing] coordination with resource adequacy requirements[.]”⁷⁷ This Commission has reinforced this conclusion in other proceedings, suggesting that BPP procurement rules have not *yet* been addressed in the IRP docket.⁷⁸

Finally, the IRP docket provides a forum in which parties may workshop best practices for BPP provisions governing Excess RA solicitations and the development of [REDACTED]. While the Commission’s model non-disclosure agreement prevents discussion of the specifics of the confidential components of other IOUs’ BPPs in individual ERRA Compliance proceedings, the IRP docket is a consolidated proceeding in which parties may execute non-disclosure agreements that allow for the evaluation of each IOU’s BPP in the same place. Accordingly, parties and the Commission can determine if there are existing practices in place that may be an appropriate remedy for the lack of detail currently found in SDG&E’s BPP.

IV. SDG&E’S EXCESS RA SALES PRACTICES ARE PROPERLY WITHIN THE SCOPE OF THIS PROCEEDING.

In an ERRA Compliance proceeding, it is appropriate to review the prudence of portfolio management – including whether the utility maximized the value of its resources for the benefit of its customers. SDG&E’s prudent management of its generation portfolio, specifically the efficiency of its sales of Excess RA, directly contributes to the rates its customers ultimately pay.

⁷⁷ R.20-05-003, Amended Scoping Memo, p. 8 (Aug. 21, 2023).

⁷⁸ D.23-12-008, p. 23 (stating “BPPs were reviewed and adopted every two years via a Commission decision in the Long-Term Procurement Plan (LTPP) proceeding. Although the IOUs’ current BPPs were last approved, with modifications, by D.15-10-031 on October 22, 2015, in R.13-12-010, the IOUs have not filed a full update of their BPPs since then. Instead, the IOUs have updated various sections of their BPPs via advice letters as needed over the years. **The IRP proceeding is the successor proceeding to the LTPP proceeding, however, a complete review of the IOU BPPs and changes to BPP procurement rules has yet to be addressed.**” (emphasis added)).

Consistent with this practice, Scoping Issue One of the *Assigned Commissioner’s Scoping Memo and Ruling* asks “[w]hether SDG&E administered and managed its own generation resources prudently, to include the management of outages and associated fuel costs, according to Standard of Conduct (‘SOC’) 4.”⁷⁹ SOC 4 requires utilities to prudently administer all contracts and generation resources and dispatch the energy in a least-cost manner.⁸⁰

SDG&E contends that Scoping Issue One relates solely to whether it physically operated and maintained its utility-owned generation (“UOG”) resources in a reasonable and prudent manner, consistent with Good Utility Practice and the reasonable manager standard in order to minimize outages.⁸¹ However, Scoping Issue One is broader than SDG&E contends. In an ERRA Compliance proceeding, the Commission’s review typically extends to whether the utility administered and managed its generation resources and contracts in compliance with ***all applicable rules, regulations, and Commission decisions, including but not limited to SOC 4.***⁸² No Commission decision has limited the applicability of this review solely to utility maintenance and upkeep of generation resources, and nothing prevents the Commission from including SDG&E’s management of its RA resources in its evaluation of SDG&E’s management of its generation resources more generally.

SDG&E’s assertions represent an unduly narrow view of the scope of this proceeding, its obligations, and the Commission’s authority. For example, the “Good Utility Practice” standard is more broadly applicable than SDG&E asserts.⁸³ SDG&E’s compliance with the Good Utility Practice standard includes the need to exercise proper management of its entire business, including

⁷⁹ A.23-06-002, Assigned Commissioner’s Scoping Memo and Ruling, p. 2 (Oct. 31, 2023).

⁸⁰ D.02-10-062, Conclusion of Law 11.

⁸¹ Exhibit SDGE-10 at JC-4:20-22, JC-5:1-2.

⁸² See e.g., A.21-06-004, Assigned Commissioner’s Scoping Memo and Ruling, Scoping Issue One (Aug. 13, 2021) (emphasis added).

⁸³ Exhibit SDGE-10 at JC-5:13-15.

making reasonable efforts to ensure SDG&E gets value for all its resources. This is a key consideration in determining whether a utility has prudently managed its generation portfolio. As SDG&E correctly points out, Good Utility Practice was defined in D.02-12-069 to include, “*any* of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period...”⁸⁴ Accordingly, nothing constrains the Commission to applying the Good Utility Practice standard solely within the prism of utility maintenance decisions.

The 2022 record year belies the shortcomings in SDG&E’s Excess RA methodology, and the CCA Parties could not have otherwise investigated this issue without it being in scope. As described herein, the only other source of information regarding SDG&E’s approach to sales of Excess RA is its BPP, which is deeply opaque. Through investigation in this proceeding, the CCA Parties uncovered many previously unknown details surrounding SDG&E’s Excess RA sales practices, which assisted the CCA Parties in better understanding the outcome of the 2022 record period and will assist the Commission in determining how to make sure as much capacity as possible is available to the RA market.

If the Commission limited the scope of this proceeding to exclude these issues, there would be no process by which the Commission could evaluate whether SDG&E’s Excess RA sales practices should be changed. For example, SDG&E asserts that the RA docket⁸⁵ is the appropriate venue to address its Excess RA solicitation practices.⁸⁶ However, IOUs in the RA docket have

⁸⁴ D.02-12-069, Attachment A-3, p. 5 (emphasis added).

⁸⁵ California PUC Docket No. R.23-10-011.

⁸⁶ Exhibit SDGE-10 at JC-12:16-20.

asserted that as solicitations of Excess RA are governed by the BPP, they are out of scope in the RA docket and must be evaluated in an ERRA Compliance proceeding.⁸⁷

Finally, it is crucial that there is a Commission venue to shed light upon the IOUs' Excess RA sales practices before stakeholders with the proper confidentiality protections in place. As mentioned above, the State has invested over \$3 billion to ensure sufficient capacity at peak times and under particularly stressful events for the electric grid. At the same time, the State, through the Commission's PRG, has permitted SDG&E to withhold Excess RA without any specific or numerical justification. While there may be reasonable and legitimate reasons to retain Excess RA, the IOUs' decisions to do so must be measurable against firm, knowable standards. In light of these significant taxpayer investments, the direct cost impacts to customers, and the overall effect of SDG&E's actions on other LSEs, the Commission must afford SDG&E's Excess RA sales practices proper scrutiny in this proceeding.

V. CONCLUSION

For the foregoing reasons, the CCA Parties respectfully urge the Commission to take the actions discussed herein and to grant any other relief the Commission deems just and reasonable.

Respectfully submitted,

/s/ Alissa Greenwald

Alissa Greenwald

Tim Lindl

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San Francisco, CA 94104

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April 12, 2024

*On behalf of San Diego Community Power
and Clean Energy Alliance*

⁸⁷ See R.23-10-011, Pacific Gas and Electric Company's (U 39 E) Opening Comments on Track 1 Proposals, p. 17 (Mar. 8, 2024).



SAN DIEGO COMMUNITY POWER Staff Report – Item 10

To: San Diego Community Power Board of Directors

From: Laura Fernandez, Director of Regulatory & Legislative Affairs
Christopher Stephens, Procurement Manager

Via: Karin Burns, Chief Executive Officer

Subject: Approve Sixth Amendment to Professional Services Agreement with
NewGen Strategies and Solutions, LLC for up to \$1,346,250 for
Regulatory Support and Rate-Related Analysis through June 30, 2027

Date: April 25, 2024

RECOMMENDATIONS

Approve sixth amendment to professional services agreement with NewGen Strategies and Solutions, LLC to increase the not-to-exceed amount by \$500,000 to \$1,346,250, extend the agreement term through FY2027 and authorize the Chief Executive Officer to execute the agreement.

BACKGROUND

In December 2020, SDCP approved a contract with NewGen Strategies and Solutions, LLC for services related to reviewing SDG&E's 2021 Energy Resource Recovery Account (ERRA) Forecast proceeding, the 2021 Power Charge Indifference Adjustment (PCIA) proceeding and the 2020 forecasted year-end Portfolio Allocation Balancing Account (PABA).

All of these proceedings impact the cost competitiveness of SDCP's service. In May of 2021, SDCP amended the professional services agreement to expand the scope of work to include the 2022 ERRA Forecast and 2020 ERRA Compliance proceedings as well as support for SDCP programs, such as the Disadvantaged Community-Green Tariff/Community Solar-Green Tariff program and other regulatory and analytical support as requested by SDCP.

Further, in April 2022, SDCP amended the professional services agreement to expand the scope of work to include the 2023 ERRA Forecast, 2021 ERRA Compliance, continuing support of development of SDCP programs, such as the Disadvantaged Community-Green Tariff/Community Solar-Green Tariff program, and additional regulatory and analytical support as requested by SDCP.

In September 2022, the professional services agreement was amended again to include SDG&E's 2024 Phase 1 General Rate Case (GRC) filed in May 2022 and Green Tariff Shared Renewable program review, including review of SDG&E's respective applications, issuance and review of discovery, and filing of expert witness testimony as required and mutually agreed by SDCP and NewGen.

Finally, in March 2023, the Board of Directors approved the Fifth Amendment to the Agreement in order to expand the scope of work to include SDG&E's 2024 ERRA Forecast case as well as SDG&E's 2022 ERRA Compliance case.

ANALYSIS AND DISCUSSION

Staff recommends increasing NewGen Strategies and Solutions, LLC contract by \$500,000 to a total not-to-exceed amount of \$1,346,250 for services through June 30, 2027.

The reasons for this increase include expanded scope of work to include the following applications that SDG&E will file with the California Public Utilities Commission:

- SDG&E 2023 ERRA Compliance
- SDG&E 2025 ERRA Forecast
- SDG&E 2024 ERRA Compliance
- SDG&E 2026 ERRA Forecast
- SDG&E 2025 ERRA Compliance
- SDG&E 2027 ERRA Forecast
- SDG&E 2028 GRC Phase 1

AD-HOC COMMITTEE AND/OR SUBCOMMITTEE REVIEW

N/A

FISCAL IMPACT

Cost of this action includes a total amount not to exceed \$1,346,250 through June 30, 2027. Partial funding is included in the FY 2023-24 amended budget and the remaining funding will be proposed for inclusion in the FY 2024-25 budget.

ATTACHMENTS

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



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

THIS SIXTH AMENDMENT (“**Sixth Amendment**”) is entered into as of this April 25, 2024 by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority (“**SDCP**”) and NEWGEN STRATEGIES AND SOLUTIONS, LLC, a Colorado limited liability company, (“**Consultant**”). SDCP and Consultant are sometimes individually referred to herein as the “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, the Parties entered into that certain Professional Services Agreement, dated July 16, 2020, a First Amendment to the Professional Services Agreement, dated December 23, 2020, a Second Amendment to the Professional Services Agreement, dated June 8, 2021, a Third Amendment to the Professional Services Agreement, dated April 28, 2022, a Fourth Amendment to the Professional Services Agreement, dated September 20, 2022, and a Fifth Amendment to the Professional Services Agreement, dated March 23, 2023 (collectively, the “**Agreement**”); and

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

WHEREAS, the Parties desire to amend the Agreement for Consultant to provide additional regulatory Services for 2024, 2025, 2026, & 2027 and receive compensation for the additional services.

AGREEMENT

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

1. Recitals. The Recitals set forth above are true and correct and are incorporated into the body of this Amendment as though expressly set forth herein.
2. Amendment of Section 1.1. Consultant will provide additional Services related to SDG&E 2023 ERRRA Compliance, SDG&E 2025 ERRRA Forecast, SDG&E 2024 ERRRA Compliance, SDG&E 2026 ERRRA Forecast, SDG&E 2025 ERRRA Compliance, SDG&E 2027 ERRRA Forecast, and SDG&E 2028 GRC Phase 1.
3. Amendment of Section 1.2. Section 1.2 of the Agreement is amended to extend the term of the agreement to June 30, 2027 for all Services.
4. Additional Compensation. Consultant shall be entitled to compensation for the additional Services provided under this Sixth Amendment by \$500,000 for a new total not-to-exceed amount of \$1,346,250.

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

6. Capitalized Terms: Any capitalized terms not defined herein shall have the meanings set forth in the Agreement.

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

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

SAN DIEGO COMMUNITY POWER

**NEWGEN STRATEGIES AND
SOLUTIONS, LLC**

By: _____

By: _____

Name: Karin Burns

Name: _____

Title: Chief Executive Officer

Title: _____



SAN DIEGO COMMUNITY POWER Staff Report – Item 11

To: San Diego Community Power Board of Directors
From: Karin Burns, Chief Executive Officer
Subject: Adopt Resolution Appointing an SDCP Secretary
Date: April 25, 2024

RECOMMENDATION

Adopt Resolution No. 2024-02 appointing Maricela Hernandez to serve as SDCP Secretary.

BACKGROUND

In accordance with the SDCP Joint Powers Agreement, Section 5.3, the SDCP Board of Directors shall appoint a qualified person who is not on the Board to serve as Secretary. The Secretary is responsible for keeping all minutes of meetings of the Board and all other records of SDCP, as well as other duties pursuant to applicable law.

ANALYSIS AND DISCUSSION

Since the initial appointment of a Board Secretary in November 2019, the Board has appointed the Clerk of the Board to serve as Board Secretary. Maricela Hernandez joined the SDCP earlier this month to serve as the Clerk of the Board. Ms. Hernandez brings with her considerable experience in performing the responsibilities of a Board Secretary, including over 20 years of experience in public service and over 15 years as a board clerk.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

Resolution No. 2024-02, appointing Maricela Hernandez to serve as SDCP Secretary.



RESOLUTION NO. 2024-02

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
SAN DIEGO COMMUNITY POWER APPOINTING THE SECRETARY**

A. The Board of Directors of San Diego Community Power (“SDCP”) desires to appoint a new Secretary who will perform the various administrative and other tasks necessary to conduct the Board’s and SDCP’s affairs pursuant to SDCP’s Joint Powers Agreement and applicable law.

B. Pursuant to Section 5.3 of the SDCP Joint Exercise of Powers Agreement, the Board shall appoint a qualified person who is not on the Board to serve as Secretary.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of San Diego Community Power as follows:

Section 1. Appointment. Pursuant to Section 5.3 of the SDCP Joint Exercise of Powers Agreement, the Board hereby appoints Maricela Hernandez to serve as Secretary. Ms. Hernandez will serve as Secretary until the earlier of: (a) the end of her employment by SDCP, (b) her resignation as Secretary, or (c) until removed or replaced as Secretary by the Board.

Section 2. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power held on _____, 2024.

ATTEST:

Chair, Board of Directors
San Diego Community Power

Secretary, Board of Directors
San Diego Community Power



SAN DIEGO COMMUNITY POWER Staff Report – Item 12

To: San Diego Community Power Board of Directors

From: Eric Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Approve Fifth Amendment to Professional Services Agreement with Brentech Inc. for up to \$316,680 for Computer and IT-Related Services through June 30, 2024

Date: April 25, 2024

RECOMMENDATIONS

Approve the fifth amendment to the Professional Services Agreement with Brentech Inc. (Brentech Agreement) to increase the not-to-exceed contract value to \$316,680 (\$196,680 for non-equipment also referred to as IT consulting services and \$120,000 for equipment) through June 30, 2024 and authorize the Chief Executive Officer to execute the amendment.

BACKGROUND

On August 17, 2021, San Diego Community Power (SDCP) approved a contract with Brentech Inc. for computer and information technology (IT)-related services and technical labor through June 30, 2022 with a not-to-exceed amount of \$48,000 (\$24,000 for non-equipment services and \$24,000 for equipment).

BrenTech Inc. is one of San Diego's longest established computer and information technology solutions providers servicing San Diego, Riverside, and Orange Counties with business solutions for over 40 years.

Brentech provides full IT, cloud-based services, and computer system services including:

- Purchase and setup of business-class laptops
- Configuration of cloud-based systems including Microsoft 365, Microsoft application suite (e.g. Word, Excel, Teams, etc.), Microsoft Azure, Microsoft Authenticator, Adobe Acrobat DC, etc.
- Setup, configure, and manage Microsoft 365 accounts for all Staff members
- Setup, configure, and manage miscellaneous email inboxes (Exchange setups)
- Provision of support services to staff members regarding any IT/computer related inquiries, issues, and troubleshooting:

- Advise, establish, configure, and manage IT and network security protocols, policies, best practices, and trainings.
- Assist with, resolve, and report on security breaches (including but not limited to hacking, phishing incidents, virus installations, and all other compromises of SDCP systems and networks).
- Work with and assist SDCP contracted vendors to conduct regular and periodic security audits, including installing monitoring and reporting clients for audit purposes.

Subsequently, on July 29, 2022, SDCP amended the contract to extend the agreement through June 30, 2023 with a not-to-exceed amount for FY 2022-23 of \$73,000 (\$33,000 for non-equipment services and \$40,000 for equipment).

After the amendment, on February 1, 2023, SDCP hired an IT Associate as SDCP desired to transition its IT services from BrenTech Inc. to be delivered internally. This transition is intended to be in parallel to retaining BrenTech Inc. in the short term to ensure continuity in IT services.

On April 27, 2023, SDCP approved a second amendment with BrenTech Inc. for computer and information technology (IT)-related services and technical labor through June 30, 2024, with a not-to-exceed amount of \$77,380 (\$34,980 for non-equipment services and \$42,400 for equipment).

Since the second amendment, SDCP's IT Associate position has been vacated and SDCP has therefore required additional services from BrenTech Inc. to ensure business operations were not negatively impacted. Those services include an on-site IT Technician which resulted in a significant increase in hours billed.

On June 22, 2023, the SDCP Board adopted its FY 2023-24 budget which included in its hiring plan a new Director of IT and Data Analytics. An additional 300 contract hours was estimated to cover the agency's need for an IT consultant until the establishment of an internal IT department.

On September 28, 2023, the SDCP Board approved a third amendment with BrenTech Inc. to increase the not-to-exceed amount of \$112,360 (\$69,960 for non-equipment services and \$42,400 for equipment). An additional 300 contract hours was estimated to cover the agency's need for an IT consultant until the establishment of an internal IT department.

On November 1, 2023 SDCP entered a new sublease agreement with Correlation and moved office spaces from its previous location on 2488 Historic Decatur Road to 2305 Historic Decatur Road. BrenTech Inc. facilitated the move with regards to all IT matters, which resulted in substantial usage of contract hours. SDCP has subsequently onboarded a Director of IT and Data Analytics to continue its commitment to build its IT services functions in house.



On January 18, 2024, the SDCP Board approved a fourth amendment with BrenTech Inc. to increase the not-to-exceed amount of \$246,720 (\$126,720 for non-equipment services and \$120,000 for equipment). An additional 960 contract hours was estimated to cover the agency's need for an IT consultant until the establishment of an internal IT department.

ANALYSIS AND DISCUSSION

Staff recommends increasing the Brentech Inc. contract for a not-to-exceed amount of \$316,680 (\$196,680 for non-equipment services and \$120,000 for equipment) in FY 2023-24.

The fourth amendment stated a not-to-exceed amount of \$126,960 for non-equipment services which equates to approximately 1,089 hours for FY 2023-24. SDCP estimates an additional 471 hours of service is needed from BrenTech, which equates to approximately \$69,960. This totals 1,560 hours for FY 2023-24. The services included are all on-site IT Consultant or Technician responsibilities such as new employee onboarding, troubleshooting hardware and software, network maintenance, Board and committee meeting setup, internal presentation or meeting equipment setup and other various IT related tasks. The not-to-exceed amount for the non-equipment services will increase by \$69,960 to a total of \$196,680.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

SDCP is reallocating \$69,960 within the Professional Services and Consultants budget level 2 category. This transfer, authorized by the CFO per the Budget Policy, adheres to the discretionary limit of \$150,000 and maintains the category's total budget. The move aligns resources with operational needs without additional financial impact or board approval.

ATTACHMENTS

Attachment A: Fifth Amendment to Professional Services Agreement Between San Diego Community Power and Brentech Inc.



FIFTH AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN SAN DIEGO COMMUNITY POWER AND BRENTech INC.

THIS FIFTH AMENDMENT (“**Fifth Amendment**”) is entered into as of this 25th day of April 2024 by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority (“**SDCP**”) and BRENTech INC., a California corporation (“**Consultant**”). SDCP and Consultant are sometimes individually referred to herein as the “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, the Parties entered into that certain Professional Services Agreement between San Diego Community Power and Consultant, dated August 17, 2021, a First Amendment to the Professional Services Agreement, dated July 29, 2022, and a Second Amendment to the Professional Services Agreement, dated April 27, 2023, and a Third Amendment to the Professional Services Agreement, dated September 28, 2023, and a Fourth Amendment to the Professional Services Agreement, dated January 18, 2024 (collectively, the “**Agreement**”);

WHEREAS, pursuant to the Agreement, Consultant provides computer-related and information technology (IT)-related services and technical labor services to SDCP; and

WHEREAS, the Parties desire to amend the Agreement to revise the scope of work, and to increase the not-to-exceed amount.

AGREEMENT

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

1. Recitals. The Recitals set forth above are true and correct and are incorporated into the body of this Amendment as though expressly set forth herein.
2. Amendment of Section 3.1.1. Section 3.1.1 of the Agreement is amended to increase the not-to-exceed amount for fiscal year 2023-24 to One Hundred and Ninety-Six Thousand Six Hundred and Eighty Dollars (\$196,680).
3. Effect of Amendment. Except as expressly set forth in this Amendment, all other sections, provisions, exhibits and commitments of the Agreement remain unchanged and in full force and effect.
4. Capitalized Terms. Any capitalized terms not defined herein shall have the meanings set forth in the Agreement.
5. Counterparts. This Amendment may be executed in one or more counterparts, including facsimile counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Amendment to the

Professional Services Agreement between San Diego Community Power and BrenTech Inc., as of the date first set forth above.

SAN DIEGO COMMUNITY POWER

BRENTECH, INC.

By: _____

By: _____

Name: Karin Burns

Name: Daniel Brenner

Title: Chief Executive Officer

Title: President

APPROVED AS TO FORM:

SDCP General Counsel

SAN DIEGO COMMUNITY POWER

Staff Report – Item 13

To: San Diego Community Power Board of Directors

From: Tim Treadwell, Senior Program Manager
Colin Santulli, Director of Programs

Via: Jack Clark, Chief Operating Officer

Subject: Update on Vehicle-Grid Integration Strategy Overview

Date: April 25, 2024

RECOMMENDATION


Receive and file the update on SDCP's Vehicle-Grid Integration Strategy overview.

BACKGROUND

Vehicle-Grid Integration ("VGI") is an important and growing source of grid flexibility. It has the potential to deliver significant cost savings to customers through time of use ("TOU") optimization and operational savings to Community Choice Aggregators ("CCAs") by reducing the amount and cost of energy and resource adequacy ("RA") obligations. Given this value, VGI has emerged as an important new resource for meeting the State's energy policy goals.

In October 2019, [Senate Bill 676](#) originally defined VGI and gave authority to the California Public Utilities Commission ("CPUC") to revise the definition. Per the Decision, VGI is defined as:

"Electric vehicle grid integration means any method of altering the time, charging level, or location at which grid-connected light-duty electric vehicles, medium-duty electric vehicles, heavy-duty electric vehicles, off-road electric vehicles, or off-road electric equipment charge or discharge, in a manner that optimizes plug-in electric vehicle or equipment interaction with the electrical grid and provides net benefits to ratepayers by doing any of the following:

- Increasing electrical grid asset utilization and operational flexibility
 - Avoiding otherwise necessary distribution infrastructure upgrades and supporting resiliency
 - Integrating renewable energy resources
- 

- Reducing the cost of electricity supply
- Offering reliability services consistent with the resource adequacy requirements established by Section 380 or the Independent System Operator tariff.”

ANALYSIS AND DISCUSSION

Purpose and Goals

The goal of SDCP’s VGI strategy is to design and deliver a portfolio of V1G and V2X programs that maximizes the size and value of SDCP’s flexible resource base. This will enable customer load optimization, delivering direct bill savings to participants, while reducing procurement risks and costs, and enabling lower rates for the broader community. Moreover, this approach will align SDCP’s efforts with the broader policy goals of the State.

To achieve this goal, Staff assessed the market for VGI vendors that can support the use of managed charging to reduce customer bills and reduce SDCP’s operational costs while balancing risk and program scale considerations. Based on this research, Staff intend to launch a Pilot, enrolling hundreds of light-duty electric vehicles (“EVs”), residential customers beginning in Q3 2024. Staff also intend to work with V2X vendor(s) that have received California Energy Commission (“CEC”) funds to conduct a small-scale demonstration (less than 100 customers) of bi-directional charging for customer resiliency, bill savings, and SDCP cost management.

What is V1G?

V1G (i.e., “Managed Charging”) is designed to optimize when EVs charge based on grid needs and/or electricity pricing, with an emphasis on reducing costs and optimizing grid load. V1G may involve charging primarily during off-peak hours or dynamically adjusting charging rates in response to real-time grid conditions. V1G can shed energy usage during peak load periods (commonly referred to as “demand response” or “DR”) or shift energy usage to times when the grid is less congested, prices are lower, or generation is cleaner.

What is V2X?

V2X (i.e., “Bidirectional Charging”) involves charging and discharging of vehicle batteries to meet site load or grid needs. This capability allows EVs to support grid operation, as well as act as resilience assets for customers during grid outages.¹ V2X configurations include Vehicle-to-Home (“V2H”), Vehicle-to-Building (“V2B”), and Vehicle-to-Grid (“V2G”) (see Figure 1). Both V2H and V2B use EVs to provide supplementary power to a building while connected to or disconnected from the grid that allows customers to save by reducing peak demand from the Load Serving Entity (“LSE”) and/or is used to provide

¹ V2X applications require [Rule 21](#) interconnection agreements if they are configured to operate in parallel to the grid.

backup power to a building during blackouts. V2G allows for discharge of electricity across the meter to support various distribution bulk system grid needs.

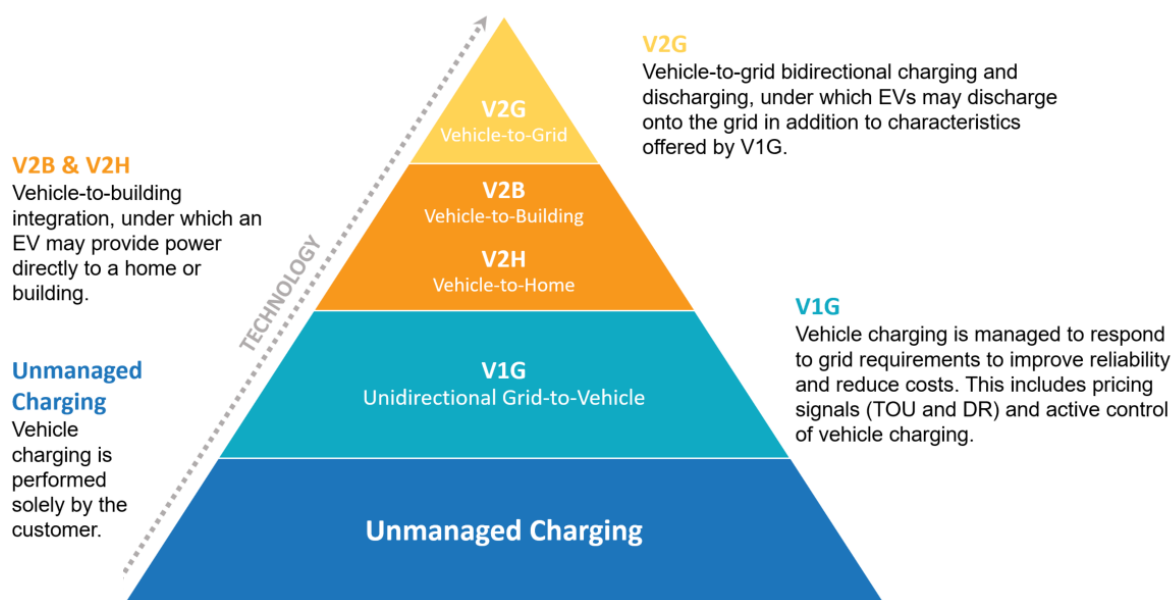


Figure 1 – VGI Categories Explained

NEXT STEPS

Given the State's focus on VGI and the operational benefits it can provide to SDCP, Staff are proposing a VGI Pilot ("Pilot") to be implemented in Q3 2024 as part of SDCP's flexible load strategy. The Pilot outlines the opportunity to drive operational efficiency and the current landscape of EV market dynamics, managed charging programs, and potential use cases for grid optimization through V1G and V2X (e.g., V2H, V2B, and V2G).

Staff expect to begin the procurement process for the V1G and V2X vendor(s) in late Q3 2024.

AD-HOC COMMITTEE AND/OR SUBCOMMITTEE REVIEW

Staff presented an overview of the VGI Strategy to the Community Advisory Committee at their April 11, 2024 meeting.

FISCAL IMPACT

Staff anticipate the first-year cost of the VGI Pilot and V2X demonstration to be approximately \$500,000 (+/- 20%). Specific costs will be dependent on the Request for Proposal ("RFP") specifications, bids received, contract structure, and program uptake. Staff does not anticipate these costs being incurred until Fiscal Year 2024-25.

ATTACHMENTS

N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 14

To: San Diego Community Power Board of Directors
From: Xiomalys Crespo, Community Engagement Manager
Via: Karin Burns, Chief Executive Officer
Subject: Quarterly Report on Community Advisory Committee
Date: April 25, 2024

RECOMMENDATION

Receive and file the quarterly report on the Community Advisory Committee (CAC).

BACKGROUND

Per Section 5.10.3 of the San Diego Community Power (SDCP) Joint Powers Authority (JPA) Agreement:

The Board shall establish a Community Advisory Committee comprised of non-Board members. The primary purpose of the Community Advisory Committee shall be to advise the Board of Directors and provide for a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of the Authority.

At the direction of the Chair of SDCP's Board of Directors, the CAC, via staff, shall provide quarterly updates during the regular meetings of the Board of Directors. The last quarterly update was provided on February 22, 2024.

ANALYSIS AND DISCUSSION

At the November 16, 2023 regular meeting of the Board of Directors, staff presented a summary of CAC activities from November 2023 and January 2024. This report summarizes January through March to adjust the cadence of reports to the following fiscal year quarters: July through September (Quarter 1, report in October), October through December (Quarter 2, report in January), January through March (Quarter 3, report in April), and April through June (Quarter 4, report in July).

January: At the January 11, 2024 regular CAC meeting, members recognized and thanked former member Carolyn Scofield (City of Chula Vista) for her service in the CAC since May 2020, as well as staff members Patrick Welch, Senior Legislative Manager, and Elaine Mezta, Key Accounts Manager. The CAC approved all department updates

under the consent agenda and heard a presentation on the 2024 Projected Rate Changes and SDPC's Flex Load Strategy. The CAC also heard end of committee reports for its Programs Ad-Hoc Committee and its Community & Equity Ad-Hoc Committee. Following the reports, members formed the following ad-hoc committees:

- Community Grants Ad-Hoc Committee, through which Members Castañeda (National City), Harris (La Mesa), and Sclafani (Chula Vista) will meet to provide feedback on the criteria proposed for SDPC's next round of Community Grant Program; and
- Power 100 Ad-Hoc Committee, through which Members Cazares (La Mesa), Hammond (Encinitas), Andersen (County of San Diego), Sandoval (Imperial Beach), and Castañeda (National City) will discuss strategies to support businesses and community-based organizations in opting up to Power 100.

The CAC discussed and recommended that the Board of Directors approve the CAC's Scope of Work and Policies and Procedures by a unanimous vote, rounding up the meeting by receiving an update on the proposed 2024 CAC Work Plan.

February: During the February 8, 2024 regular CAC meeting, members welcomed new staff members, including Michelle Porras, Senior Executive Assistant, and Veera Tyagi, General Counsel, who will directly support the CAC moving forward. The CAC approved the consent agenda, which included department updates. The CAC heard a presentation on the Mid-Year Budget Amendment, and the Account Services and Regulatory and Legislative teams provided an update on SDPC's Load Management Standards Compliance Plan. Members asked about staffing impacts of proposed amendments to the budget and strategies for educating customers about dynamic rates, respectively.

The CAC also heard the end of committee report for its Community Grant Program Ad-Hoc Committee, in which Members Castañeda (National City), Harris (La Mesa), and Sclafani (Chula Vista) met to provide feedback on the criteria proposed for SDPC's next round of community grants. The Programs team then provided a presentation on the Community Grant Program, where members learned about the process and application and recommended outreach to applicants of the previous rounds as well as considering all member agencies when allocating awards. Lastly, staff provided a presentation on SDPC's proposed Residential + Storage Program, in which members engaged in discussion around the benefits of making the incentives available to renters and multi-family housing.

March: Due to a lack of agenda items, the regular meeting of the CAC scheduled for March 14, 2024 at 5:30 pm was canceled. A cancellation notice was publicly posted on March 7, 2024. The CAC's next regular meeting took place on April 11, 2024. A monthly report was attached to this agenda packet.

As of April 16, 2024, the CAC has three vacancies representing the County of San Diego (unincorporated), the City of Chula Vista, and the City of Imperial Beach. Members of the public must be residents, community leaders, and/or business owners of the respective



jurisdictions and may submit their applications electronically. The vacancies have been advertised at meetings, community events, and through SDCP's social media.

Staff will return to the Board of Directors in July 2024 to report on activities for the fourth quarter of the fiscal year.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 15

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services

Via: Karin Burns, Chief Executive Officer

Subject: Approve First Amendment to the EEI Transaction Confirmation for Modified CAM Resource Adequacy between SDCP and SDG&E

Date: April 25, 2024

RECOMMENDATION

Approve the First Amendment to the EEI Transaction Confirmation for Modified CAM Resource Adequacy between SDCP and SDG&E and authorize the CEO to execute the agreement in substantially similar form.

BACKGROUND

Integrated Resource Planning – Modified Cost Allocation Mechanism

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

On May 19, 2022, the CPUC approved D. 22-05-015 on mCAM. The Decision addressed three categories of IOU procurement: (1) procurement on behalf of an LSE that opted-out of D. 19-11-016 obligations ("Opt-Out Procurement"); (2) procurement on behalf of an LSE that is deficient in meeting its obligation under D. 19-11-016, D. 21-06-035, and any future procurement requirements ordered in the context of the integrated resource planning (IRP) process ("Backstop Procurement"); and (3) procurement to meet the IOU's own D. 19-11-016 obligations ("Bundled Procurement"). The Decision required that the IOUs assign all above-market Bundle Procurement costs to PCIA vintage year (VY) 2019 for recovery from current IOU customers ("Bundled Service Customers") and from

customers who have departed from bundled service since 2019 (“2019 Departed Load Customers”).

In addition, the Decision adopted a one-time provision that would allow for 2019 Departed Load Customers to access their share of associated resource benefits. Under this provision, an LSE, such as SDCP, that serves customers who departed after 2019 would be required to enter an agreement with the incumbent IOU for the purchase of its share of Bundled Procurement benefits at the applicable market price benchmark (MPB).

While negotiating the 2022 EEI Transaction Confirmation for mCAM RA, SDCP and SDG&E disagreed about the appropriate calculation methodology for SDCP’s load-share to be used in the mCAM transaction. In the interest of complying timely with D.22-05-015, SDCP agreed to SDG&E’s proposed allocation percentage. Subsequently, in October 2022, SDCP and Clean Energy Alliance (CEA) filed at the CPUC a petition for modification of D.22-05-015 to clarify that load-share allocations used in mCAM transactions should be based on 2023 load forecast data submitted to the CPUC in 2022. Via D.23-12-014, the CPUC granted SDCP and CEA’s petition for modification and offered non-IOU LSEs an opportunity to amend their mCAM purchase transactions to incorporate capacity allocations that reflected 2023 load forecasts.

ANALYSIS AND DISCUSSION

Staff have negotiated the attached First Amendment to the EEI Transaction Confirmation in order to comply with D.23-12-014 and to facilitate SDCP’s purchase of additional volume of mCAM RA.

Via this transaction, SDCP will increase its purchased mCAM volume to its 2023 load-share ratio forecast during the 2022 planning period. Beginning in January 2025, SDCP will receive this share of all RA attributes that SDG&E receives from the resources it has contracted to meet its D.19-11-016 incremental procurement obligations. No other terms of the mCAM purchase agreement will change.

Transaction Summary

EEI Transaction Confirmation for Resource Adequacy Capacity Product between SDCP and SDG&E for Modified CAM Resources

- Project: Various Battery Energy Storage and Natural Gas Fired Resources that SDG&E has contracted to meet its D.19-11-016 procurement obligations
- Delivery Term start: September 1, 2022
- Contract term: ~15 years
- RA price: CPUC MPB

COMMITTEE REVIEW

N/A

FISCAL IMPACT



This long-term purchase of RA at market-based prices will provide planning certainty, diversity within SDCP's power supply cost portfolio, and contribute to SDCP's fulfillment of its resource adequacy obligations over the term of this transaction. In addition, this transaction should reduce PCIA impacts of the portion of SDG&E's PCIA-eligible RA capacity that is included in this transaction.

ATTACHMENTS

Attachment A: First Amendment to the EEI Transaction Confirmation



FIRST AMENDMENT
To the
EEI TRANSACTION CONFIRMATION

This First Amendment to the EEI Transaction Confirmation (“First Amendment”) is made and entered into by San Diego Gas & Electric Company (“SDG&E” or “Seller”), a California corporation, and San Diego Community Power (“SDCP” or “Buyer”), a California joint powers authority, effective as of May [], 2024 (the “First Amendment Effective Date”). Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties.” All capitalized terms not otherwise defined in this First Amendment are used with the meanings ascribed to them in the Agreement (as defined below).

RECITALS

WHEREAS, Seller and Buyer are Parties to that certain EEI Transaction Confirmation between SDG&E and SDCP, dated as of July 8, 2022, which is governed by the EEI Master Power Purchase & Sale Agreement, dated as of December 20, 2021, along with any amendments and annexes executed between the Parties thereto (the “Master Agreement”, and together with the Confirmation, the “Agreement”), under which, among other things, Seller will sell to Buyer, and Buyer will purchase from Seller, the Product as described therein.

WHEREAS, the California Public Utilities Commission (“CPUC”) Decision (“D.”) 22-05-015 offered Buyer, among others, a one-time provision for the purchase of resource adequacy capacity at a point in time determined by the Commission to address any uncertainty and inequity created between the adoption of D.19-11-016 and D.22-05-015.

WHEREAS, in D.23-12-014 the CPUC clarified that the point in time to determine Buyer’s allocation share for the sale and purchase of eligible resource adequacy capacity should be based on the final 2023 resource adequacy year-ahead forecast for load served by each load-serving entity, which was finalized in August 2022.

WHEREAS, because Buyer elects to purchase additional capacity in response to the clarification in D.23-12-014, Seller and Buyer now desire to amend the Agreement under the terms and conditions set forth in this First Amendment.

AGREEMENT

In consideration of the promises, mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration as set forth herein, the Parties agree as follows:

I. Effectiveness.

The effectiveness of this First Amendment is conditioned upon Seller having obtained final and non-appealable CPUC Amendment Approval no later than August 31, 2024. Prior to this deadline, should the CPUC issue an order approving this First Amendment with conditions or modifications that materially alter the commercial aspects of this First Amendment, the Parties agree to use good faith efforts to renegotiate this First Amendment

and file the amended First Amendment with the CPUC seeking approval thereof. If, no later than the earlier of (i) sixty (60) days after such order or (ii) the deadline date above, no agreement is reached, either Party may terminate this First Amendment upon delivery of Notice to the other Party. For purpose of this First Amendment, “CPUC Amendment Approval” shall mean a final, non-appealable order approving this First Amendment in its entirety issued by the CPUC.

II. Amendments.

The Agreement is amended as follows:

- a. The second sentence of Section 3.4 of the Agreement is be deleted in its entirety and the following inserted:

“‘Buyer’s Allocation mCAM Quantity’ means (i) 34.25% of Seller’s RA Total for the period commencing on the Delivery Start Date through the end of December 31, 2024, and (ii) 57.17% of Seller’s RA Total commencing at the beginning of January 1, 2025, through the end of the Delivery Term.”
- b. Appendix A is deleted in its entirety and the new Appendix A attached to this First Amendment is inserted.

III. Miscellaneous.

- a. Each Party expressly reserves all of its respective rights and remedies under the Agreement.
- b. Except as expressly set forth in this First Amendment, the Agreement remains unchanged and in full force and effect.
- c. The terms and provisions hereof shall be binding on, inure to the benefit of, and be enforceable by, the successors and assigns of the Parties, whether so expressed or not.
- d. If any provision of this First Amendment is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions hereof will not in any way be affected or impaired thereby.
- e. This First Amendment may be executed in one or more counterparts, each of which will be deemed to be an original of this First Amendment and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this First Amendment and of signature pages by facsimile transmission or by other electronic means shall constitute effective execution and delivery of this First Amendment as to the Parties and may be used in lieu of the original First Amendment for all purposes. Signatures of the Parties transmitted by facsimile or by other electronic means shall be deemed to be their original signatures for all purposes.
- f. Each Party represents and warrants that the execution, delivery and performance of this First Amendment are within its powers, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing

documents, any contracts to which it is a party, or any law, rule, regulation, order or the like applicable to it, and that the person who signs below on behalf of that Party has authority to execute this First Amendment on behalf of such Party and to bind such Party to this First Amendment.

- g. This First Amendment sets forth the entire agreement of the Parties with respect to the subject matter herein, supersedes all previous understandings, written or oral, with respect thereto, and may not be amended, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument executed by each Party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the Parties hereto have caused this First Amendment to be duly executed as of the effective date of this First Amendment.

SAN DIEGO COMMUNITY POWER, a
California joint powers authority

SAN DIEGO GAS & ELECTRIC
COMPANY, a California corporation

By: _____

Name: _____

Title: _____

By: _____

Name: Adam D. Pierce

Title: Vice President – Energy
Procurement & Rates

APPROVED as to legal form _____

Appendix A

Unit Information for resources under D.19-11-016 effective as of the Confirmation Execution Date. This summary does not include confidential contract terms, for example, “Term” may be “5 years” subject to early termination in accordance with the contract terms and quantities shall be determined in accordance with confidential contract terms. Appendix A can only be relied upon for purposes stated in the Agreement.

Unit Resource Name	Sentinel Energy	Vista Energy Storage	Valley Center Energy Storage II	Valley Center Energy Storage	Kearny Battery Energy Storage¹	Johanna Energy Storage
Resource Type	Natural Gas	Lithium-Ion Energy Storage	Lithium-Ion Energy Storage	Lithium-Ion Energy Storage	Lithium-Ion Energy Storage	Lithium-Ion Energy Storage
Maximum quantity (MW) contracted to SDG&E and CPUC approved for D19-11-016 compliance	20	10	54	50	20	20
Maximum quantity (MW) contracted to SDG&E and CPUC approved for D19-11-016 compliance Flexible RA (MW)	20	10	None	None	20	20
Anticipated Start Date for Seller's RA Total	Delivery Start Date	Delivery Start Date	Delivery Start Date	Delivery Start Date	Delivery Start Date	Delivery Start Date
Term (Years)	5	15	15	15	20	10
CAISO Resource ID	SENTNL_2_ CTG 1 through SENTNL_2_ CTG 8	VSTAES_6_ VESBT1	VLCNTR_6_ VCEBT1	VLCNTR_6_ VCEBT2	KEARNY_6_ NESBT1, KEARNY_6_ SESBT2	JOANEC_2_ STABT2
Unit SCID	BET2	VIST	LSDGE	LSDGE	LSDGE	LSDGE
Resource Category (MMC Bucket 1, 2, 3, 4)	1	1	1	1	1	1
Path 26	South	South	South	South	South	South
Capacity Area	LA County, CA	San Diego – IV	San Diego – IV	San Diego – IV	San Diego – IV	San Diego – IV
Minimum Qualified Flexible Capacity Category	Category 1, Base Ramping	Category 3, Super-peak Ramping	None	None	Category 1, Base Ramping	Category 1, Base Ramping
Deliverability Restrictions	None	None	None	None	None	None
Run Hour Restrictions	None	None	None	None	None	None

¹ Kearny Battery Energy Storage is a utility owned resource, not under contract to SDG&E. The Parties agree to include it within Seller’s RA Total for the term listed in this chart.

Unit Resource Name	Gateway Energy Storage	Edwards Sanborn Hybrid Solar Energy Storage	Bright Canyon Energy Los Alamitos Energy Storage	Ortega Grid Energy Storage	Sagebrush Energy Storage
Resource Type	Lithium-Ion Energy Storage	Lithium-Ion Energy Storage; Solar Photovoltaic	Lithium-Ion Energy Storage	Lithium-Ion Energy Storage	Lithium-Ion Energy Storage
Maximum quantity (MW) contracted to SDG&E and CPUC approved for D19-11-016 compliance	10	25	20	10	80
Maximum quantity (MW) contracted to SDG&E and CPUC approved for D19-11-016 compliance Flexible RA (MW)	10	None	20	None	80
Start Date	January 1, 2023	January 1, 2023	11/12/2023	4/7/2024 (expected)	5/23/2023
Term (Years)	14	12	10	10	10
CAISO Resource ID	GATEWY_2_G ESBT1	EDWARD_2_E 21SB1, SANBRN_2_ES 1BT3, EDWARD_2_E S2BT3, SANBRN_2_ES 2SB3, EDWARD_2_E 23SB1	BARRE_2_AL ASB1, DELAMO_2_A LASB2	VALLEY_5_O RTBT1	WSTWND_2_S BSBT1
Unit SCID	GTWY	TGEM	LSDGE	LSDGE	LSDGE
Resource Category (MMC Bucket 1, 2, 3, 4)	1	1	1	1	1
Path 26	South	South	South	South	South
Capacity Area	San Diego – IV, CA	Kern County, CA	San Diego – IV, CA	Riverside County, CA	Mojave, CA
Minimum Qualified Flexible Capacity Category	Category 3, Super-peak Ramping	None	Category 1, Base Ramping	None	Category 1, Base Ramping
Deliverability Restrictions	None	None	None	None	None
Run Hour Restrictions	None	None	None	None	None



SAN DIEGO COMMUNITY POWER Staff Report – Item 16

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services; and
Kenny Key, Director of Power Contracts, Power Services

Via: Karin Burns, Chief Executive Officer

Subject: Approve Amended and Restated Renewable Power Purchase Agreement
with Pelicans Jaw Solar, LLC

Date: April 25, 2024

RECOMMENDATION

Approve the proposed 15-year Amended and Restated Renewable Power Purchase Agreement (A&R PPA) with Pelicans Jaw Solar, LLC for a 440 MW solar photovoltaic electric generation facility and 238.5 MW (4-hour) Battery Energy System Storage (BESS) facility and authorize the CEO to execute the agreement.

BACKGROUND

As San Diego Community Power (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 are 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.

Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that SDCP provide 65% of its RPS-required renewable energy from contracts of at least ten years in length. In D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental generation facilities that will achieve commercial operation during 2023 through 2026. Further, as adopted March 23, 2023, SDCP has established a procurement target of 100% renewable by 2035.

In January 2024 SDCP board of directors approved a PPA for the Pelicans Jaw project. That PPA originated from a request for proposals SDCP issued in early 2023. SDCP engaged with SB Energy (SBE) on the Pelicans Jaw project under development by Pelicans Jaw Solar, LLC, a subsidiary of SBE after short-listing. The original PPA, approved in January 2024, was for capacity and renewable energy benefits from a portion of the Pelicans Jaw project, representing 226 MW of solar generation and 118 MW (472 MWh) of storage capacity.

After the original PPA was executed by the parties, staff was informed that additional volume of solar and storage capacity could be available from the project. Staff has reached terms mutually agreeable to both parties to increase the volumes from 226 MW of solar generation to 440 MW and to increase the storage capacity from 118 MW to 238.5 MW.

ANALYSIS AND DISCUSSION

Staff negotiated the attached A&R PPA for the purchase of renewable energy and capacity attributes from a 440 MW solar photovoltaic electricity generating facility, along with a 238.5 MWAC 4-hour (954 MWh) battery energy storage facility in Kern County.

Renewable energy produced by the facility will provide approximately 1,200,000 MWh annually of long-term renewable energy deliveries for SDCP's power supply. Further, while SDCP is increasing efforts to target and encourage local project development for SDCP's generation portfolio, SDCP expects a certain amount of geographic diversity among its power supply to help mitigate risks that might be experienced locally or regionally from weather, project site and/or wholesale market conditions.

Below is additional information regarding SBE and the proposed A&R PPA.

Background on SBE:

- SBE is a California-based solar and storage developer, owning and operating 1.4 GWac of solar projects in US, including 450 MWac of solar projects operating in California with 3 GWac of solar and 4.8 GWac of storage in its California pipeline, including the Pelicans Jaw project.
- Founded in 2019, SBE is backed by SoftBank Group Corp. and Ares Climate Infrastructure, allowing SBE to finance 100% of the projects it develops, owns, and operates.
- In December 2023, SBE received "Renewables Deal of the Year" award from Project Finance International (PFI) for reaching financial close on 1.3 GWs of solar projects and being among the first to take advantage of the domestic content adder, a provision in the IRA designed to strengthen America's manufacturing base.
- SBE is sourcing solar modules, trackers, and structural steel domestically for several of its projects.



Contract Overview – Pelicans Jaw

- Project: 440 MW solar photovoltaic electricity generating facility, along with a 238.5 MWAC 4-hour (954 MWh) battery energy storage facility
- Project location: Kern County
- Guaranteed commercial operation date: April 1, 2027
- Contract term: 15 years
- Expected annual energy production: approximately 1,200,000 MWhs
- Pricing: Fixed pricing with no escalation
- SDCP would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones as well as seller's failure to meet the guaranteed energy production.

Community Benefits and Workforce Development:

- The project is estimated to create approximately 800 temporary construction jobs and 6-8 permanent jobs.
- The project has a fully executed Project Labor Agreement with:
 - Operating Engineers Local 12 – San Diego, CA
 - Southwest Regional Council of Carpenters – Los Angeles, CA
 - Southern California District Council of Laborers and its affiliated Local Union 220 – Bakersfield, CA
 - IBEW Local 428 – Bakersfield, CA
 - IBEW Local Union 47 – Diamond Bar CA
 - Ironworkers Locals 416 and 433 – Norwalk, CA & City of Industry, CA
- The project has committed \$500,000 to a community benefit fund to benefit SDCP customers.

COMMITTEE REVIEW

The ECWG reviewed the A&R PPA for the project and recommended staff to move forward with the execution of this A&R PPA.

FISCAL IMPACT

The competitive energy and capacity pricing of the A&R 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 A&R PPA.

ATTACHMENTS

Attachment A: Amended and Restated Renewable Power Purchase Agreement with Pelicans Jaw Solar, LLC



**AMENDED AND RESTATED RENEWABLE POWER PURCHASE AND ENERGY
STORAGE SERVICE AGREEMENT**

COVER SHEET

Seller: Pelicans Jaw Solar, LLC (“**Seller**”)

Buyer: San Diego Community Power, a California joint powers authority (“**Buyer**”)

Description of Facility: A 440 MW solar photovoltaic electricity generating facility, along with a 238.5 MW/954 MWh battery energy storage facility, all located in Kern County, in the State of California, as further described in Exhibit A, and subject to reduction in size as described in Exhibit B.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	██████
CEC Pre-Certification Obtained	██████
Obtain federal and state discretionary permits: [] CEQA, [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [] EIR	██████
Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities	██████
Executed Interconnection Agreement	██████
Guaranteed Construction Start Date	██████
Procure Major Equipment	██████
Expected Commercial Operation Date	██████
Guaranteed Commercial Operation Date	4/1/27

Delivery Term: 15 Contract Years.

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Expected Energy:

Contract Year	Expected Energy MWh
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

Guaranteed Capacity: 440 MW for the Generating Facility

Storage Contract Capacity: 238.5 MW

Storage Contract Output: 954 MWh (based on four (4) hour discharge)

Dedicated Interconnection Capacity: 440 MW

Guaranteed Storage Availability: ■%

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	

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13			
14			
15			

Minimum Efficiency Rate: ■%

Contract Price

The Renewable Rate shall be:

Contract Year	Renewable Rate
1-15	■

The Storage Rate shall be:

Contract Year	Storage Rate
1-15	■

Product:

- ☒ Generating Facility Energy
- ☒ Discharging Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Storage Capacity
- ☒ Capacity Attributes (select options below as applicable)
 - ☒ Energy Only Status for the Generating Facility
 - ☒ Partial Capacity Deliverability Status for the Storage Facility
- ☒ Ancillary Services

Scheduling Coordinator: Buyer or Buyer's designated agent

Security:

Development Security: The amount equal to (a) \$70/kW of Guaranteed Capacity, plus (b) \$90/kW of Storage Contract Capacity

Performance Security: The amount equal to (a) \$70/kW of Installed Generating Capacity, plus (b) \$90/kW of Installed Battery Capacity

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AMENDED AND RESTATED RENEWABLE POWER PURCHASE AND ENERGY STORAGE SERVICE AGREEMENT

This Amended and Restated Renewable Power Purchase and Energy Storage Service Agreement (“**Agreement**”) is entered into as of April [REDACTED], 2024 (the “**Effective Date**”), between Buyer and 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, the Parties entered into that certain Renewable Power Purchase and Energy Storage Service Agreement, dated as of February 9, 2024 (the “**Original PPA**”); and

WHEREAS, the Parties hereby agree to amend, restate, replace and supersede the terms of the Original PPA as provided herein; and

WHEREAS, Seller intends to develop, design, permit, construct, own, 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:

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

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

“**Adjusted Storage Rate**” has the meaning set forth in Section 3.7(b).

“**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”, “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.

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“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Alternating Current**” or “**AC**” means alternating current.

“**Ancillary Services**” means all ancillary services, as defined in the CAISO Tariff, that the Facility is capable of providing consistent with the Operating Restrictions, as set forth in Exhibit Q.

“**Annual Storage Availability**” has the meaning set forth in Exhibit P.

“**Approved Forecast Vendor**” means any of (a) the CAISO or (b) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“**Availability Adjustment**” or “**AA**” has the meaning set forth in Exhibit P.

“**Availability Adjustment Payment**” has the meaning set forth in Exhibit P.

“**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.

“**Bid**” has the meaning as set forth in the CAISO Tariff.

“**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. Pacific Prevailing Time (PPT) 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 Bid Curtailment**” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Generating Facility Energy than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Generating Facility for a period of time;

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Generating Facility or Generating Facility Energy, including where Buyer or the SC for the Generating Facility:

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- (i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or
- (ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or
- (iii) submitted a Self-Schedule for less than the full amount of Generating Facility Energy forecasted to be generated by or delivered from the Generating Facility.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Generating Facility Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Order” means (a) the instruction from Buyer to Seller to reduce Generating Facility Energy by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order, or (b) a reduction of Generating Facility Energy pursuant to or as a result of dispatch of the Storage Facility.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Generating Facility Energy pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) Buyer default; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Buyer Dispatched Test” has the meaning in Section 4.9(b).

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

“CAISO” means the California Independent System Operator Corporation.

“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 Generating Facility Energy delivered to the Delivery Point or the Storage Facility or all Charging Energy and Discharging Energy delivered to or from the Delivery Point, as applicable.

“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

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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 Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate, charge, discharge or deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“Capacity Damages” has the meaning set forth in Section 5(a) of Exhibit B.

“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) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard.

“CEC Precertification” means that the CEC has issued a precertification for the Generating Facility indicating that the planned operations of the Generating 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 tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means the Energy delivered to the Storage Facility pursuant to a Charging Notice, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and Station Use. All Charging Energy that is not consumed in Electrical Losses or used for Station Use shall

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be used solely to charge the Storage Facility. Subject to the Operating Restrictions, Charging Energy may be delivered from the CAISO Grid in any Settlement Interval during which the Generating Facility is not producing Generating Facility Energy.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or to a specified Stored Energy Level; *provided*, any such operating instruction shall be in accordance with the Operating Restrictions. For the avoidance of doubt, (i) any instruction to charge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“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” or **“COD Delay Damages”** means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [REDACTED]

“Communications Protocols” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“Compliance Action” has the meaning set forth in Section 3.12(b).

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

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

“Construction Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [REDACTED]

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

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

“Contract Capacity” means the sum of the Guaranteed Capacity and the Storage Contract Capacity.

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

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

“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.

“CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

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

“CPUC System RA Penalty Price” means the RA penalties assessed against load serving entities by the CPUC for RA deficiencies that are not replaced or cured, as established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings that is issued by the CPUC Energy Division, or any replacement or successor documentation established by the CPUC Energy Division to reflect RA penalties that are established by the CPUC and assessed against load serving entities for RA deficiencies.

“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.

“Cure Plan” has the meaning set forth in Section 11.1(b)(vi).

“Curtailment Cap” has the meaning set forth in Exhibit C, clause (d).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, requiring such Party to curtail deliveries of Generating 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,

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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 Generating Facility Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

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

"Damage Payment" means the dollar amount that equals the amount of the Development Security.

"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.

"Dedicated Interconnection Capacity" means an instantaneous amount of Energy that is permitted to be delivered by the Facility to the Delivery Point under Seller's Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

"Deemed Delivered Energy" means the amount of Generating Facility Energy, expressed in MWh, that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be calculated using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Buyer Curtailment Period, less the amount of Generating Facility Energy delivered to the Storage Facility or the Delivery Point during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). For all purposes under this Agreement, including compensation under Exhibit C and the Curtailment Cap, Deemed Delivered Energy shall be reduced in any Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unexcused unavailability of the Storage Facility.

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

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

“Delay Damages” means Construction Delay Damages and COD Delay Damages.

“Delivery Point” has the meaning set forth in Exhibit A.

“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 for the Development Security on the Cover Sheet.

“Discharging Energy” means all Energy that is delivered from the Storage Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Station Use and Electrical Losses to the Delivery Point to the extent such Electrical Losses and Station Use are not already reflected in the Storage Facility Meter measurements.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to a specified Stored Energy Level; *provided*, any such operating instruction or updates shall be in accordance with the Operating Restrictions. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order, except that any Discharging Notice that results in a reduction in Generating Facility Energy will be deemed a Buyer Curtailment Order for all purposes hereunder. Any instruction to discharge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.

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

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

“Efficiency Rate” means the tested round-trip efficiency rate of the Storage Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In.

“Electrical Losses” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of Generating Facility Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, (c) between the Generating Facility and the Storage Facility Metering Point associated with delivery of Charging Energy.

“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 Alternating Current electrical energy measured in MWh.

“Energy In” has the meaning set forth in Part II.B of Exhibit O.

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

“Energy Out” has the meaning set forth in Part II.B of Exhibit O.

“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.

“Expected Commercial Operation Date” means the date set forth on the Cover Sheet.

“Expected Energy” means the quantity of Generating Facility Energy that Seller expects to be able to deliver to Buyer 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, which amount shall be adjusted proportionately to the reduction from Guaranteed Capacity to Installed Generating Capacity pursuant to Section 5(a) of Exhibit B, if applicable, provided, that prior to the Construction Start Date, Seller may update the Expected Energy by providing Notice to Buyer along with a resource evaluation report prepared by an independent engineer, in which case the Expected Energy for the first Contract Year will be automatically revised without further action of the Parties to equal the “P-50” estimate of the Facility’s generation for the first Contract Year as set forth in such report (and the Expected Energy for the remaining Contract Years will be automatically adjusted to reflect 0.50% degradation per Contract Year). Such automatic revision is only allowed without further action of the Parties if the revised expected energy is within [REDACTED] of the original Expected Energy specified on the Cover Sheet as of the Effective Date.

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

“Facility Energy” means the sum of Generating Facility Energy and Discharging Energy during any Settlement Interval or Settlement Period.

“FERC” means the Federal Energy Regulatory Commission.

“Flexible Capacity” has the meaning set forth in the CAISO Tariff.

“Flexible Capacity Category” has the meaning set forth in the CAISO Tariff.

“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.

“Forecasting Penalty” means for each hour in which Seller does not provide the forecast required in Section 4.3(c) and Buyer incurs a loss or penalty resulting from its scheduling activities in such hour with respect to Generating Facility Energy, the product of (A) the absolute difference (if any) between (i) the expected Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour.

“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. Future Environmental Attributes do not include 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 Capacity Attributes.

“Generating Facility” means the renewable energy electricity 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 Generating Facility Energy to (i) to the Delivery Point, and (ii) to the Storage Facility as Charging Energy; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Generating Facility Energy” means all Energy that is delivered from the Generating Facility to the Storage Facility or directly to the Delivery Point as measured at the Generating Facility Metering Point by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for Station Use and Electrical Losses to the Delivery Point to the extent such Electrical Losses and Station Use are not already reflected in the Generating Facility Meter measurements.

“Generating Facility Meter” means the CAISO Approved Meter, along with a CAISO-approved 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 Generating Facility Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. The Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Generating Facility Metering Point” means the location or locations of the Generating Facility Meter shown on Exhibit R.

“GEP Damages” has the meaning set forth in Section 4.7.

“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 Facility 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

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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.

“Guaranteed Commercial Operation Date” means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“Guaranteed Construction Start Date” means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

“Guaranteed Efficiency Rate” means, for each Contract Year, the guaranteed Efficiency Rate of the Storage Facility for such Contract Year, as set forth on the Cover Sheet.

“Guaranteed Energy Production” means an amount of Adjusted Energy Production, as measured in MWh, equal to eighty-five percent (85%) of the total Expected Energy for the applicable Performance Measurement Period.

“Guaranteed RA Amount” means, at any point in time on or after the RA Guarantee Date, the maximum Net Qualifying Capacity (in MWs) for which a storage facility with storage capacity equal to the Installed Battery Capacity with four (4) hour discharge at the Delivery Point, having achieved PCDS to the extent required under the Agreement and performing with operational characteristics equal to those required by the Guaranteed Storage Availability, Guaranteed Efficiency Rate, and the Operating Restrictions, may be counted in any given Showing Month pursuant to the then current Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources. Seller will not be required to obtain or allocate TP Deliverability (as defined in the CAISO Tariff) to the Facility in excess of the Storage Contract Capacity.

“Guaranteed Storage Availability” means the minimum guaranteed Annual Storage Availability of the Facility for each Contract Year of the Delivery Term, as set forth on the Cover Sheet.

“Guarantor” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least [REDACTED] (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) 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.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement

Period or Settlement Interval, by which the amount of Charging Energy, Discharging Energy, or Generating Facility Energy, as applicable, deviates from the amount of Scheduled Energy.

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

“Indemnified Party” has the meaning set forth in Section 16.1(a).

“Indemnifying Party” has the meaning set forth in Section 16.1(a).

“In-Service Date” has the meaning set forth in Section 4 of Exhibit B.

“Installed Battery Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation (up to but not in excess of the Storage Contract Capacity), 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 Capacity” means the sum of (i) the Installed Generating Capacity and (ii) the Installed Battery Capacity.

“Installed Generating Capacity” means the actual generating capacity of the Generating Facility, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation (up to but not in excess of the Guaranteed Capacity), 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.

“Insurable Force Majeure Event” means any Force Majeure Event which (a) results in direct, physical loss to the Facility, and (b) excludes Force Majeure Events that occur beyond the Delivery Point.

“Interconnection Agreement” means the interconnection agreement(s) entered into by Seller or a Seller Affiliate pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility at the Interconnection Point that is no less than the Dedicated Interconnection Capacity, 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.

“Interconnection Point” means the point at which Seller’s Interconnection Facilities interconnect with the Transmission System pursuant to the Interconnection Agreement, which point is identified in Exhibit A.

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

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

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“Interim Deliverability Status Percentage” means, for each Showing Month of the Delivery Term through the Showing Month in which the Partial Capacity Deliverability Status Finding is obtained, the capacity of the Storage Facility that has received Interim Deliverability Status for such Showing Month, divided by the Storage Contract Capacity for such month, expressed as a percentage.

“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 Baa3 or higher by Moody’s.

“ITC” means the investment tax credit established pursuant to Section 48 or Section 48E 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 1, 2019, 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 letters of credit, surety bonds, senior or subordinated construction, interim, back leverage or long-term debt, equity or 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), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, 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 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, 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.

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“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

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

“Losses” means, with respect to the Non-Defaulting 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 reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including 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, Capacity Attributes, and Renewable Energy Incentives.

“Lost Output” means the amount of Generating Facility Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during Force Majeure Events, Curtailment Periods, System Emergencies, or Buyer default, which amount shall be calculated using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Force Majeure Events, Curtailment Periods, System Emergencies, or Buyer default, less the amount of Generating Facility Energy delivered to the Storage Facility or the Delivery Point during such period of time (or other relevant period); *provided* that, if the applicable difference is negative, the Lost Output shall be zero (0). For all purposes under this Agreement, Lost Output shall be reduced in any Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unexcused unavailability of the Storage Facility.

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

“Maximum Charging Capacity” means the maximum power output level, in MW, at which the Storage Facility can be charged, as specified in Exhibit Q.

“Maximum Discharging Capacity” means the maximum power output level, in MW, at which the Storage Facility can be discharged, as specified in Exhibit Q.

“Maximum State of Charge” means the maximum State of Charge to which the Storage Facility may be charged, as set forth in Exhibit Q.

“Maximum Stored Energy Level” means the maximum Stored Energy Level the Storage Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.

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

“**Minimum Efficiency Rate**” means the percentage specified on the Cover Sheet.

“**Minimum State of Charge**” means the minimum State of Charge to which the Storage Facility may be discharged, as set forth in Exhibit Q.

“**Minimum Stored Energy Level**” means the minimum Stored Energy Level the Storage Facility is capable of achieving, expressed in MWh, as set forth in Exhibit Q.

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

“**Moody’s**” means Moody’s Investors Service, Inc.

“**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.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, the Real-Time Market LMP at the Facility’s PNode is less than Zero dollars (\$0).

“**Negative LMP Costs**” has the meaning set forth in Exhibit C.

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

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**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 to Proceed**” has the meaning set forth in Exhibit B.

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

“**Pacific Prevailing Time**” means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

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

“Partial Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Facility is eligible for Partial Capacity Deliverability Status.

“Partial Capacity Deliverability Status Percentage” means, for each Showing Month of the Delivery Term after Partial Capacity Deliverability Status Finding is obtained, the capacity of the Storage Facility that has received Partial Capacity Deliverability Status for such Showing Month, divided by the Storage Contract Capacity for such month, expressed as a percentage.

“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 Year period during the Delivery Term so that the first Performance Measurement Period shall include Contract Years 1 and 2. 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.

“Performance Security” means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth as the Performance Security 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 [REDACTED] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least three (3) years of experience in the ownership and operations of power generation 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.

“Planned Outage” means, subject to and as further described in the CAISO Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Facility that is conducted for the purposes of carrying out routine repair or maintenance of such Facility, or for the purposes of new construction work for such Facility.

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“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.

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

“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 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 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.

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

“PTC Amount” means the amount, on a dollar per MWh basis, equal to the PTC that Seller would have earned in respect of Generating Facility Energy at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Buyer Bid Curtailment or Buyer Curtailment Order, which amount will be calculated by reference to the amount of Deemed Delivered Energy in excess of the Curtailment Cap and the portion of the Generating Facility eligible to receive Production Tax Credits at the time of determination.

“RA Compliance Showing” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the Commercial Operation Date.

“RA Shortfall” has the meaning set forth in Section 3.8(b).

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing with the Showing Month that contains the RA Guarantee Date, during which there is an RA Shortfall.

“Ramp Rate” means the ability of the Storage Facility to change between power output levels, expressed in MW_{AC}/min.

“Real-Time Forecast” means any Notice of any change to the Available Generating Capacity, Storage Capacity, or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

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

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

“Renewable Energy Credit” 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 or storage 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.

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

“Replacement Energy” means energy produced by an Eligible Renewable Energy Resource other than the Generating Facility, that is provided by Seller to Buyer as a component of Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as a component of such Replacement Product.

“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 year

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of production or a different year as agreed to by the Parties, as the Renewable Energy Credits that would have been generated by the Generating Facility.

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

“Replacement RA” means Resource Adequacy Benefits, if any, (a) equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is expected to be due to Buyer, including, as applicable, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, and any Local RAR, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits, and (b) located within the CAISO balancing authority area.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s Resource Adequacy Requirements, as those obligations are set forth in any ruling issue by a Governmental Authority, including the Resource Adequacy Rulings, or the CAISO Tariff, and shall include Flexible Capacity, and any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

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

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by the CPUC or the CAISO, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“Resource Category” means the categories for established by the CPUC in the Resource Adequacy Rulings and subsequently incorporated into the annual Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings that is issued by the CPUC Energy Division, or any replacement or successor documentation established by the CPUC Energy Division.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.).

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

“Scheduled Energy” means the Charging Energy, Discharging Energy, or Generating Facility Energy, as applicable, 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 8.9.

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

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

“Seller Initiated Test” has the meaning set forth in Section 4.9(b).

“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 Interconnection Point, including the Interconnection Agreement itself, that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

“Showing Month” shall be the calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

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“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

“**Site Control**” means that, for the Contract Term, 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.

“**SP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“**State of Charge**” or “**SOC**” means the ratio of (a) the Stored Energy Level of the Facility to (b) the Storage Capacity multiplied by four (4) hours, expressed as a percentage.

“**Station Use**” means the Energy that is used within the Facility to power certain lights, motors, temperature control systems, control systems and other ancillary electrical loads that are necessary for operation of the Facility (or as otherwise defined by the retail energy provider and CAISO Tariff) except during periods in which the Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice.

“**Storage Capacity**” means (a) the maximum dependable operating capability of the Storage Facility to discharge 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 Contract Term that the Storage Facility is able to provide as the Facility is configured on the Commercial Operation Date and subject to the Operating Restrictions and that relate to the maximum dependable operating capability of the Storage Facility to discharge Energy.

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

“**Storage Capacity Test**” or “**SCT**” means any test or retest of the capacity of the Storage Facility and/or Efficiency Rate conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“**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 from time to time pursuant to Section 5(b) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

“**Storage Contract Output**” means the product of the Storage Contract Capacity multiplied by four (4) hours, represented in MWh, initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(b) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

“**Storage Cure Plan**” has the meaning set forth in Section 11.1(b)(vii).

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“Storage Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including the Energy Management System and 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 a CAISO Approved Meter, along with a CAISO-approved 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 Point 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. 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 Point” means the location or locations of the Storage Facility Meter shown on Exhibit R.

“Storage Payment” has the meaning set forth in Exhibit C.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, 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.

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

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

“Summer Delivered Capacity Limit” means, for each day during the Summer Period, [REDACTED], as a minimum for the Delivery Term. If the Participating Transmission Owner provides Seller notice that the [REDACTED] applicable to the Summer Period to a value greater than [REDACTED] and such increased rating is utilized in the CAISO Full Network Model, then the Summer Delivered Capacity Limit will increase to an amount equal to such increased rating.

“Summer Excess Generating Facility Energy” means, for each Settlement Interval during the Summer Period, (a) the amount of energy expressed in MWh that the Facility is capable of producing and delivering to either the Storage Facility or the Delivery Point for such Settlement Interval whether or not it is actually generated or delivered, determined in the same manner as Deemed Delivered Energy (but excluding any such energy that could not have been delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility for any reason other than events set forth in Section 4.6), minus (b) the product of the Summer Delivered Capacity Limit and the duration of the Settlement Interval, expressed in hours.

“Summer Period” means the months of April through October during the Delivery Term,

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provided that if the CAISO establishes a revised set of months as the “summer months” for transmission planning purposes, then such revised set of months shall be the Summer Period.

“**Summer Reserved Storage Amount**” means for each day during the Summer Period, the product of the then-effective Storage Contract Capacity for such day and four (4) hours.

“**Supplementary Storage Capacity Test Protocol**” has the meaning set forth in Exhibit O.

“**Supply Plan**” has the meaning set forth in the CAISO Tariff.

“**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.

“**Test Energy**” means Generating Facility Energy delivered (a) commencing on April 1, 2027, and (b) ending upon the occurrence of the Commercial Operation Date; provided, that if the Commercial Operation Date occurs on April 1, 2027, then there will be no Test Energy hereunder.

“**Test Energy Rate**” has the meaning set forth in Section 3.6.

“**Throughput**” means, at any point in time during any day or Contract Year, as applicable, the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such day or Contract Year, as applicable (expressed in MWh).

“**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 downstream from the Delivery Point.

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“Ultimate Parent” means SBE US Holdings One, LLC, a Delaware limited liability company.

“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 October 2022, 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;

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(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. Seller shall provide Notice to Buyer of the expected Commercial Operation Date at least thirty (30) days in advance of such date. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation. Following Buyer's receipt of such Notice, Buyer shall have five (5) Business Days to approve or reject Seller's request for confirmation of Commercial Operation, which, if confirmed, shall be deemed to have occurred as of the date of such Notice. If Buyer fails to respond to Seller's Notice within

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such five (5) Business Day period, Buyer will be deemed to have approved Seller's request for confirmation of Commercial Operation. Upon Buyer's approval (or deemed approval) of Seller's achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date. If Buyer rejects Seller's Notice of Commercial Operation, Buyer will provide a detailed statement of the reasons for such rejection together with its Notice of such rejection. If Seller disagrees with Buyer's rejection of Seller's Notice of Commercial Operation or if the Parties are unable to address the concerns stated in Buyer's Notice of rejection to the mutual satisfaction of both Parties, then Seller may initiate the expedited dispute resolution process set forth in Section 15.3. If Seller initiates the expedited dispute resolution process and it is determined pursuant to such dispute resolution process that Seller met the requirements for Commercial Operation set forth in this Section 2.2, Commercial Operation shall occur as of the date that the requirements for Commercial Operation were initially satisfied, as determined pursuant to such dispute resolution process.

(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 Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(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 for operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(e) Seller has received CEC Precertification of the Generating Facility (and reasonably expects to receive final CEC Certification and Verification for the Generating 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, including 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;

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(g) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

(h) Insurance requirements for the Facility that are required to be in place during the Delivery Term have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;

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

(j) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and COD 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 agree to 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. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Buyer. For the avoidance of doubt, 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 becomes aware that it will not achieve the Construction Start Date by the Guaranteed Construction Start Date, Seller shall submit to Buyer, within ten (10) Business Days of becoming aware that the Guaranteed Construction Start Date will be missed, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Guaranteed Construction Start Date, including the cause of the delay, and Seller's detailed description of its proposed course of action to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation 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, including the Guaranteed Construction Start Date.

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 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 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 or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Capacity Attributes and Storage 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 Generating 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 from Seller, all Green Attributes attributable to the Generating Facility Energy.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be allocated to the Party that is acting as Scheduling Coordinator for the Facility.

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.

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 Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs 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 shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(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

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forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy**. Prior to April 1, 2027, Seller will be entitled to sell all or any portion of the Product to one or more third parties and to retain all resulting revenue free and clear of any claim by Buyer. If and to the extent the Facility generates Test Energy on or after April 1, 2027, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to one hundred percent (100%) of all net CAISO revenues received by Buyer for the Generating Facility Energy (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes**. Seller shall request Partial Capacity Deliverability Status for at least the Storage Contract Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Partial Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.




(c) For the duration of the Delivery Term, subject to Section 3.12, Seller shall take all reasonable 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 Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages as set forth in Section 3.8(b) and/or provide Replacement RA as set forth in Section 3.8(c), in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of (i) the difference, expressed in kW, of (A) the Guaranteed RA Amount for such Showing Month, minus (B) the lowest amount of Net Qualifying Capacity included on the Supply Plan as RAR and, if applicable, Local RAR from the Facility by both the CPUC and CAISO for such Showing Month (such difference, the “**RA Shortfall**”), multiplied by (ii) the sum of (A) the CPM Soft Offer Cap and (B) the CPUC System RA Penalty Price for System RAR (without consideration of any multipliers



(c) Seller may, as an alternative to paying RA Deficiency Amounts, deliver Replacement RA in the amount of the RA Shortfall, provided that Notice of such Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least thirty (30) days before the RA Compliance Showing deadline for the applicable Showing Month.

3.9 **CEC Certification and Verification.** Subject to Section 3.12, 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 for the Generating Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). 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, subject to Section 3.12, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of

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any changes to the information included in Seller's application for CEC Certification and Verification for the Generating Facility.

3.10 **Reserved.**

3.11 **Non-Modifiable Standard Terms and Conditions.**

(a) **Tracking of RECs in WREGIS.** Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

(b) **Transfer of Renewable Energy Credits.** 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. [STC REC-1].

(c) **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's 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. [STC 6].

(d) With respect to the immediately preceding paragraphs, (i) the reference in Section 3.11(a) to "first delivery under the contract" has the same meaning as "first delivery of Generating Facility Energy under this Agreement", (ii) the references in Section 3.11(c) to "Project" have the same meaning as "Generating Facility", and (iii) each reference in the last sentences of Section 3.11(b) and Section 3.11(c) to "commercially reasonable efforts" means efforts consistent with and subject to Section 3.12 below.

3.12 **Compliance Expenditure Cap.**

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Subject to Section 3.12(b), Seller agrees to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law relating to Green Attributes and/or Capacity Attributes to maximize benefits to Buyer,

including: (i) the modification of the description of Green Attributes and/or Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to assure that this Agreement or the Generating Facility is eligible as an ERR and for other benefits under the California Renewables Portfolio Standard.

(b) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs (A) to cause the Generating Facility, the Energy generated by the Generating Facility, or the associated Green Attributes to be in compliance with the RPS or to obtain, maintain, convey or effectuate Buyer's use of any Green Attributes, or (B) or to obtain, maintain, convey or effectuate Buyer's use of any Capacity Attributes, Resource Adequacy Benefits, or Ancillary Services, or (C) a change in WREGIS Operating Rules or CRS requirements after the Effective Date increases Seller's costs to comply with its obligations under Section 4.10 or Section 4.12, then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses (any action required to be taken by Seller to comply with such change in Law, a "**Compliance Action**"), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [REDACTED] of Contract Capacity in aggregate over the Contract Term (the "**Compliance Expenditure Cap**").

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

(d) 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, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(e) If Buyer agrees to reimburse Seller for 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, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

Any change in the value of any attributes provided by Seller to Buyer resulting from any change in Law shall not affect the Contract Price or Buyer's obligation to pay Seller for any attributes delivered.

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; *provided*, 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) in their sole discretion 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 continuing 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 shall 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 or the Delivery Point to the Storage Facility (but excluding the cost of Charging Energy itself), 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, and supplying any non-Generating Facility Charging Energy to the Delivery Point. The Facility Energy, any other Products, and non-Generating Facility Charging Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Facility during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, 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. Buyer acknowledges that the Green Attributes that could be produced by the Generating Facility may be reduced due to Storage Facility efficiency losses. For the avoidance of doubt, a reduction in WREGIS Certificates due to Storage Facility efficiency losses will not be deemed a WREGIS Certificate Deficit.

(c) Summer Delivered Capacity Limit. The Parties acknowledge and agree that (i) the combination of the Generating Facility and Storage Facility output delivered to the Delivery Point may not exceed the Summer Delivered Capacity Limit during the Summer Period, and (ii) the Storage Facility has been sized to enable Summer Excess Generating Facility Energy in the amount of the Summer Reserved Storage Amount to be stored in the Storage Facility each day during the Summer Period. During the Summer Period, Buyer will retain the right to issue Charging Notices and Discharging Notices as set forth in Section 4.5 (including any limitations specified therein); provided, however, that (x) for any Settlement Interval during the Summer Period, if the Storage Facility does not receive a Charging Notice directing one hundred percent (100%) of the Summer Excess Generating Facility Energy for such Settlement Interval to be delivered to the Storage Facility as Charging Energy, then the portion of such Summer Excess Generating Facility Energy that is not directed to be delivered as Charging Energy will be Deemed Delivered Energy for all purposes hereunder, and (y) for each day during the Summer Period, once

the aggregate Summer Excess Generating Facility Energy for such day equals the Summer Reserved Storage Amount, the foregoing clause (x) will cease to apply with respect to any subsequent Summer Excess Generating Facility Energy for the remainder of such day.

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 shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting.** Seller shall provide the forecasts described below at its sole expense and in a format acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(a) **Annual Forecast of Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Buyer's SC (if applicable) a non-binding forecast of each month's average-day expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) **Monthly Forecast of Energy and Available Generating Capacity.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's SC (if applicable) a non-binding forecast of the hourly expected Energy, Available Generating Capacity and Storage Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

(c) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity, (ii) Storage Capacity and (iii) hourly expected Energy, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's non-binding best estimate of (i) the Available Generating Capacity, (ii) the Storage Capacity and (iii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer's SC. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on (in order of priority) (1) any Real-Time Forecast provided in accordance

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with Section 4.3(d), or (2) the Monthly Delivery Forecast or (3) Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer and Buyer's SC (if applicable) of any changes from the Day-Ahead Forecast via a direct data feed to Buyer's SC (such feed to be provided by Seller at Seller's expense) of one (1) MW or more in (i) Available Generating Capacity, (ii) Storage Capacity or (iii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity, Storage Capacity, or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer and Buyer's SC (if applicable) as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor. With respect to any Forced Facility Outage, Seller shall use reasonable efforts in accordance with Prudent Operating Practice to notify Buyer and Buyer's SC (if applicable) of such outage as soon as practicable after the commencement of the Forced Facility Outage and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Storage Capacity, or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer, in each case, to the extent known at such time. Seller shall inform Buyer and Buyer's SC (if applicable) of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer and Seller; provided that Buyer specifies the method no later than ten (10) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's SC of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(c) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Generating Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.12, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment.**

(a) **General.** Seller agrees to reduce the amount of Generating Facility Energy produced by the Generating Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Generating Facility.

(b) **Buyer Curtailment.** Buyer shall have the right to order Seller to curtail deliveries of Generating Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Renewable Rate and, if applicable, the PTC Amount, in accordance with Exhibit C.

(c) **Failure to Comply.** If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Generating Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Generating Facility Energy will have priority over Discharging Energy from the Storage Facility. Except as set forth in Section 4.1(c) with respect to Summer Excess Generating Facility Energy, if the Storage Facility has less than one hundred percent (100%) State of Charge during any Curtailment Period or during a Buyer Curtailment Period, to the extent permitted under the CAISO Tariff, Generating Facility Energy will be used to charge the Facility until it reaches a one hundred percent (100%) State of Charge.

(e) **Seller Equipment Required for Curtailment Instruction Communications.** Subject to Section 3.12, Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall, subject to Section 3.12, take the steps necessary to become compliant as soon as reasonably possible. Subject to Section 3.12, Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-

current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 **Charging Energy Management.**

(a) **Generally.** Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Storage Facility. Except as expressly set forth in this Agreement, including Section 4.5(c) and Section 4.9(b), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility.

(b) **Charging Notices.** During the Delivery Term, Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices is subject to Facility availability and the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice). Seller shall comply with all valid Charging Notices, subject to Facility availability and the requirements and limitations set forth in this Agreement, including the Operating Restrictions.

(c) **No Unauthorized Charging.** Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice, or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all Energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) **Discharging Notices.** During the Delivery Term, Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to Facility availability and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Seller shall comply with all valid Discharging Notices, subject to Facility availability and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

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(e) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice, or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Delivery Term, Seller (i) discharges the Storage Facility other than as provided for in the Discharging Notice or (ii) discharges the Storage Facility in violation of the first sentence of this Section 4.5(e), then (x) Seller shall be responsible for all Energy costs associated with such discharging of the Storage Facility, (y) Buyer shall not be required to pay for the discharging of such Energy (i.e., Discharging Energy), and (z) Buyer shall be entitled to all of the benefits (including Storage Product) associated with such discharge.

(f) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment, or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider, or compliance with the Operating Restrictions. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Restrictions.

(g) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to test, charge and discharge the Storage Facility, and (iii) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility shall be for Seller's account. Seller is responsible to procure, at its own cost, any energy required for commissioning purposes and to arrange to discharge such energy into the grid. Upon the Commercial Operation Date, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer's account.

(h) Station Use.



[REDACTED]

(i) **Grid Charging.** At all times during each Contract Year, the aggregate Contract Year-to-date Charging Energy provided from a source other than the Generating Facility must be equal to or less than [REDACTED] of the total aggregate Contract Year-to-date Charging Energy provided from all sources. If there is a change in Law or related guidance promulgated or issued by a Governmental Authority with respect to the maximum level of non-Generating Facility Energy that can be used as Charging Energy without adversely impacting the Facility's (or any portion thereof) eligibility for property tax exclusions or exemptions, then the Parties will negotiate in good faith to conform this Section 4.5(i) and the Operating Restrictions to such change in Law or related guidance as necessary to ensure that the Facility maintains eligibility for all potentially available property tax exclusions or exemptions.

4.6 Reduction in Energy Delivery Obligation. For the avoidance of doubt, and in no way limiting Section 3.1, Section 4.7, or Exhibit G or Exhibit P:

(a) **Facility Maintenance.** Subject to providing Buyer one-hundred twenty (120) days prior Notice, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Facility as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff, and Seller shall reimburse Buyer for any cost Buyer incurs in connection therewith (including the cost of any replacement Capacity Attributes as required by the CAISO). During the five-month period from June 1 to October 31 during the Delivery Term, Seller shall not schedule any non-emergency maintenance that reduces the energy generation capability of the Facility, unless (i) such outage is required to avoid an emergency or damage to the Facility or its Interconnection Facilities, (ii) such maintenance is necessary to maintain equipment warranties or is otherwise required by the equipment manufacturer and cannot be scheduled outside the months of June to October, (iii) such outage is in connection with Force Majeure Events, (iv) such outage is required by law, or the requirements of CAISO or the interconnecting utility and/or each other applicable Governmental Authority, or (v) the Parties agree otherwise in writing.

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product other than Capacity Attributes 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 other than Capacity Attributes during any period of System Emergency, Buyer Curtailment Period 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 other than Capacity Attributes during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

(e) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product other than Capacity Attributes as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production.** During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Generating Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer all (a) Deemed Delivered Energy and (b) Lost Output for the Performance Measurement Period. 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 (“**GEP Damages**”); *provided*, Seller may, as an alternative to paying GEP Damages, provide Replacement Product in accordance with Exhibit G.

4.8 **Storage Availability and Efficiency Rate.**

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Availability during each Contract Year of no less than the Guaranteed Storage Availability, which Annual Storage Availability shall be calculated in accordance with Exhibit P. If the Annual Storage Availability for any Contract Year is less than the Guaranteed Storage Availability, then Seller shall owe Buyer an Availability Adjustment Payment (as determined in accordance with Exhibit P). Seller shall provide Buyer with monthly updates on Seller’s Contract Year-to-date Annual Storage Availability.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate, calculated pursuant to a Storage Capacity Test, of no less than the Guaranteed Efficiency Rate. If the Efficiency Rate during any month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages pursuant to Exhibit C.

(c) Buyer’s sole and exclusive remedies for Seller’s failure to achieve the Guaranteed Storage Availability and the Guaranteed Efficiency Rate are: (i) for the Guaranteed Storage Availability, (A) the Availability Adjustment Payment, as set forth in Exhibit P, and (B) the Seller Event of Default as set forth in Section 11.1(b)(vii) and the applicable remedies set forth in Article 11; and (ii) for the Guaranteed Efficiency Rate, (A) the liquidated damages for failure to achieve the Guaranteed Efficiency Rate, as set forth in Exhibit C, and (B) the Seller Event of Default as set forth in Section 11.1(b)(x).

4.9 **Storage Capacity Tests.**

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all applicable data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. For any Storage Capacity Tests initiated by Seller (“**Seller Initiated Test**”), including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Test, any Storage Capacity Test conducted if the Storage Contract

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Capacity immediately prior to such Storage Capacity Test is below [REDACTED] of the Installed Battery Capacity, and other Seller-requested discretionary tests or dispatches, Seller shall (i) not be entitled to the Renewable Rate for associated Charging Energy, (ii) be liable for all CAISO costs and charges for associated Charging Energy, and (iii) be entitled to any CAISO revenues associated with Discharging Energy. For any Storage Capacity Tests initiated by Buyer, including any test required by CAISO and all required annual tests pursuant to Exhibit O (“**Buyer Dispatched Test**”), Buyer shall (x) pay Seller the Renewable Rate for associated Charging Energy, (y) be liable for all CAISO costs and charged for associated Charging Energy, and (z) be entitled to any CAISO revenues associated with associated Discharging Energy. No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test. Charging Notices or Discharging Notices may be issued during a Buyer Dispatched Test as reasonably necessary to implement the applicable test. The Storage Facility shall be deemed unavailable during any Seller Initiated Test. Any Buyer Dispatched Test shall be deemed an Excused Event for the purposes of calculating the Annual Storage Availability.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then current Storage Contract Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to such Storage Capacity Test shall become the new Storage Contract Capacity (not to exceed the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Section 5 of Exhibit B) and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C, until a revised Storage Contract Capacity and/or Efficiency Rate, as applicable, is established pursuant to a subsequent Storage Capacity Test.

4.10 **WREGIS.** Seller shall, at its sole expense, 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 Generating Facility Energy or Facility Energy, as applicable, 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.

(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.

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(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 Generating Facility Energy or Facility Energy, as applicable, 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 Generating Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and damages, if any, under Exhibit G for the applicable Contract Year; *provided, however*, that such adjustment shall not apply to the extent that Seller (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes 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) Subject to Section 3.12, 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 CEC modifies its *RPS Eligibility Guidebook* to enable the full amount of Generating Facility Energy to generate WREGIS Certificates, without reduction for Storage Facility efficiency losses, 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 maximum quantity of WREGIS Certificates that can be transferred to Buyer from the Generating Facility in the same calendar month.

4.11 **Interconnection**. Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. During the Delivery Term, Seller shall have and maintain interconnection capacity available or allocable to the Facility that is no less than the Dedicated Interconnection Capacity; provided that Buyer acknowledges that such interconnection capacity is

subject to reduction, limitation, or curtailment as set forth in the Interconnection Agreement.

4.12 **Green-E Certification.** Upon request of Buyer and subject to Section 3.12, Seller shall submit, a Green-e® Energy Tracking Attestation Form (“**Attestation**”) for Product delivered under this Agreement to the Center for Resource Solutions (“**CRS**”) at <https://www.tfaforms.com/4652008> or its successor. Subject to Section 3.12, the Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer’s request or the last day of the month in which the applicable Generating Facility Energy was generated, whichever is later.

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 of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. 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 time and place contemplated under this Agreement (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, the generation and sale of Product, and the disposal and recycling of any equipment associated with the Facility, including without limitation, batteries and solar panels.

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 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 and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties. Seller agrees that any agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, including providing interconnection capacity for the Facility's sole use in an amount not less than the Dedicated Interconnection Capacity, (ii) shall provide for separate metering and a separate CAISO Resource ID for the Facility, (iii) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource IDs; and (iv) shall provide that any curtailment of the full capacity of Shared Facilities that is ordered by Transmission Provider that Seller and its Affiliates have discretion to allocate across generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any Affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Dedicated Interconnection Capacity.

ARTICLE 7 METERING

7.1 **Metering.**

(a) Unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a single CAISO Resource ID for the Facility, which is a combination of the Generating Facility and the Storage Facility. Seller shall measure the amount of Generating Facility Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Generating Facility Meter and Storage Facility Meter shall be programmed to adjust for Electrical Losses and Station Use, as applicable, from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall separately meter all Station Use. Metering shall 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 Generating Facility Meter and Storage Facility 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, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration

data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Seller shall test the Generating Facility Meter and Storage Facility Meter at least annually and more frequently than annually if Buyer or Seller reasonably believe there may be a meter malfunction. 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 so long as such adjustments are accepted by CAISO and WREGIS; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Generating Facility Energy, Charging Energy, Discharging Energy, and Replacement RA delivered to Buyer (if any); the calculation of Deemed Delivered Energy, Lost Output, and Adjusted Energy Production; the LMP prices at the Delivery Point for each Settlement Period; and the Contract Price applicable to such Product in accordance with Exhibit C; (b) reflect any records, including invoices or settlement data from the CAISO, 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 from the CAISO, 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. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

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. Buyer shall pay undisputed invoice amounts within thirty (30) days of Buyer's receipt of Seller's invoices; *provided*, 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 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the

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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 five (5) years or as otherwise required by Law. Upon ten (10) Business Days’ Notice to the other Party, either Party shall be granted 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 Ten Thousand Dollars (\$10,000).

8.4 **Invoice Adjustments.** Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or pursuant to a Storage Capacity Test, or (c) there have been meter inaccuracies; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. 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 twelve (12) 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 twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-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, C 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 thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect until Buyer is required to return such Development Security hereunder. 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 that 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, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security (including a Guaranty) in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of 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.

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

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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 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.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** 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 United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) 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; (c) 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 (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, invoices sent pursuant to Section 8.1 and 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; 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) [REDACTED]

(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) [REDACTED]

(vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

(d) Notwithstanding any provision to the contrary, a Force Majeure Event does not excuse Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date except to the extent such excuse for Force Majeure Event is allowed pursuant to a Development Cure Period.

10.2 Termination Following Force Majeure Event.

(a) If a Force Majeure Event has occurred after the Commercial Operation Date 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. 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.

(b) If the cumulative extensions granted under the Development Cure Period equal one hundred eighty (180) days, and one or more delays due to a Force Majeure Event as described in Section 4(b) of Exhibit B are continuing, then (i) Seller may terminate this Agreement upon written Notice of termination to Buyer that shall include documentation or information supporting Seller's determination that the Commercial Operation Date is not likely to be achieved by the date that is one hundred twenty (120) days after the Guaranteed Commercial Operation Date through the use of commercially reasonable efforts, and Seller's payment of liquidated damages in the amount of the Development Security, minus the aggregate Delay Damages previously paid by Seller, which, at Seller's election, may either be paid directly to Buyer with the Notice of termination or drawn from the Development Security, or (ii) if Seller extends the Guaranteed Commercial Operation Date by payment of Commercial Operation Delay Damages for one hundred and twenty (120) days as set forth in Exhibit B and a Force Majeure Event is continuing after such extension, then Seller may terminate this Agreement upon written Notice of termination to Buyer. 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 Section 11.6, and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

10.3 Notice for Force Majeure. Within five (5) Business Days of the commencement of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with Notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, all as known or estimated in good faith by the claiming Party. Failure to provide timely notice as described in the prior sentence constitutes a waiver of the Force Majeure Event as to all periods prior to the delivery of the notice. Upon written request from the non-claiming Party, the claiming Party shall provide documentation describing the claiming Party's efforts to overcome the Force Majeure Event. The claiming party shall promptly 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. The suspension of performance due to a claim of Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4 **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, 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 with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. 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. 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.

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)-day 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 Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (2) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(vi), (viii), and (ix), the exclusive remedies for which are set forth in Section 4.7 and Exhibit G; (3) failures related to the Annual Storage Availability that do not trigger the provisions of Section 11.1(b)(vii), the exclusive remedies for which are set forth in Section 4.8 and Exhibit P; and (4) failures related to the Efficiency Rate that do not trigger the provisions of Section 11.1(b)(x), the exclusive remedies for which are set forth in Section 4.8 and Exhibit C) and such failure is not remedied

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within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising best efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if 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:

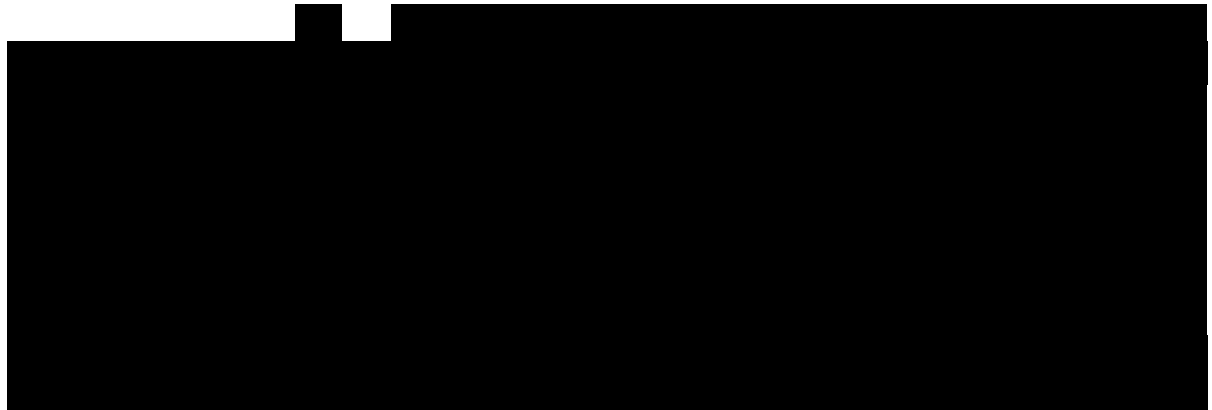
(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, other than Replacement Product;

(ii) the failure by Seller to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(c) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

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

(iv) [reserved];

(v) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(x) if, Seller fails to maintain an average Efficiency Rate equal to or greater than the Minimum Efficiency Rate over a rolling twelve (12) month period;

(xi) if, Seller fails to maintain a Storage Capacity equal to at least [REDACTED] of the Storage Contract Capacity for more than three hundred sixty five (365) consecutive days;

(xii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Development Security or 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;

(xiii) 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.

(xiv) with respect to any outstanding Letter of Credit provided for the

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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 twenty (20) 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), 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*, 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 monetary remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Termination Payment. The Termination Payment ("**Termination Payment**") for a 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. 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. 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 a 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 a 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 or Damage 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, as applicable, and whether the Termination Payment or Damage Payment, as applicable, 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 or Damage Payment, as applicable, 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 or Damage Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, 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 or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable shall be determined in accordance with Article 15.

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If this Agreement is terminated by either Party prior to the Commercial Operation Date for any reason except due to Buyer'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 such termination date, 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 on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price but adjusted to account for the incremental expected costs to complete development, financing, and construction and achieve Commercial Operation for the Facility at such time relative to the expected costs as of the Effective Date) and [REDACTED]

[REDACTED] Seller shall provide confirmation to Buyer of the nature and amount of the incremental expected costs to complete development, financing, and construction of the Facility and achieve Commercial Operation by providing Buyer a certification of such amounts by a Licensed Professional Engineer. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer, such approval not to be unreasonably withheld, conditioned, or delayed. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of 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.

11.8 **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, 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.

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.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 4.10, 10.2(b), 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, 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.

12.3 **Limitation on Pre-COD Liability.** Notwithstanding anything in this Agreement to the contrary, unless and until the Facility has achieved Commercial Operation, Seller's aggregate liability under this Agreement for any and all reasons, including liabilities for payment of Construction Delay Damages, Commercial Operation Delay Damages, and the Damage Payment, shall not exceed [REDACTED]

[REDACTED] For avoidance of doubt, this Section 12.3 shall not be applicable once the Facility has

achieved Commercial Operation.

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. 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 and Seller will be the applicant on any CEQA documents.

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

(a) 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

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positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(a) 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.

(b) 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.

(c) 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.

(d) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim 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 located 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.)

(e) 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 necessary for it to legally perform its 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 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**”). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller’s obligations under this Section 13.4 will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

13.5 **Workforce Development and Supplier Diversity.** Seller acknowledges that Buyer will, from time to time, request voluntary disclosure of Seller’s certification status with the CPUC Clearinghouse, and voluntary disclosure regarding Seller’s efforts to work with diverse business enterprises, including women, minority, disabled veteran, and lesbian, gay, bisexual, transgender and/or persons with disabilities business enterprises in a form similar to Exhibit S.

13.6 **Community Benefits.** Seller pledges to deliver five hundred thousand dollars (\$500,000.00) to Buyer so that Buyer may direct such amount to community benefits initiatives that directly benefit stakeholders in Buyer’s service area. Buyer shall have sole discretion to determine which initiatives will be funded and will provide Seller Notice describing the initiatives Buyer intends to fund. Seller shall make this payment prior to January 31, 2026 upon Seller’s review of the scope of the initiatives to be funded by Buyer. Upon Seller’s request, Buyer’s personnel responsible for allocating funding to community benefits initiatives will meet with Seller to discuss the initiatives to be funded by Buyer. Notwithstanding anything to the contrary in this Section 13.6, Buyer will not make any public statement about the Facility, this Agreement, Seller, or Seller’s Affiliates in connection with any community benefits initiatives funded with Seller’s community benefits funds paid through this Section 13.6 without the prior written consent of Seller.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided in this Article 14, 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, conditioned, or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed; provided that Buyer’s consent will not be required for any Change of Control of Seller where Seller is controlled by a Permitted Transferee following such transaction. Any purported assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer’s rights, benefits, risks or

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obligations under this Agreement, or to modify the Agreement, except as set forth below. The assigning Party shall be responsible for the non-assigning Party's reasonable third party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller or any of its Affiliates involved in the Facility 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, upon request of Seller, 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 including with respect to the provisions set forth below, with such agreement not to be unreasonably withheld, and shall include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and the cure period of Lender shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within thirty (30) days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, which shall not exceed a maximum of ninety (90) days (or one

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hundred eighty (180) days in the event of a bankruptcy of Seller, or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements arising on and after taking possession (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (excluding any Events of Default which by their nature are incapable of being cured) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements arising on and after such sale or transfer as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith, Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to cause Buyer to enter into a replacement agreement having substantially the same terms as this Agreement for the remaining term thereof, and, promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or Lender's designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request which must be made within forty-five (45) days after such rejection or termination, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title

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to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee must meet the definition of Permitted Transferee.

14.3 **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume, upon such transfer or assignment, all of Seller's obligations and liabilities under this Agreement arising on and after such assignment, and (y) certifies that such Person meets the definition of a Permitted Transferee.

Except as provided in the preceding sentence, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

14.4 **Permitted Assignment by Buyer.** Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has an Investment Grade Credit Rating ("**Limited Assignee**") of Buyer's right to receive Product and Buyer's obligation to make payments to Seller, subject to execution of a limited assignment agreement between and among Seller, Buyer, and Limited Assignee upon terms and conditions mutually agreed, including that the limited assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement.

Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer.

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 law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement. [STC 17] 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 the County of San Diego, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement (other than a dispute regarding whether the requirements for Commercial Operation have been achieved, which shall be subject to Section 15.3), within ten (10) days following the receipt of a 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 submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. 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.

15.3 **COD Expedited Dispute Resolution.**

[REDACTED]

[REDACTED]

[REDACTED]

1. **Identify the main components of the system.**

16.1 Indemnity.

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hereunder), performance or non-performance of its obligations under this Agreement (“**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 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

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, including products and completed operations and personal injury insurance, in a minimum amount of Two Million Dollars (\$2,000,000) per occurrence, and an annual aggregate of not less than Five Million Dollars (\$5,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Ten Million Dollars (\$10,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions. Limits may be provided in any combination of Seller’s general liability and umbrella policies.

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(a) Employer's Liability Insurance. Employers' Liability insurance shall not be less than 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.

(b) 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.

(c) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto 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 and shall name Buyer as additional insured and contain standard cross-liability and severability of interest provisions.

(d) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(e) Contractor's Pollution 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 [REDACTED] per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(f) Subcontractor Insurance. Seller shall use commercially reasonable efforts to require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than [REDACTED] (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.

(h) Evidence of Insurance. Within [REDACTED] after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of

insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination 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. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

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; (iv) information that the recipient independently developed without a violation of this Agreement; and (v) information that is determined by Buyer to be subject to the California Public Records Act.

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; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. 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 Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator 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 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 herein. 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 Agreement 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 the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions no less stringent than those in this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.**

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. 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 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

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set forth herein, any Lender and/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). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under Law.

19.7 **Counterparts.** 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.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

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

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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.

19.13 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.14 **Service Contract.** The Parties acknowledge and agree that this Agreement is intended to constitute a “service contract” within the meaning of Section 7701(e) of the Internal Revenue Code of 1986, as amended from time to time.

[Signatures on following page]

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

PELICANS JAW SOLAR, LLC

By: _____
Name: _____
Title: _____

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

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name: Pelicans Jaw Solar

Site includes all or some of the following APNs: [REDACTED]

County: Kern

CEQA Lead Agency: Kern County

Zip Code: 93249

Latitude and Longitude: [REDACTED]

Facility Description: 440 MW solar + 954 MWh (238.5 MW x 4 hours) storage

Delivery Point: PNode, as set forth below.

Generating Facility Meter and Metering Points: See Exhibit R.

Storage Facility Meter and Metering Points: See Exhibit R.

PNode: The PNode assigned to the Facility by the CAISO.

Interconnection Point: New 230kV switching station near Gates-Midway POI

Participating Transmission Owner: PG&E

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EXECUTION VERSION

Additional Information: Site Plan provided below, provided that Seller shall have the right to provide an updated Site Plan at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

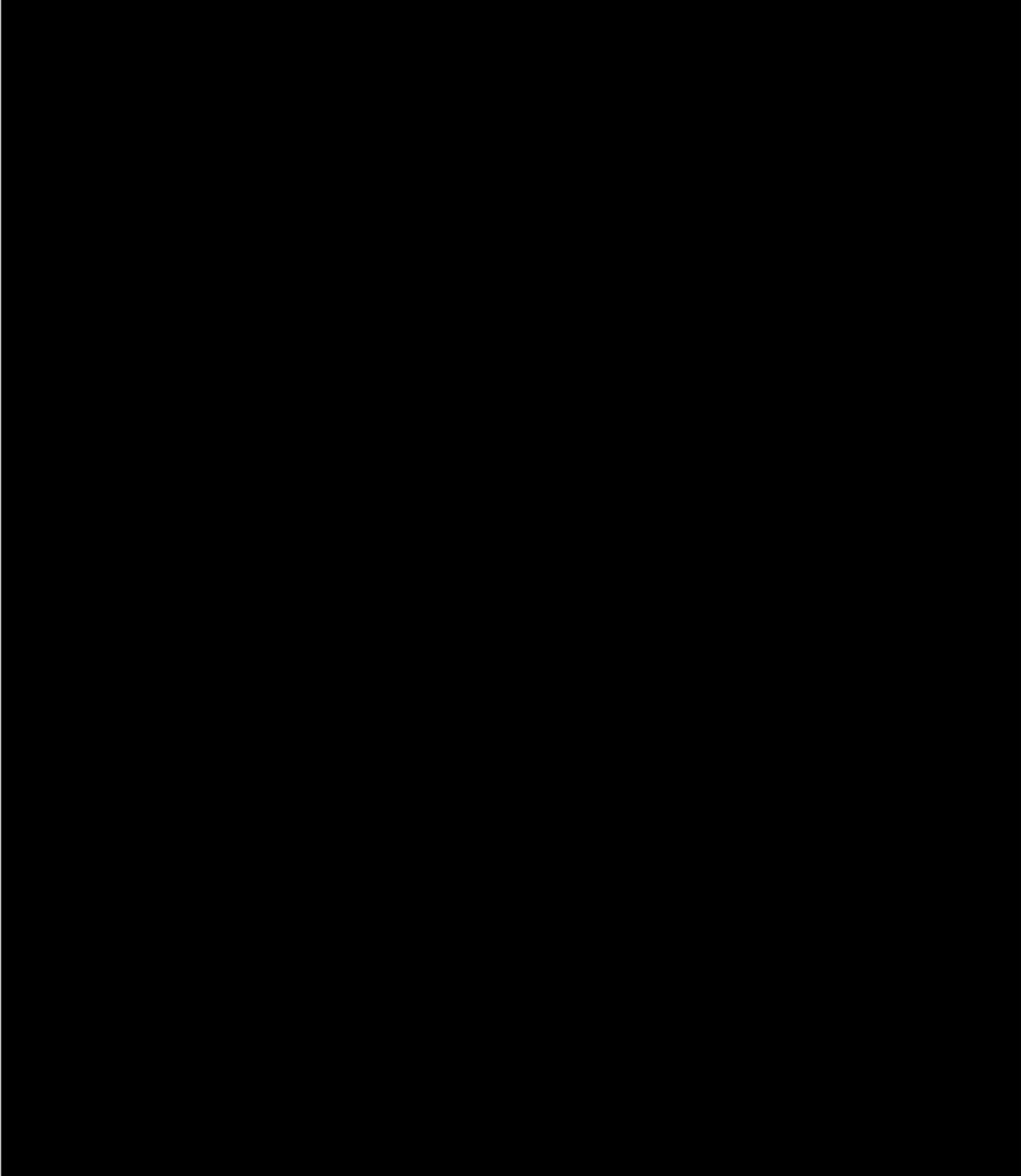


EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. Construction Start.

- a. **“Construction Start”** will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits to begin the construction of the Facility, and execution of an engineering, procurement, and construction contract and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site (**“Notice to Proceed”**). 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 shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date, as may be extended by Seller’s payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B.
 - b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date by paying Construction Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of [REDACTED] of extensions by such payment of Construction Delay Damages. If Seller elects to extend the Guaranteed Construction Start Date, on or before the date that is [REDACTED] prior to the then-current Guaranteed Construction Start Date, Seller shall provide Notice and payment to Buyer of the Construction Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Construction Delay Damages, Buyer shall refund to Seller the Construction Delay Damages in an amount equal to the product of (i) the number of days prior to the Guaranteed Construction Start Date, as extended, that Seller achieves Construction Start, *times* (ii) the Construction Delay Damages, not to exceed the total amount of Construction Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. Construction Delay Damages shall also be refundable to Seller pursuant to Section 2(b) and 2(c) of this Exhibit B.
2. **Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing (or deemed to have acknowledged pursuant to Section 2.2) that Buyer agrees that Commercial Operation has been achieved or Commercial Operation has otherwise been deemed to have been achieved pursuant to

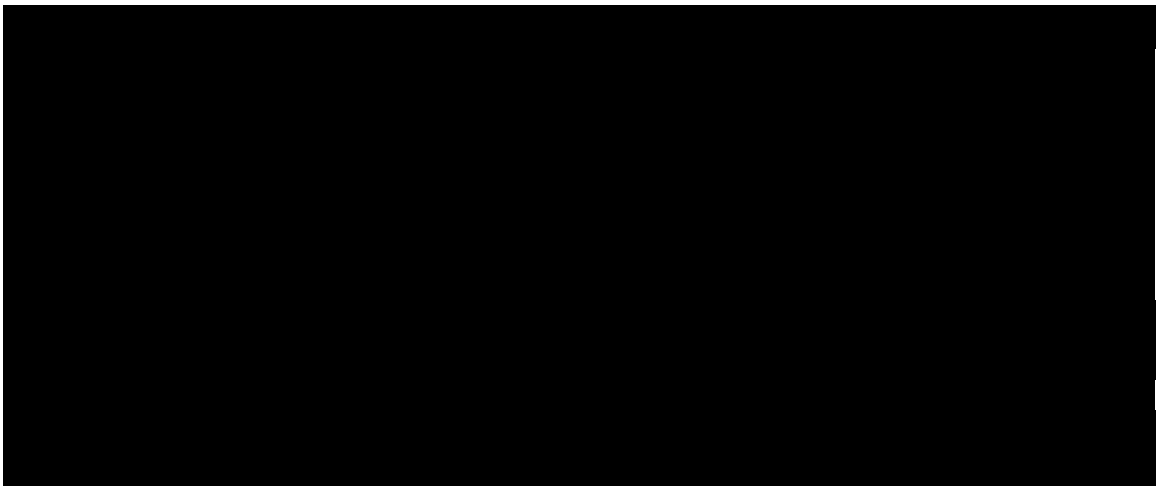
Section 2.2. The “**Commercial Operation Date**” shall be the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation to occur no later than the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2(c) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.
- b. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, as may be extended by a Development Cure Period but not by the payment of Commercial Operation Delay Damages, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.
- c. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] of extensions by such payment of Commercial Operation Delay Damages. If Seller elects to extend the Guaranteed Commercial Operation Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. Seller may deduct the amount of Construction Delay Damages previously paid to Buyer from the amount of COD Delay Damages owed to Buyer. Buyer shall refund to Seller the positive amount, if any, by which Construction Delay Damages paid by Seller, if any, exceed the amount of COD Delay Damages owed by Seller, if any. If no COD Delay Damages are owed by Seller, and Construction Delay Damages were previously paid, Buyer shall refund any Construction Delay Damages paid to Seller after the Guaranteed Commercial Operation Date, as extended hereunder, is achieved. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages in an amount equal to the product of (i) the number of days prior to the Guaranteed Commercial Operation Date, as extended, that Seller achieves Commercial Operation, times (ii) the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(c) of Exhibit B.

3. [REDACTED]



4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be 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 to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
- a. a Force Majeure Event occurs; or
 - b. 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 diligent and commercially reasonable efforts by Seller; or
 - c. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.



[REDACTED]

[REDACTED]

5. **Failure to Reach Guaranteed Capacity or Storage Contract Capacity.**

- a. *Guaranteed Capacity.* If, at Commercial Operation, the Installed Generating Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity such that the Installed Generating 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 Generating Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed Capacity exceeds the Installed Generating Capacity, and the Guaranteed Capacity, Dedicated Interconnection Capacity, Summer Delivered Capacity Limit, and other applicable portions of the Agreement shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Construction Delay Damages, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.
- b. *Storage Contract Capacity.* If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, 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 Storage Contract Capacity by such date, Seller shall pay “**Storage Capacity Damages**” to Buyer, in an amount equal to [REDACTED] for each MW that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Storage Capacity Damages shall not be offset or reduced by the payment of Construction Delay Damages, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.

EXHIBIT C
COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

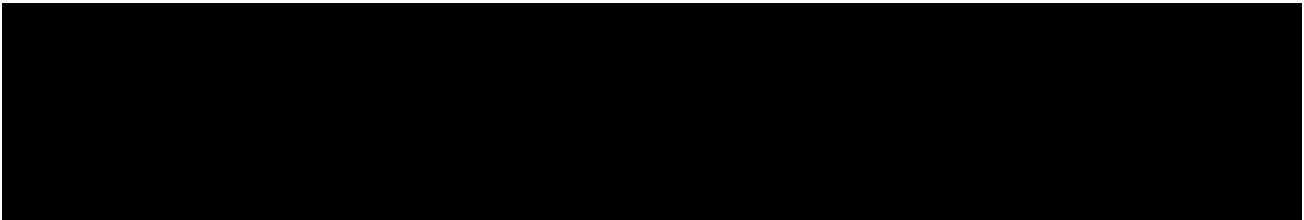
(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of Generating Facility Energy, plus Deemed Delivered Energy in excess of the Curtailment Cap, if any, up to one hundred ten percent (110%) of the Expected Energy for each Contract Year.

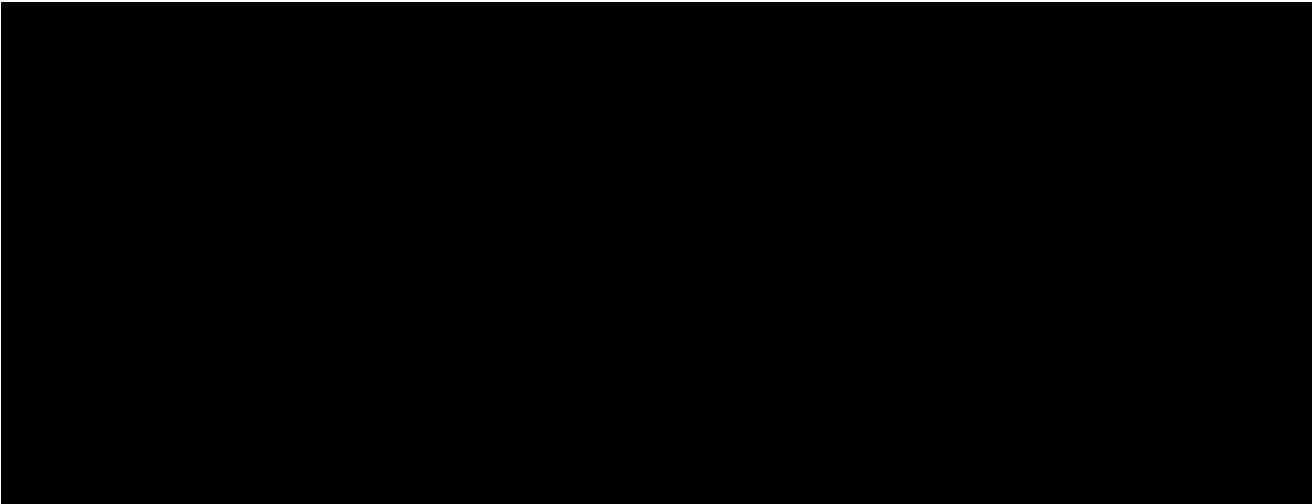
(b) Excess Contract Year Deliveries Over 110%. If, at any point in any Contract Year, the amount of Generating Facility Energy plus the amount of Deemed Delivered Energy in excess of the Curtailment Cap exceeds one hundred and ten percent (110%) of the Expected Energy for such Contract Year, the price to be paid for additional Generating Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real-Time Market for the applicable Settlement Interval or (b) [REDACTED] of the Renewable Rate, but not less than \$0.00/MWh. If, at any point in any Contract Year, the amount of Generating Facility Energy plus the amount of Deemed Delivered Energy in excess of the Curtailment Cap exceeds [REDACTED] of the Expected Energy for such Contract Year, no payment shall be owed by Buyer for any additional Generating Facility Energy or Deemed Delivered Energy.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Generating Facility Energy, in excess of the product of the Installed Generating Capacity *multiplied by* the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh ("Negative LMP Costs").

(d) Curtailment Payments. Seller shall receive no compensation from Buyer for (i). Generating Facility Energy that is curtailed during any Curtailment Period, and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap at the Renewable Rate. The "Curtailment Cap" equals the Expected Energy per Contract Year, in MWh, equal to [REDACTED] multiplied by the Guaranteed Capacity.

(e) Storage Payment. Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a payment ("Storage Payment") equal to the Storage Rate *multiplied by* the Storage Contract Capacity for such month; provided, however, that:





Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Storage Contract Capacity and/or Efficiency Rate are adjusted pursuant to a Capacity Test effective as of a day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Storage Contract Capacity and/or Efficiency Rate are applicable. The Storage Payment is also subject to adjustments pursuant to Section 3.8(b), if applicable.

(f) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the time-weighted-average Efficiency Rate applicable to such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by *multiplying* (i) the total Charging Energy for such month, *by* (ii) the percentage amount by which such time-weighted-average Efficiency Rate is less than the Guaranteed Efficiency Rate, *by* (iii) the simple average of the Real-Time Market LMP at the Delivery Point during intervals in which the Storage Facility was charging during such month, which amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice.

(g) PTC Amount. If applicable, for new eligible PTC resources, during the period (not to exceed a total of one hundred twenty (120) consecutive months) in which Seller is receiving PTCs, Buyer shall also pay the PTC Amount for Deemed Delivered Energy in excess of the Curtailment Cap until the sum of Generating Facility Energy plus the amount of Deemed Delivered Energy in excess of the Curtailment Cap exceeds one hundred percent (100%) of the Expected Energy for such Contract Year.

(h) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(i) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy 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

(a) Buyer as Scheduling Coordinator for the Facility. Prior to the Commercial Operation Date, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility. Upon the Commercial Operation Date, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt (as applicable) of Charging Energy, Facility Energy and the Product at the Delivery Point. At least thirty (30) days prior to the anticipated Commercial Operation Date, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the then-anticipated Commercial Operation Date, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the then-anticipated Commercial Operation Date. Except with Buyer's prior consent, Seller shall not declare a Commercial Operation Date that is earlier than the anticipated Commercial Operation Date provided to CAISO as the date for the transition from Seller's Scheduling Coordinator to Buyer's Scheduling Coordinator for the Facility pursuant to the prior sentence. The Parties acknowledge that they will need to provide the CAISO a fixed date for the transition of the Scheduling Coordinator for the Facility and that the actual Commercial Operation Date may be later than the date on which Buyer or its designee becomes recognized by CAISO as the Scheduling Coordinator for the Facility. The Parties will cooperate reasonably to minimize any such period and to coordinate CAISO scheduling for the Facility during such period, and Buyer will pass through to Seller all CAISO settlements relating to the Facility with respect to the period prior to the Commercial Operation Date promptly after Buyer or its designee receives such settlements from the CAISO. On and after the Commercial Operation Date, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including Charging Energy costs, penalties, Imbalance Energy costs, and other charges) and shall be entitled

to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall assume all liability and reimburse Buyer for any and all Non-Availability Charges (as defined in the CAISO Tariff) and similar charges assessed against Buyer (as Scheduling Coordinator for the Facility) based on the Facility's failure to meet performance obligations applicable to the Facility as a Resource Adequacy Resource; provided that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any such Non-Availability Charges (as defined in the CAISO Tariff) or similar charges are the responsibility of Seller and for Seller's account (except to the extent such Non-Availability Charges or similar charges arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to 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 any CAISO directive, or to perform in accordance with the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility (except to the extent such sanctions or penalties arise out of Buyer's failure to perform its duties as Scheduling Coordinator for the Facility).

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

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer'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 Seller with respect to the Facility that Seller has directed Buyer to dispute, except to the extent such dispute arises from Buyer's failure to perform its duties as Scheduling Coordinator for the Facility.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the

designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) 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. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) 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 Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (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:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
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 specific section reporting on progress of completion of the Transmission Provider's upgrades and description of any known issues that are expected to result in a delay in completion of such upgrades.
11. 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.
12. Prevailing wage reports as required by Law.
13. 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.
14. 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.
15. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
16. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
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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

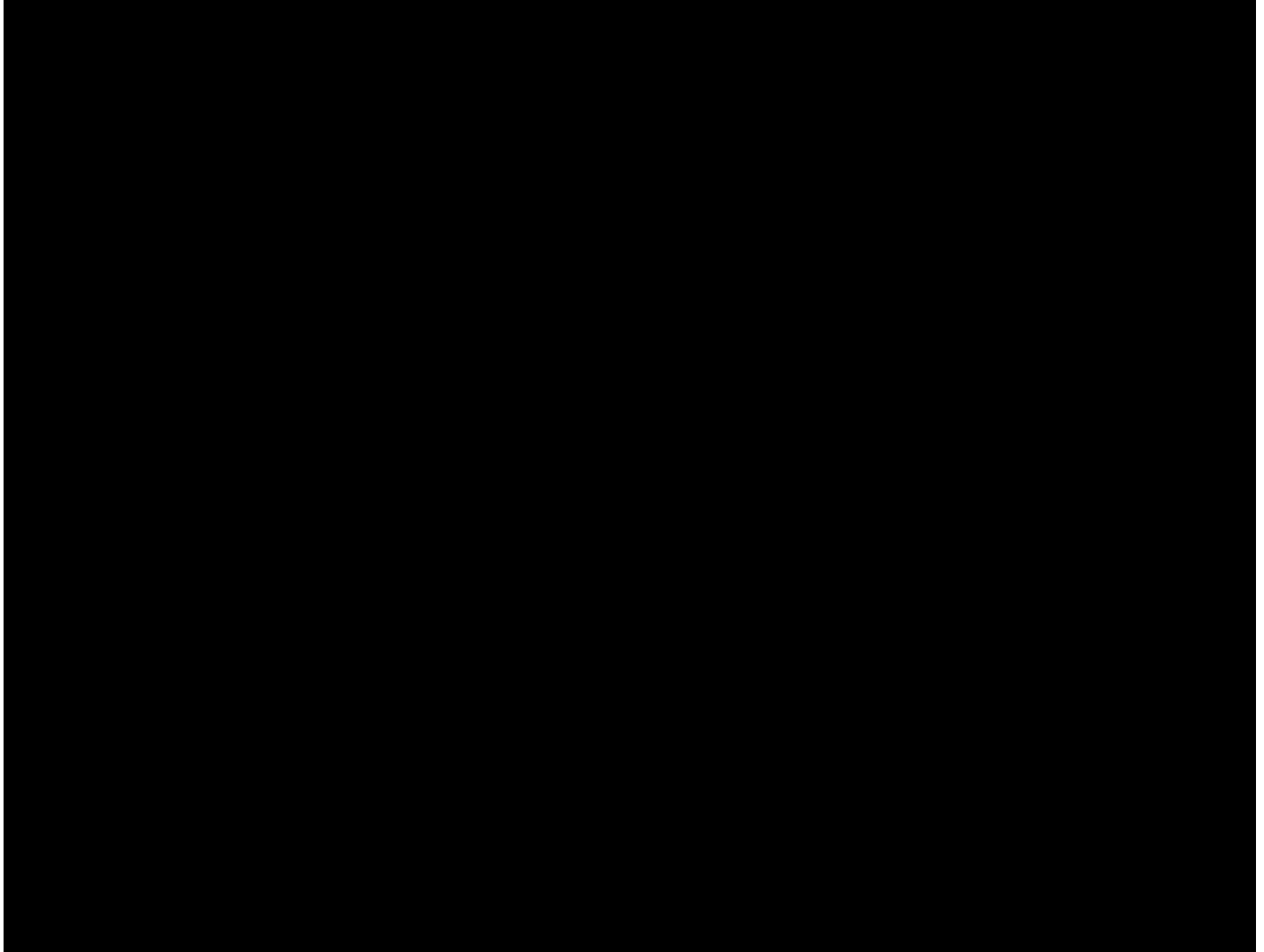
[Available Generating Capacity, MWh Per Hour] – [Insert Month]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

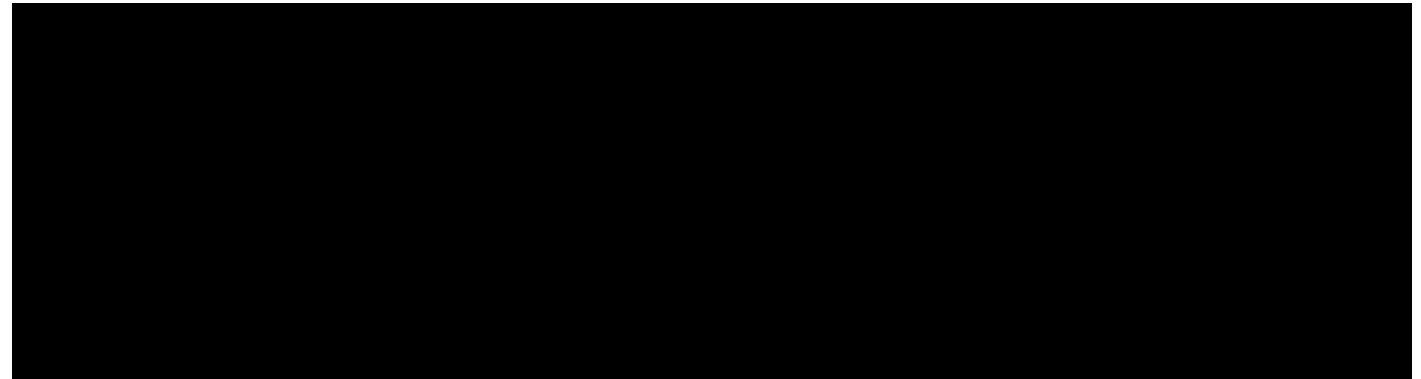
The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

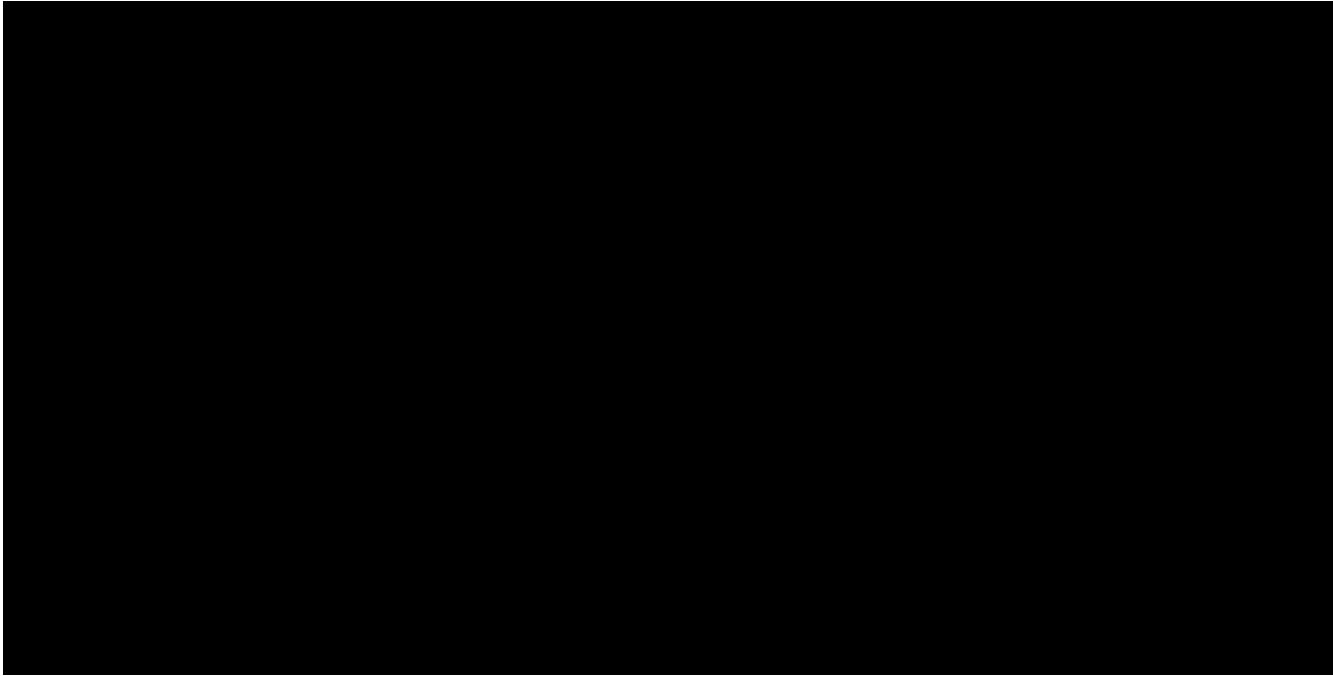
EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION



1. **“Adjusted Energy Production”** shall mean the sum of the following: Generating Facility Energy + Deemed Delivered Energy + Lost Output.





3. No payment shall be due if the calculation of (a) $(A - B - F)$, (b) $(C - D)$, or (c) $[(A - B - F) * (C - D)] - (E)$, yields a negative number. Except as set forth in Section 2 of this Exhibit G with respect to Replacement Product, in no event will Buyer owe any payment to Seller pursuant to this Exhibit G.

4. Within one hundred twenty (120) days after each Contract Year, Buyer shall 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) one hundred fifty (150) days after each Performance Measurement Period.

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 Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase and Energy Storage Service Agreement dated [*DATE*] (“**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 and the Storage Facility are 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. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
5. Seller has demonstrated functionality of the Facility’s communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the PPA and/or the CAISO.
6. The Generating Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.
7. 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.
8. Authorization to parallel the Facility was obtained from the Participating Transmission Owner on ____ [*DATE*] ____.
9. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation ____ [*DATE*] ____.
10. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on ____ [*DATE*] ____.

11. Seller shall have caused the Generating Facility and the Storage Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time Markets in respect of each of the Generating Facility and Storage Facility.
12. Seller has segregated and separately metered Station Use to the extent required in accordance with the retail service provider's tariff, and any such meter(s) have the same or greater level of accuracy as is required under the retail service provider's tariff.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this [] day of [], 20[].

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

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 Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase and Energy Storage Service Agreement dated [*DATE*] ("**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:

(a) 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 ("**Installed Generating Capacity**");

(b) The Storage Capacity Test conducted on [*DATE*] 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, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "**Installed Battery Capacity**"); and

(c) The sum of (a) and (b) is ___ MW AC and shall be the "**Installed Capacity**".

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this _____ day of _____, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to San Diego Community Power Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase and Energy Storage Service Agreement dated [DATE] (“**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 this _____ day of _____, 20__.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

Beneficiary:

San Diego Community Power Authority
PO Box 12716
San Diego, CA 92112

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “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. \$[XXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase and Energy Storage Service Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall renew annually until terminated in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by valid 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. [XXXXXXX] (“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 Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to 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.

This Letter of Credit may only be terminated upon sixty (60) days' prior written notice from Issuer to Beneficiary by registered mail or overnight courier service that Issuer elects 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 is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: San Diego Community Power, Chief Financial Officer, PO Box 12716, San Diego, CA 92112. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of San Diego Community Power, a California joint powers authority, PO Box 12716, San Diego, CA 92112, 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 and Energy Storage Service 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 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 by wire transfer in immediately available funds to the following account:

[Specify account information]

San Diego Community Power

Name and Title of Authorized Representative

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 and Energy Storage Service 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 payment 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 full, complete and 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**”). 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. Notwithstanding anything to the contrary in this Guaranty, the Guaranteed Amount shall in no circumstances exceed the amount of Seller’s Performance Security under the PPA, provided that Seller shall remain subject to the replenishment obligation pursuant to Section 8.8 of the PPA following a draw of the Performance Security.

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 PPA. 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 (except any such extension provided by duly executed amendment to the PPA), 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 (except for any such defenses based on fraud by Buyer), or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA;

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 (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

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 9, 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.

5. 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.

6. 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.

7. 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 (4) 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 7.

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 the City and County of San Diego, 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 and Energy Storage Service 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 3.8(c) 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: _____

Printed Name: _____

Title: _____

EXHIBIT N

NOTICES

Pelicans Jaw Solar, LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
All Notices: Street: 3 Lagoon Dr., Suite 280 City: Redwood City, CA 94065 Attn: SBE Legal, SBE Power Marketing Phone: 650-731-3262 Email: legalus@sbenergy.com, powermarkets@sbenergy.com	All Notices: PO Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: <u>SBE Asset Mgmt</u> Phone: 650-443-7064 Email: amus@sbenergy.com	Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Scheduling: Attn: <u>SBE Asset Mgmt</u> Phone: 650-443-7064 Email: amus@sbenergy.com	Scheduling: Tenaska Power Services Co. Attn: Kara Whillock Phone: (972) 333-6122 Email: kwhillock@tnsk.com Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104
Confirmations: Attn: <u>SBE Asset Mgmt</u> Phone: 650-443-7064 Email: amus@sbenergy.com	Confirmations: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: <u>SBE Asset Mgmt</u> Phone: 650-443-7064 Email: amus@sbenergy.com	Payments: Attn: Michael Maher Phone: (415) 526-3020 Email: mmaher@maher CPA.com
Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]

Pelicans Jaw Solar, LLC (“Seller”)	SAN DIEGO COMMUNITY POWER (“Buyer”)
With additional Notices of an Event of Default to: Attn: Ryan Bates, VP General Counsel 3 Lagoon Dr., Suite 280 Redwood City, CA 94065 Phone: (650) 731-3262 Email: ryan@sbenenergy.com, legalus@sbenenergy.com	With additional Notices of an Event of Default to: Attn: Veera Tyagi General Counsel PO Box 12716 San Diego, CA 92112 Phone: Email: vtyagi@sdcommunitypower.org
Emergency Contact: Attn: SBE Asset Mgmt Phone: 650-443-7064 Email: amus@sbenenergy.com	Emergency Contact: Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Section 5 of Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the initial Storage Contract Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, [REDACTED] prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than [REDACTED] prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Contract Capacity and Efficiency Rate. No later than [REDACTED] following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(c) of the Agreement, Part II.J and Part II.K below, the actual Efficiency Rate and Storage Contract Capacity determined pursuant to a Storage Capacity Test (in the case of the Storage Contract Capacity, up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Section 5 of Exhibit B) shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Storage Payment and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "SCT". Buyer or its representative may be present

for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

Note: Seller shall have the right and option in its sole discretion to install storage capacity in excess of the initial Storage Contract Capacity of 238.5 MW; provided, for all purposes of this Agreement, the amount of Storage Contract Capacity shall never be deemed to exceed 238.5 MW.

A. Purpose of Test. Each SCT shall:

- (1) Determine an updated Storage Contract Capacity;
- (2) Determine the amount of Energy required to fully charge the Storage Facility;
- (3) Determine the Storage Facility charge Ramp Rate;
- (4) Determine the Storage Facility discharge Ramp Rate; and
- (5) Determine an updated Efficiency Rate.

B. Test Elements. Each SCT shall include the following test elements:

- The measurement of Charging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is required to charge the Storage Facility up to the Maximum Stored Energy Level not to exceed the Storage Contract Output (MWh) ("**Energy In**");
- The measurement of Discharging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is discharged from the Storage Facility to the Delivery Point until the Stored Energy Level reaches zero MWh as indicated by the battery management system ("**Energy Out**");
- Electrical output at maximum discharging capacity at the Storage Facility Meter (MW);
- Electrical input at maximum charging capacity at the Storage Facility Meter (MW);
- Amount of time between the Storage Facility's electrical output going from 0 to maximum discharging capacity;
- Amount of time between the Storage Facility's electrical input going from 0 to maximum charging capacity;

- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level.
- C. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at ten (10) minute intervals:
- (1) discharge time (minutes);
 - (2) charging energy (MWh);
 - (3) discharging energy (MWh);
 - (4) Stored Energy Level (MWh).
- D. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air Temperature (°F).
- E. Test Conditions.
- (i) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit Q).
 - (ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT, Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.
 - (iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.
- F. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the

Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

- G. Final Report. Within [REDACTED] after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:
- (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
 - (2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;
 - (3) the level of Storage Contract Capacity, Energy In, Energy Out, Efficiency Rate, charging capacity, the current charge and discharge Ramp Rate, and Stored Energy Level determined by the SCT, including supporting calculations; and
 - (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within [REDACTED] after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

- H. Supplementary Storage Capacity Test Protocol. No later than [REDACTED] prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) an updated supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Storage Contract Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under Section 5 of Exhibit B, multiplied by (ii) four (4) hours), shall be divided by four (4) hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and

shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.

J. Adjustment to Efficiency Rate.

The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above), and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

Part III. INITIAL SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

A. Initial Supplementary Storage Capacity Test Protocol

The initial Supplementary Storage Capacity Test Protocol outlined below shall not be binding on the Parties until delivery of the Supplementary Storage Capacity Test Protocol in accordance with Part II.I above and is included for the convenience of the Parties.

• Procedure:

- (1) System Starting State: The Storage Facility shall be balanced using OEM procedures as appropriate and will be in the on-line state at the Minimum Stored Energy Level.
- (2) Record the initial value of the Storage Facility State-of-Charge (“SOC”).
- (3) Charge the Storage Facility at the Maximum Charging Capacity until the battery reaches the maximum SOC allowed at that rate. Continue charging the Storage Facility at the fixed maximum battery voltage (CV charging). Stop the Storage Facility charge routine when the battery has reached the desired SOC, not to exceed six hours of charging.
- (4) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter at the Storage Facility Metering Point associated with Charging Energy (“**Energy In**”). All separately metered Storage Facility Station Use shall be excluded from the measurement of Energy In.
- (5) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility’s Maximum Discharging Capacity and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached the Minimum Stored Energy Level, or (c) the sustained discharging level is at least 2% less than the Maximum Discharging Capacity.

- (6) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation of the Storage Capacity.
- (7) Record and store the AC Energy charged (in MWh) as measured at the Storage Facility Metering Point associated with Charging Energy. Such data point shall be used for purposes of calculation of the Efficiency Rate.
- (8) If the Storage Facility has not reached the Minimum Stored Energy Level pursuant to Part III.A.5, continue discharging the Storage Facility until it reaches the Minimum Stored Energy Level.
- (9) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Metering Points. "Energy Out" means that total AC Energy discharged (in MWh) as measured at the Storage Facility Metering Point associated with Charging Energy from the commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached the Minimum Stored Energy Level pursuant to either Part III.A.5 or Part III.A.8, as applicable. All separately metered Storage Facility Station Use shall be excluded from the measurement of Energy Out.

- Test Results:

- (1) The resulting Efficiency Rate is calculated as Energy Out/Energy In.
- (2) The resulting Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

EXHIBIT P

ANNUAL STORAGE AVAILABILITY CALCULATION

Seller shall calculate the “Annual Storage Availability” for a given month of the Delivery Term using the formula set forth below:

$$\text{Annual Storage Availability (\%)} = \frac{[\text{AVAILHRS}_y + \text{EXCUSEDHRS}_m]}{[\text{YRTHRS}_y]}$$

Where:

y = relevant year “ y ” in which Annual Storage Availability is calculated;

YRTHRS_m is the total number of hours for the relevant Contract Year;

AVAILHRS_m is the total number of hours, or partial hours, in the month during which the Storage Facility was available to charge and discharge Energy between the Storage Facility and the Delivery Point and to provide Ancillary Services at the Delivery Point (excluding, for avoidance of doubt, all circumstances at the high-voltage side of the Delivery Point or beyond that may limit Seller’s delivery of Product). If the Storage Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Storage Contract Capacity, the AVAILHRS_m for such time period shall be calculated by multiplying such AVAILHRS_m by a percentage determined by dividing (a) by (b); where (a) is the lower of (i) such Storage Capacity amount reported as available by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such hours, or partial hours, and (ii) Seller’s most recent Storage Facility availability Notice, and (b) is the Storage Contract Capacity; and

EXCUSEDHRS_m



If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Storage

Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Adjustment. If the Annual Storage Availability during any Contract Year of the Delivery Term is less than the Guaranteed Storage Availability, then Seller shall owe Buyer an Availability Adjustment Payment for such Contract Year, where “**Availability Adjustment Payment**” means an amount equal to the product of (a) the sum of the Storage Payments for the months in such Contract Year, multiplied by (b) the Availability Adjustment for such Contract Year.

The applicable “**Availability Adjustment**” or “**AA**” is calculated as follows:

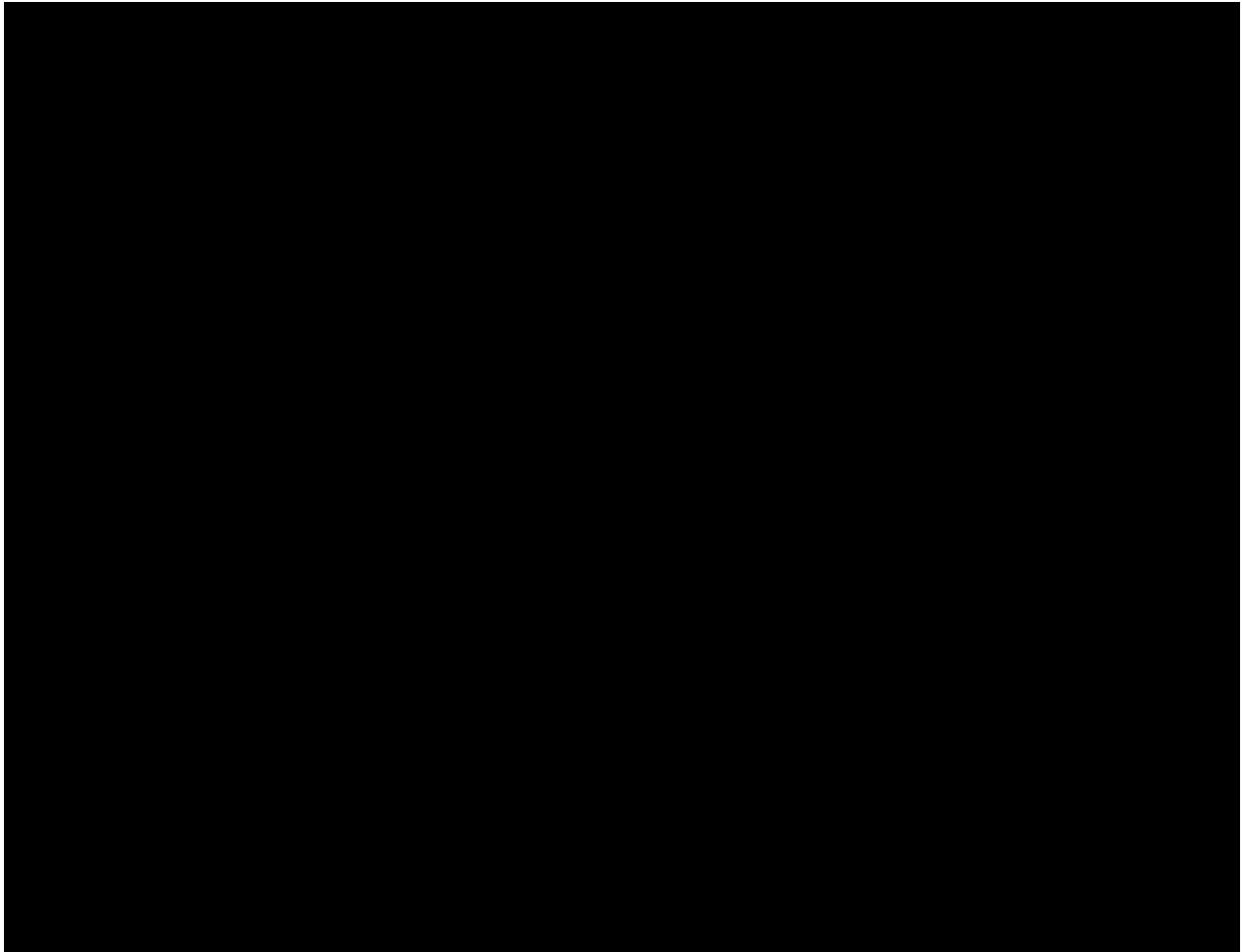


EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Storage Facility in the absence of Discharging Notices or other similar instructions from Buyer relating to the use of the Storage

[illegible]

Regulation up is included:	Yes
Regulation down is included:	Yes
Black start is included:	No
Voltage support is included:	No

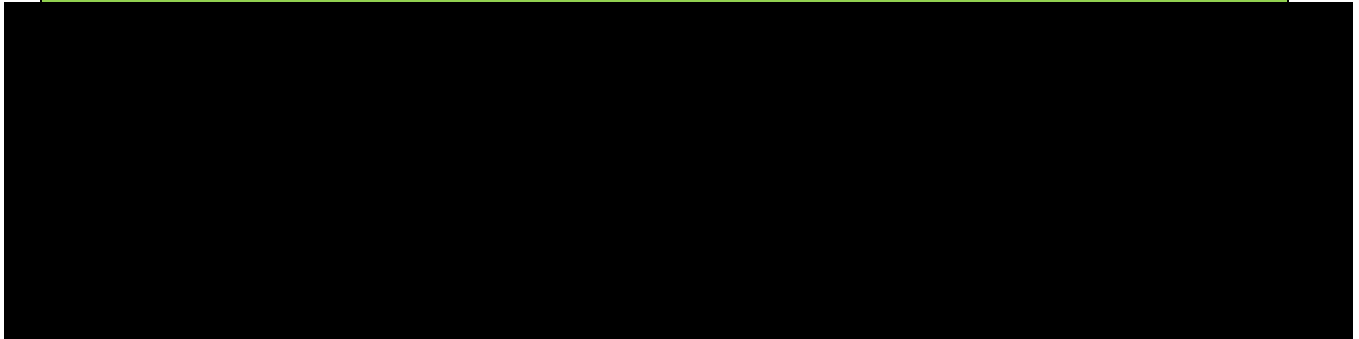


EXHIBIT R
METERING DIAGRAM

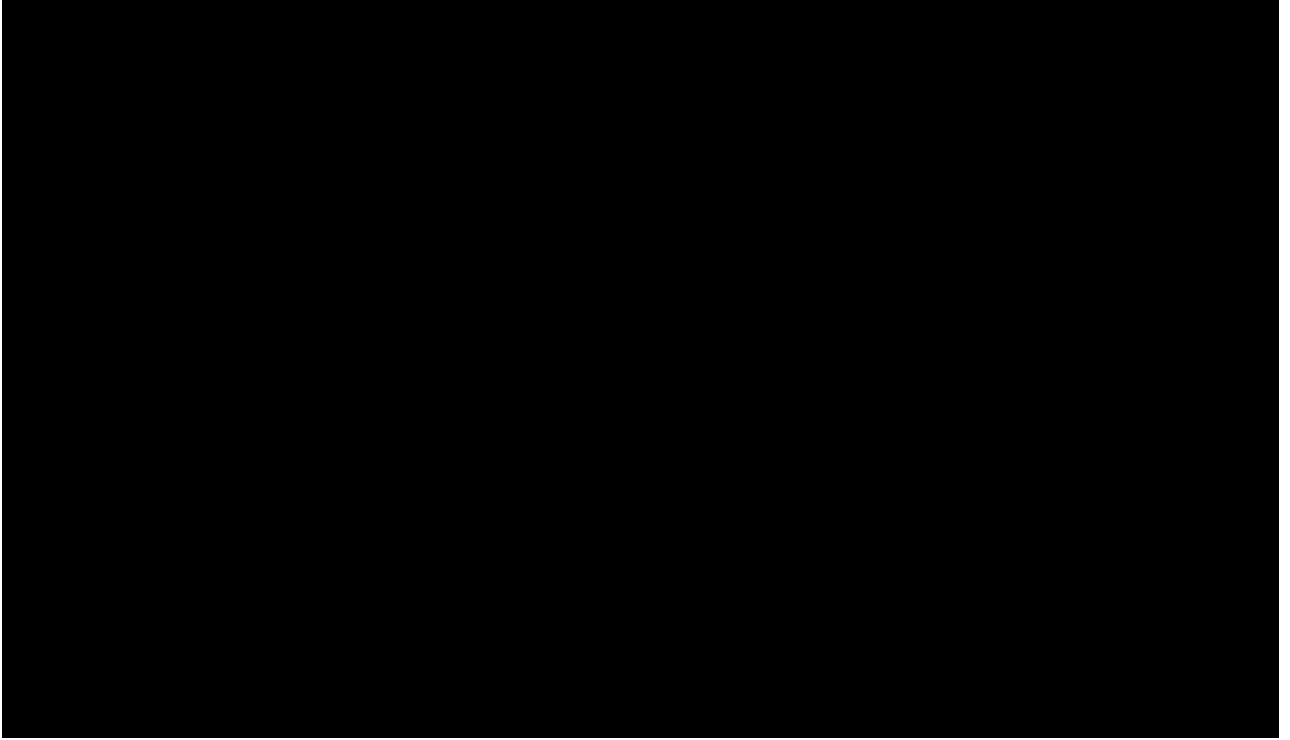


EXHIBIT S
WORKFORCE DEVELOPMENT

Sample Supplier Diversity Survey

Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "Not Applicable" or "Decline to State."

Pursuant to Proposition 209, SDCP does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact your participation in any future SDCP solicitation selection process. Responses are collected for informational and reporting purposes only pursuant to Senate Bill (SB) 255.

*Required

1. Business Name*

2. Email Address*

3. Where is your business located/headquartered?

4. Is your business certified under General Order 156 (GO 156)? GO 156 is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority owned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTBs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database at www.thesupplierclearinghouse.com.*

Yes

No

Qualified as a WMDVLGBTBE but not GO 156 certified

5. If you answered "yes" to Question 4, when does your certification expire?

6. If you answered "yes" or "qualified, but not certified" to Question 4, in which categories are you certified or qualified? Please choose all that apply.

Minority Owned

Women Owned

LGBT Owned

Disabled Veteran Owned

Small Business Enterprise, as defined by 8(d) of the Small Business Act

7. If your business is a minority-owned business enterprise, what GO156 certification or qualification does your business fall under?

Black American

Hispanic American

Asian Pacific American

Native American

8. Please list the Standardized Industrial Code (SIC) of the products and services your business offers. Search for your SIC in the “Commodity Codes” search bar, here: <https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>.

9. If certified under GO 156, please list your annual business revenue as reported to the CPUC Supplier Clearinghouse. You may check your CPUC Supplier Clearinghouse status here: <https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>.

10. If your business is qualified, but not GO 156 certified, please identify the reasons for not completing the certification process?

11. If your business has used GO 156 certified subcontractors for your SDCP contract, please include a list of your subcontractor business names, if the subcontract is for products or services, and the anticipated subcontract amount. Example: Electrical Design Technology, Inc.; products (batteries); \$100,000.

12. If applicable, please describe any hiring policies your business has for using small, local, and/or economically disadvantaged subcontractors or for using subcontractors that qualify for the GO 156 Supplier Clearinghouse.

13. Does your business have a history of using apprenticeship programs, local-hires, union labor, or multi-trade project labor agreements? Local hires can be defined as labor-sourced from within SDCP’s service area.

Yes, apprenticeship programs in this recent contract with SDCP

Yes, local labor in this recent contract with SDCP

Yes, union labor in this recent contract with SDCP

Yes, multi-trade PLA in this recent contract with SDCP

Yes, apprenticeship programs but not in this contract with SDCP

Yes, history of local hire but not in this contract with SDCP

Yes, history of union labor but not in this contract with SDCP

Yes, history of multi-trade PLA but not in this contract with SDCP

Uses California-based labor, but not local to SDCP's service areas

None of the above

Not applicable

14. Are you a small business? Please refer to the Small Business Association' Size Standards tool for more information: <https://www.sba.gov/sizestandards>.

Yes

No

15. If you answered "yes" to Question 14, please describe your history with labor agreements, union labor, multi-trade labor, apprenticeship labor, or how many local workers/businesses you employ for your contract with SDCP.

16. Is there any additional feedback that you would like to provide to SDCP at this time?

17. Does the bidder have formal initiatives to promote diversity, equity, and inclusion among its workforce?

18. If the answer to question 33 is "Yes", please explain and provide supporting documentation.

19. Has the bidder adopted formal Environmental, Social, and Governance (ESG) goals?

20. If the answer to question 36 is "Yes", please explain and provide supporting documentation.

GLOSSARY OF TERMS

AB – Assembly Bill - An Assembly Bill is a piece of legislation that is introduced in the Assembly. In other words, the Assembly, rather than the Senate, is the house of origin in the legislature for the legislation. In California, it is common for legislation to be referred to by its house of origin number (such as, AB 32) even once it becomes law.

AL – Advice Letter - An Advice Letter is a request by a CPUC jurisdictional entity for Commission approval, authorization, or other relief.

ALJ – Administrative Law Judge - ALJs preside over CPUC cases to develop the evidentiary record and draft proposed decisions for Commission action.

ARB – Air Resources Board - The California Air Resources Board (CARB or ARB) is the "clean air agency" in the government of California. CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change.

AReM – Alliance for Retail Energy Markets - a not for profit corporation that advocates for continued development of successful customer choice in retail energy markets and provides a focused voice for competitive energy retailers and their customers in selected public policy forums on the state level. AREM represented direct access providers such as Constellation NewEnergy and Direct Energy.

BayREN - Bay Area Regional Energy Network - BayREN offers region-wide energy programs, services and resources to members of the public by promoting energy efficient buildings, reducing carbon emissions and building government capacity.

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

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

CALSEIA – California Solar Energy Industries - CALSEIA represents more than 200 companies doing solar-related business in California, including manufacturers, distributors, installation contractors, consultants, and educators. Members' annual dues support professional staff and a lobbyist who represent the common interests of California's solar industry at the Legislature, Governor's Office, and state and local agencies.

CALSLA – California City County Street Light Association - statewide association representing cities, counties and towns before the CPUC that is committed to maintaining fair and equitable street light electric rates and facilities charges, and disseminating street light related information.

CAM – Cost Allocation Mechanism - the cost recovery mechanism to cover procurement costs incurred in serving the central procurement function.

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

CARE – California Alternative Rates for Energy - A State program for low-income households that provides a 30% discount on monthly energy bills and a 20% discount on natural gas bills. CARE is funded through a rate surcharge paid by all other utility customers.

CBE – Communities for a Better Environment - environmental justice organization that was founded in 1978. The mission of CBE is to build people's power in California's communities of color and low-income communities to achieve environmental health and justice by preventing and reducing pollution and building green, healthy and sustainable communities and environments.

CCA – Community Choice Aggregator - A community choice aggregator, sometimes referred to as community choice aggregation, allows local governments to procure power on behalf of their residents, businesses, and municipal accounts from an alternative supplier while still receiving transmission and distribution service from their existing utility provider. CCAs are an attractive option for communities that want more local control over their electricity sources, more green power than is offered by the default utility, and/or lower electricity prices. By aggregating demand, communities gain leverage to negotiate better rates with competitive suppliers and choose greener power sources.

CCSF – City and County of San Francisco - The City and County of San Francisco often engage in joint advocacy before the CPUC. San Francisco operates CleanPowerSF, a CCA.

CEC – California Energy Commission - the primary energy policy and planning agency for California, whose core responsibilities include advancing state energy policy, achieving energy efficiency, investing in energy innovation, developing renewable energy, transforming transportation, overseeing energy infrastructure and preparing for energy emergencies.

CEE – Coalition for Energy Efficiency - non-profit comprised of US and Canadian energy efficiency administrators working together to accelerate the development and availability of energy efficient products and services.

CLECA – California Large Energy Consumers Association - an organization of large, high load factor industrial customers located throughout the state; the members are in the cement, steel, industrial gas, pipeline, beverage, cold storage, food packaging, and mining industries, and share the fact that electricity costs comprise a significant portion of their costs of production. Some members are bundled customers, others are Direct Access (DA) customers, and some are served by Community Choice Aggregators (CCAs); a few members have onsite renewable generation.

CPUC – California Public Utility Commission - state agency that regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies, in addition to authorizing video franchises.



C&I – Commercial and Industrial – Business customers. C&I customers generally consume much higher volumes of electricity and gas. Many utilities segment their C&I customers by energy consumption (small, medium and large).

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

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

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

DACC – Direct Access Customer Coalition a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements

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

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

DAC – Disadvantaged Community - Disadvantaged communities refers to the areas throughout California which most suffer from a combination of economic, health, and environmental burdens. These burdens include poverty, high unemployment, air and water pollution, presence of hazardous wastes as well as high incidence of asthma and heart disease. One way that the state identifies these areas is by collecting and analyzing information from communities all over the state. CalEnviroScreen, an analytical tool created by the California Environmental Protection Agency (CalEPA), combines different types of census tract-specific information into a score to determine which communities are the most burdened or "disadvantaged."

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

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

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

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

DLAP – Default Load Aggregation Point – In the CAISO's electricity optimization model, DLAP is the node at which all bids for demand should be submitted and settled.



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

DRP – Distributed Resource Plans - plans that are required by statute that are intended to identify optimal locations for the deployment of distributed resources.

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

ECR – Enhanced Community Renewable - An IOU program that reflects the "Community Solar" model of renewable energy purchasing. Customers sign up to purchase a portion of a local solar project directly from a Developer at a level that meets at least 25% of their monthly electricity demand, but up to 100%. The customer will pay the Developer for the subscribed output, and receive a credit on their utility bill that reflects their enrollment level.

ED – Energy Division - The CPUC's Energy Division develops and administers energy policy and programs to serve the public interest, advise the Commission, and ensure compliance with the Commission decisions and statutory mandates.

EE – Energy Efficiency- the use of less energy to perform the same task or produce the same result. Energy-efficient homes and buildings use less energy to heat, cool, and run appliances and electronics, and energy-efficient manufacturing facilities use less energy.

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

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

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

ES – Energy Storage - the capture of energy produced at one time for use at a later time to reduce imbalances between energy demand and energy production.

ESA – Energy Storage Agreement - means a battery services contract, a capacity contract, demand response contract or similar agreement.

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

EV – Electric Vehicle - a vehicle that uses one or more electric motors for propulsion.

FCR – Flexible Capacity Requirements - “Flexible capacity need” is defined as the quantity of resources needed by the CAISO to manage grid reliability during the greatest three-hour continuous ramp in each month. Resources will be considered as “flexible capacity” if they can sustain or increase output, or reduce ramping needs, during the hours of “flexible need.” “FCR”



means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions.

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

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

GTSR – Green Tariff Shared Renewables - The GTSR program enables customers to receive 50 to 100 percent of their electricity demand from renewable sources. The GTSR program has two components: the Green Tariff (GT) component and the Enhanced Community Renewables (ECR) component. Through GT, a customer may pay the difference between their current generation charge and the cost of procuring 50 to 100 percent renewables. With ECR, a customer agrees to purchase a share of a community renewable (typically solar) project directly from a developer, and in exchange will receive a credit from their utility for the customer's avoided generation procurement.

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

ICA – Integration Capacity Analysis - The enhanced integrated capacity and locational net benefit analysis quantifies the capability of the system to integrate Distributed Energy Resources (DERs) within the distribution system. Results are dependent on the most limiting element of the various power system criteria such as thermal ratings, power quality, system protection limits and safety standards of existing equipment.

IDER – Integrated Distributed Energy Resources – A CPUC proceeding that aims to more effectively coordinate the integration of demand-side resources in order to better meet customer and grid needs, while enabling California to attain its greenhouse gas reduction goals.

IDSMD – Integrated Demand-Side Management - an approach that joins together all the resources utilities have at their disposal to plan, generate and supply electricity in the most efficient manner possible.

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

IMD – Independent Marketing Division - Under state law, IOUs are prohibited from lobbying or marketing on community choice unless the IOU forms an independent marketing division funded by shareholders rather than ratepayers. SDG&E' and its parent company Sempra were permitted by the CPUC to create such an independent marketing division, which allowed SDG&E to lobby against plans to create a CCA program.

IOU – Investor-Owned Utility – A private electricity and natural gas provider, such as SDG&E, PG&E or SCE, which are the three largest IOUs in California.



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

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

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

LCE – Lancaster Choice Energy - the CCA that serves the City of Lancaster, California.

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

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

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

LNBA – Locational Net Benefits Analysis - a cost-benefit analysis of distributed resources that incorporates location-specific net benefits to the electric grid.

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

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

LTPP – Long-Term Procurement Rulemaking - This is an “umbrella” proceeding to consider, in an integrated fashion, all of the Commission’s electric procurement policies and programs.

MCE – Marin Clean Energy - the first CCA in California that began serving customers in 2010. They serve customers in Contra Costa, Marin, Napa and Solano counties in Northern California.

MEO – Marketing Education and Outreach - a term generally used to describe various strategies to inform customers, such as to motivate consumers to take action on energy efficiency or conservation measures and change their behavior.

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

MWH – Megawatt-hour – measure of energy

NAESCO – National Association of Energy Service Companies - – an advocacy and accreditation organization for energy service companies (ESCOs). Energy Service Companies



contract with private and public sector energy users to provide cost-effective energy efficiency retrofits across a wide spectrum of client facilities.

NBC – Non-Bypassable Charge - fees that are paid on every kilowatt-hour of electricity that is consumed from the grid. These charges can be used to fund things like energy assistance programs for low-income households and energy efficiency programs. These charges apply even if customers buy grid-supplied power from an outside power company such as a CCA.

NDA – Non-Disclosure Agreement - a contract by which one or more parties agree not to disclose confidential information that they have shared with each other.

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

NRDC – Natural Resources Defense Council - non-profit international environmental advocacy group.

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

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

OSC – Order to Show Cause - order requiring an individual or entity to explain, justify, or prove something.

ORA – Office of Ratepayer Advocates - the independent consumer advocate within the CPUC, now called Public Advocates office.

PA – Program Administrator (for EE Business Plans) IOUs and local government agencies authorized to implement CPUC-directed Energy Efficiency programs.

PCE – Peninsula Clean Energy Authority - CCA serving San Mateo County and all 20 of its cities and towns as well as the City of Los Banos.

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

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

PCC3 – RPS Portfolio Content Category 3 – Unbundled REC

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

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



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

PG&E – Pacific Gas & Electric - the IOU that serves 16 million people over a 70,000 square mile service area in Northern California.

PHC – Prehearing Conference - CPUC hearing to discuss the scope of a proceeding among other matters. Interested stakeholders can request party status during these.

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

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

PRP – Priority Review Project - transportation electrification pilot projects approved by the CPUC pursuant to SB 350.

PRRR – Progress on Residential Rate Reform – Pursuant to a CPUC decision, the IOUs must submit to the CPUC and parties periodic updates on the progress of their efforts to assist customers with residential rate design changes related to rate reform, including tier collapse and transition to a default time of use rate.

PUC – Public Utilities Code - California statute that contains 33 Divisions, and the range of topics within this Code includes natural gas restructuring, private energy producers, telecommunication services, and specific municipal utility districts and transit authorities. Primary statute for governance of utilities as well as CCAs in California.

PURPA – Public Utilities Regulatory Policy Act - federal statute passed by Congress to encourage fuel diversity via alternative energy sources and to introduce competition into the electric sector. It was meant to promote energy conservation (reduce demand) and promote greater use of domestic energy and renewable energy (increase supply). The law was created in response to the 1973 energy crisis.

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

RAM – Renewables Auction Mechanism - a procurement program the Investor-owned Utilities (IOUs) may use to procure RPS eligible generation. The IOUs may use RAM to satisfy authorized procurement needs, for example, system Resource Adequacy needs, local Resource Adequacy needs, RPS needs, reliability needs, Local Capacity Requirements, Green Tariff Shared Renewables needs, and any need arising from Commission or legislative mandates.

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

REC - Renewable Energy Certificate - A REC is the property right to the environmental benefits associated with generating renewable electricity. For instance, homeowners who generate solar



electricity are credited with 1 solar REC for every MWh of electricity they produce. Utilities obligated to fulfill an RPS requirement can purchase these RECs on the open market.

RES-BCT – Renewables Energy Self-Generation Bill Credit Transfer - This program enables local governments and universities to share generation credits from a system located on one government-owned property with billing accounts at other government-owned properties. The system size limit under RES-BCT is 5 MW, and bill credits are applied at the generation-only portion of a customer's retail rate.

RFO – Request for Offers a competitive procurement process used by organizations to solicit the submission of proposals from interested parties in response to a scope of services.

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

SB – Senate Bill - a piece of legislation that is introduced in the Senate. In other words, the Senate, rather than the Assembly, is the house of origin in the legislature for the legislation.

SCE – Southern California Edison - the large IOU that serves the Los Angeles and Orange County area.

SCP – Sonoma Clean Power Authority - CCA serving Sonoma County and surrounding areas in Northern California.

SDG&E – San Diego Gas & Electric - the IOU that serves San Diego county, they own the infrastructure that delivers SDCP energy to customers.

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

SUE – Super User Electric - electric surcharge that's intended to penalize consumers for excessive energy use.

SVCE – Silicon Valley Clean Energy - CCA serving Silicon Valley Area.

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

TE – Transportation Electrification - For the transportation sector, electrification means replacing fossil fuels with electricity as the means of powering light-duty vehicles, medium- and heavy-duty trucks, and buses. The primary goal is to reduce greenhouse gas (GHG) emissions and, ultimately, contribute to mitigating the effects of climate change on the planet.

Time-of-Use (TOU) Rates — The pricing of delivered electricity based on the estimated cost of electricity during a particular time-block. Time-of-use rates are usually divided into three or four time-blocks per 24 hour period (on-peak, midpeak, off-peak and sometimes super off-peak) and by seasons of the year (summer and winter). Real time pricing differs from TOU rates in that it is based on actual (as opposed to forecasted) prices that may fluctuate many times a day and are weather sensitive, rather than varying with a fixed schedule.



TM – Tree Mortality - refers to the death of forest trees and provides a measure of forest health. In the context of energy, the CPUC is tasked with utilizing its authority to extend contracts and take actions to authorize new contracts on bioenergy facilities that receive feedstock from high hazard zones.

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

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

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

VAMO – Voluntary Allocation, Market Offer - the process for SDG&E to allocate a proportional share of their renewable portfolio to SDCP and other LSEs within the service territory.

