



## **AGENDA**

### **Special Meeting of the Board of Directors of San Diego Community Power (SDCP)**

March 24, 2022  
4:00 p.m.

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

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

1. **Providing Oral Comments During Meeting.** To provide comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. On Zoom video conference by computer or mobile phone, use the "Raise Hand" feature. This will notify the moderator that you wish to speak during a specific item on the agenda or during non-agenda Public Comment. Members of the public will not be shown on video but will be able to speak when called upon. If joining the meeting using the Zoom dial-in number, you can raise your hand by pressing \*9. Comments will be limited to three (3) minutes. Please be aware that the Chair has the authority to reduce equally each speaker's time to accommodate a large number of speakers.
2. **Written Comments.** Written public comments must be submitted prior to the start of the meeting by using this ([web 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 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](mailto: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

**AGENDA – BOARD OF DIRECTORS – SAN DIEGO COMMUNITY POWER**

## **Call to Order**

## **Roll Call**

## **PUBLIC COMMENTS ON CLOSED SESSION ITEMS**

### **CLOSED SESSION**

**1. PUBLIC EMPLOYEE APPOINTMENT PURSUANT TO GOVERNMENT CODE SECTION 54957**

Title: Chief Executive Officer

**2. CONFERENCE WITH LABOR NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54957.6**

Agency designated representative(s): Cindy Krebs, Alliance Resource Consulting

Unrepresented employee: Chief Executive Officer

**3. PUBLIC EMPLOYMENT PURSUANT TO GOVERNMENT CODE SECTION 54957**

Title: Interim Chief Executive Officer

## **REPORT FROM CLOSED SESSION**

### **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](mailto:info@sdcommunitypower.org). Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

#### ***Availability of Board Documents***

Copies of the agenda and agenda packet are available at <https://sdcommunitypower.org/resources/meeting-notes/>. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are available for public review as required by law. Previously, public records were available for inspection at the City of San Diego Sustainability Department, located at 1200 Third Ave., Suite 1800, San Diego, CA 92101. However, due to the Governor's Executive Orders N-25-20 and N-29-20 and the need for social distancing, in-person inspection is now suspended. Public records, including agenda-related documents, can instead be requested electronically at [info@sdcommunitypower.org](mailto:info@sdcommunitypower.org) or by mail to SDCP, 815 E Street, Suite 12716, San Diego, CA 92112. The documents may also be posted at the above website.



## **AGENDA**

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

March 24, 2022  
5:00 p.m.

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

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**Welcome**

**Call to Order**

**Pledge of Allegiance**

**Roll Call**

**Report from Closed Session**

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

**Public Comments**

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

**Consent Calendar**

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

- 1. Approval of Findings to Continue Holding Remote/Teleconference Meetings Pursuant to Assembly Bill 361**
- 2. Approval of December 16, 2021 Meeting Minutes**
- 3. Receive and File Treasurer's Report for Period Ending 1/31/22**
- 4. Update on Back Office Metrics/Dashboard**
- 5. Update on Regulatory and Legislative Affairs**
- 6. Approval of Second Amendment to Neyenesch Printing Contract**
- 7. Adoption of Resolution Approving a Records Retention Policy and Schedule**
- 8. Approval of Information Technology and Security Policy**
- 9. Approval of Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy**
- 10. Update on Supplier Diversity and 2021 Report**
- 11. Approval of Legislative Policy Platform**

**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.*

**12. Appointment of Chief Executive Officer and Approval of Employment Agreement**

Recommendation: Adopt Resolution appointing a Chief Executive Officer and approving execution of an Employment Agreement in substantially the form attached hereto or presented

at the meeting, with non-substantive revisions approved by the Chair and reviewed and approved as to form by General Counsel.

**13. Second Amendment to Temporarily Extend Interim CEO Employment Agreement**

Recommendation: Consider approval of Second Amendment to the Interim CEO Employment Agreement with Bill Carnahan to temporarily extend the term until the new CEO's employment date or April 30, 2022, whichever is earlier.

**14. Discussion on Location and Format of Upcoming Meetings**

Recommendation: Receive presentation, discuss meeting location and format issues and provide direction to staff.

**15. Approval of Energy Proposal Evaluation Criteria**

Recommendation: Approve the Energy Proposal Evaluation Criteria

**16. Update on Community Power Plan**

Recommendation: Receive and File Community Power Plan Update

**17. Update on Residential Enrollment Marketing**

Recommendation: Receive and File Residential Enrollment Marketing Update

**18. Approval of Agreement with River City Bank for the Renewal and Increase of the Credit Facility**

Recommendation: Approve the agreement with River City Bank for the renewal and increase of the credit facility.

**Reports by Management and General Counsel**

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

**Director Comments**

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

**Adjournment**

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## SAN DIEGO COMMUNITY POWER Staff Report – Item 1

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To: San Diego Community Power Board of Directors

From: Ryan Baron, General Counsel

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

Date: March 24, 2022

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### RECOMMENDATION

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

### BACKGROUND

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

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

### ANALYSIS AND DISCUSSION

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

## **FISCAL IMPACT**

None.

## **ATTACHMENTS**

None.







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

San Diego City Administration Building, 12th Floor  
202 "C" Street  
San Diego, CA 92101

**MINUTES**

December 16, 2021

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This meeting was conducted utilizing teleconferencing and electronic means consistent with Government Code Section 54953, as amended by Assembly Bill 361, in relation to the COVID-19 State of Emergency and recommended social distancing measures.

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 Mosca (Encinitas) called the SDCP Board of Directors meeting to order at 5:04 p.m.

**PLEDGE OF ALLEGIANCE**

Chair Mosca (Encinitas) led the Pledge of Allegiance.

**CEREMONIAL OATH OF OFFICE**

Executive Assistant/Assistant Board Clerk Isley administered the Oath of Office to Director Terra Lawson-Remer (San Diego County) and Director Alejandra Sotelo-Solis (National City).

**ROLL CALL**

PRESENT: Chair Mosca (Encinitas), Alternate Director Aguirre (Imperial Beach), Alternate Director Humora (La Mesa), Director Lawson-Remer (San Diego County), Director Montgomery Steppe (San Diego), and Director Sotelo-Solis (National City)

ABSENT: Vice Chair Padilla (Chula Vista), Director Baber (La Mesa), and Director Dedina (Imperial Beach)

*Also Present: Interim Chief Executive Officer (“CEO”) Carnahan, Chief Operating Officer (“COO”) Hooven, General Counsel Baron, Interim Board Clerk Wiegelman*

### **REPORT FROM CLOSED SESSION**

General Counsel Baron announced there were no reportable actions from Closed Session.

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

There were no items to be added, withdrawn, or reordered.

### **PUBLIC COMMENTS**

Bill Teter spoke regarding cost and rate transparency.

Eddie Price, Community Advisory Committee (“CAC”) Chair, spoke regarding the relationship between the SDCP Board of Directors and the CAC.

Matthew Vasilakis, Climate Action Campaign, welcomed the new SDCP Directors and thanked Director Montgomery Steppe for her work on the Board.

### **CONSENT CALENDAR**

(Items 1 through 8)

#### **1. Approval of Findings to Continue Holding Remote/Teleconference Meetings Pursuant to Assembly Bill 361**

Approved.

#### **2. Approval of 2022 Board Meeting Schedule**

Approved with the following changes: (1) the January 13, 2022 Special meeting date and January 27, 2022 Regular meeting date were removed and replaced with a January 20, 2022 meeting date; and (2) the January 28, 2022 Strategic Planning workshop was removed with the new date to be determined.

#### **3. Receive and File Treasurer’s Report for Period Ending 10/31/2021**

Received and filed.

**4. Amend Community Advisory Committee (CAC) Membership Terms and Criteria, Membership Application, and Receive Update on Application Timeline and Appointment**

Approved.

**5. Approval of Renewable Energy Self-Generation Bill Credit Transfer (RES-BCT) Tariff**

Approved.

**6. Update on Back Office Metrics/Dashboard**

Received and filed.

**7. Approval of Remainder of Delinquency Policy for Customers**

Approved.

**8. Approval of Amendment to the SDCP Energy Risk Management Policy to Authorize the CEO to Approve and Execute Administrative Amendments to Power Contracts**

Approved.

ACTION: Motioned by Director Montgomery Steppe (San Diego) and seconded by Director Sotelo-Solis (National City) to approve Consent Calendar Items 1 through 8. The motion carried by the following vote:

Vote: 6-0

Yes: Chair Mosca (Encinitas), Alternate Director Aguirre (Imperial Beach), Alternate Director Humora (La Mesa), Director Lawson-Remer (San Diego County), Director Montgomery Steppe (San Diego), and Director Sotelo-Solis (National City)  
No: None  
Abstained: None  
Absent: Chula Vista

**INFORMATION REPORTS / UPDATES**

**9. Update on CEO Search Ad Hoc Committee Efforts**

Interim CEO Carnahan provided an update on the CEO recruitment process and the proceedings of the CEO Search Ad Hoc Subcommittee and Alliance Resource Consulting firm.

Board questions and comments ensued.

Matthew Vasilakis, Climate Action Campaign, spoke on adding the San Diego County or National City SDCP Director to the CEO Search Ad Hoc Subcommittee.

City Clerk Wiegelman read aloud the first 400 words of the emailed public comments submitted prior to the start of the Board meeting.

Joyce Lane submitted a comment on adding the San Diego County or National City SDCP Director to the CEO Search Ad Hoc Subcommittee and selecting a CEO familiar with the San Diego region.

Following Board questions and comments, no action was taken.

#### **10. Operations and Administration Report from the Interim Chief Executive Officer**

Data Analytics and Account Services Director Utouh announced the following new hires:

- Carly Newman, Account Services Analyst
- Ryan Hanke, Data and Systems Analyst

Following Board questions and comments, no action was taken.

#### **11. Update on Regulatory and Legislative Affairs**

Regulatory and Legislative Affairs Director Fernandez provided an update on the San Diego Gas and Electric (“SDG&E”) Energy Resources Recovery Account (“ERRA”) Forecast Application Proposed Decision and the Net Energy Metering (NEM) proposed decision issued Monday, December 13, 2021.

Tara Hammond, CAC Vice Chair, spoke regarding the impacts the proposed NEM 3.0 tariff would have on rooftop solar.

Following Board questions and comments, no action was taken.

#### **12. Update on Power Resources and Local Renewable Energy and Energy Storage Request for Information**

Power Resources Director Vosburg and Power Services Portfolio Manager Williams provided an overview of the local request for information (“RFI”), highlighting the timeline, technology, location, initial date of delivery, term of agreement, initial response, and next steps.

Following Board questions and comments, no action was taken.

### **REGULAR AGENDA**

#### **13. Approval of Amended and Restated Joint Powers Agreement and Bylaw Revisions**

General Counsel Baron outlined the history of the Joint Powers Agreement (“JPA”) and reviewed the procedures for amending the JPA or Bylaws. General Counsel Baron gave an overview of the proposed amendments.

Matthew Vasilakis, CAC Member, spoke regarding the omission of the CAC’s recommended JPA amendments.

Eddie Price, CAC Chair, spoke regarding the omission of the CAC’s recommended JPA amendments.

Cristina Marquez, IBEW Local 569, urged SDCP to open discussions to amend the Inclusive and Sustainable Workforce policy and to develop a bid evaluation scoring criteria to include in SDCP's solicitation process.

Tara Hammond, CAC Vice Chair, spoke on amending the JPA to allow all qualified applicants the opportunity to apply.

City Clerk Wiegelman read aloud the first 400 words of the emailed public comments submitted prior to the start of the Board meeting.

Joyce Lane submitted a comment on amending the JPA to allow all qualified applicants the opportunity to apply.

Karinna Gonzalez submitted a comment on amending the JPA to allow all qualified applicants the opportunity to apply and hiring a CEO local to and familiar with the San Diego region.

Board questions and comments ensued.

**ACTION:** Motioned by Director Montgomery Steppe (San Diego) and seconded by Director Aguirre (Imperial Beach) to approve the amended and restated Joint Powers Agreement ("JPA") and conforming revisions to the Bylaws, with the exception of the proposed amendment to the Voting Shares Vote, thus maintaining the original JPA language for Section 4.11.2. The motion carried by the following vote:

Vote: 6-0

Yes: Chair Mosca (Encinitas), Alternate Director Aguirre (Imperial Beach), Alternate Director Humora (La Mesa), Director Lawson-Remer (San Diego County), Director Montgomery Steppe (San Diego), and Director Sotelo-Solis (National City)  
No: None  
Abstained: None  
Absent: Chula Vista

#### **14. Approval of Renewable Power Purchase Agreement with Duran Mesa, LLC**

Power Resources Director Vosburg gave an overview of the Long-term Renewable Portfolio Standard ("RPS") requirements, the 2020 Long-term RPS Renewable Energy Request for Offers ("RFO") timeline, and the 2020 Long-term RPS RFO projects. Power Resources Director Vosburg provided background on Pattern Energy Group LP and reviewed the proposed Duran Mesa, LLC project and contract.

Board questions and comments ensued.

Cristina Marquez, IBEW Local 569, spoke in opposition to the Renewable Power Purchase Agreement with Duran Mesa, LLC.

Board questions and comments continued.

**ACTION:** Motioned by Director Montgomery Steppe (San Diego) and seconded by Alternate Director Humora (La Mesa) to approve the Renewable Power Purchase Agreement with Duran Mesa, LLC. The motion carried by the following vote:

Vote: 6-0

Yes: Chair Mosca (Encinitas), Alternate Director Aguirre (Imperial Beach), Alternate Director Humora (La Mesa), Director Lawson-Remer (San Diego County), Director Montgomery Steppe (San Diego), and Director Sotelo-Solis (National City)  
No: None  
Abstained: None  
Absent: Chula Vista

**15. Approval of Updates to the Feed-in-Tariff (FIT) Schedule and Delegate Authority to Interim Chief Executive Officer or their Designee to Execute and Amend the FIT Power Purchase Agreements**

Program Manager Lomeli provided background on the FIT Schedule and reviewed the current approved FIT program. Program Manager Lomeli gave an overview of the proposed changes to the FIT program, the goal of the proposed changes to the FIT program, the program capacity and standard pricing, the reservation security deposit, the development security deposit, and the performance security deposit. Power Manager Lomeli summarized the CAC's input on the FIT program.

Board questions and comments ensued.

Eddie Price, CAC Chair, spoke regarding the January 2021 update to the Inclusive and Sustainable Workforce policy.

Hillary Hebert, Cleantech San Diego, spoke in support of the FIT program.

David Harris, CAC Member, spoke in support of the FIT program but voiced concerns with the total cost of the program and the possibility of local projects importing renewable natural gas, biogas or biodiesel from another county or state.

**ACTION:** Motioned by Director Montgomery Steppe (San Diego) and seconded by Chair Mosca (Encinitas) to approve the Feed-in-Tariff (FIT) Schedule and delegate authority to Interim CEO or their designee to execute the FIT Power Purchase Agreement. The motion carried by the following vote:

Vote: 5-0

Yes: Chair Mosca (Encinitas), Alternate Director Aguirre (Imperial Beach), Alternate Director Humora (La Mesa), Director Montgomery Steppe (San Diego), and Director Sotelo-Solis (National City)  
No: None  
Abstained: None  
Absent: Chula Vista; Director Lawson-Remer (San Diego County)

**16. Update on 2022 Rate/Power Charge Indifference Adjustment (PCIA) Projected Changes**

COO Hooven and Data Analytics and Account Services Director Utouh provided an overview of the rate setting process, the 2021/2022 rates timeline, the 2022 bundled commodity rate and PCIA projections, the proforma and competitiveness impacts; the 2022 rate setting mechanics, and the next steps in the rate and PCIA process.

Following Board questions and comments, no action was taken.

### **REPORTS BY MANAGEMENT AND GENERAL COUNSEL**

Interim CEO Carnahan announced SDCP would be closed from December 25, 2021 through January 1, 2022.

### **DIRECTOR COMMENTS**

Chair Mosca (Encinitas) thanked Director Montgomery Steppe (San Diego) for her time and efforts with SDCP.

Director Montgomery Steppe (San Diego) thanked her colleagues, SDCP staff, and the community.

Director Sotelo-Solis (National City) volunteered to sit on the CEO Search Ad Hoc Subcommittee. Chair Mosca (Encinitas) appointed Director Sotelo-Solis (National City) to the CEO Search Ad Hoc Subcommittee.

### **ADJOURNMENT**

Chair Mosca (Encinitas) adjourned the meeting at 8:15 p.m.

Megan Wiegelman, CMC  
Interim Board Clerk



## SAN DIEGO COMMUNITY POWER Staff Report – Item 3

To: San Diego Community Power Board of Directors

From: Eric W. Washington, Chief Financial Officer

Via: Bill Carnahan, Interim Chief Executive Officer

Subject: Treasurer's Report –Presentation of Financial Results for Fiscal Year 2022 Period ended 1/31/22

Date: March 24, 2022

### RECOMMENDATION

Receive and File Report

### BACKGROUND

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

SDCP has prepared year-to-date financial statements for the period ended January 31, 2022, along with budgetary comparisons.

### ANALYSIS AND DISCUSSION

Financial results for the period ended 1/31/22: \$208.11 million in net operating revenues were reported compared to \$209.34 million budgeted for the period. \$199.76 million in total expenses were reported (including \$196.09 million in energy cost) compared to \$199.54 million budgeted for the period (including \$196.09 million budgeted for energy costs). After expenses, SDCP's change in net position of \$8.36 million was reported. The following is a summary to actual results compared to the Fiscal Year 2022 Budget.

	Budget Comparison			
	YTD FY22 as of 1/31/22 (7 mos)	FY22 YTD Budget	Budget Variance (\$)	Budget (%)
Net Operating Revenues	\$ 208,112,088	\$ 209,341,518	\$ (1,229,430)	99
Total Expenses	\$ 199,756,193	\$ 199,544,706	\$ 211,487	100
Change in Net Position	\$ 8,355,895	\$ 9,796,812	\$ (1,440,917)	

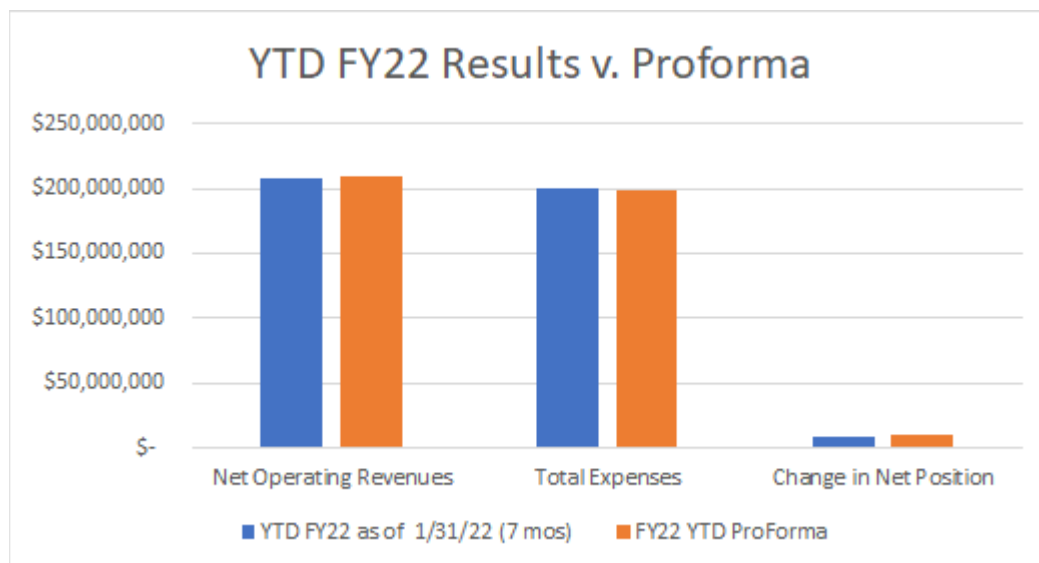
- Net operating revenues finished -\$1.23 million (or -0.6 percentage points) under the amended budget



- Operating expenses came in at the amended budget amount

Financial results for the period were under the projections presented in the year-to-date proforma. SDCP's change in net position was -21.35% under the projection mainly due to high energy costs. The following is a summary to actual results compared to the fiscal year-to-date proforma.

	YTD FY22 as of 1/31/22 (7 mos)	Proforma Comparison		Proforma (%)
		FY22 YTD ProForma	ProForma Variance (\$)	
Net Operating Revenues	\$ 208,112,088	\$ 208,827,095	\$ (715,007)	-0.34%
Total Expenses	\$ 199,756,193	\$ 198,203,386	\$ 1,552,807	0.78%
Change in Net Position	\$ 8,355,895	\$ 10,623,709	\$ (2,267,814)	-21.35%



### COMMITTEE REVIEW

The report was reviewed by the Financial Risk Management Committee (FRMC) on March 3, 2022.

### FISCAL IMPACT

N/A

### ATTACHMENTS

Attachment A: 2022 Year-to-Date Period Ended 1/31/22 Financial Statements



## ACCOUNTANTS' COMPILATION REPORT

Management  
San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of January 31, 2022, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

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

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

*Maher Accountancy*

San Rafael, CA  
February 26, 2022

**SAN DIEGO COMMUNITY POWER**  
**STATEMENT OF NET POSITION**  
**As of January 31, 2022**

**ASSETS**

Current assets	
Cash and cash equivalents	\$ 19,186,570
Accounts receivable, net	21,274,135
Accrued revenue	11,163,154
Prepaid expenses	186,976
Other receivables	29,973
Deposits	<u>5,732,057</u>
Total current assets	57,572,865
Noncurrent assets	
Restricted cash	9,000,000
Deposits	<u>3,050,000</u>
Total noncurrent assets	<u>12,050,000</u>
Total assets	<u><u>69,622,865</u></u>

**LIABILITIES**

Current liabilities	
Accrued cost of energy	46,225,130
Accounts payable	195,476
Other accrued liabilities	151,929
Due to State of California	85,358
Security deposits	570,000
Interest payable	76,623
Bank note payable	<u>22,840,082</u>
Total current liabilities	<u>70,144,598</u>
Noncurrent liabilities	
Other noncurrent liabilities	517,741
Loans payable	<u>5,000,000</u>
Total noncurrent liabilities	<u>5,517,741</u>
Total liabilities	<u><u>75,662,339</u></u>

**NET POSITION**

Unrestricted	<u>(6,039,474)</u>
Total net position (deficit)	<u><u>\$ (6,039,474)</u></u>

**SAN DIEGO COMMUNITY POWER**  
**STATEMENT OF REVENUES, EXPENSES**  
**AND CHANGES IN NET POSITION**  
**Seven Months Ended January 31, 2022**

**OPERATING REVENUES**

Electricity sales, net	\$ 208,112,088
------------------------	----------------

**OPERATING EXPENSES**

Cost of energy	196,092,527
Contract services	1,389,978
Staff compensation	1,741,313
General and administration	532,375
Total operating expenses	199,756,193
Operating income (loss)	8,355,895

**NONOPERATING EXPENSES**

Interest and financing expense	346,732
Nonoperating expenses	346,732

**CHANGE IN NET POSITION**

	8,009,163
Net position at beginning of period	(14,048,637)
Net position at end of period	\$ (6,039,474)

**SAN DIEGO COMMUNITY POWER**  
**STATEMENT OF CASH FLOWS**  
**Seven Months Ended January 31, 2022**

**CASH FLOWS FROM OPERATING ACTIVITIES**

Receipts from customers	\$ 189,645,671
Other operating receipts	5,596,638
Payments to suppliers for electricity	(166,773,806)
Payments for goods and services	(2,256,265)
Payments to employees for services	(1,698,588)
Payments for deposits and collateral	(6,153,708)
Tax and surcharge payments to other governments	(560,365)
Net cash provided (used) by operating activities	<u>17,799,577</u>

**CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES**

Interest and related expense payments	<u>(333,573)</u>
Net cash provided (used) by non-capital financing activities	<u>(333,573)</u>

Net change in cash and cash equivalents	17,466,004
Cash and cash equivalents at beginning of period	<u>10,720,566</u>
Cash and cash equivalents at end of period	<u><u>\$ 28,186,570</u></u>

**Reconciliation to the Statement of Net Position**

Cash and cash equivalents (unrestricted)	19,186,570
Restricted cash	<u>9,000,000</u>
Cash and cash equivalents	<u><u>\$ 28,186,570</u></u>

**SAN DIEGO COMMUNITY POWER**  
**STATEMENT OF CASH FLOWS (continued)**  
**Seven Months Ended January 31, 2022**

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

Operating income	\$ 8,355,895
Adjustments to reconcile operating income (loss) to net cash provided (used) by operating activities	
Revenue adjusted for allowance for uncollectible accounts	2,102,142
(Increase) decrease in:	
Accounts receivable	(22,260,156)
Accrued revenue	1,057,155
Other receivables	4,013,299
Prepaid expenses	(186,976)
Deposits	(4,882,057)
Increase (decrease) in:	
Accrued cost of electricity	30,080,409
Accounts payable	(166,806)
Other accrued liabilities	62,595
Due to State of California	74,077
Supplier security deposits	(450,000)
Net cash provided (used) by operating activities	<u><u>\$ 17,799,577</u></u>



## ACCOUNTANTS' COMPILATION REPORT

Board of Directors  
San Diego Community Power

Management is responsible for the accompanying special purpose statement of San Diego Community Power (SDCP), a California Joint Powers Authority, which comprise the budgetary comparison schedule for the period ended January 31, 2022, 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  
February 26, 2022

**SAN DIEGO COMMUNITY POWER**  
**BUDGETARY COMPARISON SCHEDULE**  
**Seven Months Ended January 31, 2022**

	<b>2021/22 YTD Amended Budget</b>	<b>2021/22 YTD Actual</b>	<b>2021/22 YTD Amended Budget Variance (Under) Over</b>	<b>2021/22 YTD Actual/ Amended Budget %</b>	<b>2021/22 Annual Amended Budget</b>	<b>2021/22 Amended Budget Remaining</b>
<b>REVENUES AND OTHER SOURCES</b>						
Gross Ratepayer Revenues	210,871,503	\$ 210,214,230	(657,273)	100%	\$ 380,816,532	\$ 170,602,302
Less Uncollectible Customer Accounts	(1,529,985)	(2,102,142)	(572,157)	137%	(2,763,026)	(660,884)
Total Revenues and Other Sources	<u>209,341,518</u>	<u>208,112,088</u>	<u>(1,229,430)</u>		<u>378,053,506</u>	<u>169,941,418</u>
<b>OPERATING EXPENSES</b>						
Cost of Energy	193,998,716	196,092,527	2,093,811	101%	329,517,592	133,425,065
Personnel Costs	1,911,252	1,741,313	(169,939)	91%	4,023,175	2,281,862
Professional Services and Consultants	1,893,204	1,144,301	(748,903)	60%	5,126,016	3,981,715
Marketing and Outreach	749,404	415,793	(333,611)	55%	1,748,699	1,332,906
General and Administrative	420,723	362,259	(58,464)	86%	783,581	421,322
Total Operating Expenses	<u>198,973,299</u>	<u>199,756,193</u>	<u>782,894</u>		<u>341,199,063</u>	<u>141,442,870</u>
Operating Income (Loss)	<u>10,368,219</u>	<u>8,355,895</u>	<u>(2,012,324)</u>		<u>36,854,443</u>	<u>28,498,548</u>
<b>NON-OPERATING REVENUES (EXPENSES)</b>						
Debt Service and Bank Fees	(571,407)	(346,732)	224,675	61%	(978,000)	(631,268)
Total Non-Operating Revenues (Expenses)	<u>(571,407)</u>	<u>(346,732)</u>	<u>224,675</u>		<u>(978,000)</u>	<u>(631,268)</u>
<b>CHANGE IN NET POSITION</b>	<u>\$ 9,796,812</u>	<u>\$ 8,009,163</u>	<u>\$ (1,787,649)</u>		<u>\$ 35,876,443</u>	<u>\$ 27,867,280</u>





## SAN DIEGO COMMUNITY POWER Staff Report – Item 4

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To: San Diego Community Power Board of Directors

From: Lucas Utouh, Director of Data Analytics and Account Services

Via: Bill Carnahan, Interim Chief Executive Officer

Subject: Update on Back-Office Metrics and Dashboard

Date: March 24, 2022

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### RECOMMENDATION

Receive update on various back-office activities.

### BACKGROUND

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

### ANALYSIS AND DISCUSSION

#### A) Phase 3 Enrollment Update

Staff is happy to report that our Phase 3 efforts for Imperial Beach and Net Energy Metering (NEM) customers with a true up month of February is now complete. Our La Mesa and March NEM customers' mass enrollment efforts are currently underway and so far as of 3/17/2022, we've added a total of 20,995 accounts. Cumulatively, across Phase 1, 2 and 3 to date we now have 89,820 accounts actively being served under our portfolio.

#### B) Participation Tracking

Staff and Calpine have worked together to create a reporting summary of customer actions to opt-out, opt-up to Power100 or opt-down from Power100 to PowerOn. The below charts summarize these actions accordingly as of March 13<sup>th</sup>, 2022:



## I. Opt Outs

Opt Outs by Jurisdiction	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	March - MTD	Grand Total
CITY OF CHULA VISTA	2	77	1	150	9	3	11	12	1	0	0	21	19	67	373
CITY OF ENCINITAS	0	0	3	32	7	11	5	3	1	1	3	60	304	449	879
CITY OF IMPERIAL BEACH	0	0	0	11	0	1	1	0	0	0	19	129	22	8	191
CITY OF LA MESA	0	0	15	51	3	6	3	0	6	0	1	158	372	59	674
CITY OF SAN DIEGO	14	10	43	516	51	123	111	131	34	23	21	152	194	645	2068
<b>Grand Total</b>	<b>16</b>	<b>87</b>	<b>62</b>	<b>760</b>	<b>70</b>	<b>144</b>	<b>131</b>	<b>146</b>	<b>42</b>	<b>24</b>	<b>44</b>	<b>520</b>	<b>911</b>	<b>1228</b>	<b>4185</b>

Opt Outs by Class Code	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	March - MTD	Grand Total
Residential	0	0	0	0	0	0	0	0	0	0	36	501	867	1194	2598
Commercial/Industrial	16	87	62	760	70	144	131	146	42	24	8	19	44	34	1587
<b>Grand Total</b>	<b>16</b>	<b>87</b>	<b>62</b>	<b>760</b>	<b>70</b>	<b>144</b>	<b>131</b>	<b>146</b>	<b>42</b>	<b>24</b>	<b>44</b>	<b>520</b>	<b>911</b>	<b>1228</b>	<b>4185</b>

Opt Outs by Reason	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	March - MTD	Grand Total
Concerns about Government-Run Power Agency	0	0	2	15	2	2	2	0	0	0	1	33	53	108	218
Concerns about lack of equivalent CCA programs	0	0	0	0	0	0	0	0	0	0	0	3	8	2	13
Decline to Provide	0	4	19	11	25	33	31	94	1	1	9	96	152	218	694
Dislike being automatically enrolled	0	0	28	59	23	18	34	16	3	4	17	142	257	375	976
Have renewable Energy Reliability Concerns	0	0	0	3	0	2	7	0	0	0	1	4	7	20	44
Other	1	83	2	667	12	18	3	7	8	3	8	69	126	159	1166
Rate or Cost Concerns	15	0	11	5	8	70	50	29	29	16	6	95	174	248	756
Service or Billing Concerns	0	0	0	0	0	1	4	0	1	0	0	17	22	25	70
Existing relationship with the utility	0	0	0	0	0	0	0	0	0	0	2	61	112	73	248
<b>Grand Total</b>	<b>16</b>	<b>87</b>	<b>62</b>	<b>760</b>	<b>70</b>	<b>144</b>	<b>131</b>	<b>146</b>	<b>42</b>	<b>24</b>	<b>44</b>	<b>520</b>	<b>911</b>	<b>1228</b>	<b>4185</b>

Opt Outs by Method	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	March - MTD	Grand Total
Customer Service Rep (CSR)	0	83	31	681	23	67	73	84	23	17	16	147	259	200	1704
Interactive Voice Response (IVR)	0	0	1	8	5	27	22	9	16	4	9	55	45	188	389
Web	16	4	30	71	42	50	36	53	3	3	19	318	607	840	2092
<b>Grand Total</b>	<b>16</b>	<b>87</b>	<b>62</b>	<b>760</b>	<b>70</b>	<b>144</b>	<b>131</b>	<b>146</b>	<b>42</b>	<b>24</b>	<b>44</b>	<b>520</b>	<b>911</b>	<b>1228</b>	<b>4185</b>

## II. Opt Ups to Power100

Opt Ups by Jurisdiction	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	March - MTD	Grand Total
CITY OF CHULA VISTA	0	56	0	0	626	9	4	1	4	1	1	6	3	7	718
CITY OF ENCINITAS	0	18	0	0	0	0	0	0	0	0	0	0	0	0	18
CITY OF IMPERIAL BEACH	0	0	0	0	0	60	0	0	0	0	0	2	23	0	85
CITY OF LA MESA	0	0	12	0	130	3	0	3	0	0	0	6	32	9	195
CITY OF SAN DIEGO	0	133	1	2	2922	12	22	10	48	2	11	25	106	79	3373
<b>Grand Total</b>	<b>0</b>	<b>207</b>	<b>13</b>	<b>2</b>	<b>3678</b>	<b>84</b>	<b>26</b>	<b>14</b>	<b>52</b>	<b>3</b>	<b>12</b>	<b>39</b>	<b>164</b>	<b>95</b>	<b>4389</b>

Opt Ups by Class Code	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	March - MTD	Grand Total
Residential	0	2	0	0	0	0	0	0	0	0	1	15	151	84	253
Commercial/Industrial	0	205	13	2	3678	84	26	14	52	3	11	24	13	11	4136
<b>Grand Total</b>	<b>0</b>	<b>207</b>	<b>13</b>	<b>2</b>	<b>3678</b>	<b>84</b>	<b>26</b>	<b>14</b>	<b>52</b>	<b>3</b>	<b>12</b>	<b>39</b>	<b>164</b>	<b>95</b>	<b>4389</b>

Opt Ups by Method	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	March - MTD	Grand Total
Customer Service Rep (CSR)	0	207	11	1	3668	80	23	12	48	3	7	25	151	30	4266
Interactive Voice Response (IVR)	0	0	0	0	3	0	0	0	0	0	1	0	0	2	6
Web	0	0	2	1	7	4	3	2	4	0	4	14	13	63	117
<b>Grand Total</b>	<b>0</b>	<b>207</b>	<b>13</b>	<b>2</b>	<b>3678</b>	<b>84</b>	<b>26</b>	<b>14</b>	<b>52</b>	<b>3</b>	<b>12</b>	<b>39</b>	<b>164</b>	<b>95</b>	<b>4389</b>

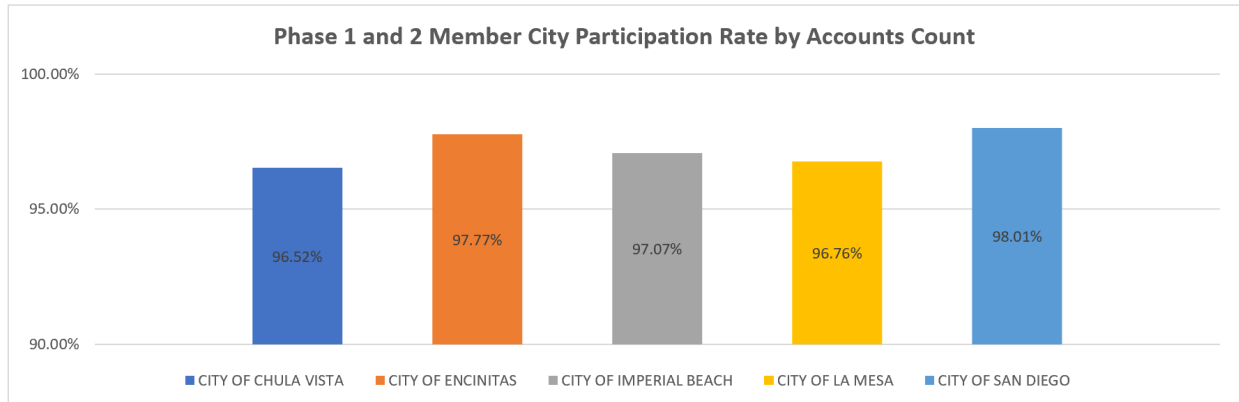
## III. Opt Downs from Power100

Opt Downs by Jurisdiction	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	March - MTD	Grand Total
CITY OF CHULA VISTA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CITY OF ENCINITAS	0	0	0	0	24	8	1	1	1	0	0	5	34	58	132
CITY OF IMPERIAL BEACH	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CITY OF LA MESA	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CITY OF SAN DIEGO	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1
<b>Grand Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>24</b>	<b>8</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>35</b>	<b>58</b>	<b>133</b>

Opt Downs by Class Code	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	March - MTD	Grand Total
Residential	0	0	0	0	0	0	0	0	0	0	0	4	31	58	93
Commercial/Industrial	0	0	0	0	24	8	1	1	1	0	0	1	4	0	40
<b>Grand Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>24</b>	<b>8</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>35</b>	<b>58</b>	<b>133</b>

Opt Downs by Method	Feb-21	Mar-21	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	March - MTD	Grand Total
Customer Service Rep (CSR)	0	0	0	0	22	6	1	1	1	0	0	4	30	46	111
Interactive Voice Response (IVR)	0	0	0	0	2	2	0	0	0	0	0	0	0	6	10
Web	0	0	0	0	0	0	0	0	0	0	0	1	5	6	12
<b>Grand Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>24</b>	<b>8</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>35</b>	<b>58</b>	<b>133</b>

#### IV. Participation Rate.

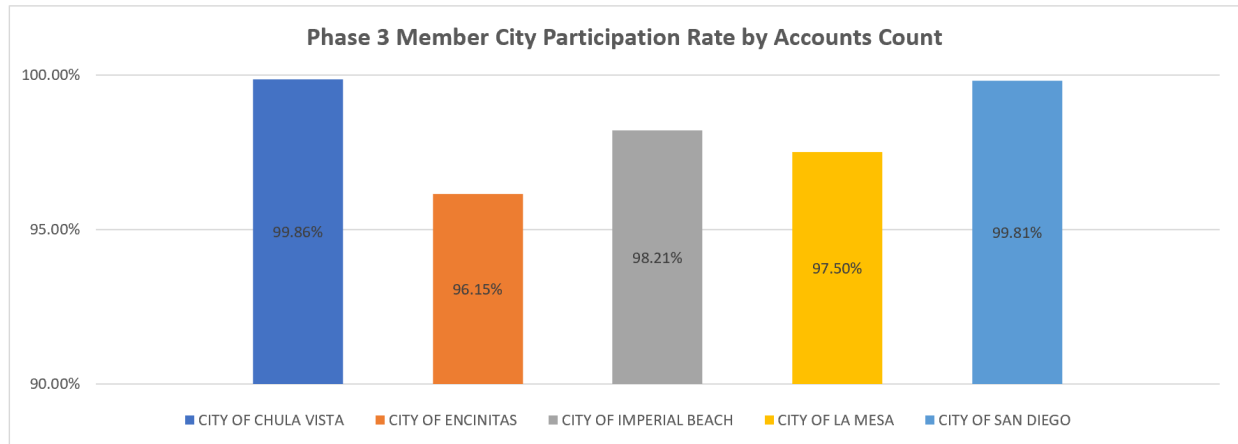


##### Phase 1 and 2

Town or Territory	Active	Eligible	Total Opt Outs	Participation Rate by Accounts Count
CITY OF CHULA VISTA	7468	7737	269	96.52%
CITY OF ENCINITAS	3108	3179	71	97.77%
CITY OF IMPERIAL BEACH	531	547	16	97.07%
CITY OF LA MESA	2600	2687	87	96.76%
CITY OF SAN DIEGO	56375	57517	1142	98.01%
<b>Grand Total</b>	<b>70082</b>	<b>71667</b>	<b>1585</b>	<b>97.79%</b>

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

Town or Territory Phase 3	Active	Eligible	Total Opt Outs	Participation Rate by Accounts Count
CITY OF CHULA VISTA	1789	74541	104	99.86%
CITY OF ENCINITAS	506	20978	808	96.15%
CITY OF IMPERIAL BEACH	9429	9766	175	98.21%
CITY OF LA MESA	557	23494	587	97.50%
CITY OF SAN DIEGO	6619	492987	926	99.81%
<b>Grand Total</b>	<b>18900</b>	<b>621766</b>	<b>2600</b>	<b>99.58%</b>



### C) Contact Center Metrics

Consistent with expectations after our pre-enrollment notice #1 drop in City of San Diego and Chula Vista, call and email volumes have exponentially increased over the last two weeks in March. The chart below summarizes contact made by customers broken down by month through March 13<sup>th</sup>:

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

IVR and SLA Details	Apr-21	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	March-MTD	Grand Total
Total Calls to IVR	79	109	103	324	531	349	307	244	243	1154	1538	1410	6391
Total Calls Connected to Agents	49	66	57	205	338	231	191	135	129	654	948	795	3798
Average Seconds to Answer	0:00:38	0:00:14	0:00:21	0:00:37	0:00:22	0:00:14	0:00:13	0:00:13	0:00:08	0:00:09	0:00:06	0:00:03	
Average Call Duration	0:08:57	0:07:51	0:06:42	0:10:33	0:08:13	0:08:41	0:08:11	0:08:30	0:08:28	0:08:53	0:09:45	0:10:57	
Calls Answered within 60 Seconds (75% SLA)	91.84%	100.00%	89.83%	89.42%	96.46%	99.57%	98.95%	100.00%	100.00%	98.63%	99.26%	100.00%	
Abandon Rate	0.00%	0.00%	3.39%	1.44%	0.29%	0.00%	0.00%	0.00%	0.00%	0.46%	0.21%	0.00%	

Customer Service Emails			
	Emails Received	Emails answered or escalated within 24 hours	(%)
May-21	34	29	85.29%
Jun-21	43	41	95.35%
Jul-21	32	31	96.88%
Aug-21	73	71	97.26%
Sep-21	34	32	94.12%
Oct-21	26	25	96.15%
Nov-21	12	12	100.00%
Dec-21	18	16	88.89%
Jan-22	109	92	84.40%
Feb-22	133	123	92.48%
March-MTD	131	127	96.95%

*\*Does not include junk email*

We are also continuing to enforce our robust Quality Assurance (QA) procedures to ensure that our customers are getting a world-class customer experience when they contact us via our Contact Center.

**COMMITTEE REVIEW**

N/A

**FISCAL IMPACT**

N/A

**ATTACHMENTS**

N/A





## SAN DIEGO COMMUNITY POWER Staff Report – Item 5

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To: San Diego Community Power Board of Directors  
From: Laura Fernandez, Director of Regulatory and Legislative Affairs  
Via: Bill Carnahan, Interim Chief Executive Officer  
Subject: Update on Regulatory and Legislative Affairs  
Date: March 24, 2022

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### RECOMMENDATIONS

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

### BACKGROUND

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

### ANALYSIS AND DISCUSSION

#### A) Final 2021 Renewables Portfolio Standard Plan Filed

On January 13, 2022, the California Public Utilities Commission (CPUC) issued Decision (D.) [22-01-004](#) regarding the 2021 Renewables Portfolio Standard (RPS) plans. This decision required retail sellers, including SDCP, to make certain updates to their Draft 2021 RPS Plans. For example, SDCP was required to update its Draft RPS plan with an explanation of how mid-term reliability procurement obligations impact RPS compliance requirements. SDCP was also required to make certain other adjustments and updates to the Draft RPS Plan. On February 17, 2022, SDCP filed its [Final 2022 RPS Plan](#) as required by D. 22-01-004.

#### B) Decision in SDG&E Sales Forecast Application

On January 27, 2022, the CPUC issued a [Proposed Decision](#) in SDG&E's 2022 sales forecast proceeding. Most relevant to SDCP's involvement, the Proposed Decision grants SDG&E's request to file future electric sales forecast applications together with its Energy Resource Recovery Account (ERRA) forecast applications. No party opposed this request, which was supported by SDCP, among others. SDCP did not file comments

on the Proposed Decision since SDCP supported and advocated for this outcome. The final [Decision 22-03-003](#) was issued on March 23, 2022. In addition to combining the future ERRA and sales forecast applications, this decision:

- Adopts the sales forecast proposed by Cal Advocates which includes pandemic-related impacts;
- In response to SDG&E's claims that changes to its forecasts would take four months to implement, directs SDG&E to work with parties and stakeholders by April 15 to consider modifications to its sales forecast implementation process; and
- Directs SDG&E to hold an annual all-party workshop no later than March 31 of each year in preparation of filing its annual sales forecast with the CPUC.

Finally, SDG&E must file a Tier 1 Advice Letter within 60 days to implement the approved 2022 sales forecast.

### **C) Resource Adequacy Rulemaking**

On February 7, 2022, SDCP along with Central Coast Community Energy, and Silicon Valley Clean Energy Authority, collectively the "Joint CCAs," submitted joint informal comments on the Resource Adequacy (RA) Frameworks Working Group Process. These comments are attached to this staff report. SDCP plans to continue engaging in the RA proceeding and will be filing formal comments on March 24, 2022.

### **D) Response to SDG&E Advice Letter Regarding Voluntary Allocation of Power Charge Indifference Adjustment Renewable Energy Resource Pro Forma Contracts**

On March 21, 2022, SDCP filed a response to SDG&E Advice Letter 3962-E. In this response, SDCP notes the unreasonable nature of the pricing terms set forth in SDG&E's proposed contract for the allocation of unbundled renewable energy credits through the Voluntary Allocation and Market Offer. SDCP's full response is attached to this staff report.

### **COMMITTEE REVIEW**

N/A

### **FISCAL IMPACT**

N/A

### **ATTACHMENTS**

Informal Comments of Coast Community Energy, San Diego Community Power, and Silicon Valley Clean Energy Authority on the Implementation of the Slice-of-Day System RA Workshops

SDCP and Clean Energy Alliance Response to SDG&E Advice Letter 3962-E







## **Informal Comments of Coast Community Energy, San Diego Community Power, and Silicon Valley Clean Energy Authority on the Implementation of the Slice-of-Day System RA Workshops**

**R.21-10-002**

**February 7, 2022**

### **I. Introduction**

Central Coast Community Energy, San Diego Community Power and Silicon Valley Clean Energy Authority, collectively the “Joint CCAs,” appreciate the opportunity to provide joint informal comments on the Resource Adequacy (“RA”) Frameworks Working Group Process. The Joint CCAs applaud the efforts of the many presenters and participants who have taken part in the workshops to explore these complex issues over the past five months. As the workshops conclude, the Joint CCAs offer the following comments regarding foundational issues related to the CPUC’s original RA Reform Principles including reliability, meeting environmental goals, transactability and implementation, all of which have important implications for affordability. In summary:

- The current and mid-term reliability challenges of the grid can be met by both the Gridwell and the 24-hour slice proposals.<sup>1</sup>
- The Gridwell proposal does a better job of ensuring reliability while facilitating decarbonization, primarily because the 24-hour proposal incentivizes gas procurement.
- The transactability challenges of the 24-hour proposal must be addressed if it is to be implemented
- The Gridwell proposal is readily implementable, while the 24-hour proposal requires structural changes and additional analysis.
- The Joint CCAs are open to further updates to the RA framework as grid needs change, including eventual creation of a 24-hour obligation.

### **II. The current and mid-term reliability challenges of the grid can be met by both the Gridwell and the 24-hour slice proposals**

The RA structure in California has not kept pace with the evolving needs of the grid, as evidenced by the CAISO August 2020 rotating outages. In its Final Root Cause Analysis report,

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<sup>1</sup> For the purposes of these comments the Joint CCAs refer collectively to both the PG&E and SCE proposals as the “24-hour slice proposal”. The Joint CCAs acknowledge the two proposals had minor differences, however, for the purpose of these comments these differences did not seem consequential.



the joint agencies cite increases in extreme weather events, insufficient planning reserve margin (“PRM”), and out-of-date resource counting methods, particularly for the net peak, as key causes of the 2020 rolling blackouts<sup>2</sup>.

Both the Gridwell and the 24-hour slice proposals address these problems. First, regardless of the adopted proposal, a first step toward implementation of a new RA framework is for the CPUC to work with stakeholders to establish an updated PRM. While details, inputs, and assumptions for the PRM update need to be determined, workshop participants widely acknowledged the need to consider extreme weather events as part of the PRM analysis. Secondly, both proposals suggest updating resource counting, albeit using differing methodologies. The Joint CCAs believe either counting methodology is capable of accurately capturing a resource’s reliability contribution but, note that neither proposal includes clear resource accounting standards or rules.<sup>3</sup> Combined, updates to the PRM and accounting rules should address California’s current reliability challenges.

Further, both proposals appear to address reliability through at least the mid-term. Reliability studies within the Integrated Resource Planning proceeding show that at least through 2030 reliability events occur almost exclusively during the summer peak and net peak hours<sup>4</sup> – hours which both proposals distinctly address. This implies that both the Gridwell and 24-slice proposals should be functional until at least that year. The Joint CCAs are not aware of any modeling that exists to show when reliability events are expected to occur largely outside of the peak and net peak hours, suggesting both proposals may be viable beyond 2030.

Until such a time when reliability events are dispersed across more hours of the day, there is no reliability benefit to instituting a 24-hour requirement. Thus, *any* added costs introduced as a result of introducing new obligations outside the peak and net peak hour do not have corresponding reliability benefits to justify them. Given a foundational principle of the RA reform work is to balance a reliable electrical grid while minimizing costs to customers, it is unclear how the 24-hour proposal can meet this principle.

The Joint CCAs caution the Commission against introducing additional obligations without a corresponding reliability benefit, especially given new obligations may slow decarbonization while creating transactability challenges and market power issues. The Joint CCAs discuss each of these concerns in more detail below.

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<sup>2</sup> See Final Root Cause Analysis, Mid-August 2020 Extreme Heat Wave. January 13, 2021. Prepared by California ISO, California Public Utilities Commission and California Energy Commission.

<http://www.caiso.com/Documents/Final-Root-Cause-Analysis-Mid-August-2020-Extreme-Heat-Wave.pdf>

<sup>3</sup> For instance, for the 24-hour slice proposal exceedance levels for renewables have not been determined. For the Gridwell proposal, exact ELCC methodology is not finalized.

<sup>4</sup> See Integrated Resource Planning (IRP) Proposed Preferred System Plan Analysis Workshop slides from September 1, 2021. <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/2019-2020-irp-events-and-materials/psp-workshop-slides.pdf>

### **III. The Gridwell proposal does a better job of ensuring reliability while facilitating decarbonization, primarily because the 24-hour proposal incentivizes gas procurement.**

In addition to ensuring reliability, the new RA program will have a significant impact on California's decarbonization effort. California has set aggressive, necessary GHG reduction goals that can only be met through a major transition in the state's resource fleet over the next eight years. Fossil resources and the retiring Diablo Canyon Power Plant must be replaced with renewables paired with storage, with the most urgent component being the buildout of storage. Storage is currently the only viable alternative to natural gas for ramping up energy output quickly in the evening when solar drops off. Retiring natural gas plants that are currently critical to meeting net peak demand will thus only become possible once enough storage has been built to replace them.

The new RA framework will either work with or against California's decarbonization effort depending on which resources it incentivizes LSEs to procure for RA compliance. The relative competitiveness of different resources, and particularly gas versus currently available battery storage technology, will determine whether the RA program accelerates decarbonization or delays it. The Joint CCAs propose that under the Commission's timeframe (2023 implementation for the 2024 compliance year), a two-slice model is the better choice for ensuring reliability without penalizing resources that are critical to decarbonization.

The most widely available storage technology on the market today is four-hour battery storage. Four-hour storage may eventually become less dominant as longer-duration storage, offshore wind, and other renewable and carbon-free resources mature. But for now, it is critical to the decarbonization effort since it is the only resource that can effectively replace gas in the net peak period. Given that, as discussed above, either a 2-slice or 24-slice model can ensure reliability, the relative viability of four-hour storage under each becomes important. An RA program where currently available storage technology is a competitive resource with gas for compliance will help facilitate decarbonization without reducing reliability.<sup>5</sup>

Under the Gridwell proposal, four-hour storage is a viable RA compliance resource. Though it will be derated by the introduction of the effective load carrying capacity ("ELCC") accounting for storage, its availability in the net peak period still makes it fundamentally competitive. Under this framework, load serving entities ("LSEs") that have been planning to build storage for decarbonization reasons will continue to be able to count on RA capacity value as one of its value streams, creating synergy between California's reliability and decarbonization efforts.

By contrast, moving to a 24-hour model now would push LSEs back onto gas and work against decarbonization. A 24-hour obligation incentivizes market participants to contract with resources that have 24-hour availability. On the timeline the Commission is proposing, no other resource

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<sup>5</sup> The Joint CCAs acknowledge that "four-hour storage" is a naming convention and that the actual discharge time of any storage technology can be lengthened by discharging at less than the maximum discharge rate. The point is that with a full charge, most currently available storage technology can discharge at maximum output through most or all of the net peak period but not all night. This gives it immediate value in displacing gas needed to meet the net peak that will be obscured by a 24-hour model that rewards 24-hour resources.

besides gas is widely available for meeting overnight capacity obligations.<sup>6</sup> Even though four-hour storage can significantly address the net peak demand challenge, LSEs will be incentivized to procure 24-hour products which can fill all hours, giving them effectively six times the capacity contribution of a 4-hour battery. This will push LSEs into continuing to sign RA contracts with natural gas facilities, even though in the most constrained hour, the net peak, storage has become a viable alternative. And once those contracts are locked in, California's reliance on natural gas is further extended. Facing this push to contract with gas, investment in storage will potentially be dampened and decarbonization slowed.

The Joint CCAs acknowledge that some stakeholders feel the 24-hour model will provide better value for renewables and storage and therefore better promote decarbonization. However, the Joint CCAs encourage stakeholders and the CPUC to consider the net impact that a 24-hour model will have on resource procurement across the entire day. While the exceedance methodology associated with the 24-hour proposal may provide greater hourly value for some renewables during the daytime hours than current ELCC values do, the 24-hour model also introduces an entire new set of RA obligations overnight.

In these overnight hours, gas is still the predominantly available resource. Regardless of how renewable output is valued when it is generating during the day, the only way to avoid procurement of gas capacity to meet the nighttime obligations is to have enough storage to transfer that renewable output into the nighttime hours. There is not time for LSEs to build enough storage to replace gas on the Commission's current timeline for implementing this RA reform. So higher valuation of renewables during the daylight hours does not address the Joint CCAs' concern about pushing LSEs into gas contracts to meet RA obligations in hours where there is no current reliability constraint. If anything, the incentive to contract with gas capacity in 24-hour strips has the potential to dampen storage investment and delay the move away from reliance on gas overnight.

The Joint CCAs also note that this push towards gas contracting would be more appropriate if the grid were currently constrained in both net peak and off-peak hours. In that scenario, the RA framework would be sending an accurate signal that California was not yet ready to move away from gas. But as discussed in Section II, the grid is not currently constrained overnight and is not predicted to be until at least the end of the decade. In the meantime, adopting an RA framework for which gas is the most viable compliance resource when carbon-free alternatives to gas in the constrained hour already exist unnecessarily delays decarbonization without adding any reliability benefit.

#### **IV. The transactability challenges of the 24-hour proposal must be addressed if it is to be implemented**

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<sup>6</sup> The Joint CCAs recognize that geothermal and biomass resources can provide overnight generation and that some LSEs will be able to obtain a portion of their overnight capacity needs from these sources. However, these resources are not available in sufficient quantities to prevent the net push onto gas that the Joint CCAs are concerned about.

The 24-hour proposal introduces several important market and transaction problems to the RA structure which the Commission must address as it considers adoption of the proposal. Failure to do so risks over procurement, market power issues and the addition of undue administrative burden to stakeholders. All of these, if unaddressed, are likely to increase ratepayer costs without corresponding benefits.

First, a 24-hour structure which does not allow hourly trading of resources will result in over procurement, especially for smaller LSEs. Restricting the unbundling of hourly slices could lead to stranding of hourly length that could be otherwise utilized to meet compliance requirements. Restricting transactions to only 24-hour strips will set each LSE's procurement target at its largest hourly net short position, which will cause over procurement. This problem is particularly pronounced for smaller LSEs who may be less able to shape their load to specific products in the market. During the workshops, opponents of hourly trading seem to have found implementing it to be too challenging. While unbundling the hours may add complexity, failure to allow hourly trading in an hourly compliance structure introduces fundamental market inefficiencies and increased opportunity for exercise of market power, both at the cost of ratepayers. It is the view of the Joint CCAs that, at a minimum, unbundling of products must be allowed in any 24-hour structure.

The 24-hour proposal may create market power for owners of some resource classes, especially natural gas. Unlike the Gridwell proposal where ELCC calculations create a single measure of capacity regardless of resource type, the 24-hour proposal creates product differentiation by shaping resource types to expected output. The result of this is that resources which can produce when others cannot, will be able to demand a higher price in the market. As noted above, it is the view of the Joint CCAs that overnight obligations incentivize natural gas contracting. Given most natural gas resources are under long-term contract or owned by the IOUs, this would provide them an increased market advantage and opportunity for exertion of market power in an already tight RA market. Since there is no reliability benefit to off-peak RA obligations at present, the 24-hour proposal provides an opportunity for market power exertion with no benefit to ratepayers. The issue is further compounded by the fact that CCA customers pay for RA resources as bundled customers but do not currently receive the corresponding benefit through an allocation of RA attributes.

The Commission must also consider how this RA framework aligns with the local RA CPE structure and how CAM allocations are assigned to hourly slices. If LSEs are not able to assign these allocations to meet their hourly requirements, inefficiencies and underutilization of capacity will occur. We request that the Commission direct the CPE to manage its excess length in the 24-hour framework should unbundling be permitted and to begin outlining a process for LSEs to fairly allocate their share of CAM.

Finally, one of the key features of the original seasonal 6-hour slice proposal was that it was less administratively burdensome. Now that the focus has shifted to a monthly 24-hour proposal, consideration should be given to the enormous effort that will be required for market participants, the CAISO, and the Commission to administer this RA structure. Transacting and

tracking at this granularity will introduce liquidity problems if systems and tools are not able to adapt to this changing need.

Combined, these issues jeopardize the viability of the 24-hour proposal and create substantial challenges for many stakeholders. Without further consideration and vetting of the proposal, some of these risks may not be fully realized until implementation is underway. As identified in the CAISO's reply comments, the 24-hour proposal might be incompatible amongst Local Regulatory Authorities administering drastically different RA programs. Publicly Owned Utilities RA will not be shown at a 24-hour level and should an hourly backstop procurement mechanism be implemented it will be unclear which entities were the cause of the deficiency and for what volume.

The Joint CCAs encourage the Commission to be mindful that even with a good faith effort LSEs may be unable to meet their compliance obligations due to market constraints and market power issues. If the 24-hour model is adopted, the Joint CCAs urge the Commission to delay the implementation of any penalties for LSEs that show good faith efforts to meet the requirements of a 24-hour structure, given the radical change it represents as well as the potential for unforeseen issues and barriers to compliance.

In contrast, Gridwell's proposal is largely compatible with existing contract structures and would not require significant market changes to implement. While minor renegotiations may be required as some resources will lose effectiveness in meeting the net peak requirement, these challenges are significantly less complicated than those presented by a 24-hour proposal. More important, the Gridwell proposal avoids key market power and transactability issues that arise from the 24-hour proposal.

## **V. The Gridwell proposal is readily implementable, while the 24-hour proposal requires structural changes and additional analysis**

A key benefit of the Gridwell proposal is that it addresses the foreseeable challenges of the grid while not making substantial structural changes to the RA paradigm. Under the Gridwell proposal the core components of the systems for contracting and compliance will remain largely unchanged, easing implementation and reducing risks. While new ELCCs will need to be established to determine resource values, ELCC studies are regularly being conducted for the CAISO, so this does not appear to be a significant hurdle to adoption. Simply put, the 2-slice implementation process appears to be relatively straightforward, with few implementation risks and less market disruption.

The 24-hour proposal has several implementation challenges. First, the 24-hour proposal significantly alters Resource Adequacy methodologies including for resource counting and allocation, each which deserve further consideration. Second, its implementation requires material changes to compliance tools and methodologies. This is especially true given the need to address transactability and market power issues created by the 24-hour structure. Once

assumptions and compliance tools are finalized LSEs still must work with developers to create viable contracts and complete procurement for this framework.

The 24-hour proposal fundamentally alters the RA paradigm. Simultaneously, the proposal still does not fully define methodologies for key elements such as what exceedance level should be used for renewables. The PG&E and SCE proposals differ in need determination and allocation. These issues are consequential to achieving reliability and deserve thoughtful analysis which considers the complex interaction the various assumptions have on one another<sup>7</sup>.

The Joint CCAs believe the transactability and market issues outlined in section IV must be addressed before implementing any 24-hour slice RA structure. Unless there is an ability to unbundle and trade resources between LSEs, the market power that the IOUs hold will result in a disadvantage to ratepayers that are not a part of the bundled IOU portfolio. Developing this process will take time as it not only requires a substantial change to the compliance instruments, but also changes to contract structure. Such changes bring with them risks and unforeseen challenges which may cause further delays.

Should the Commission approve a fair and equitable 24-hour proposal that addresses market power and includes unbundled resource trading, the next task will be to upgrade existing systems and compliance filings. The CAISO has indicated that they will be unable to upgrade their Customer Interface for Resource Adequacy (“CIRA”) application to check each 24-hour slice by 2024. Currently CIRA only registers one RA value for the month per LSE. Moving to an hourly framework would require that the CAISO has the ability to track across each hour and identify hourly backstop costs to the deficient LSE. Additionally, a modern, efficient software solution will be required to enable efficient transactions and filings; excel will not be sufficient for implementation of a 24-hour structure.

Provided that we work through the complexities of upgrading systems, there is still the need to successfully procure capacity to meet each of the hourly slices. This effort should not be overlooked as LSEs will be dedicating significant amounts of time to fulfill these obligations and for hours in which there are presently no reliability issues. Consideration and adequate time should be given so that LSEs can renegotiate contracts should it be in their best interest to do so.

While on its face the 24-hour proposal may seem elegant, it may be an over engineered solution to problems we don’t have which will only act to create a new set of challenges for the system and stakeholders. We caution the Commission from rushing into the 24-hour framework before we have greater certainty the structures are in place for a smooth transition to a new paradigm. Attempting to make corrections to the framework after implementation may cause significant market disruption. A solution that requires additional iterations is not durable or worth the significant problems that may arise in the near-term.

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<sup>7</sup> For instance, the PRM model should account for the final exceedance level assumed for variable energy resources (VERs) to ensure there is no “double counting” of reliability need in the PRM and VER resource accounting.

**VI. The Joint CCAs are open to further updates to the RA framework as grid needs change, including eventual creation of a 24-hour obligation.**

The Joint CCAs are open to further reevaluation of the RA program as grid needs and generation technologies evolve. By the time the grid becomes constrained in off-peak hours and the Gridwell model requires updates, there will likely be more renewable and carbon-free technologies capable of replacing gas in the overnight hours. Availability of those alternatives may lessen some of the current problems with a 24-hour obligation, including market power and contravening decarbonization. The Joint CCAs are open to consideration of other frameworks, including a 24-hour obligation, if they best serve grid and ratepayer needs in the future.

In the meantime, the timing of RA reform is critical to co-optimizing between reliability, affordability, and decarbonization. With current reliability risk concentrated around the net peak, there is no immediate reliability need for a 24-hour regime. If we want to move towards a 24-hour clean grid we cannot create a 24-hour RA requirement before there are clean resources to meet it. Doing so will only push LSEs back onto gas, unnecessarily prolonging the status quo and potentially dampening storage development. By incrementally evolving the RA framework alongside the development and maturation of clean technologies, regulators can address reliability challenges as they arise while complementing decarbonization efforts and minimizing ratepayer costs. Of the two models at hand, Gridwell's is the best choice for ensuring a clean, affordable, and reliable electricity system for California.

**VII. Conclusion**

The Joint CCAs appreciate the opportunity to provide these comments and thank the parties and Commission staff for their consideration.

Respectfully submitted,

February 7, 2022

/s/ Hilary Staver

Director Regulatory and Legislative Affairs  
Central Coast Community Energy  
831-257-4001  
[Hstaver@3ce.org](mailto:Hstaver@3ce.org)

/s/ Maren Wenzel

Power Resource Planner  
Silicon Valley Clean Energy Authority  
408-716-4745  
[maren.wenzel@svcleanenergy.org](mailto:maren.wenzel@svcleanenergy.org)

/s/ Laura Fernandez

Director Regulatory and Legislative Affairs  
San Diego Community Power  
619-657-0406  
[lfernandez@sdcommunitypower.org](mailto:lfernandez@sdcommunitypower.org)

March 21, 2022

**VIA ELECTRONIC MAIL**

Mr. Pete Scala  
Interim Director, Energy and Climate Policy  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Re: San Diego Community Power and Clean Energy Alliance's Response to San Diego Gas & Electric Company's Tier 2 Advice Letter 3962-E Regarding Voluntary Allocation of Power Charge Indifference Adjustment Renewable Energy Resource Pro Forma Contracts Pursuant to Decision 22-01-004

Dear Mr. Scala:

Pursuant to the California Public Utilities Commission's ("Commission's") General Order ("GO") 96-B, San Diego Community Power ("SDCP") and Clean Energy Alliance ("CEA")<sup>1</sup> (together, the "San Diego CCAs") hereby submit this response to SDG&E's Tier 2 Advice Letter 3962-E regarding Voluntary Allocation of Power Charge Indifference Adjustment ("PCIA") Renewable Energy Resource Pro Forma Contracts Pursuant to Decision 22-01-004 ("Advice Letter"). Specifically, this response serves to highlight the unreasonable nature of the pricing terms set forth in SDG&E's proposed contract for the allocation of unbundled renewable energy credits ("RECs") through the Voluntary Allocation and Market Offer ("VAMO").

The proposed pricing terms set a commercially unreasonable price for unbundled REC allocations using the RPS Adders, which represent the market price benchmarks ("MPBs") for bundled, portfolio content category ("PCC") 1 REC sales. Though authorized by Commission decision, these pricing terms clearly overstate the value of unbundled RECs to the non-investor-owned utility ("IOU") allocatees. This issue is particularly relevant to the SDG&E service area, since SDG&E has a greater percentage of long-term unbundled RECs in its PCIA-eligible pool of renewables portfolio standard ("RPS") resources than the other IOUs. Given the financial risks associated with accepting a long-term allocation of unbundled RECs at commercially unreasonable terms, and the inequitable advantage these terms afford to SDG&E, non-IOU load serving entities ("LSEs") may be reluctant to make a full election under the VAMO, or to participate in the VAMO at all, thus hindering the Commission's portfolio optimization goals.

The San Diego CCAs have also had the opportunity to review California Community Choice Association's ("CalCCA") protest to SDG&E's Advice Letter and fully support the proposals included therein.

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<sup>1</sup> Both SDCP and CEA are Community Choice Aggregation ("CCA") programs that serve customers in the San Diego Gas & Electric ("SDG&E") service territory.





## **I. BACKGROUND**

In Decision (“D.”) 21-05-030 adopting the RPS VAMO (the “VAMO Decision”), the Commission ordered that an LSE’s allocation must represent a “slice” of the IOU’s entire PCIA-eligible RPS portfolio and that an LSE accepting all or some of its allocation must pay “the applicable year’s market price benchmark for attributes received.”<sup>2</sup> While an LSE may decide to accept a short-term or long-term allocation, or choose to decline all or a portion of their allocation, an LSE is unable to similarly control the type of RECs it is allocated. Instead, the adopted methodology suggests that an allocation must contain an LSE’s “slice” of all bundled and unbundled RECs that comprise the IOU’s entire RPS portfolio.<sup>3</sup>

Though the VAMO Decision does not differentiate between bundled and unbundled REC allocations, SDG&E seeks Commission approval of two separate long-form confirmations: one addressing the short-term and long-term allocation of bundled RECs (the “Bundled Confirm”)<sup>4</sup> and one addressing the short-term and long-term allocation of unbundled RECs (the “Unbundled Confirm”).<sup>5</sup> Though the two confirms address the allocations of two differently valued products, they nonetheless include identical pricing terms setting the allocation price at the “then-applicable Forecast Adder for RPS (in \$/MWh) for deliveries for the applicable calendar year, subject to annual true-up for the Final Adder for RPS.”<sup>6</sup>

## **II. RESPONSE**

### **1. It Is Unreasonable to Price Unbundled Allocations Using the RPS Adders, Which Represent the MPB for PCC 1 RECs**

In accordance with the VAMO Decision and Advice Letter 3835-E,<sup>7</sup> SDG&E’s Bundled and Unbundled Confirms set the allocation price using the Forecast and Final RPS Adders. These Adders are calculated annually and were developed in Decision 19-10-001 to be used as inputs in PCIA calculations representing the RPS market price benchmarks (“MPB”) based on

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<sup>2</sup> D. 21-05-030 at Ordering Paragraph (“OP”) 2.

<sup>3</sup> D. 11-12-052 implemented RPS portfolio content categories established in Public Utilities Code § 399.16 (b), pursuant to SB 2 (1X). PCC 1 procurement is procurement of energy and RECs delivered to a California balancing authority (“CBA”) without substituting electricity from another source. PCC 2 procurement is procurement of energy and RECs that cannot be delivered to a CBA without substituting electricity from another source. PCC 3 procurement is procurement of unbundled RECs only, or RECs that do not meet the conditions for PCC 1 and PCC 2.

<sup>4</sup> Advice Letter at Appendices 1 and 2.

<sup>5</sup> *Id.* at Appendices 3 and 4.

<sup>6</sup> *Id.* at 3, 10.

<sup>7</sup> Joint Tier 2 Advice Letter of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company to Propose Load Forecasting and Renewables Portfolio Standard Methodologies for Voluntary Allocation of the RPS Attributes of the Power Charge Indifference Adjustment Eligible Portfolio, Approved October 25, 2021.



transactions for *bundled* PCC 1 RECs.<sup>8</sup> In the PCIA context, the Forecast Adders are intended to reduce uncertainty of the indifference amount, and the Final Adders are intended to further align actual realized market revenues with forecasted values. In the VAMO context, however, the Forecast and Final Adders will result in non-IOU LSEs overpaying for unbundled REC allocations and retaining less value when compared to the IOU.

Generally, bundled PCC 1 RECs have a greater value to LSEs than do unbundled RECs; thus resulting in higher market prices for bundled RECs than for unbundled RECs. However, the Unbundled Confirm does not reflect these market differentials, and instead requires an LSE to pay bundled PCC 1 prices for a substantially less-valuable unbundled product.

Should an LSE choose to resell its allocation of unbundled RECs, whether because organization policies expressly prohibit or limit the use of unbundled RECs, whether they prefer not to include unbundled RECs in their retail service offerings, or whether they must resell for purposes of prudent portfolio management, the re-selling LSE and its customers will lose more than half of the PCC 1 price in the market. Thus, any theoretical benefits provided through the VAMO will be immediately reduced by the guaranteed losses associated with an overpayment. No reasonable market participant would otherwise agree to such inaccurate and inequitable pricing terms in a bilateral agreement for the same unbundled product.

## **2. Even if the Commission Adopts the IOUs' PCC 0 Classification Proposal, the Unbundled Pricing Terms Would Still be Unreasonable.**

Currently, a Joint Motion by Pacific Gas & Electric Company, Southern California Edison Company, and SDG&E is pending in the RPS proceeding, R. 18-07-003.<sup>9</sup> In that Motion, the IOUs seek clarification that VAMO allocations will not result in a change to the current PCC 0 attributes of resources that form part of the IOUs' PCIA-eligible RPS portfolios. While the San Diego CCAs support the Joint IOUs' request, it must be noted that PCC 0 classification does little to remedy the bundled/unbundled REC price disparity since PCC 0 RECs do not count the same as PCC 1 for RPS compliance purposes.

First, PCC 0 reduces an LSE's total portfolio quantity requirement ("PQR") obligation, thereby reducing PCC 1/2/3 portfolio balance requirements. So, PCC 0 value is a 75% /15% /10% blend of PCC 1/2/3 value, which is clearly less than PCC 1. Second, PCC 0 RECs do not provide equal compliance value to IOUs and CCAs. The IOUs receive value from PCC 0 for RPS compliance purposes, but many CCAs do not, since their RPS procurement targets tend to exceed minimum requirements. This is true for both SDCP and CEA. Though IOUs and CCAs receive different value from these unbundled RECs, both would be required to pay the same

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<sup>8</sup> See, e.g., D. 19-10-001 at Ordering Paragraph ("OP") 1.

<sup>9</sup> Rulemaking ("R.") 18-07-003, *Joint Motion of Southern California Edison Company (U 338-E), Pacific Gas and Electric Company (U39-E) and San Diego Gas & Electric Company (U 902-E) to Amend Scoping Memorandum to Accommodate Voluntary Allocation Structure*, December 8, 2021.

price. This places CCAs at competitive disadvantage and prevents equal access to the VAMO mechanism.

### **3. The Unbundled Confirm's Terms Fail to Account for the Value of the RECs Beyond Compliance Purposes**

Moreover, unlike the IOUs, many CCAs set procurement goals that exceed the standards set by the Commission's RPS program. These procurement standards, as reflected in a CCA's Power Content Label ("PCL"), provide added value to CCA service when compared to IOU service. Unbundled RECs – even those that receive PCC 0 legacy classification – will be reported as unbundled RECs on the allocatee LSE's PCL, resulting in an inferior product as compared to one with only bundled renewable energy purchases. Thus, to CCAs like SDCP and CEA, the unbundled allocations are even less valuable than market prices suggest and certainly far less valuable than bundled PCC 1 RECs.

### **4. LSEs in the SDG&E Service Area will be Particularly Impacted by the Unreasonable Pricing Terms Outlined Above**

Approximately 20% of SDG&E's RPS portfolio is comprised of unbundled PCC 0 RECs,<sup>10</sup> over half of which will be included in long-term allocations, resulting in significant, guaranteed losses for the remainder of the long-term (10+ years) contract. These losses will likely result in increases to customer rates, an avoidable outcome which does not align with the Commission's cost reduction goals or with general ratemaking principles. Further, given the significant financial burden on allocatees, unless LSEs are provided a viable means of negotiating more favorable unbundled allocation terms with SDG&E, this issue will likely disincentivize full VAMO participation, which directly hinders the Commission's portfolio optimization goals.

### **5. The Unbundled Confirm Handles Deliveries in an Inequitable Manner that Favors SDG&E Over Other LSEs**

The Unbundled Confirm proposes to deliver unbundled RECs directly to the recipient LSE's Western Renewable Energy Generation Information System ("WREGIS") account.<sup>11</sup> Currently, SDG&E receives the energy and RECs from the relevant long-term PCC 0 resource at the out-of-state generator busbar, which allows SDG&E to apply these RECs towards an RPS adjustment and to reduce the carbon cost obligation associated with imported power. Allocatees would not enjoy these same benefits via the proposed delivery method, since they would not receive any bundled energy and thus not have the opportunity to use those RECs to offset their own carbon obligations from imported power.

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<sup>10</sup> See, e.g., SDG&E's 2020 Power Source Disclosure Annual Report for the Year Ending December 31, 2020.

<sup>11</sup> Appendix 3 at 4.



In addition to retaining access to this added value associated with its own slice of the long-term resource, SDG&E will also receive the RPS adjustment value from the unbundled RECs that are allocated to and paid for by the non-IOU allocatees. This outcome threatens to result in an impermissible cost-shift to unbundled customers and further demonstrates the unreasonable nature of the Unbundled Confirm.<sup>12</sup>

### III. CONCLUSION

Though the Commission has decided on the use of RPS MPB in the VAMO, this response clearly demonstrates the unintended consequences that are likely to arise if the Unbundled Confirm's pricing terms are adopted.<sup>13</sup> If presented by SDG&E for Commission approval as a bilateral sale, it seems highly unlikely that the Commission would find the Unbundled Confirm's terms to be just and reasonable. The voluntary nature of the mechanism is insufficient to excuse the adoption of unreasonable terms that will reduce the VAMO's utility, increase customer rates, and prevent the full realization of the Commission's portfolio optimization goals. The San Diego CCAs thank Energy Division staff for its review of this response.

Respectfully,

/s/ Samir Hafez

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Samir Hafez  
Tosdal, APC  
845 15<sup>th</sup> Street, Suite 103  
San Diego, CA 92101  
Email: [samir@tosdalapc.com](mailto:samir@tosdalapc.com)

*Attorney for San Diego Community Power and  
Clean Energy Alliance*

CC (via email):

Energy Division Tariff Unit ([edtariffunit@cpuc.ca.gov](mailto:edtariffunit@cpuc.ca.gov))

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<sup>12</sup> In D. 21-05-030, the Commission recognized that, pursuant to Section 366.2(g), CCA customers may be allocated a fair and equitable share of benefits retained by bundled load that are not reflected in PCIA calculations.

<sup>13</sup> See VAMO Decision at Conclusion of Law 4, "The Commission should approve the WG3 Proposal regarding Voluntary Allocations and Market Offers of PCIA-eligible RPS resources to the extent that it is consistent with the Commission's compliance programs and proceedings, as well as tailored to mitigate risks of unintended consequences."

Gregory Anderson ([GAnderson@sdge.com](mailto:GAnderson@sdge.com))  
[sdgetariffs@sdge.com](mailto:sdgetariffs@sdge.com)

R. 18-07-003 Service List





## SAN DIEGO COMMUNITY POWER Staff Report – Item 6

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To: San Diego Community Power Board of Directors

From: Lucas Utouh, Director of Data Analytics and Account Services  
Cody Hooven, Chief Operating Officer

Via: Bill Carnahan, Interim Chief Executive Officer

Subject: Amendment to Professional Services Agreement with Neyenesch Printers  
up to \$1,200,000 for services through FY2023

Date: March 24, 2022

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### RECOMMENDATION

Approve amendment to professional services agreement with Neyenesch Printers up to \$1,200,000 through March of Fiscal Year 2023 and authorize the Interim Chief Executive Officer to execute the contract. This amendment allows SDCP to continue meeting all of its statutory pre- and post-enrollment notification printing, postage and mailing requirements as part of our Phase 3 mass enrollment efforts.

### BACKGROUND

In November 2020, SDCP conducted an informal bidding process as outlined in our Purchasing Policy to seek a printing and mailing vendor for statutory required customer mailers. After reviewing several proposals, staff recommended moving forward with Neyenesch Printers due to their long tenure as a local family-owned business in the community and demonstrated history of delivering quality printing and mailing services.

In December 2020, SDCP contracted with Neyenesch Printers to conduct printing, postage and mailing services for the Phase 1 and 2 mass enrollment efforts with an end date of June 30, 2021. Since then, Neyenesch has continued to provide high-quality work and has been retained by Clean Energy Alliance for their own printing and mailing needs as well.

In May 2021, the Board of Directors approved an amendment updating the not to exceed amount from \$100,000 to \$277,000. However, this amount inadvertently did not factor in postage costs needed to be paid to the United States Postal Service (USPS) in addition to the printing and mailing costs quoted by the vendor and these costs are substantial.

## **ANALYSIS AND DISCUSSION**

In FY22, SDCP has continued to have printing, postage and mailing needs with the significant quantities needed for our largest mass enrollment phase for City of San Diego and Chula Vista requiring over 1 million cumulative pre- and post-enrollment notices to be sent out to customers. Due to the familiarity and high-quality work provided by Neyenesch, as well as immediate printing and postage needs of SDCP, staff recommends continuing to work with this vendor throughout Phase 3 in 2022 and through March of FY2023. Prior to the end of this contract term, SDCP will issue a formal Request for Proposals (RFP) for printing, mailing and postage services associated with our upcoming County of San Diego and National City mass enrollment efforts.

## **FISCAL IMPACT**

Cost of this action includes a total amount not to exceed \$1,200,000 through March of Fiscal Year 2023. Savings in other areas of the budget are available to fund this increase and there is no net impact to the Board approved amended FY2022 budget.

## **ATTACHMENTS**

Attachment A: Professional Services Agreement amendment with Neyenesch Printers



**SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN  
SAN DIEGO COMMUNITY POWER AND NEYENESCH PRINTERS, INC.**

THIS SECOND AMENDMENT (this “Amendment”) is entered into as of this March 24, 2022 by and between SAN DIEGO COMMUNITY POWER, a California joint powers agency (“SDCP”) and Neyenesch Printers 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 Neyenesch Printers, dated December 3, 2020 (the “Agreement”) with a term from December 3, 2020 to June 30, 2021; and

WHEREAS, the Parties amended the Agreement between San Diego Community Power and Neyenesch Printers, dated July 1, 2021 (the “First Amendment”) with a term from July 1, 2021 to June 30, 2022; and

WHEREAS, pursuant to the Agreement, Consultant provides printing, postage and mailing services to SDCP; and

WHEREAS, the parties desire to amend the Agreement to increase the maximum compensation amount payable to Consultant for its services; and

WHEREAS, the CEO is authorized without SDCP Board approval to increase the aggregate contract price of Board-approved non-energy contracts by no more than 10% of the original contract price over the life of the contract.

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. Section 3.1 of the First Amendment is amended to update the cumulative not-to exceed amount payable by SDCP to Consultant for Consultant’s services from \$277,000 to \$1,200,000.
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. 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 Second Amendment to the Professional Services Agreement between San Diego Community Power and Neyenesch Printers, as of the date first set forth above.

**SAN DIEGO COMMUNITY POWER**

**NEYENESCH PRINTERS, INC.**

\_\_\_\_\_  
Name: Bill Carnahan  
Title: Interim Chief Executive Officer  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: Kandy Neyenesch  
Title: Chief Financial Officer  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
SDCP General Counsel

## SAN DIEGO COMMUNITY POWER

### Staff Report – Item 7

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To: San Diego Community Power Board of Directors

From: Ryan Baron, General Counsel  
Nicholaus Norvell, Assistant General Counsel

Subject: Adoption of Resolution Approving a Records Retention Policy and Schedule

Date: March 24, 2022

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#### RECOMMENDATION

Adopt Resolution approving a Records Retention Policy and Schedule.

#### BACKGROUND

The proposed San Diego Community Power (“SDCP”) Records Retention Policy and Schedule establishes policies and procedures for the retention and disposal of SDCP records in compliance with applicable legal requirements. The Records Retention Policy provides the general procedures and requirements related to retention and disposal of SDCP records. The Records Retention Schedule details the retention period for specific records maintained by SDCP and includes references to State and federal laws or guidelines which establish the applicable periods.

#### ANALYSIS AND DISCUSSION

Regulations for retaining public agency records are governed by various State and federal laws, including Government Code Section 34090, *et seq.* To assist SDCP in complying with various legal requirements for records retention and destruction, SDCP’s General Counsel has prepared the proposed Records Retention Policy and Schedule.

The Records Retention Policy contains general procedures and requirements related to the retention and destruction of SDCP records. Under these general rules contained in the Policy, SDCP is required to retain any records required to be kept by law or the Records Retention Policy/Schedule, as well as any other records necessary or convenient to the performance of SDCP’s duties. Once the required retention period passes, SDCP staff may dispose of obsolete records by following specific procedures established under the Records Retention Policy. Specifically, SDCP department heads will complete a form requesting to dispose of obsolete records, and the form will be reviewed and signed by SDCP’s General Counsel and SDCP’s designated Records Coordinator. The Records Retention Policy also provides that SDCP must postpone

disposal of any record that is relevant to a Public Records Act request, subpoena, court order, litigation hold, or claim against SDCP.

The Records Retention Schedule details the retention period for specific records maintained by SDCP and includes references to statutes or regulations which establish minimum retention periods. This information will assist staff in tracking future changes in the law and updating the retention requirements when necessary. Under the proposed Records Retention Policy, SDCP's CEO and Records Coordinator would be authorized to update the Records Retention Schedule as necessary to maintain compliance with State and federal law.

To implement the Records Retention Policy and Retention, the General Counsel has prepared the attached resolution which adopts the Policy and Schedule.

### **FISCAL IMPACT**

SDCP may experience savings both in labor and storage expenses through adopting and implementing the proposed Records Retention Policy and Schedule.

### **ATTACHMENTS**

- a. Proposed Records Retention Policy
- b. Proposed Records Retention Schedule
- c. Resolution Approving a Record Retention Policy and Schedule



## San Diego Community Power Records Retention Policy

### **1.0 PURPOSE**

California Government Code Sections 34090 through 34090.8 and the Secretary of State Local Government Records Management Guidelines govern the retention of records of San Diego Community Power ("SDCP") and the disposal of SDCP's obsolete records. The purpose of this Policy is to provide policies regarding the retention of SDCP records; provide for the identification, maintenance, safeguarding of SDCP records and the disposal of obsolete records in the normal course of business; ensure prompt and accurate retrieval of records; and ensure compliance with all legal and regulatory requirements.

### **2.0 AUTHORIZATION**

The Chief Executive Officer ("CEO") is authorized by the Board of Directors ("Board") to interpret and implement this Policy and to designate a Records Coordinator who shall be responsible for the administration of this Policy. The CEO and the Records Coordinator are authorized to do any and all acts necessary to comply with the provisions and intent of this Policy. The CEO and Records Coordinator are responsible for the appropriate retention of records and the destruction of any obsolete records that meet the qualifications governing the retention and disposal of records, as specified below.

### **3.0 DEFINITIONS**

1. Document, record, or writing means any handwriting, typewriting, printing, photostating, photographing, photocopying, electronic mail or facsimile transmission, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.
2. Official Record means a record that: (a) is required to be maintained for a specific period of time under the attached Record Retention Schedule; (b) is otherwise required by law to be kept permanently or for a specific period of time; or (c) is necessary and convenient to the discharge of an SDCP officer or employee's official duties and was made or retained for the purpose of preserving its informational content.
3. Transitory Record means a record whose value is comparatively short-lived and may be discarded when it has fulfilled the brief, limited purpose for which it was created. Transitory records include, but may not be limited to, preliminary drafts, notes, or inter- or intra-agency memoranda not kept in the ordinary course of business and the retention of which is not necessary for the discharge of an SDCP officer or employee's official duties. Specific examples are: transmittal letters, acknowledgments, drafts, rough notes, preliminary calculations, non-substantive follow-up communications or reminders, and

similar electronic communications that, based on their content, are not required to be retained as "Official Records."

#### **4.0 GENERAL GUIDELINES**

The following general guidelines apply to all SDCP records:

1. Except where a record is expressly required to be preserved by law or this Policy, SDCP may destroy any original obsolete record without retaining a copy of the document as long as the retention and destruction of the document complies with this Policy and the attached Record Retention Schedule. (Gov. Code § 34090.)
2. In addition to the retention periods required under the attached Record Retention Schedule, SDCP shall retain original administrative, legal, fiscal and/or historical records with continued value (i.e., records for long-term transactions and/or special projects) as Official Records until all matters pertaining to such records are completely resolved or the time for appeals has expired.
3. At any time, SDCP may discard Transitory Records that have fulfilled their limited purpose; provided, however, that any Transitory Records subject to the "Exceptions to Disposal of Obsolete Records" section of this Policy may not be discarded and shall be temporarily retained for the necessary period.
4. As further provided in SDCP's Computer Usage and E-mail Management Policy, e-mails relating to SDCP business, whether located on an SDCP electronic device or account or a personal electronic device or account: (a) are considered "public records" under the California Public Records Act and may be subject to disclosure; and (b) may be required to be retained by SDCP either as Official Records or as Transitory Records subject to the "Exceptions to Disposal of Obsolete Records" section of this Policy.
5. Pursuant to Government Code section 34090, SDCP shall not destroy any of the following records:
  - a. Records affecting the title to real property or liens thereon;
  - b. Court records;
  - c. Records required to be kept by statute;
  - d. Records less than two years old;
  - e. The minutes, ordinances, or resolutions of the Board of Directors or of another legislative body established by SDCP.
6. In addition, SDCP shall not destroy any of the following records:
  - a. Original, final records relating to the execution or amendment of SDCP's Joint Powers Agreement;

- b. Any records that are the subject of any pending request for records under the California Public Records Act, whether or not the document is exempt from disclosure or considered a Transitory Record, until the request has been granted or two (2) years after the request has been denied by SDCP.
7. The Records Coordinator may authorize the destruction of hard-copy originals of Official Records upon complying with all of the requirements of Government Code section 34090.5, which ensures that such records are reproduced and maintained in a format that is accurate, legible, and not subject to modification. Such methods may include, but not limited to, having the records photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data processing system, recorded on optical disk, reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document, or reproduced on film, optical disk, or any other medium in compliance with Government Code section 12168.7 for recording of permanent records or nonpermanent records.

## **5.0 RECORDS RETENTION SCHEDULE**

The Records Retention Schedule for SDCP is attached to this Policy as Attachment “A” and is incorporated into this Policy by this reference. This Policy, including the Records Retention Schedule, shall comply with State and federal law, as well as the records retention guidelines provided by the California Secretary of State. The Records Retention Schedule may be updated from time to time by the CEO and/or the Records Coordinator in order to stay current with federal and State laws, as well as any other regulations, regarding the retention of SDCP records.

## **6.0 RECORDS TO BE RETAINED IN ORIGINAL FORMAT**

The records listed above in Section 4 of the “General Guidelines” must be retained in their original format, whether the original record is in hard copy or electronic format.

In addition, the following records are required to be retained in their original hard copy format for at least two (2) years before imaging or scanning them into electronic format for retention:

- Statements of Economic Interest for Elected Officials (copies of FPPC Form 700). (Total retention is four (4) years)
- Statements of Economic Interest for Non-Elected Officials (originals of FPPC Form 700). (Total retention is seven (7) years)

After two (2) years, SDCP may image/scan the above documents and dispose of the hard copy versions. The electronic version becomes the “original,” pursuant to State law. (Gov. Code §§ 34090.5; 81009(g).)

## **7.0 DUPLICATE RECORDS**

The CEO and/or the Records Coordinator are authorized to destroy at any time any **duplicate** record of SDCP, while the original, whether in paper or electronic format, is retained by SDCP for the legally required time period.

## **8.0 PROCEDURES FOR DISPOSAL OF OBSOLETE RECORDS**

1. At least once annually, each department is responsible for reviewing all Official Records in its custody. Official Records that have reached the end of their retention period, including electronic records, are to be destroyed by following the procedures described below.
2. The department head completes and signs a "Request for Destruction of Obsolete Records" form, listing the date and description of each document to be destroyed. A sample form is attached to this policy as Attachment "B." The department head submits the form to the Records Coordinator.
3. The Records Coordinator checks the records listed on the submitted form to confirm that each document: (1) is not required to be permanently retained; (2) has been retained for the legally required period of time; and (3) is not subject to an exception requiring continued retention under this Policy (e.g., public records request, subpoena, litigation hold, etc.). The Records Coordinator also confirms that any applicable reproduction requirements (i.e., scanning/imaging, etc.) for each document are complete.
4. The Records Coordinator submits the form to the General Counsel, who reviews and signs the form and then returns the signed form to the Records Coordinator.
5. After receiving the signed form from the General Counsel, the Records Coordinator oversees the destruction of the obsolete records, indicates the method of destruction on the form, signs the form and retains the original signed form.
  - a. The Records Coordinator will retain all original signed forms requesting destruction of obsolete records for a minimum period of two (2) years.
  - b. The Records Coordinator will retain a permanent record, such as a log or copies of certificates of destruction, in whatever format the Records Coordinator determines to be convenient for the purpose, to document the destruction of obsolete records of SDCP.

## **9.0 EXCEPTIONS TO DISPOSAL OF OBSOLETE RECORDS**

Disposal of **any** record, whether it is an Official Record that has met or exceeded its retention periods or a Transitory Record that has fulfilled its limited purpose, must be postponed if the record is responsive to, subject to, or relates in some way to any of the following:

1. A pending Public Records Act request received by SDCP;
2. A subpoena served on SDCP;
3. A Request for Production received by SDCP from an opposing party in litigation;
4. A court order;
5. A litigation hold or request for preservation of evidence received by SDCP; or
6. A claim filed against SDCP under the Government Claims Act.

The above exceptions apply to both hard copy and electronic records.



**ATTACHMENT "A"**

**RECORDS RETENTION SCHEDULE  
FOR SAN DIEGO COMMUNITY POWER**

[Attached]

**ATTACHMENT "B"**  
**REQUEST FOR DESTRUCTION OF OBSOLETE RECORDS**

[Attached]

## SAN DIEGO COMMUNITY POWER

To: SDCP Records Coordinator  
SDCP General Counsel

From: Department Head

Subject: Request for Destruction of Obsolete Records

I am requesting approval to destroy the obsolete records listed below.

DATE OF RECORD	DESCRIPTION OF RECORD

If additional space is needed, attach a second page to this form.

APPROVED

\_\_\_\_\_  
Department Head

\_\_\_\_\_  
Date

\_\_\_\_\_  
General Counsel

\_\_\_\_\_  
Date

The obsolete records described above were destroyed under my supervision using the following method: ☐ Shredding ☐ Electronic deletion ☐ Other (specify:\_\_\_\_\_)

I certify that such destruction meets the requirements of the Records Retention Policy of San Diego Community Power and all applicable requirements of State and federal law.

\_\_\_\_\_  
Records Coordinator

\_\_\_\_\_  
Date of Records Destruction

## RECORDS RETENTION SCHEDULE FOR SAN DIEGO COMMUNITY POWER

Destruction of any SDCP record must have the Board of Directors approval and written consent from the General Counsel,  
unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Accident/Illness Reports	For Employee Medical Records & Employee Exposure Records regarding exposure to toxic substances or harmful physical agents --Includes Material Safety Data Sheets (MSDS) Does NOT include: records of health insurance claims maintained separate from employer's records; first aid records of one-time treatments for minor injuries; records of employees who worked less than one (1) year if records are given to employee upon termination	8 CCR 3204(d)(1)(A)(B)	Length of employment + 30 years
Accidents/Damage to Agency Property	Risk management administration	GC 34090 CCP 337.15	10 years
Accounting Records – General Ledger	General Ledger	GC 34090 CCP 337	Until audited + 4 years  Published articles show 4 – 7 years retention as typical  Sec. of State Guidelines recommends permanent retention.
Accounting Records – - Permanent Books of Accounts	Records showing items of gross income, receipts and disbursement (including inventories, per IRS regulations)	26 CFR 1.6001-1(c) & (e)	Permanent

### Legal Authority Abbreviations

CCP	Code of Civil Procedure (California)	GC	Government Code (California)	PC	Penal Code (California)
CCR	California Code of Regulations	R&TC	Revenue & Taxation Code (California)	H&S	Health & Safety Code (California)
CFR	Code of Federal Regulations	USC	United States Code		
EC	Elections Code (California)	LC	Labor Code (California)		

## RECORDS RETENTION SCHEDULE FOR SAN DIEGO COMMUNITY POWER

Destruction of any SDCP record must have the Board of Directors approval and written consent from the General Counsel, unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Accounts Payable	Journals, statements, asset inventories, account postings with supporting documents, vouchers, investments, invoices and back-up documents, purchase orders, travel expense reimbursements, petty cash, postage, retirement reports, check requests, etc.	CCP 337 26 CFR 31.6001-1(e)(2); Sec. of State Local Gov't. Records Mgmt. Guidelines recommendation	Until audited + 4 years
Accounts Receivable	Receipts for deposited checks, coins, currency; checks received, reports, investments, receipt books, cash receipts, cash register tapes, etc.	CCP 337 26 CFR 31.6001-1(e)(2); Sec. of State Local Gov't. Records Mgmt. Guidelines recommendation	Until audited + 4 years
Affidavits of Publication / Posting	Legal notices for public hearings, publication of ordinances, etc.	GC 34090	Current + 2 years, unless part of a project or matter that requires longer retention (e.g., CEQA documents)
Agency Report of Consultants (FPPC Form 805)	Identifies consultants hired by the Agency who must file Form 700	2 CCR 18734; GC 81009(e)	7 years
Agency Report – Events and Ticket/Pass Distribution (FPPC Form 802)	Report of tickets/passes; identifies persons who received tickets/passes and describes the public purpose for the distribution	GC 81009(e)	7 years
Agency Report of New Positions (FPPC Form 804)	Identifies new positions that will make or participate in making governmental decisions on behalf of the Agency	GC 81009(e)	7 years

### Legal Authority Abbreviations

CCP	Code of Civil Procedure (California)	GC	Government Code (California)	PC	Penal Code (California)
CCR	California Code of Regulations	R&TC	Revenue & Taxation Code (California)	H&S	Health & Safety Code (California)
CFR	Code of Federal Regulations	USC	United States Code		
EC	Elections Code (California)	LC	Labor Code (California)		

## RECORDS RETENTION SCHEDULE FOR SAN DIEGO COMMUNITY POWER

Destruction of any SDCP record must have the Board of Directors approval and written consent from the General Counsel, unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Agency Report of Public Official Appointments (FPPC Form 806)	Report of additional compensation received by agency officials when appointing themselves to committees, boards or commissions of other public agencies, special districts, joint powers agencies or joint powers authorities. <u>Copy of current report must be posted on the Agency's website.</u>	2 CCR 18702.5(b)(3); GC 81009(e)	Original - 7 years
Agenda / Agenda Packets	Board of Directors, committees – agendas and packets can be imaged immediately for retention, if desired.	GC 34090 GC 34090.5	2 years
Agenda reports (staff reports)	Board/committees - Originals can be imaged immediately for retention, if desired. The imaged record can serve as the "original" record, if desired.	GC 34090 GC 34090.5	2 years
Agreements (See also Contracts)	Original contracts and agreements and back-up materials, including leases, license agreements, energy procurement contracts, service/maintenance contracts, etc.	CCP 337 CCP 337.2 CCP 343	4 years after termination/completion
	Original contracts/agreements regarding the development of real property, design, specifications, surveying, planning, supervision, testing, or observation of construction or improvement to real property; may include records of retention releases, retention withheld, change orders, etc.	CCP 337.15	10 years after termination/completion

### Legal Authority Abbreviations

CCP	Code of Civil Procedure (California)	GC	Government Code (California)	PC	Penal Code (California)
CCR	California Code of Regulations	R&TC	Revenue & Taxation Code (California)	H&S	Health & Safety Code (California)
CFR	Code of Federal Regulations	USC	United States Code		
EC	Elections Code (California)	LC	Labor Code (California)		

## RECORDS RETENTION SCHEDULE FOR SAN DIEGO COMMUNITY POWER

Destruction of any SDCP record must have the Board of Directors approval and written consent from the General Counsel,  
unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Agreement – Joint Powers Agreement	Original Joint Powers Agreement and amendments	GC 34090	Permanent
Annual Financial Report	May include independent auditor analysis	GC 34090	Until audited + 2 years Sec. of State Guidelines recommends while current + 7 years
Applications for Boards, Commissions Committees	Not selected	GC 34090	2 years
Applications for Boards, Commissions, Committees	Selected	GC 34090 Sec. of State Guidelines	Current + 5 years
Appraisals	For Real Property Owned by Agency	GC 34090	2 years
Audit Hearing or Review	Documentation created and or received in connection with an audit hearing or review	GC 34090	2 years
Audit Reports	Financial services; internal and/or external reports	GC 34090 CCP 337 CCP 343	Current + 4 years Sec. of State Guidelines recommends permanent retention
Bank Account Reconciliations	Bank statements, receipts, certificates of deposit, etc.	26 CFR 31.6001-1(e)(2)	4 years (Sec. of State Guidelines – recommended retention: until audited + 5 years)
Behested Payment Report (FPPC Form 803)	FPPC form used by elected officials to disclose payments made at their behest (\$5,000 or more from same source) for legislative, governmental, or charitable purposes.	GC 81009; 82015(b)(2)(B)(iii)	7 years

### Legal Authority Abbreviations

CCP	Code of Civil Procedure (California)	GC	Government Code (California)	PC	Penal Code (California)
CCR	California Code of Regulations	R&TC	Revenue & Taxation Code (California)	H&S	Health & Safety Code (California)
CFR	Code of Federal Regulations	USC	United States Code		
EC	Elections Code (California)	LC	Labor Code (California)		

## RECORDS RETENTION SCHEDULE FOR SAN DIEGO COMMUNITY POWER

Destruction of any SDCP record must have the Board of Directors approval and written consent from the General Counsel, unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Bids, Successful	Includes plan and specifications; notices/affidavits.	GC 34090 CCP 337, 337.1	4 years
Bids, Unsuccessful	Unsuccessful bid packages only	GC 34090	2 years
Billing Records	Utility bill stubs – submitted with payment	GC 34090	Current + 2 years
Bonds	Authorization/public hearing records/prospectus/proposals/certificates/notices (transcripts)/registers/statements.	CCP 336a, 337.5	Upon cancellation, redemption or maturity + 10 years
Bonds, Employee (Fidelity Bonds)	Form of insurance that covers employer (Agency) for losses resulting from fraudulent acts of specified employees	GC 34090	Length of employment + 2 years
Bonds - Final	Final bond documentation; monthly statement of transactions; supporting documents	GC 34090 CCP 337.5	Upon cancellation, redemption or maturity +10 years
Bonds – Paid/Cancelled	Paid or cancelled bonds; warrant certificates; interest coupons	GC 34090 GC 53921	2 years
Bonds, Surety	Documentation created and/or received in connection with the performance of work/services for the Agency, or for parcel maps and subdivision work	CCP 337	4 years
Bonds – Unsold/Unused	Unsold/unused bonds	GC 34090 GC 43900 et seq.	2 years (specific requirements for disposal of unused bonds)
Brochures/ Publications	Informational/promotional documents created for or by the Agency	GC 34090	2 years

### Legal Authority Abbreviations

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## RECORDS RETENTION SCHEDULE FOR SAN DIEGO COMMUNITY POWER

Destruction of any SDCP record must have the Board of Directors approval and written consent from the General Counsel,  
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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Budget, Annual	Annual operating budget approved by Board of Directors	GC 34090	Current + 2 years  Sec. of State Local Gov't. Records Mgmt. Guidelines recommends permanent retention.
Cal-OSHA	Log of work related injuries & illnesses (Form 300), Annual Summary (Form 300A), Incident reports (Form 301)	LC 6410; 8 CCR 14300.33	5 years
California State Tax Records	Forms filed annually; quarterly and year-end reports	R&TC 19530 R&TC 19704	6 years
Checks (Agency-issued)	Includes payroll checks; canceled or voided checks; copies of checks; electronic versions of checks	GC 34090 CCP 337 26 CFR 31.6001-1(e)(2)	Until audited +4 years (Sec. of State Guidelines – recommended retention: until audited + 5 years)
Citizen Feedback	General correspondence.	GC 34090	2 years
Claims Against the Agency	Government Claims Act – Claims paid or denied	GC 34090	Until settled + 2 years
Collective Bargaining Agreements	Memoranda of Understanding (MOUs) with employee unions; represented employee groups	29 CFR 516.5(b)	Current + 3 years
Community Surveys	Review final survey reports for historic significance	GC 34090	2 years
Complaints - Miscellaneous	Miscellaneous complaints, not related to specific lawsuits involving the Agency and not otherwise specifically covered by the Retention Schedule.	GC 34090	2 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Comprehensive Annual Financial Reports (CAFR)	Finance	GC 34090 CCP 337	Until audited + 4 years
Conflict of Interest Code	Conflict of Interest Code – required under Political Reform Act; must be reviewed by July 1st of every even-numbered year and amended if necessary	GC 87300 et seq.	Permanent
Contracts, Agency (see also Agreements)	Original contracts and agreements and back-up materials, including leases, license agreements, service/maintenance contracts, etc.	CCP 337 CCP 337.2 CCP 343	4 years after termination/ completion
	Original contracts/agreements regarding the development of real property, design, specifications, surveying, planning, supervision, testing, or observation of construction or improvement to real property; may include records of retention releases, retention withheld, change orders, etc.	CCP 337.15	10 years after termination/completion
Correspondence	General correspondence regarding Agency business that is necessary and convenient to the discharge of Agency's duties; may include letters, email, text messages, posts/comments on Agency-owned social media accounts.	GC 34090	2 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Credit Cards, Agency-owned	Credit card bills or statements and related receipts.	26 CFR 31.6001-1(e)(2)	Until audited + 4 years
	Other records related to use of Agency-owned credit cards (policies, correspondence, etc.)	GC 34090	Current + 2 years
Deeds, Real Property (Grant Deeds)	File with recorded documents; originals may not be destroyed.	GC 34090	Permanent
Deferred Compensation Reports	Finance - pension/retirement funds	29 CFR 516.5 29 CFR 1627.3	3 years
Demographic/ Statistical Data		GC 34090	Current + 2 years
Development Agreements	Agreements for development of real property; Development and Disposition Agreements (DDAs); May include infrastructure contracts (i.e., architects, treatment plants, utility lines, etc.), franchises, etc.	CCP 337, 337.1, CCP 337.15 GC 34090 48 CFR 4.703	Permanent (Sec. of State Guidelines recommends retaining paper original for minimum 7 years)
Development Conditions	Mitigation measures; filed with project files	GC 34090	For the life of the project
Development, General Subject Files	Internal working files including correspondence	GC 34090	2 years
Development Logs	Logs, registers or similar records listing permits, certificates of occupancy issued, may include inspection, building activity, daily, plan check, utility	GC 34090(a) GC 4003, GC 4004 H&S 19850 - 19853	5 years
Development, Photographs	Aerial Photographs	GC 30490	Current + 2 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Development, Reports	Activity, Periodic	GC 34090	2 years
Development, Surveys	Recording data and maps	GC 34090	Permanent
DMV Drivers' Records Reports (DMV Pull-Notice System)	Motor Vehicle Pulls; Personnel record	GC 34090 VC 1808.1(c)	Until superseded (should receive new report every 12 months)
Drawings, Project Plan	Does not include those usually filed with case or project.	GC 34090	2 years
Easements, Real Property	File with recorded documents; originals may not be destroyed.	GC 34090	Permanent
EEOC Records (Equal Employment Opportunity Commission)	Records, reports showing compliance with federal equal employment requirements (EEO-4 Reports, etc.)	29 CFR 1602.30	3 years
Employee Benefits	Benefit plans (including "cafeteria" and other plans); health insurance programs; records regarding COBRA – extension of benefits for separated employees, insurance policies (health, vision, dental, deferred compensation, etc.)	29 USC 1027 28 CCR 1300.85.1 11 CCR 560 29 CFR 1627.3(b)(2)	For life of plan/policy + 6 years
Employee Files	Personnel files	GC 12946 29 CFR 1627.3	While current + 3 years
Employee Information, General	Name, address, date of birth, occupation, rate of pay and weekly compensation earned	GC 12946 29 CFR 1627.3 LC 1174	3 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Employee Information - CEIR	Personnel--California Employer Information Report (for employers of 100 or more employees)	2 CCR 11013 (c)(1) GC 12946	Received + 2 years
Employee Information - Applicant Identification Records	Personnel--Data regarding race, gender, national origin of applicants	2 CCR 11013 (c)(2)	Received + 2 years
Employee, Medical & Exposure Records (toxic substances or harmful physical agents)	Includes medical records made or maintained by a physician, nurse, or other health care personnel, or technician pertaining to employees exposed to toxic substances or harmful physical agents.  Does <u>not</u> include first-aid records of one-time treatment made on-site by a non-physician or observation of minor scratches, cuts, burns, splinters, etc., which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.  (For employees of less than 1 year, no need to retain medical records regarding exposure to toxic substances/harmful physical agents if they are returned to employee upon termination)	29 CFR 1910.1020(d)(1)(i)(ii) 8 CCR 3204 (d)(1)(A)(B)	Length of employment + 30 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Employee, Medical Records (routine)	Maintained separate from other medical records -- Health insurance claims; Records of one-time first aid treatment for minor injuries (burns, splinters, etc), not involving medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a non-physician	GC 12946, 34090 29 CFR 1627.3	Length of employment + 3 years
Employee, Noise Exposure	Noise exposure measurement records Employee audiometric test records	8 CCR 5100 8 CCR 5100	Current + 2 years Length of employment
Employee	Employee records may include release authorizations; certifications; reassignments; outside employment; commendations, disciplinary actions; terminations; oaths of office; pre-employment medical evaluations; fingerprints; identification cards (ID's)	29 CFR 1627.3 LC 1174 GC 12946 GC 34090	Length of employment + 3 years
Employee Programs	May include Employee Assistance Program (EAP), Employee Recognition program, etc.	GC 34090 GC 12946	2 years
Employee, Recruitment	Alternate lists/logs, ethnicity disclosures, examination materials, examination answer sheets, job bulletins	GC 12946 GC 34090 29 CFR 1602.31 29 CFR 1627.3	2 years
Employee, Reports	Employee statistics, benefit activity, liability loss	GC 34090	2 years
Employment Agreements – At-Will Employees; Temporary Employees	Original agreements/contracts for at-will employees or temporary employees	CCP 337 CCP 343	Length of employment + 4 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Employment Applications - Not Hired	Applications submitted for existing or anticipated job openings, including any records pertaining to failure or refusal to hire applicant	GC 34090 GC 12946 29 CFR 1627.3(b)(1)(i)	2 years
Employment Eligibility Verification (I-9 Forms)	Federal Immigration and Nationality Act; Immigration Reform/Control Act 1986	8 USC 1324a (b)(3) Pub. Law 99-603	3 years after date of hire, or 1 year after date of termination, whichever is later
Employment - Public Safety certifications	Certification/designations	GC 34090	Length of employment + 2 years
Employment - Surveys and Studies	Includes classification, wage rates	GC 12946 GC 34090 29 CFR 516.6	2 years
Employment - Training Records, Non-Safety	Paperwork documenting internal and external training for non-safety employees; includes any volunteer program training - class training materials, internships	GC 34090 GC 12946	Length of employment + 2 years
Employment - Vehicle Mileage Reimbursement Rates	Annual mileage reimbursement rates	GC 34090	Until superseded + 2 years
Engineering Capital Improvement Projects	Supporting documentation including bidders list, specifications, reports, plans, work orders, schedules, etc.	GC 34090, CCP 337.15	Project completion + 10 years
Enterprise Systems Catalog	Catalog of software applications, computer systems used by the Agency.	GC 6270.5	Must be posted on Agency website and updated annually
Environmental Quality Air Quality (AQMD)	Participants/voucher logs, Total Daily Mileage Survey (TDM); various local authorities	CCP 338(k); GC 34090	3 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Environmental Quality Asbestos	Documents, abatement projects, public buildings	GC 34090	Permanent
Environmental Quality California Environmental Quality Act (CEQA)	Exemptions, Environmental Impact Report, Mitigation monitoring, negative declaration, notices of completion and determination, comments, statements of overriding considerations,	GC 34090 CEQA Guidelines	Permanent
Environmental Quality Congestion Management	Ride sharing, trip management	GC 34090	Completion + 2 years
Environmental Quality Environmental Review	Evidence, correspondence, consultants, issues, conservation, any other substantive materials related to CEQA compliance or project, including staff notes, memoranda, and e-mails relating to the Project or CEQA compliance	GC 34090; Pub. Res. Code 21167.6(e)(7), (10); <i>Golden Door Properties v. Superior Court</i> (2020) 53 Cal.App.5th 733	Completion + 2 years
Environmental Quality Pest Control	Pesticide applications, inspections and sampling, documents	GC 34090	Completion + 2 years
Environmental Quality Soil	Analysis, construction recommendations	GC 34090	Completion + 2 years
Environmental Quality Soil Reports	Final Reports	GC 34090	Permanent

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
ERISA Records  (Employee Retirement Security Act)	Employee Retirement Income Security Act of 1974 - Plan reports, certified information filed; records of benefits due	29 USC 1027 29 USC 1059	6 years
Ethics Training Records (AB 1234; effective 1/1/06)	Records required to be kept under Gov. Code section 53235.2. Records must show dates that local officials satisfied the training requirements and the entity that provided the training	GC 53235.2	5 years after receipt of training
Events Planning, Community	Review for historic significance	GC 34090	2 years
Family and Medical Leave Act (federal)	Records of leave taken, Agency policies relating to leave, notices, communications relating to taking leave	29 CFR 825.500 GC 12946	3 years (federal) 2 years (State)
Federal Tax Records	May include Forms 1095-C, 1096, 1099, W-4 and W-2	26 CFR 31.6001-1(e) 29 CFR 516.5-516.6	Current + 4 years
Fixed Assets Inventory	Reflects purchase date, cost, account number	GC 34090	Until audited + 2 years
Fixed Assets Surplus Property	Auction; disposal – Listing of property; sealed bid sales of equipment	GC 34090 CCP 337	Until audited + 4 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Fixed Assets Vehicle Ownership & Title	Title transfers when vehicle is sold	VC 9900 et. seq.	Until sold + 2 years
Forms	Administrative - blank		Until Superseded
Fund Transfers	Internal; bank transfers & wires	GC 34090	Until audited + 2 years
General Ledgers	All annual financial summaries--all agencies	GC 34090 CCP 337	Until audited + 4 years  Published articles show 4 – 7 years retention as typical  Sec. of State Guidelines recommends permanent retention
Gift to Agency Report (FPPC Form 801)	FPPC form showing payment or donation made to the Agency or to an Agency official and which can be accepted as being made to the Agency	2 CCR 18944(c)(3)(F), (G); FPPC Fact Sheet : “Gifts to an Agency – Part 2”	Originals – 7 years; Copy must be posted on Agency website
Gifts/Bequests	Finance - to the Agency (kept with cash receipts)	GC 34090	2 years
Grants Community Development Block Grant (CDBG); Urban Development; other Federal and State grants	Grant documents and all supporting documents: applications, reports, contracts, project files, proposals, statements, sub-recipient dockets, environmental review, inventory, consolidated plan, etc.	GC 34090 24 CFR 570.502 24 CFR 85.42	Until completed + 4 years
Grants - Unsuccessful	Applications not entitled	GC 34090	2 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Hazardous Materials & Hazardous Waste Disposal Records	Examples of hazardous materials/hazardous waste: medical waste; used oil; pesticides	H&S 117945 H&S 118165 22 CCR 66279.91 3 CCR 6624(g)	3 years
Hazardous Materials - Permits, Hazardous Materials Storage		GC 34090	While current + 2 years [Permanent retention of documents regarding environmentally sensitive materials is recommended]
Hazardous Materials - Programs, Household Hazardous Waste	Documents regarding federal, State or local programs on disposal of household hazardous waste	GC 34090	Until superseded + 2 years
Hazardous Materials - Exposure Records, etc.	Employee exposure records; name/identity of chemical substance used; when & where chemical substance was used	8 CCR 3204(d) et. seq.	Length of employment + 30 years
Hazardous Materials - Underground Storage Tank Compliance	Documents regarding: storage, location, installation, removal, remediation	GC 34090	Permanent
Hazardous Materials - Underground Storage Tank Maintenance and Repair	Documents regarding: repairs, lining and upgrades	23 CCR 2660(j), 2712	For the life of the tank
Insurance	Personnel related	GC 34090	While current, + 4 years
Insurance Certificates, Agency	Liability, performance bonds, employee bonds, property; Insurance certificates filed separately from contracts, includes insurance filed by licensees.	GC 34090	While current + 4 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Insurance, Liability/Property	May include liability, property, Certificates of Participation, deferred, use of facilities	GC 34090	While current + 4 years
Insurance, Risk Management Reports	Federal OSHA Forms; Loss Analysis Report; Safety Reports; Actuarial Studies	29 CFR 1904.44 GC 34090	5 years (Federal) 2 years (State)
Investment Reports, Transactions	Summary of transactions, inventory and earnings report	GC 34090 CCP 337	Until audited + 4 years
Invoices	Invoices from vendors and back-up documents	CCP 337 26 CFR 31.6001-1(e)(2); Sec. of State Local Gov't Records Mgmt. Guidelines recommendation	Until audited + 4 years
Job Descriptions	Descriptions of duties, qualifications, responsibilities for each position/classification/job title	29 CFR 1627.3	While current + 3 years
Labor Organizations	Records of payments, loans, promises or agreements by Agency to any labor organization or representative of same	29 USC 436	5 years
Lease Agreement	Property or equipment	CCP 337 CCP 337.2 CCP 343	Until terminated + 4 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Legal Notices / Affidavits of Publication or Posting	Examples: Notices of public hearings, notices to member agencies, notices of liens, etc. Also proof of publication of notice, or proof of posting of notice	GC 34090	Current + 2 years, unless part of a project or matter that requires longer retention (e.g., CEQA documents)
Legal Opinions	Confidential – not for public disclosure (attorney-client privilege)	GC 34090	Until superseded + 2 years
Legislative Support/Opposition, Requests & Responses	Related to legislation.	GC 34090	2 years
Litigation	Case files	GC 34090	Until settled + 2 years
Lobbying or Lobbyist Forms (FPPC forms)	FPPC Form 602 – Lobbying Firm Activity Authorization; FPPC Form 635 – Report of Lobbyist Employer & Report of Lobbying Coalition – forms used when employing or contracting with a lobbying firm	FPPC Reg. 18615(d)	5 years
Local Appointments List (“Maddy List”)	List of all regular and ongoing boards, commissions, and committees appointed by the Board of Directors – pursuant to the Maddy Local Appointive List Act	GC 54970, et seq. GC 34090	Until superseded (new list prepared each Dec. 31 <sup>st</sup> )
Maintenance Manuals	Equipment service/maintenance	GC 34090	Until superseded
Maintenance/Repair Records	Equipment	GC 34090	2 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Maps & Plats	Engineering & field notes and profiles; cross section of roads, streets, right-of-way, bridges; may include annexations, parks, tracts, block, storm drains, water easements, bench marks, trees, grading, landfill, fire hydrants, base maps, etc.	GC 34090	Permanent
Marketing, Promotional	Brochures, announcements, etc.	GC 34090	2 years
Master/Strategic Plans	Special or long range program plan for Agency – coordination of services; strategic planning	GC 34090	Current + 2 years
Memoranda of Understanding (MOU)	Personnel related; agreements with employee bargaining units resulting from negotiations	GC 34090; 29 USC 211(c) 29 CFR 516.5 Sec. of State Local Gov't. Records Mgmt. Guidelines	Current + 3 years  Sec. of State recommends permanent retention
Minutes	Board/committees	GC 34090(e)	Permanent
Newsletter, Agency	May wish to retain permanently for historic reference.	GC 34090	2 years
Notices – Public Meetings	Special Meetings	GC 34090	2 years
Oaths of Office	Elected and public officials (i.e., Board members; commissioners; etc.)	GC 34090 29 USC 1113 Sec. of State Guidelines	Current + 6 years
Offers of Dedication		GC 34090	Until Completed

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USC United States Code  
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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Ordinances	Ordinances adopted by Board of Directors	GC 34090(e)	Permanent
OSHA	OSHA 300 Log, privacy case list, OSHA 300A annual summary, OSHA 301 incident report forms	LC 6410; 8 CCR 14300.33 29 CFR 1904.33	5 years
OSHA (Accident/Illness Reports)	Personnel - Employee Exposure Records & Employee Medical Records regarding exposure to toxic substances	LC 6410; 8 CCR 14300.33; 8 CCR 3204(d)(1)(A)	Duration of employment plus 30 years
Payroll - Federal/State Reports	Annual W-2's, W-4's, Form 1099s, etc.; quarterly and year-end reports	29 USC 436 26 CFR 31.6001-4 R&TC 19530 R&TC 19704 26 USC 6001 26 CFR 301.6501(a)-1 26 CFR 31.6001-1(e) 29 CFR 516.5 – 516.6	6 years
Payroll Deduction/Authorizations	Finance	29 CFR 516.6(c)	Current + 2 years
Payroll records (employee information)	Records showing employee information/data – names, addresses, etc.; hours worked; regular and overtime wages, etc.	29 CFR 516.5 LC 1174(d), 1197.5	Length of employment + 3 years

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Payroll, registers	Finance Labor costs by employee & program	29 CFR 516.5(a) LC 1174(d)	3 years  (Sec. of State Guidelines – recommended permanent retention)
Payroll, time cards/sheets	Employee	29 CFR 516.6(a)(1) LC 1174(d)	2 years (Sec. of State guidelines – recommends retention: until audited + 6 years)
Payroll - Wage Rates / Job Classifications	Employee records	LC 1197.5(d) LC 1174(d) GC 34090 GC 12946 29 CFR 516.6 29 CFR 1602.4 29 CFR 1627.3	While current + 3 years
Permits, Construction	Other than building permits - For signs, grading, encroachment, including copies of blueprints and specifications	GC 34090	Until completed + 2 years
Personnel Policies -- Rules and Regulations	Including employee handbooks, employee manuals, and other policies/procedures	29 CFR 516.6 29 CFR 1627.3(a)	Current + 3 years
Personnel Records	Payroll <b>or other</b> records containing name, address, date of birth, occupation, rate of pay, etc., including records relating to promotion, demotion, transfer, lay-off, termination	29 CFR 1627.3	3 years

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CCR	California Code of Regulations	R&TC	Revenue & Taxation Code (California)	H&S	Health & Safety Code (California)
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## RECORDS RETENTION SCHEDULE FOR SAN DIEGO COMMUNITY POWER

Destruction of any SDCP record must have the Board of Directors approval and written consent from the General Counsel,  
unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Petitions	Submitted to legislative bodies	GC 34090	Current + 2 years
Policies, Administrative	All policies and procedures, directives rendered by Board not assigned a resolution or ordinance number	GC 34090	Until Superseded + 2 years
Policies, Board of Directors	Original policies adopted by the Board of Directors.	GC 34090	Until Superseded
Press Releases	Agency related.	GC 34090	2 years
Procedure Manuals	Administrative	GC 34090	Until superseded + 2 years
Proclamations	Agency issued proclamations	GC 34090	2 years; if done by Board of Directors Resolution, then permanent retention
Project Facilities Construction	Contains records of plans, design, construction, conversion or modification of local government-owned facilities, structures and systems	GC 34090 H&S 19850	For the life of the project
Project Facilities Facility Rentals; Use	Permits, contracts, diagrams, schedules, insurance binders	GC 34090	Current + 2 years
Project Facilities Maintenance and Operations	Service requests, invoices supporting documentation, buildings, equipment, field engineering, public facilities including work orders and graffiti removal	GC 34090	2 years
Property, Abandonment	Buildings, condemnation, demolition	GC 34090	Permanent
Property Acquisition/Disposition	Agency owned. Supporting documents regarding sale, purchase, exchange, lease or rental of property by Agency	CCP 337.15	10 years

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unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Public Records Act Request	Requests from the public to inspect or copy public documents	GC 34090	2 years
Purchasing RFQs, RFPs	Requests for Qualifications; Requests for Proposals regarding goods and services	GC 34090	Current + 2 years
Purchasing, Requisitions, Purchase Orders	Original Documents	GC 34090 CCP 337	Until audited + 4 years
Rates and Fees, Schedules/Studies	Approved by the Board of Directors	GC 34090	Current + 3 years
Recordings - audio (e.g., for preparation of meeting minutes)	Board/committee meetings -- audio recording “made for whatever purpose by or at the direction of the local agency”	GC 34090; 54953.5(b)	Minimum 30 days
Recordings - routine video monitoring, telephone, and radio communications	Routine daily recording of telephone & radio communications; routine video monitoring including in-car video systems, building security systems.	GC 34090, 34090.6	Videos - 1 year; Phone & Radio communications - 100 days (destruction must be approved by Board of Directors & Agency Attorney)
Recordings, video or digitally recorded – meetings of legislative bodies	Videos or digital recordings of public meetings made by or at the direction of the Agency (e.g., Board/committee Agency meetings)	GC 54953.5(b)	Minimum 30 days
Recordings, video or digitally recorded (Duplicate – see Description or Example of Record)	Other than videos or digital recordings of public meetings; Considered duplicate records if another record of the same event is kept (i.e., written minutes)	GC 34090, 34090.7 85 Ops. Cal. Atty. Gen. 256 (2002)	Minimum 90 days after event is recorded
Records Management Disposition Certification	Documentation of final disposition of records	GC 34090	Permanent

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Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Records Retention Schedules		GC 34090	Current + 2 years
Recruitments and Selection	Records relating to hiring, promotion, selection for training	29 CFR 1627.3	3 years
Regulatory Filings	Final filings submitted by or on behalf of Agency to CPUC, other state or federal agencies or regulatory bodies, etc.	GC 34090	Permanent
Release Forms/Waivers	Releases/waiver signed by visitors, volunteers, etc.	GC 34090	2 years
Resolutions	Resolutions adopted by the Board of Directors	GC 34090(e)	Permanent
Returned Checks	Finance-NSF (not Agency checks)	GC 34090	2 years after audit
Salary/Compensation Studies, Surveys	Studies or surveys of other agencies regarding wages, salaries and other compensation or benefits	GC 34090	While current + 2 years
Settlement Agreements	Final, signed/approved settlement agreements for litigation matters, claims, citations, etc.	GC 34090	2 years after signed/approved
	For Workers Compensation claims – final, signed/approved settlement agreements	8 CCR 10102 8 CCR 15400.2	5 years after signed/approved
State Controller	Annual reports filed by Agency	GC 34090	2 years
Statements of Economic Interest - Form 700 (copies) (elected officials)	<u>Copies</u> of original statements of elected officials forwarded to Fair Political Practices Commission (FPPC)	GC 81009(f), (g)	4 years (can image after 2 years)

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unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Statements of Economic Interest - Form 700 (originals) (non-elected)	<u>Originals</u> of statements of designated employees	GC 81009(e), (g)	7 years (can image after 2 years)
Stop Payments	Finance - bank statements	GC 34090	2 years
Studies, Various Agency		GC 34090	While current + 2 years
Subpoenas (Subpoena Duces Tecum; Deposition Subpoena, etc.)	Subpoena served on the Agency or on an Agency employee by a third party (Agency/ Employee is not a party in the litigation), including copies of any records produced in response to the subpoena	GC 34090	2 years
Unemployment Insurance Records	Records relating to unemployment insurance – claims, payments, correspondence, etc.	26 USC 3301-3311; Calif. Unemployment Insurance Code; CCP 343	While current + 4 years
Utility Services - Applications	Applications for utility connections, disconnects, opt-out requests, registers, service	GC 34090; Sec. of State Guidelines recommendation	Current + 2 years
Utility Services - Billing Records	Customer name, service address, meter reading, usage, payments, applications/cancellations	GC 34090; CCP 337	Until audited + 4 years
Utility Services - Customer Data Requests	Cost comparisons, bill analyses, usage history, billing history, rate comparisons, customer service emails	GC 34090	Customer request + 2 years

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## RECORDS RETENTION SCHEDULE FOR SAN DIEGO COMMUNITY POWER

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unless otherwise provided by law. (Gov. Code § 34090.)

Category of Record	Description or Example of Record	Legal Authority	Minimum Legal Retention Period
Utility Services - Journals, Utility Billing	Billing including monthly activity	GC 34090; CCP 337	Current + 4 years
Utility Services - Connection Records	Maps	GC 34090; Sec. of State Guidelines recommendation	Permanent
Utility Services - Meter Reading; Reports		GC 34090; Sec. of State Guidelines recommendation	Current + 2 years
Utility Services - Utility Rebates, Reports		GC 34090	Current + 2 years
Vouchers - Payments	Account postings with supporting documents	GC 34090 CCP 337	Until audited + 4 years
Wage Garnishment	Wage or salary garnishment	CCP 337	Active until garnishment is satisfied; then retain until audited + 4 years
Workers Compensation Files	Work-injury claims (including denied claims); claim files, reports, etc.	8 CCR 10102 8 CCR 15400.2	Until settled + 5 years

### Legal Authority Abbreviations

CCP Code of Civil Procedure (California)  
CCR California Code of Regulations  
CFR Code of Federal Regulations  
EC Elections Code (California)

GC Government Code (California)  
R&TC Revenue & Taxation Code (California)  
USC United States Code  
LC Labor Code (California)

PC Penal Code (California)  
H&S Health & Safety Code (California)

## RESOLUTION NO. 2022-02

### A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER ADOPTING A RECORDS RETENTION POLICY AND RECORDS RETENTION SCHEDULE

A. San Diego Community Power (“SDCP”) is a joint powers agency formed pursuant to the Joint Exercise of Powers Act, Cal. Gov. Code § 6500 *et seq.*, California Public Utilities Code § 366.2, and a Joint Powers Agreement effective on October 1, 2019 (“JPA Agreement”).

B. Pursuant to Government Code Section 6509 and Section 3.4 of the JPA Agreement, SDCP’s powers are subject to the restrictions upon the manner of exercising power possessed by the City of Encinitas, a general law city.

C. Government Code Section 34090, *et seq.*, provides general rules and procedures related to retention and destruction of records of general law cities. Pursuant to Government Code Section 6509 and Section 3.4 of the JPA Agreement, such rules and procedures apply, by extension, to SDCP.

D. Various other provisions of State and federal law require retention of SDCP records for specific periods of time.

E. In order to comply with applicable records retention statutes and regulations, SDCP desires to adopt the proposed Records Retention Policy and Records Retention Schedule to provide for the orderly retention of SDCP records and the proper disposal of obsolete records.

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

Section 1. The Board of Directors finds that the foregoing recitals are true and correct and are incorporated herein.

Section 2. The Records Retention Policy and Schedule attached hereto as Exhibit A are incorporated as though fully set forth herein, and are hereby adopted as the official Records Retention Policy and Schedule of SDCP. SDCP shall retain records in accordance with the requirements and procedures set forth in the Records Retention Policy and Schedule and with applicable law. Pursuant to Government Code section 34090, SDCP is authorized to dispose of obsolete records in accordance with the requirements and procedures set forth in the Records Retention Policy and Schedule and with applicable law.

Section 3. The Chief Executive Officer (“CEO”) and Records Coordinator designated by the CEO are authorized to do any and all acts necessary to give effect to and comply with the terms and intent of the Records Retention Policy and Schedule. The CEO and Records Coordinator shall be responsible for the administration of the retention of records and the destruction of obsolete records pursuant to the Records Retention

Policy and Schedule. In addition, the CEO and Records Coordinator are authorized to update or amend the Records Retention Schedule as needed, without further approval from the Board of Directors, in order to stay current with federal and state laws, as well as any other regulations, regarding records retention.

Section 4. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are severable. The Board of Directors hereby declares that it would have adopted this resolution irrespective of the invalidity of any particular portion thereof.

Section 5. 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 March 24, 2022.

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Chair, Board of Directors  
San Diego Community Power

ATTEST:

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Secretary, Board of Directors  
San Diego Community Power

**EXHIBIT A**

**RECORD RETENTION POLICY AND RECORD RETENTION SCHEDULE**

[SEE FOLLOWING PAGES]





## SAN DIEGO COMMUNITY POWER Staff Report – Item 8

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To: San Diego Community Power Board of Directors

From: Lucas Utouh, Director of Data Analytics and Account Services

Via: Bill Carnahan, SDCP Interim Executive Officer

Subject: Approval of Information Technology and Security Policy

Date: March 24, 2022

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### RECOMMENDATION

Approve the attached Information Technology and Security Policy.

### BACKGROUND

Attached is the proposed Information Technology and Security Policy to govern the use of the SDCP network and management of SDCP's IT assets and resources. The Policy sets restrictions on usage by all who have access to the SDCP Network or have been issued SDCP-owned technology, including all SDCP personnel, and contemplates that all SDCP employees will sign acknowledgement of these policies, once adopted.

### ANALYSIS AND DISCUSSION

The proposed Information Technology and Security Policy would establish standard operating procedures, guidelines, clear and concise boundaries for the use of the SDCP network and applications and ensure SDCP personnel use computing technology in a responsible, efficient, ethical, and legal manner. The Policy sets forth the types of SDCP network usage and electronic communication that are prohibited, permissible internet usage, software usage policies, and how SDCP monitors electronic usage generally in compliance with state and federal law. The Policy provides that the data stored on the SDCP network are the property of SDCP and that the SDCP network is only to be used for valid business functions and authorized purposes. The Policy prevents unauthorized access to, or disclosure of sensitive information prepared, owned, used, or retained by SDCP. In addition, the Policy provides rules for use of SDCP's e-mail system and provides that e-mails sent or received on SDCP's system will be retained for a period of at least two (2) years. Thereafter, e-mails may be discarded on a rolling basis unless the e-mails are required to be retained for a longer period by law or SDCP's Record Retention Policy/Schedule.

### **FISCAL IMPACT**

No material impacts. SDCP personnel already operate and maintain the SDCP network. This policy will provide additional direction to SDCP personnel on how to operate and maintain the SDCP network.

### **ATTACHMENTS**

Attachment A: Proposed Information Technology and Security Policy





San Diego Community Power

## **Information Technology and Security Policy**

### **1.0 PURPOSE**

The purpose of this Information Technology and Security Policy ("Policy") is to establish standard operating procedures, guidelines and clear and concise boundaries for the use of the San Diego Community Power ("SDCP") Network, as defined below, and ensure that SDCP personnel use computing technology in a responsible, efficient, ethical, and legal manner. Use of the SDCP Network and the data stored thereon is the property of SDCP and is to be used for valid business functions and authorized purposes only. This Policy also prevents the unauthorized access to or disclosure of sensitive information prepared, owned, used, or retained by SDCP and complies with the California Electronic Communications Privacy Act.

### **2.0 GENERAL**

Personal use of the SDCP Network that is deemed to be excessive, interferes with performance by SDCP personnel, or that is intended for personal monetary gain, is strictly prohibited.

Those in violation of this Policy could be subject to disciplinary action up to and including dismissal and/or termination of contract, as described in further detail under the "Violations" section of this Policy.

All questions regarding the interpretation or applicability of this Policy should be directed to Human Resources for clarification.

### **3.0 APPLICABILITY**

This Policy will apply to all who may have access to or use of the SDCP Network or have been issued SDCP-owned technology, including all SDCP personnel. Furthermore, this Policy applies when SDCP-issued technology is used on or off SDCP property, when non-SDCP devices access the SDCP Network or are used to prepare or receive information within the scope of SDCP employment, and when private information is prepared, used, or retained by SDCP.

## **4.0 DEFINITIONS**

<b>Term</b>	<b>Definition</b>
Electronic communications	Any and all electronic transmissions, and every other means of recording upon any tangible thing in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. Without limiting the nature of the foregoing, "electronic communications" include e-mails, texts, voicemails, and also include communications on or within commercial applications (apps) such as Facebook Messenger, Twitter, WhatsApp, etc.
Electronic device	A device depending on the principles of electronics and using the manipulation of electron flow for its operation, including but not limited to cellular telephones, laptops and desktop computers, hotspots, tablets, pagers, cameras, televisions, and DVD/CD players.
Electronic mail (email)	Electronic messages sent within an email application (e.g. Microsoft Outlook) or other email platform(s) (e.g., Gmail, Yahoo!, etc.).
Electronic messaging account	Any account that creates, sends, receives or stores electronic communications, such as email messages or text messages, or voicemail messages.
Excessive use	Use is defined as "excessive" if it interferes with normal job functions, impacts responsiveness, and/or the ability to perform daily job activities.
Listserves	A messaging function hosted by server computers that automatically mails messages to subscribers and can also be referred to as "electronic bulletin boards."
SDCP Network	Any Internet access, computer server, computer network, intranet, local area network, wireless network, email system, cloud storage system, or file-sharing system owned or made available by SDCP.
SDCP personnel	Collectively refers to all SDCP employees, officers (including Board members and members of advisory bodies), consultants, volunteers, and other non-employees who create, transmit, or retain electronic communications related to SDCP business.

## **5.0 INAPPROPRIATE USE**

1. The SDCP Network shall not be used for any activity that is a violation of local, state, or federal law or to further private or personal business activities.
2. SDCP personnel may not intentionally intercept, eavesdrop, record, read, alter, or receive another person's electronic communications without proper authorization.
3. SDCP personnel are prohibited from using the SDCP Network to transmit any electronic communication containing or expressing:

- a. Messages in support or opposition to campaigns for candidates for an elected office or a ballot measure, or that otherwise involve partisan politics;
  - b. Messages of a religious nature or promoting or opposing religious beliefs;
  - c. Messages containing language which is insulting, offensive, disrespectful, demeaning, or sexually suggestive;
  - d. Messages containing harassment of any form, sexual or ethnic slurs, obscenities, or any representation of obscenities (which violates SDCP's anti-harassment policies and is subject to SDCP disciplinary action);
  - e. Messages that promote, foster, or perpetuate discrimination on the basis of race, creed, color, age, religion, gender, marital status, or status with regard to public assistance, national origin, physical or mental disability or sexual orientation, as well as any other category protected by federal, state, or local laws (which violates SDCP's anti-harassment policies and is subject to SDCP disciplinary action);
  - f. Messages used to send or receive copyrighted material, proprietary financial information or similar materials, unless the transmission of such material is directly related to SDCP business;
  - g. Messages used for gambling or any activity that is a violation of local, state, or federal law;
  - h. Threats of violence or injury to any person, property, or organization;
  - i. Messages that conduct or encourage illegal activity;
  - j. Messages containing pornographic materials;
  - k. Messages containing chain letters or other forms of junk mail generally containing unsolicited commercial and non-commercial messages transmitted as a mass mailing to a number of recipients;
  - l. Messages that cause disruption in the performance or reliability of the SDCP Network; and
  - m. Messages that defeat or attempt to defeat security restrictions on the SDCP Network.
4. Electronic communications relating to SDCP business, whether located on the SDCP Network, an SDCP device, or a personal electronic device or account: (a) are considered "public records" under the California Public Records Act and may

be subject to disclosure; and (b) may be required to be retained by SDCP under SDCP's Records Retention Policy. To help ensure proper retention of records and compliance with the California Public Records Act, the use of personal electronic messaging accounts or personal devices to conduct SDCP business where such messages or other records are not saved or otherwise available on the SDCP Network is strongly discouraged.

- a. SDCP personnel should use reasonable efforts to use SDCP devices and accounts and/or the SDCP Network whenever possible, and are encouraged to forward and/or copy messages sent or received on non-SDCP devices or accounts to their SDCP devices or accounts or the SDCP Network on an ongoing basis. SDCP personnel who use a non-SDCP device or account for SDCP business shall make public records on the device or account available to SDCP upon request.
- b. In the event that SDCP receives a Public Records Act ("PRA") request, subpoena, or other request that either explicitly seeks documents on non-SDCP devices or accounts or can be reasonably interpreted as such, SDCP will promptly communicate the request to the relevant SDCP personnel who may be in possession of responsive records.
- c. SDCP personnel shall provide responsive public records to SDCP's PRA coordinator. These records are still subject to review and redactions for PRA exemptions before production. SDCP personnel shall provide responsive public records regardless of the potential exemptions.
- d. Records that do not relate to the conduct of the public's business need not be provided to the PRA coordinator. In the event that any SDCP personnel makes a decision to withhold any responsive records that do not qualify as public records, he or she shall submit a statement with facts sufficient to show the record is not related to SDCP business. SDCP shall determine whether the statement has sufficient information.
- e. Employees who are terminating their employment with SDCP shall provide any public records on their non-SDCP devices or accounts to the PRA coordinator before the last day of their employment.

## **6.0 MONITORING**

1. SDCP personnel have no right or expectation of privacy or confidentiality in any electronic communication created, sent, received, deleted, or stored using the SDCP Network or on an SDCP-issued device.
2. SDCP owns the rights to all data and files in any computer, network, or other information system used by SDCP. SDCP reserves the right to retrieve and make proper and lawful use of any and all electronic communications transmitted through

the SDCP Network or on SDCP-owned technology. As a routine matter, SDCP does not read or monitor the content of electronic communications created, sent, received, deleted, or stored through the SDCP Network or on SDCP-owned technology. However, SDCP may monitor or access such electronic communications as allowed by the Electronic Communications Privacy Act, the federal Stored Communications Act, and any other applicable federal or State laws.

3. Most communications among SDCP personnel are not confidential communications. However, certain communications such as personnel records, customer data, or attorney-client communications may be or contain confidential information. Questions about whether communications are confidential, and how they are to be preserved, should be discussed with SDCP's Record Retention Coordinator and/or General Counsel. When in doubt, DO NOT USE email, text messages, or voicemail messages as a means of communication. Furthermore, the use of passwords to protect documents does not guarantee confidentiality or security.
4. SDCP personnel shall not disclose personal, confidential, or privileged information prepared, owned, used, or retained by SDCP or on behalf of SDCP, unless expressly permitted by SDCP's legal counsel or required by law.
5. When the release of personal information prepared, owned, used, or retained by SDCP is authorized, SDCP personnel will only use SDCP-issued electronic messaging accounts or an SDCP-approved file sharing or collaboration service to transmit such identifiably personal information.
6. SDCP personnel shall not forward messages from their SDCP-issued electronic messaging account to any non-governmental account(s) for the purpose of creating a personal email archive of any record related to SDCP business.
7. SDCP may comply with reasonable requests from law enforcement and regulatory agencies for logs, diaries, archives, or files on individual computer and email activities. No SDCP personnel member may access another's computer, computer files, or electronic mail messages without prior authorization from either the employee or an appropriate SDCP official.

## **7.0 ELECTRONIC MAIL**

1. All SDCP employees (and certain other personnel designated by the Chief Executive Officer) shall be issued an SDCP email account, and all SDCP business conducted through email must only be done within the SDCP email account. However, if SDCP personnel must use their personal email account to conduct SDCP business, the personnel member must retain the email message in accordance with this Policy and SDCP's records retention policies.
2. Brief and occasional personal use of the electronic mail system or the Internet is acceptable as long as it is not excessive or inappropriate, occurs during personal time

(lunch or other breaks), and does not result in expense to SDCP. Generally, SDCP personnel are not to use email for non-governmental business, including, but not limited to: union activities (unless expressly allowed in the collective bargaining agreement or other binding agreement with SDCP); commercial ventures; or religious or political causes. Incidental use of the SDCP Network for personal use is permissible pursuant to Government Code section 8314(b)(1) and Penal Code section 424(c), though not encouraged.

3. SDCP personnel are responsible for managing their mailboxes, including organizing and deleting any non-SDCP related messages.
4. SDCP personnel are expected to remember that email sent from SDCP email accounts or on behalf of the SDCP is a representation of SDCP. All SDCP personnel must use normal standards of professional and personal courtesy and conduct when drafting email messages.
5. SDCP personnel should avoid "broadcasting" messages and documents unless the message is of interest to all SDCP personnel.
6. Spam can contain malicious software that is harmful to the SDCP Network. If an email message does not pertain to SDCP business, it should be deleted from your email account and not forwarded. Examples include jokes, thoughts for the day, "chain" type e-mail messages, etc. Users shall contact the IT department/representative immediately after a user clicks on any type of spam or malicious software that user believes may be harmful to SDCP.
7. Avoid the use of SDCP email accounts to subscribe to non-work related (personal) newsletters or other mailers, as it may create susceptibility for spam or a malicious attack on the SDCP Network.
8. The SDCP's electronic mail system must not be used to violate the laws and regulations of the United States or any other nation or any state, city, province, or other local jurisdiction in any way. Use of SDCP resources for illegal activity can lead to disciplinary action, up to and including dismissal and criminal prosecution.

#### **Retention of E-mails Relating to SDCP Business**

1. All SDCP e-mails shall be automatically retained for two (2) years after the e-mail was sent/received and automatically deleted on a rolling basis thereafter, except as provided below.
2. Electronic communications that are owned by SDCP but in the possession of consultants or contractors must also be retained in accordance with this Policy. Whether such electronic communications are owned by SDCP is governed by the agreement between SDCP and the consultants or contractors.



3. E-mails may be subject to longer retention periods as determined by the content of the e-mail. SDCP personnel shall retain e-mails subject to a retention period longer than two (2) years as determined by applicable laws, regulations, and SDCP's Records Retention Policy/Schedule.
4. It is the responsibility of the SDCP personnel member sending or receiving an e-mail to determine if it is subject to a retention period of longer than two (2) years.
5. All e-mails subject to a Public Records Act request, subpoena, request for production, court order, litigation hold, or claim against SDCP shall be retained until the matter is completed, plus any additional period required under SDCP's Records Retention Policy/Schedule. If an e-mail is scheduled for automatic deletion, SDCP personnel shall save or otherwise move the e-mail to a safe location where it will be retained for the necessary period.
6. Pursuant to the California Environmental Quality Act ("CEQA") and SDCP's Record Retention Policy/Schedule, SDCP shall retain all records required to be retained by law under Section 21167.6(e) of the California Public Resources Code. This includes, but is not limited to, all written correspondence, including e-mails sent or received by SDCP, relating to compliance with CEQA or a "project" under CEQA, as well as internal SDCP communications, notes, or memoranda related to CEQA compliance or the project. (Pub. Res. Code § 21167.6(e)(7), (10); *Golden Door Properties v. Superior Court* (2020) 53 Cal.App.5th 733.) SDCP personnel shall save or otherwise move the e-mails to a safe location where they will be retained for the required period. Non-substantive e-mails that provide no insight into CEQA compliance or the project (e.g., the equivalent of sticky notes, calendaring faxes, or social hallway conversations), are not subject to this section and may be discarded after two (2) years.
7. SDCP personnel shall consider an e-mail's attachments when determining whether the e-mail needs to be retained. Admittedly, many e-mail attachments are simply duplicates of documents that are retained elsewhere or are draft versions of documents that might not be retained by SDCP after the final version of the document is complete. However, if the attachment to the e-mail is an official SDCP record that must be retained pursuant to applicable law or SDCP's Records Retention Policy/Schedule, SDCP staff or officials shall preserve the attachment and discard the e-mail after two (2) years. If you need help in determining whether an attachment to an e-mail message must be retained, please contact the Records Coordinator.
8. To the extent that it is practical to do so, prior to any SDCP employee's separation from SDCP, the employee shall identify any e-mail(s) subject to a retention period of longer than two (2) years. If not practical, the SDCP employee's supervisor or other designee shall identify any e-mail(s) subject to a retention period of longer than two (2) years. All other e-mails shall be deleted after the two (2) year period.
9. The following provisions provide direction regarding storing and filing of e-mails.:

- a. To aid in the effective organization of retained records, SDCP personnel may store e-mails in subfolders on their exchange e-mail server. E-mails in a subfolder shall not be subject to automatic deletion after two (2) years.
- b. SDCP personnel may also store e-mails in locations other than subfolders that appropriately retain the e-mail, including metadata.
- c. District personnel shall not use PST files to store e-mails.
- d. When permitted by applicable law, this Policy, and SDCP's Records Retention Policy/Schedule, e-mails shall be deleted after two (2) years in a timely and cost-efficient manner so as to destroy the record without permitting duplicates, either electronic or hard copies. SDCP personnel should consider e-mail servers, archives, back-up systems, shared drives amongst SDCP personnel, CDs and DVDs, USB Flash drives in storage, and external hard drives. The confidentiality of a record's contents shall be considered when deciding the level of security used in that record's destruction.
- e. To ensure maximum efficiency in the operation of the e-mail system, SDCP personnel are directed to regularly delete e-mail messages that do not pertain to SDCP business from their mailboxes. Examples of such messages are personal e-mails, e-mail advertisements/ announcements, or newsletters received via e-mail.

### **Electronic Mail Tampering**

Email messages received should not be altered without the sender's permission; nor should electronic mail be altered and forwarded to another user and/or unauthorized attachments be placed on another's email message.

### **SDCP Listservs**

- 1. Listservs hosted on SDCP computers, but not operated by SDCP, are to be subscribed to for SDCP business purposes only, because the amount of traffic generated by Listservs can significantly impact the email system.
- 2. Listservs hosted on SDCP servers may be created and subscribed to by SDCP personnel, subject to approval by the appropriate Executive Staff member. Appropriate postings to these SDCP Listservs include: employee recognition announcements; announcement of birth/adoption of a child; announcement of death in family; announcement of hospitalization/severe illness; announcement of employee retirement; and news from staff of various SDCP divisions or departments. However, SDCP personnel shall not share or disclose others' personal information unless expressly permitted by SDCP's legal counsel or unless required by law.

## **8.0 INTERNET**

1. This Policy applies to all uses of the Internet, but does not supersede any state or federal laws or SDCP policies regarding confidentiality, information dissemination, or standards of conduct.
2. The Internet is to be used to further the SDCP's mission, to provide effective service of the highest quality to SDCP's customers and staff, and to support other direct job-related purposes. Supervisors should work with SDCP personnel to determine the appropriateness of using the Internet for professional activities and career development. The various modes of Internet/Intranet access are SDCP resources and are provided as business tools to employees who may use them for research, professional development, and work-related communications.
3. While accessing the Internet, SDCP personnel should conduct themselves appropriately, exercise good judgment, and behave with common courtesy.
4. SDCP personnel are individually liable for any and all damages incurred as a result of violating SDCP security policy, copyright, and licensing agreements.
5. All SDCP policies and procedures apply to the conduct of SDCP personnel on the Internet, especially, but not exclusively, relating to: intellectual property, confidentiality, SDCP information dissemination, standards of conduct, misuse of SDCP resources, anti-harassment, and information and data security.
6. Brief and occasional personal use of the electronic mail system or the Internet is acceptable as long as it is not excessive, inappropriate or violate any applicable laws or SDCP policies, occurs during personal time (lunch or other breaks), and does not result in expense to the SDCP.
7. If SDCP personnel are provided hotspots to access the Internet, SDCP is not responsible for any ancillary charges incurred by SDCP personnel. Further, SDCP reserves the right to recover any unanticipated costs arising from SDCP personnel using an SDCP-owned hotspot.
8. In using SDCP-provided Internet access, all users must scan for viruses all files that are downloaded from the Internet and comply with license agreements and policies of networks and on-line services accessible via the Internet. Users shall contact the IT department immediately after a user clicks on any type of virus that user believes may be harmful to SDCP.
9. SDCP personnel and other users are specifically prohibited from using SDCP-provided Internet access:

- a. In a manner or for any purpose that violates a federal, State, or local law, regulation, or ordinance or resolution;
  - b. To access or distribute indecent or obscene material or child pornography (see 18 U.S.C. § 2252);
  - c. In a manner that interferes with or disrupts the SDCP Network, services, or equipment;
  - d. To intentionally seek out information, obtain copies or modify files or other data that are private, confidential or not open to public inspection, unless specifically authorized to do so by the file owner;
  - e. To copy software without determining that permission to do so has been granted by the file owner;
  - f. To represent oneself electronically as another, unless specific permission to do so has been granted; and
  - g. To access a website or location on the Internet where a fee is charged. SDCP personnel incurring such charges will bear sole responsibility for them, unless otherwise authorized by the SDCP.
10. Violation of these policies and/or state and federal laws can lead to disciplinary action, up to and including dismissal and possible criminal prosecution, as described in further detail under the "Violations" Section of this Policy.

## **9.0 SOFTWARE**

SDCP has licensed the use of certain commercial software application programs for business purposes. Third parties retain the ownership and distribution rights to such software. No member of SDCP personnel may create, use, or distribute copies of such software in a manner that is not in compliance with the license agreements for the software. Additionally, no software should be downloaded, installed, or otherwise applied to SDCP computer resources without prior approval from the IT department.

### **Valid Software Registration or Licensing**

Each piece of proprietary software (i.e., Word, Excel, etc.) operating on an SDCP computer must have valid registration (individually for stand-alone personal computers) or must be covered by users' license (if connected to a local area network). Proprietary software and associated documentation are subject to copyright laws and licensing agreements, and are not to be reproduced unless authorized under a licensing agreement. Appropriate documentation to substantiate the legitimacy of the software is necessary. Employees will not use "unauthorized" software on SDCP computer resources.

## **Downloads**

It is illegal under federal law to download copies of copyrighted music, games, or videos, using any copying scheme or media format. Downloading of copyrighted, protected materials or software is strictly prohibited. Additionally, downloading of files, software or other items from email or the internet from unknown sources is to be avoided at all costs. Users should contact the IT department if there is any doubt about a download or its source.

## **10.0 INFORMATION SECURITY**

### **Internet/Intranet Security**

1. SDCP personnel are responsible for respecting and maintaining the security of SDCP Network and other electronic resources.
2. For cloud storage, SDCP authorizes SDCP personnel to use OneDrive a file hosting service and synchronization service operated by Microsoft as well as Azure, a comprehensive cloud hosting service.
3. SDCP personnel shall only use software and hardware that has been authorized for use by SDCP.
4. Use of the SDCP Network or technology to obtain unauthorized information, attempt to access information protected by privacy laws, or impersonate other users is strictly prohibited.
5. Do not try to bypass security settings and filters, including through the use of proxy servers.
6. Do not install or use illegal software or files, including unauthorized software or apps, on any SDCP-issued electronic devices.
7. All electronic communications or records created, sent, received, deleted, or stored using the SDCP Network, using an SDCP-owned device, or on a private device or account but within the scope of SDCP employment, are the property of SDCP and may only be accessed by authorized SDCP personnel. SDCP personnel who are separating from employment have no rights to the contents such communications or records.
8. SDCP has taken the necessary actions to assure the safety and security of our network. Any employee who attempts to disable, defeat, or circumvent SDCP security measures is subject to disciplinary action, up to and including dismissal.

## **Passwords**

1. A confidential password does not guarantee privacy, nor does deletion mean the SDCP cannot retrieve past communications, nor does it suggest that voice mail or email are the property right of the employee. Please refer back to the section of this Policy on "Monitoring."
2. Passwords and codes will help secure information, but they do not ensure privacy and security. Passwords should be changed periodically to ensure security. Under no circumstances should users share their passwords with anyone else.

## **11.0 LEGAL**

If any paragraph, sentence, clause or phrase of this Policy is held unlawful or invalid for any reason, said unlawfulness or invalidity shall not affect the remaining portions of this Policy. Additionally, due to the ever changing facets of the realm of Information Technology and its related areas, this Policy shall not be construed to be all inclusive. Revisions to this Policy shall be made periodically in an effort to keep up with changing technology.

## **12.0 VIOLATIONS**

1. Any SDCP personnel found to have violated this Policy may have his/her access to the SDCP Network limited or revoked completely. Furthermore, unlawful use may result in referral for criminal prosecution.
2. Additionally, failure of SDCP personnel to comply with this Policy, following its adoption, may result in one or more of the following:
  - a. Disciplinary action, up to and including termination (for SDCP employees);
  - b. Breach of contract or termination of contract (for SDCP consultants); and
  - c. Revocation of electronic device privileges.

### **Information Technology and Security Policy Acknowledgment**

I hereby acknowledge that I have received a copy of the San Diego Community Power Information Technology and Security and that I understand that I am to read and comply with its contents. I am aware that failure to comply with this policy may lead to disciplinary action, up to and including termination. I further understand that if I have any questions about the policy or its contents, I am to discuss them with my supervisor or SDCP's Human Resources representative.

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Print Employee Name

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Employee Signature

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Date



## SAN DIEGO COMMUNITY POWER Staff Report – Item 9

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To: San Diego Community Power Board of Directors

From: Lucas Utouh, Director of Data Analytics and Account Services

Via: Bill Carnahan, Interim Chief Executive Officer

Subject: Approval of Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy

Date: March 24<sup>th</sup>, 2022

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### RECOMMENDATION

Approve the enclosed Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy.

### BACKGROUND

The proposed San Diego Community Power (“SDCP”) Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy establishes policies and procedures to ensure the privacy and security of AMI data and customer usage information for San Diego Community Power (SDCP).

### ANALYSIS AND DISCUSSION

Decision 12-08-045, issued by the California Public Utilities Commission (Commission) on August 31, 2012, requires certain privacy protections for the energy usage data of customers of Community Choice Aggregators, including SDCP. This policy provides those protections. This policy adopts rules to protect the privacy and security of customer data generated by Smart Meters with regards to the usage of electricity. The rules that will be adopted implement the protections ordered by Senate Bill (SB) 1476 (Chapter 497, Statutes of 2010). The proposed rules to be adopted are also consistent with other sections of the Public Utilities Code and past Commission privacy policies. The proposed privacy and security rules apply to SDCP, the companies that assist SDCP in operations and other companies that, after authorization by a customer or by the action of the Commission, gain access to the customer’s usage data directly or indirectly from SDG&E on behalf of SDCP. In addition to the proposed rules protecting the privacy and security of usage data, the policy will aid SDCP in governing access to customer usage by authorized third parties.



## **FISCAL IMPACT**

N/A

## **ATTACHMENTS**

Attachment A: Proposed Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy





## San Diego Community Power

### Advanced Metering Infrastructure (AMI) Data Security and Privacy Policy

#### 1.0 **Purpose**

To ensure the privacy and security of AMI data and customer usage information for San Diego Community Power (SDCP).

#### 2.0 **Definition of Terms**

##### 2.1 **California Public Utilities Commission (CPUC):**

A regulatory agency that regulates privately owned public utilities in the state of California, including electric power, telecommunications, natural gas and water companies.

##### 2.2 **Aggregate Usage Data:**

Customers' energy usage and usage-related data (such as billing, program participation, or account information) that has been summed, averaged, or otherwise processed such that the result does not contain information at the level of individual customers and an individual customer cannot reasonably be re-identified.

##### 2.3 **Covered Information:**

Any customer energy usage information obtained through the use of the capabilities of Advanced Metering Infrastructure (AMI) when associated with any information that can reasonably be used to identify an individual, family, household or residence, or non-residential customer, except that covered information does not include usage information from which identifying information has been removed or information provided to the CPUC pursuant to its oversight responsibilities.

##### 2.4 **Primary Purposes:**

The "Primary Purposes" for the collection of storage, use or disclosure of covered information are to:

- Provide or bill for electrical power,
- Provide for system, grid or operational needs,
- Provide services as required by state, or federal laws or as specifically authorized by an order of the Commission, or
- Plan, implement, or evaluate demand response, energy management, or energy efficiency programs under contract with a Community Choice Aggregator or an Electrical Services Provider (when providing service to residential or small commercial customers), under contract with the Commission, or as part of a Commission authorized program conducted by a governmental entity under the supervision of the Commission.

##### 2.5 **Secondary Purpose:**

Secondary Purpose means any purpose for the collection, storage, use, or disclosure of covered information that is not a primary purpose.

#### 3.0 **Policy**

3.1 SDCP shall implement reasonable administrative, technical, and physical safeguards to protect covered information from unauthorized access, destruction, use, modification or disclosure.

3.1 SDCP and authorized third parties shall provide reasonable training to all employees and contractors who use, store, or process covered information.

- 3.3 SDCP shall collect, store, use, and disclose only as much covered information as is reasonably necessary or as authorized by the Commission to accomplish a specific primary purpose.

## **4.0 Procedure**

### **4.1 Transparency and Notification**

- A. SDCP shall provide customers with meaningful, clear, accurate, specific, and comprehensive notice regarding the accessing, collection, storage, use, and disclosure of AMI data: provided, however, that SDCP is using AMI data solely for a primary purpose on behalf of and under contract with utilities it is not required to provide notice separate from that provided by the utility.
- B. SDCP shall provide written notice when confirming a new customer account and at least once a year. The notice shall inform customers how they may obtain a copy of SDCP's notice regarding the accessing, collection, storage, use, and disclosure of AMI data and shall provide a conspicuous link to the notice on the home page of their website and include a link to their notice in all electronic correspondence to customers.
1. The notice shall be labeled Notice of Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information and shall be written in easily understandable language and be no longer than is necessary to convey the requisite information.
  2. The notice and the posted privacy policy shall state clearly the identity of SDCP, the effective date of the notice or posted privacy policy, SDCP's process for altering the notice or posted privacy policy including how the customer will be informed of any alterations and where prior versions will be made available to customers, and the title and contact information including email address, postal address, and telephone number of an official at SDCP who can assist the customer with privacy questions, concerns, or complaints regarding the collection, storage, use, or distribution of covered information.
  3. The notice shall provide an explicit description of each category of covered information collected, used, stored, or disclosed, and for each category of covered information, the reasonably specific purposes for which it will be collected, stored, used, or disclosed, each category of covered information that is disclosed to third parties, and, for each such category, a description of the means by which customers may view, inquire about, or dispute their covered information, and the means, if any, by which customers may limit the collection, use, storage, or disclosure of covered information and the consequences to customers if they exercise such limits.
- C. SDCP shall provide to customers upon request convenient and secure access to their covered information in an easily readable format that is at a level no less detailed than that at which the covered entity discloses the data to third parties.

### **4.2 Use, Disclosure, and Customer Authorization**

- A. SDCP may disclose covered information without customer consent to a third party acting under contract with the Commission for the purpose of providing services authorized pursuant to an order or resolution of the Commission or to the governmental entity for the purpose of providing energy efficiency or energy efficiency evaluation services pursuant to an order or resolution of the Commission.

- B. SDCP may disclose covered information to a third party without customer consent when explicitly ordered to do so by the Commission, or for a primary purpose being carried out under contract with an on behalf of SDCP provided that the covered entity disclosing the data shall, by contract, require the third party to agree to access, collect, store, use, and disclose the covered information under policies, practices, and notification requirements no less protective than those under which the covered entity itself operates.
- C. Any entity that receives covered information derived initially from SDCP may disclose such covered information to another entity without customer consent for a primary purpose, provided that the entity disclosing the covered information shall, by contract, require the entity receiving the covered information to use the covered information only for such primary purpose and to agree to store, use, and disclose the covered information under policies, practices, and notification requirements no less protective than those under which the covered entity from which the covered information was initially derived operates.
- D. When SDCP discloses covered information to a third party under this subsection it shall specify by contract, unless otherwise ordered by the Commission, that it shall be considered a material breach if the third party engages in a pattern or practice of accessing, storing, using, or disclosing the covered information in violation of the third party's contractual obligations to handle the covered information under policies no less protective than those under which the covered entity from which the covered information initially derived operates.
- E. If SDCP finds that a third party contractor to which it disclosed covered information is engaged in a pattern or practice of accessing, storing, using, or disclosing covered information in violation of the third party's contractual obligations related to handling covered information, SDCP shall promptly cease disclosing covered information to such third party.
- F. Separate authorization by each customer must be obtained for all disclosures of covered information except as otherwise provided for herein.
- G. SDCP shall permit customers to cancel authorization for any secondary purpose of their covered information by the same mechanism initially used to grant authorization.
- H. SDCP shall permit the use of aggregated usage data that is removed of all personally-identifiable information to be used for analysis, reporting, or program management provided that the release of that data does not disclose or reveal specific customer information because of the size of the group, rate classification, or nature of the information.



## SAN DIEGO COMMUNITY POWER Staff Report – Item 10

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To: San Diego Community Power Board of Directors  
From: Sebastian Sarria, Program and Policy Manager  
Via: Cody Hooven, Chief Operating Officer  
Subject: Update on Supplier Diversity Overview and 2021 Report  
Date: March 24, 2022

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### RECOMMENDATION

Receive an overview of the California Public Utilities Commission General order 156 requirements and Supplier Diversity Program, and review of SDCP's first report results, planned activities, and challenges.

### BACKGROUND

The purpose of CPUC General Order 156 (GO 156), originally adopted in April 1988, is to promote and increase contracting opportunities for diverse suppliers with California utilities. GO 156 defines the Utility Supplier Diversity Program, its definitions, objectives, and reporting requirements. GO 156 requires utilities to “submit annual detailed and verifiable plans for increasing women-owned, minority-owned, disabled veteran-owned, and LGBT-owned business enterprises’ (WMDVLGBTBEs) procurement in all categories.”

Until 2021, Community Choice Aggregators (CCAs) were not required to submit reports. This changed when Senate Bill 255 (2019, Bradford) passed, therefore requiring CCAs with “gross annual revenues exceeding \$15 million to annually submit a detailed and verifiable plan to the commission” on their procurements with certified diverse suppliers per the CPUC’s Supplier Clearinghouse. In 2021, SDCP was not required to submit a 2020 report because it did not meet the revenue threshold for that calendar year. This 2022, SDCP did submit a 2021 Annual Report and 2022 Annual Plan which was due to the CPUC on March 1, 2022.

### ANALYSIS AND DISCUSSION

#### Proposition 209

As a California local government entity bound by California Proposition (Prop) 209 (1996), SDCP is prohibited from considering race, sex, color, ethnicity, or national origin in its contracting. According, and in contrast to California’s electrical corporations, SDCP does

not consider Supplier Clearinghouse certification nor eligibility in procurement decisions of any kind, nor does SDCP set supplier diversity targets or goals.

To comply with GO 156 and promote the statewide Supplier Diversity program, SDCP is approaching our Supplier Diversity activities in an innovative way that drives the program forward, while staying within the legal bounds that constrain CCAs from setting targets and expressing preference for diverse suppliers. Staff engaged with numerous other CCAs in preparation for the inaugural report to ensure alignment on reporting requirements and narrative language surrounding the Prop 209 limitations.

### 2021 Results

In calendar year 2021, SDCP made procurements from one certified supplier for a total \$30,337 out of \$2,841,948 reportable expenses under the products and services category. Under the power procurement category, there were no certified suppliers for the total reportable power spend of \$26,778,369. It is important to note that given CCAs' total procurement landscapes being heavily weighted to power procurement and supplier selection not considering diverse supplier status, SDCP's diverse supplier spend is only a small portion of annual net procurement.

SDCP did have vendors certified as small business and located in San Diego County under the Department of General Services, but that designation is not currently recognized by the CPUC Supplier Clearinghouse and counted towards the goals of the Supplier Diversity program.

### 2022 Plan and Next Steps

SDCP's 2022 Annual Plan highlights continued commitment to pursuing supplier diversity within the limits of Prop 209. Given the agency's early nature and focus on hiring staff as well as establishing a strong financial footing, SDCP will look to create a Supplier Diversity program that aims to implement the goals of a diverse and inclusive workforce. SDCP's report will be made public on the CPUC Utility Supplier Diversity Program website ([www.cpuc.ca.gov/supplierdiversity](http://www.cpuc.ca.gov/supplierdiversity)) for full details.

Staff will also return to the Board over the coming months to further discuss local spend in the context of the budget. The CPUC is also looking to made changes to GO 156 which will impact CCAs. Staff will consider these possible changes moving forward to ensure compliance under SB 255.

### **FISCAL IMPACT**

None.

### **ATTACHMENTS**

None.





## **SAN DIEGO COMMUNITY POWER**

### **Staff Report – Item 11**

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To: San Diego Community Power Board of Directors

From: Laura Fernandez, Director of Regulatory and Legislative Affairs

Via: Cody Hooven, Chief Operating Officer

Subject: Adopt Legislative Policy Platform

Date: March 24, 2022

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### **RECOMMENDATIONS**

Adopt Legislative Policy Platform

### **BACKGROUND**

SDCP's Legislative Policy Platform (Platform) serves as a guide to the SDCP Board of Directors and SDCP staff in their advocacy efforts and engagement on policy matters of interest to SDCP. The Platform allows both Board members and staff to pursue actions at the local, regional, state and federal legislative levels in a consistent manner and with the understanding that they are pursuing actions in the best interest of the organization and its mission, its member agencies, and its customers. The Platform enables the organization to move swiftly to respond to issues before Legislature and Executive Branch agencies including California Public Utilities Commission (CPUC), the California Energy Commission (CEC), California Independent System Operator (CAISO), and the California Air Resources Board (CARB) so that SDCP's views can be heard on important matters in a timely fashion. This Platform is applicable to statewide referenda, grant funding opportunities, and local ballot initiatives. The Platform provides guidance to the Chief Executive Officer on support or oppose positions that should be taken on legislative matters identified by the SDCP Director of Regulatory and Legislative Affairs and the California Community Choice Association (CalCCA) Board of Directors.

### **ANALYSIS AND DISCUSSION**

SDCP has three major legislative priorities:

1. Accelerating Deep Decarbonization, including electrification of buildings and the transportation sector;
2. Promoting Local Development, and
3. Stabilizing Community Choice.



SDCP support of legislation will be contingent upon that legislation adhering to these legislative priorities as well as SDCP's organizational goals and priorities. Moreover, SDCP supports any and all policies that will preserve or enhance the ability of SDCP to promote these priorities at the local level.

The entire legislative policy platform is attached to this staff report.

### **COMMITTEE REVIEW**

This item was presented to the Community Advisory Committee on March 11, 2022.

### **FISCAL IMPACT**

N/A

### **ATTACHMENTS**

Attachment A: San Diego Community Power Legislative Platform





## **San Diego Community Power Legislative Platform**

### **Overview and Purpose**

San Diego Community Power's (SDCP) Legislative Policy Platform (Platform) serves as a guide to the SDCP Board of Directors and SDCP staff in their advocacy efforts and engagement on policy matters of interest to SDCP. The Platform allows both Board members and staff to pursue actions at the local, regional, state and federal legislative levels in a consistent manner and with the understanding that they are pursuing actions in the best interest of the organization and its mission, its member agencies, and its customers. The Platform enables the organization to move swiftly to respond to issues before Legislature and Executive Branch agencies including California Public Utilities Commission (CPUC), the California Energy Commission (CEC), California Independent System Operator (CAISO), and the California Air Resources Board (CARB) so that SDCP's views can be heard on important matters in a timely fashion. This Platform is applicable to statewide referenda, grant funding opportunities, and local ballot initiatives. The Platform provides guidance to the Chief Executive Officer on support or oppose positions that should be taken on legislative matters identified by the SDCP Director of Regulatory and Legislative Affairs and the California Community Choice Association (CalCCA) Board of Directors.

The Platform outlines the legislative priorities and stances of SDCP with the intent to inform customers, representatives, and policymakers on the myriad of public policies that intersect with SDCP's priorities, programs, and services.

SDCP has three major legislative priorities:

1. Accelerating Deep Decarbonization, including electrification of buildings and the transportation sector;
2. Promoting Local Development, and
3. Stabilizing Community Choice.

SDCP support of legislation will be contingent upon that legislation adhering to these legislative priorities as well as SDCP's organizational goals and priorities. Moreover, SDCP supports any and all policies that will preserve or enhance the ability of SDCP to promote these priorities at the local level.

Any questions regarding this Platform can be directed to Laura Fernandez, Director of Regulatory and Legislative Affairs, at [lfernandez@sdcommunitypower.org](mailto:lfernandez@sdcommunitypower.org).

### **General Legislative Principles**

SDCP has three general legislative principles. These priorities serve as the foundation for all actions SDCP will take, including the lobbying for policies that promote those same guiding priorities. Public policy encompasses a myriad of subject and topic areas. However, as these policies intersect at the local level, they have the ability to impact SDCP revenues, programs, and/or administrative discretion and control. SDCP will support policies that accelerate deep decarbonization, promote local development, stabilize community choice, or any

combination thereof. If a given policy does not meet these criteria, SDCP will oppose, support with amendments, or in some cases take no stance on that policy or legislation. The General Legislative Principles for SDCP are:

### **Accelerating Deep Decarbonization**

- Support the creation or expansion of federal, state, and local policies, programs and funding that enable SDCP to provide 100% renewable energy by 2035 or sooner to customers within its service territory as well as contribute to the State's efforts to reduce greenhouse gas emissions, including through building electrification and transportation electrification
- Oppose any legislation, policies, programs, referenda, unfunded mandates and budgets that would have an adverse impact on SDCP's ability to advance decarbonization through its procurement, programs, projects, and services.

### **Promoting Local Development**

- Support any legislation, policy, funding, referenda, and budgets that enhance community choice energy providers' ability to invest in local clean energy, distributed energy resources, grid resiliency, zero-emission transportation, all while promoting equity in the communities that it serves.
- Oppose any legislation, policy, funding, referenda, and budgets that limit or undermine SDCP's ability to invest in local clean energy, distributed energy resources, zero-emission transportation, all while promoting equity in the communities that it serves.

### **Stabilizing Community Choice**

- Support any legislation, policies, funding, referenda, and budgets that maintain or improve the stability of community choice energy providers by ensuring regulatory structure is equitable and enables Community Choice Aggregators (CCAs) to meet their mission and goals. Maintaining local decision-making authority, including rate-setting authority and procurement of energy, is a key pillar for this stability.
- Oppose any legislation, policies, funding, referenda, and budgets that undermine or circumvent CCAs and impede the ability of SDCP to achieve its mission and goals or its value proposition.

The list of policy positions below is by no means exhaustive. In addition to the general legislative priorities, SDCP takes the following more specific public policy positions:

#### **I. Governance and Authority**

- a. Oppose legislation that limits the local decision-making authority for CCAs, including rate-setting authority and procurement of energy and capacity to serve their customers.
- b. Oppose legislation that limits SDCP's ability to effectively serve its customers.

- c. Support legislation that makes it easier for other cities and counties that are not served by a publicly owned utility to form a CCA, become members of SDCP or other CCAs, and oppose legislation that restricts that ability.

## **II. Deep Decarbonization**

- a. Advocate for and support legislative efforts to accelerate deep decarbonization of the energy sector, transportation and the built environment.
- b. Advocate for and support legislative efforts to support and expand access to transportation and building electrification.
- c. Advocate for and support efforts to ensure flexibility in program design so that local data and local needs directly inform program offerings.
- d. Support state funding for electric vehicle infrastructure grant programs.
- e. Advocate for and support legislative efforts to provide incentives to support communities of concern achieving deep decarbonization.

## **III. Environmental Justice**

- a. Support legislation that supports the ability of communities of concern in the SDCP service area to have affordable, reliable and clean energy.
- b. Support legislation that strengthens the resilience of vulnerable communities to the impacts of climate change.
- c. Support legislation that enables all communities, including emerging and historically marginalized communities in California, to participate in deep decarbonization efforts.
- d. Support legislation and initiatives that would reduce local air pollution, reduce other negative local impacts associated with energy production, and boost adoption of distributed energy resources within communities of concern.
- e. Oppose legislation and initiatives that have the potential to disproportionately and negatively impact communities of concern.

## **IV. Environmental Sustainability**

- a. Support legislation and initiatives that increase funding for the creation of sustainable and stable energy supply infrastructure.
- b. Support legislation and initiatives that encourage the conservation of energy resources as well as the development of dynamic load-shifting capabilities.
- c. Support legislation and funding for renewable and advanced energy technology that increase efficient consumption.
- d. Support legislation and funding for pilot energy and resource efficiency programs.
- e. Support legislation and initiatives with the goal of reducing and mitigating the effects of climate change and building local resiliency.

## **V. Investor-Owned Utility (IOU) Charges and Exit Fees - Power Charge Indifference Adjustment (PCIA)**

- a. Support efforts that seek to eliminate exit fees including the PCIA or wind down exit fees within a reasonable time frame.
- b. Support efforts to minimize the cost of the PCIA generally and minimize its impact on SDCP's rates.

- c. Support CalCCA efforts to increase the transparency of IOU electricity contracts that provide the basis for PCIA charges.
- d. Support legislation that would bring stability to the PCIA and/or provide new mechanisms for CCAs to securitize PCIA charges.
- e. Support legislation that advances ratepayer equity.
- f. Oppose legislation that would increase or expand exit fees on CCA customers.

**VI. Resource Adequacy**

- a. Support legislation by CalCCA to implement the recommendations from Working Group 3 via statute.
- b. Oppose legislation that would supplant CCAs' procurement authority for Resource Adequacy.
- c. Support reform of the CPUC Resource Adequacy program to allow for stability in the resource adequacy value of existing resources.
- d. Advocate for and support efforts to remove barriers to demand response, microgrids and behind the meter resources to provide Resource Adequacy.

**VII. Nonbypassable Charges**

- a. Oppose legislation that restricts or limits SDCP's ability to procure its own energy products to meet state policy goals.
- b. Support legislation that promotes a level playing field between CCAs and other market participants.
- c. Support legislation that enhances the flexibility of CCA programs to support statewide procurement policy and develop and expand programs, local options, and rate design to support SDCP's community and customers.

**VIII. Community Resilience**

- a. Advocate for and support funding for programs implemented by CCAs and their member jurisdictions to increase community resilience to wildfires, public safety power shutoff (PSPS) events and other potential service disruptions.
- b. Support legislation that reduces barriers to microgrid development by CCAs.
- c. Oppose legislation that would enable IOUs to be the only developer of microgrids.
- d. Support legislation that increases development of community-level resources and distributed energy resources that increase resilience and reduce the need for new transmission and distribution infrastructure.

**IX. Local Economic Development**

- a. Support legislation that is consistent with SDCP's commitment to an inclusive and sustainable workforce.
- b. Support legislation that enhances opportunities for CCAs to promote local economic development through locally designed programs that meet the unique needs of their member agencies, communities, and customers.
- c. Support efforts to enhance development of local and regional sources of renewable energy.
- d. Support legislation that enables CCAs to collaborate with their member jurisdictions on local energy resources and projects to advance environmental objectives.

- e. Advocate for and support efforts to direct federal economic stimulus/recovery funding to CCAs to deliver local energy resources and projects, as appropriate.

**X. California Energy Market Structure**

- a. Oppose legislation that expands direct access or the ability or economic incentives for electric service providers to selectively recruit CCA or IOU customers.
- b. Support legislation that would create renewable content and environmental standards for electric service providers to match the products offered by CCAs.
- c. Support legislation that changes California's market structures towards innovative models that reduce costs of energy service and support the expansion of carbon-free resources.
- d. Support legislation that advocates for equitable and timely data access/sharing between the IOUs, CCAs and other LSEs to support accurate and timely load forecasts, which aid in overall statewide grid reliability and resiliency efforts.

**XI. Finance**

- a. Support legislation that enhances the financial standing of CCAs and their ability to receive a positive credit rating.
- b. Oppose legislation that reduces or removes the tax-exempt status of municipal bonds.
- c. Oppose any legislation that would divert CCA revenues to the State or other governmental entities.

**XII. Educational, Neighborhood and Social Services**

- a. Support legislation that aids or helps to fund SDCP to provide energy support services, education, and opportunities for reducing energy costs to people who are low-income, seniors, veterans, and/or people with disabilities.
- b. Support legislation and initiatives that increase funding for energy efficiency, demand response, solar plus storage, and transportation electrification programs, and energy literacy services.



## SAN DIEGO COMMUNITY POWER Staff Report – Item 12

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To: San Diego Community Power Board of Directors

From: Ryan Baron, General Counsel  
Nicholaus Norvell, Assistant General Counsel

Subject: Appointment of Chief Executive Officer and Approval of Employment Agreement

Date: March 24, 2022

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### RECOMMENDATION

Recommendation: Adopt Resolution appointing a Chief Executive Officer and approving execution of an Employment Agreement in substantially the form attached hereto or presented at the meeting, with non-substantive revisions approved by the Chair and reviewed and approved as to form by General Counsel.

### BACKGROUND

During its March 4 and March 24 closed session meetings, the Board of Directors discussed the appointment of a Chief Executive Officer following a competitive recruitment process. The individual proposed for appointment may be announced following the special meeting / closed session occurring on March 24, 2022 starting at 4:00 p.m. If the Board makes such a decision, it will consider the approval of an employment agreement for the Chief Executive Officer during open session of the regular meeting.

### ANALYSIS AND DISCUSSION

The proposed CEO Employment Agreement was developed after evaluation of similar contracts and a review of compensation for municipal, CCA, and public power executives in the Southern California area and the state. Based on the decisions made by the Board in closed session, information on salary and benefits will be summarized verbally at the meeting in compliance with the Brown Act.

### FISCAL IMPACT

There is no impact to the current budget for Fiscal Year 21-22, as CEO salary and benefits were anticipated to be incurred during this fiscal year.

### ATTACHMENTS

Attachment A: Resolution

Attachment B: CEO Employment Agreement

**RESOLUTION NO. 2022-05**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF SAN DIEGO COMMUNITY POWER  
APPOINTING A CHIEF EXECUTIVE OFFICER AND  
AUTHORIZING EXECUTION OF AN EMPLOYMENT  
AGREEMENT**

A. The Board of Directors of San Diego Community Power ("SDCP") desires to appoint \_\_\_\_\_ as Chief Executive Officer and to authorize the execution of an Employment Agreement with \_\_\_\_\_.

B. \_\_\_\_\_ desires to serve as Chief Executive Officer of SDGP starting on \_\_\_\_\_.

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

1. \_\_\_\_\_ is appointed as the Chief Executive Officer pursuant to the Employment Agreement.

2. The Board Chair is authorized to execute the Employment Agreement with \_\_\_\_\_ in substantially the form attached hereto or presented at the meeting, with non-substantive revisions approved by the Chair and reviewed and approved as to form by the General Counsel.

**PASSED AND ADOPTED** at a meeting of the Board of Directors of San Diego Community Power held on March 24, 2022.

\_\_\_\_\_  
Joe Mosca, Chair  
San Diego Community Power

ATTEST:

\_\_\_\_\_  
Megan Wiegelman, Interim Secretary  
San Diego Community Power

## **CHIEF EXECUTIVE OFFICER EMPLOYMENT AGREEMENT**

This CHIEF EXECUTIVE OFFICER AGREEMENT ("**Agreement**") is made by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority ("**SDCP**"), and \_\_\_\_\_, an individual ("**Executive**") as of \_\_\_\_\_ ("**Effective Date**").

### **RECITALS**

A. Whereas, Section 5.5 of the *San Diego Community Power Joint Powers Agreement*, amended and restated on December 16, 2021 ("**JPA**"), requires the SDCP Board of Directors ("**Board**") to appoint a Chief Executive Officer ("**CEO**"), who shall be responsible for the day-to-day operation and management of SDCP and the Community Choice Aggregation Program;

B. Whereas, the Board desires to retain Executive as CEO to perform those duties and functions as may be specified by the JPA and to perform such other legally permissible and proper duties and functions as SDCP may from time-to-time assign; and

C. Whereas, Executive desires to accept employment by SDCP as its CEO.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

### **AGREEMENT**

SECTION 1. DUTIES OF EXECUTIVE. Executive shall assume the powers of the CEO position and perform the functions and duties specified by SDCP's Board and as provided by any such other resolutions of the Board, applicable laws, rules, regulations, orders, directives, policies, or procedures now in effect or hereafter adopted by SDCP.

- a. Full Energy and Skill. Executive shall faithfully, diligently, and to the best of Executive's abilities, perform all duties that may be required under this Agreement. Executive agrees that Executive has a duty of loyalty and a general fiduciary duty to SDCP. Executive shall devote the whole of Executive's working time, skill, experience, knowledge, ability, labor, energy, attention, and best effort exclusively to SDCP's business and affairs.
- b. No Conflict. Executive shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Executive's duties.
- c. Hours of Work. Executive is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the CEO position. Executive does not have set hours of work as Executive is expected to be available at all times. It is recognized that Executive must devote a great deal of time to the business of SDCP outside of SDCP's customary office hours, and to that end



Executive's schedule of work each day and week may vary in accordance with the work required to be performed and in accordance with any specific direction provided by the Board.

SECTION 2. EFFECTIVE PERIOD. Executive is appointed as CEO beginning on the Effective Date through \_\_\_\_\_, (the “**Effective Period**”) unless terminated earlier in accordance with Section 3, below.

- a. At Will Employment. Executive understands and agrees that employment under this Agreement is “at-will” meaning that either Executive or the Board may terminate Executive’s employment at any time, with or without cause, subject only to the provision set forth below in Section 3.
- b. No Property Interest. Executive understands and agrees that Executive has no constitutionally-protected property or other interest in Executive's employment as CEO. Executive understands and agrees that Executive works at the will and pleasure of SDCP’s Board, and that Executive may be terminated, or asked to resign, at any time, with or without cause, by a majority vote of its members.

SECTION 3. TERMINATION.

- a. By SDCP—Not “For Cause”.

At any time, SDCP may terminate Executive’s employment without Cause (as defined in Section 3(b) below) by providing Executive written notice of termination. In the event Executive is terminated without Cause, Executive shall be entitled to an amount equal to Executive’s base salary for six (6) months conditioned upon Executive execution of a settlement agreement (i) waiving any and all claims Executive may have against SDCP and/or its officers or directors; (ii) including a release of all known or unknown claims related to or arising out of Executive’s employment with SDCP, including the termination of said employment; (iii) a Civil Code section 1542 waiver; and (iv) any other provisions, clauses, terms and/or conditions, deemed appropriate by the Board at the time of the termination of Executive’s employment, under the facts and circumstances of such termination. In order for Executive to be eligible for the severance payment, the release agreement must be finalized no later than twenty-one (21) days after the effective date of Executive’s termination or the date upon which the release agreement is presented to Executive, whichever is later. Thereafter, all of SDCP’s obligations under this Agreement shall cease. SDCP may dismiss Executive as provided in this Section 3 notwithstanding anything to the contrary contained in or arising from any statements, policies, or practices of SDCP relating to the employment, discipline, or termination of its employees.

Notwithstanding any other provision herein, in accordance with Government Code section 53260, the cash payment that Executive may receive in the event of the termination of this Agreement, as set forth in this Section, shall not exceed an

amount equal to the monthly base salary of Executive multiplied by the number of months left on the unexpired term of this Agreement.

b. By SDCP—"For Cause".

At any time, and without prior notice, SDCP may terminate Executive for Cause. SDCP shall pay Executive all compensation then due and owing; thereafter, all of SDCP's obligations under this Agreement shall cease. Termination shall be "For Cause" if Executive: (i) acts in bad faith and to the detriment of SDCP; (ii) willfully and unequivocally refuses or fails to act in accordance with any specific direction or order of SDCP's Board; (iii) exhibits in regard to his or her employment gross unfitness or chronic unavailability for service, unsatisfactory performance, misconduct, dishonesty, habitual neglect, or incompetence; (iv) is convicted of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person resulting in incarceration; (v) commits or is accused of committing an act involving moral turpitude under federal, state, or local law (regardless of whether or not such act involving moral turpitude is a misdemeanor or felony); and/or (vi) breaches any material term of this Agreement.

c. Statutory Requirements.

In compliance with Government Code section 53243, to the extent SDCP provides: (i) paid leave to Executive pending an investigation; (ii) funds for the legal criminal defense of the Executive; and/or (iii) a cash settlement to Executive related to the termination of Executive pursuant to Section 3(b) of this Agreement, Executive shall fully reimburse SDCP for any and all amounts paid by SDCP which fall within any such categories in the event that Executive is convicted of a crime involving the abuse of their office or position.

d. By Executive.

In the event that Executive desires to terminate this Agreement during such time as SDCP desires to continue Executive in the capacity of CEO, then Executive agrees to provide SDCP with at least forty-five (45) days' written notice of said termination.

SECTION 4. COMPENSATION AND PERFORMANCE REVIEWS.

- a. Executive shall receive the base annual salary of \_\_\_\_\_ (\$\_\_\_\_\_), payable on a pro-rata basis in accordance with SDCP's payroll practices and less all applicable payroll taxes and withholdings. Executive may be eligible for an increase in salary on the anniversary of this Agreement, subject to approval by a majority of the members of the Board.
- b. SDCP shall perform a performance review of Executive at least annually. The Board or a committee of the Board of Directors shall additionally review the base compensation, bonuses, and benefits provided to Executive under this Agreement and may, in their sole discretion, adjust the same.

SECTION 5. OTHER BENEFITS. \_\_\_\_\_

SECTION 6. INDEMNIFICATION. SDCP shall indemnify and defend Executive in accordance with the California Government Claims Act. Unless otherwise specifically required by law, SDCP's Board shall determine, in its sole discretion, whether to file an appeal if a final judgment is adverse to Executive or whether to compromise and settle any such claim or suit against Executive, as well as the amount of any settlement or judgment rendered thereon. SDCP shall also pay for the cost of any fidelity or other bonds required by law for the position of CEO.

SECTION 7. OTHER TERMS AND CONDITIONS OF EMPLOYMENT. SDCP shall make any other terms and conditions of employment related to the performance of Executive, provided such terms and conditions are not inconsistent with the provisions of this Agreement or by law.

SECTION 8. NOTICES. Notices given under this Agreement shall be in writing and shall be served personally or sent by Federal Express or some equivalent private overnight delivery service. Notices shall be deemed received at the earlier of actual receipt or two (2) days following transmission to an overnight carrier.

To SDCP:                      Attn: Chair of the Board of Directors  
San Diego Community Power  
655 W. Broadway, Suite 1500  
San Diego, CA 92101

With a copy to:

Ryan M. F. Baron  
SDCP General Counsel  
c/o Best, Best & Krieger LLP  
655 W. Broadway, 15th Floor  
San Diego, CA 92101

To Executive:                      \_\_\_\_\_  
At the address on file with SDCP's  
Human Resources Department

SECTION 9. INTEGRATION. This Agreement is intended to be the final, complete, and exclusive statement of the terms of Executive's employment by SDCP. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of Executive, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of SDCP, now or in the future, apply to Executive and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

SECTION 10. AMENDMENTS; WAIVERS. This Agreement may not be amended except by an instrument in writing, signed by each of the Parties. No failure to exercise and no delay

in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.

SECTION 11. ASSIGNMENT; SUCCESSORS AND ASSIGNS. Executive agrees that he or she will not assign, sell, transfer, delegate, or otherwise dispose of, whether voluntarily or involuntarily, or by operation of law, any rights or obligations under this Agreement. Any such purported assignment, transfer, or delegation shall be null and void. Nothing in this Agreement shall prevent the consolidation of SDCP with, or its merger into, any other entity, or the sale by SDCP of all or substantially all of its assets, or the otherwise lawful assignment by SDCP of any rights or obligations under this Agreement. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, legal representatives, successors, and permitted assigns, and shall not benefit any person or entity other than those specifically enumerated in this Agreement.

SECTION 12. SEVERABILITY. If any provision of this Agreement, or its application to any person, place, or circumstance, is held by an arbitrator or a court of competent jurisdiction to be invalid, unenforceable, or void, such provision shall be enforced to the greatest extent permitted by law, and the remainder of this Agreement and such provision as applied to other persons, places, and circumstances shall remain in full force and effect.

SECTION 13. ATTORNEY'S FEES. In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

SECTION 14. GOVERNING LAW AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties agree that venue for any dispute shall be in San Diego County Superior Court.

SECTION 15. INTERPRETATION. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement.

SECTION 16. REPRESENTATION BY COUNSEL. The Parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.

SECTION 17. COUNTERPARTS AND ELECTRONIC SIGNATURES. This Agreement may be executed in triplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that this Agreement may be executed and delivered by electronic signatures and that the signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

IN WITNESS WHEREOF, SDCP and Executive have executed this Agreement on the date written below:

SAN DIEGO COMMUNITY POWER

EXECUTIVE

By: \_\_\_\_\_  
Joe Mosca  
Chair, SDCP Board of Directors

By: \_\_\_\_\_  
[Name]

APPROVED AS TO FORM:

By: \_\_\_\_\_  
SDCP General Counsel



## SAN DIEGO COMMUNITY POWER Staff Report – Item 13

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To: San Diego Community Power Board of Directors

From: Ryan Baron, General Counsel  
Nicholaus Norvell, Assistant General Counsel

Subject: Second Amendment to Temporarily Extend Interim CEO Employment Agreement

Date: March 24, 2022

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### RECOMMENDATION

Consider approval of Second Amendment to Interim CEO Employment Agreement with Bill Carnahan to temporarily extend the term until the new CEO's employment date or April 30, 2022, whichever is earlier.

### BACKGROUND

Effective October 1, 2020, SDCP appointed Bill Carnahan, a former public utility executive with CCA and public power experience, to serve as Interim CEO of SDCP while SDCP performed a critical series of municipal, commercial and residential launches and other key tasks during 2020 and 2021. When Mr. Carnahan was appointed, it was anticipated that once SDCP's CCA program successfully launched, SDCP would begin a new search for a long-term CEO.

In fall 2021, following the successful launch of SDCP's CCA program, SDCP began the process of planning for and recruiting a long-term CEO and approved a First Amendment to Mr. Carnahan's Employment Agreement temporarily extending the term of his employment until March 31, 2022, while SDCP completed the recruitment process.

SDCP anticipates that it will complete the CEO hiring process in the very near future, and possibly at this meeting. In the event that such process is not completed at this meeting, or the new CEO is unavailable to begin employment prior to April 1, the attached amendment to Mr. Carnahan's employment agreement would extend the term of his employment for up to one (1) month or until the new CEO begins employment, whichever is earlier.

### ANALYSIS AND DISCUSSION

Under the proposed Second Amendment to the Interim CEO Employment Agreement:

- Mr. Carnahan's term of employment would be extended for up to one (1) month, or until a new CEO begins employment with SDCP, whichever is earlier. Mr. Carnahan's employment would remain "at-will" and at the pleasure of the Board of Directors.

All other aspects of the Interim CEO Employment Agreement, as amended, including salary and other benefits, would remain the same.

### **FISCAL IMPACT**

There is no impact to the current budget for Fiscal Year 21-22, as CEO salary and benefits were anticipated to be incurred during this fiscal year.

### **ATTACHMENTS**

Attachment A: Second Amendment to Interim CEO Employment Agreement



SECOND AMENDMENT TO INTERIM CHIEF EXECUTIVE OFFICER EMPLOYMENT  
AGREEMENT

THIS SECOND AMENDMENT TO INTERIM CHIEF EXECUTIVE OFFICER EMPLOYMENT AGREEMENT (“**Second Amendment**”) is made by and between San Diego Community Power, a California joint powers authority (“**SDCP**”) and Bill Carnahan (“**Employee**”) as of April 1, 2022.

This Second Amendment is entered into on the basis of the following facts:

- A. SDCP and Employee entered into that certain Interim Chief Executive Officer Employment Agreement dated October 1, 2020 (“**Original Agreement**”). Pursuant to the Original Agreement, SDCP appointed Employee as Interim Chief Executive Officer to administer and run SDCP’s community choice energy program;
- B. SDCP and Employee entered into that certain First Amendment to the Original Agreement dated October 1, 2021 (“**First Amendment**”), to extend the term of Employee’s employment while SDCP conducted a competitive search for a long-term CEO;
- C. SDCP wishes to have Employee continue to temporarily perform the duties and functions of the Interim CEO until the new CEO begins employment, which is anticipated to occur in April 2022;
- D. Employee desires to continue employment by SDCP as its Interim CEO;
- E. The SDCP Board of Directors and Employee desire to amend the Original Agreement and First Amendment as set forth in this Second Amendment. The Original Agreement, together with the First Amendment and this Second Amendment, shall be known hereafter as the “**Agreement.**”



BASED UPON THE FOREGOING, SDCP AND EMPLOYEE AGREE AS FOLLOWS:

1. Term Extension.

Employee's term of employment is extended until the first date of employment of a new CEO by SDCP, or April 30, 2022, whichever is earlier. Further, as provided in the Original Agreement, Employee's employment is "at will" and subject to the terms of the Agreement and the pleasure of the SDCP Board of Directors; consistent therewith, SDCP's Board of Directors may at any time notify Employee of an earlier expiration date for the term of his employment for any other or no reason.

2. Effect of Amendment. Except as otherwise expressly set forth herein, all other terms of the Agreement shall remain in full force and effect.

SIGNATURES ON FOLLOWING PAGE

**SIGNATURE PAGE FOR SECOND AMENDMENT TO INTERIM CHIEF  
EXECUTIVE OFFICER EMPLOYMENT AGREEMENT**

Dated: \_\_\_\_\_

SAN DIEGO COMMUNITY POWER

\_\_\_\_\_  
Joe Mosca, Chair, Board of Directors

Attest:

Approved as to Form:

\_\_\_\_\_  
Megan Wiegelman, Board Secretary

\_\_\_\_\_  
Ryan Baron, General Counsel

Dated: \_\_\_\_\_

EMPLOYEE

\_\_\_\_\_  
Bill Carnahan, Employee

## SAN DIEGO COMMUNITY POWER

### Staff Report – Item 14

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To: San Diego Community Power Board of Directors

From: \_\_\_\_\_

Via: Bill Carnahan, Interim CEO

Subject: Discussion on Location and Format of Upcoming Meetings

Date: March 24, 2022

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#### RECOMMENDATION

Receive presentation, discuss meeting location and format issues, and provide direction to staff.

#### BACKGROUND

In general, the Brown Act requires in-person meetings but allows legislative body members to participate in a meeting by teleconference if the teleconference locations are identified on the agenda, the teleconference locations are open to the public to attend and participate in the meeting from those locations, and a quorum of the members is participating from within the agency's jurisdiction. Since March 2020, these standard Brown Act teleconferencing requirements have been waived or modified by the Governor's Executive Orders or AB 361 (2021). This has allowed public agencies, including SDCP, to hold fully or partially virtual meetings without compliance with the above teleconferencing requirements.

AB 361 allows for public agencies to hold fully or partially virtual meetings under certain circumstances. Specifically, public agencies may hold fully or partially virtual meetings if there is a Governor-proclaimed state of emergency and one of two other criteria listed below exists:

1. State or local officials have imposed or recommended measures to promote social distancing; or
2. The legislative body determines that requiring a meeting in person would present an imminent risk to the health and safety of attendees.

In addition, public agencies using AB 361 to hold virtual meetings must make certain findings every thirty (30) days in order to continue doing so.

### **ANALYSIS AND DISCUSSION**

With the current reduction in COVID-19 cases, and the potential desire by the Board to resume some fully or partially in-person meetings, the purpose of this agenda item is to allow the Board to discuss various options for holding its upcoming meetings, as well as potential locations if there will be an in-person component.

In general, the options for future SDCP meetings include the following:

1. Continuing to hold fully virtual meetings, where all Board members and members of the public participate remotely. This option would become unavailable if the conditions required to hold remote meetings under AB 361 can no longer be met.
2. Holding hybrid virtual meetings that allow Board members and staff the option of meeting in person, while broadcasting the meetings via Zoom and allowing members of the public to participate remotely. Like the option above, availability of this option could change based a change in the conditions required to satisfy AB 361.
3. Holding hybrid virtual meetings where Board members, staff, *and* members of the public would have the option of attending in person or remotely. Like the options above, availability of this option could change based on a change in the conditions required to satisfy AB 361. Further, due to SDCP's limited options for meeting spaces, the ability to use this alternative may be difficult at this time, and staff would need ample time to secure a meeting space, if possible.
4. Holding fully in-person meetings, with no option for Board members, staff, or members of the public to participate remotely (except pursuant to the standard Brown Act teleconferencing rules). Like the option above, due to SDCP's limited options for meeting spaces, the ability to use this alternative may be difficult at this time, and staff would need ample time to secure a meeting space, if possible.

Staff will provide information and considerations related to potential meeting locations as part of its presentation.

Staff requests that the Board of Directors discuss and provide direction on how it would prefer for SDCP to hold upcoming Board, committee, and Community Advisory Committee meetings, including timing and potential locations if there will be an in-person component for the Board and/or members of the public.

### **FISCAL IMPACT**

None.

### **ATTACHMENTS**

None.







## SAN DIEGO COMMUNITY POWER Staff Report – Item 15

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To: San Diego Community Power Board of Directors  
From: Byron Vosburg, Director of Power Services  
Via: Bill Carnahan, Interim Chief Executive Officer  
Subject: SDCP Energy Proposal Evaluation Criteria  
Date: March 24, 2022

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### RECOMMENDATION

Adopt the proposed Energy Proposal Evaluation Criteria for future evaluation of long-term, wholesale contracts for purchase of renewable energy and capacity.

### BACKGROUND

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.

SDCP will pursue long-term contracts for renewable energy and carbon-free resource adequacy supply predominantly via solicitations processes, similar to the 2020 Long-term Renewable Energy Request for Offers (2020 RPS RFO) and the 2021 Request for Information for Local Renewable Energy and Energy Storage (2021 Local RFI). In each of these solicitations, SDCP Staff and the Ad-Hoc Contracts Committee (AHCC) have used an Interim Evaluation Criteria for purposes of evaluating and scoring each potential project or transaction. For purposes of consistency and transparency, Staff now propose to formally adopt the proposed Energy Proposal Evaluation Criteria, which is modeled

after and very similar to the Interim Evaluation Criteria, for purposes of future evaluation of long-term, wholesale contracts for purchase of renewable energy and capacity.

During each solicitation for long-term renewable energy, upon receipt of submissions or proposals from the participating project developers and energy suppliers, SDCP staff evaluate each project and prepare a summary of offers for initial review with SDCP's AHCC. Part of this initial review typically involves development of a "short-list" of contracts with which the AHCC authorizes Staff to enter into negotiations for a contract for purchase of renewable energy and/or capacity. Assuming that Staff and shortlisted developer(s) are able to agree to mutually agreeable contracts consistent with terms authorized by the AHCC, Staff then review draft agreements with SDCP's Finance and Risk Management Committee (FRMC) and, presuming the FRMC supports, then with the SDCP Board for approval and authorization to execute the relevant documents.

## ANALYSIS AND DISCUSSION

The purpose of a defined evaluation criteria is not only to provide SDCP Staff, Committees, and the Board a consistent and transparent method via which to evaluate all proposed transactions within a given solicitation but also to communicate to potential participants, prior to the solicitation, SDCP's preferences with respect to energy and capacity resource acquisition and to encourage developers and suppliers to pursue development opportunities that best align with SDCP's stated priorities.

To such end, the proposed EPEC will include evaluation within six areas, listed below and further described within the EPEC, for each of which Staff shall assign each project a score of "high," "medium," "neutral," or "low."

1. Project Location
2. Quantitative Value
3. Project Development
4. Community Benefits
5. Workforce Development
6. Environmental Stewardship

The scores within each area of evaluation will then be aggregated, and Staff will review holistically with the AHCC prior to recommendation and approval of a short-list of solicitation respondents with whom Staff should enter contract negotiations. For reference, an illustrative example of how SDCP will summarize and present the evaluation of potential transactions under this EPEC is attached as Exhibit A to the EPEC, which is presented as Attachment A, below.

SDCP intends that this EPEC will be updated as SDCP grows and evolves, and it may be modified on a solicitation-by-solicitation basis to reflect specific goals of targeted procurement efforts.



### **COMMITTEE REVIEW**

This project was reviewed with the Community Advisory Committee on February 11, 2022 and reviewed and recommended for approval, subject to further discussion regarding Community Benefits and Cost Effectiveness of GHG Emission Reductions, by Finance and Risk Management Committee on March 3, 2022.

### **FISCAL IMPACT**

There is no direct fiscal impact of adoption of this EPEC. Consistent and quantitative evaluation of potential energy resource value and risk per this EPEC will allow SDCP to reduce energy supply related costs to the benefit of SDCP customers.

### **ATTACHMENTS**

Attachment A: SDCP Energy Proposal Evaluation Criteria (Proposed)







## Energy Proposal Evaluation Criteria

### Purpose

The purpose of this Energy Proposal Evaluation Criteria (“Evaluation Criteria” or “EPEC”) is to provide a consistent and transparent framework with which SDCP Board, Committees, and Staff can evaluate proposals for SDCP purchases of energy and capacity. SDCP will use the EPEC as an initial screen to score proposals for evaluation of long-term, wholesale energy contracts with the Ad-Hoc Contracts Committee prior to Board review. More broadly, SDCP shall also use the principles and preferences within the EPEC to guide all resource procurement.

SDCP intends that this EPEC will be updated as SDCP grows and evolves, and it may be modified on a solicitation-by-solicitation basis to reflect specific goals of targeted procurement efforts.

### Energy Proposal Evaluation Criteria

The EPEC will include evaluation within the following six areas, each of which will be scored as “high,” “medium,” “neutral,” or “low” as further described below, which will be aggregated and reviewed holistically to provide SDCP Board, Committees, and Staff a method via which to compare and evaluate numerous projects within each solicitation. For reference, an illustrative example of how SDCP will summarize and present the evaluation of potential transactions under this EPEC is attached as Exhibit A.

#### 1. Project Location

- High: For Renewable Energy: San Diego or Imperial counties  
For Energy Storage: eligible to provide SD-IV Local RA
- Medium: Southern California (no farther north than San Luis Obispo, Kern, and San Bernadino counties)
- Neutral: Northern California (farther north than San Luis Obispo, Kern, and San Bernadino counties) or directly interconnected to California Independent System Operator (CAISO)
- Low: Outside California and not interconnected to CAISO

#### 2. Quantitative Value

- Projects will be ranked based on several quantitative factors (including those below), ranked, and categorized as “high,” “medium,” or “low.”
  - Contract Price
  - Products offered for purchase
  - Value to SDCP customers
  - Impact to SDCP portfolio risk
  - Cost effectiveness of project-related GHG emission reductions

#### 3. Project Development

- Projects will be ranked based on several project development-related factors (including those below), ranked, and categorized as “high,” “medium,” or “low.”
  - Site control
  - Interconnection status
  - Environmental screens
  - Land use and permitting
  - Project financing
  - Developer experience

#### 4. Community Benefits

- High: Project is located within a Disadvantaged Community (DAC), Community of Concern (COC), or a region otherwise designated by local jurisdiction or permitting agency as prioritized for renewable energy development (“Renewable Energy Development Zone” or “REDZ”); has completed community outreach; demonstrates community benefits.
- Medium: Project is not located within a DAC, COC, or REDZ but has completed community outreach and can demonstrate community benefits
- Neutral: Project does not demonstrate community benefits
- Low: Project is inconsistent with community priorities

#### 5. Workforce Development

- High: The project meets all objectives of SDCP’s Inclusive and Sustainable Workforce Policy with respect to PPAs.
- Medium: The project does not meet all objectives of SDCP’s ISWF Policy but can demonstrate prevailing wage, skilled and trained workforce, and local hire commitments
- Low: The project does not demonstrate prevailing wage, skilled and trained workforce, and local hire commitments

#### 6. Environmental Stewardship

- High: Project is located on currently or previously developed land and demonstrates additional societal, health, economic, water-saving, or environmental benefits beyond the climate and GHG reduction benefits of renewable energy
- Medium: Project is located on currently or previously developed land but not does demonstrate additional environmental benefits
- Neutral: Project does not demonstrate positive or negative environmental impact
- Low: Project demonstrates significant, unmitigated negative environmental impacts

## Exhibit A:

### Illustrative Example of the Energy Proposal Evaluation Summary

Project	Location	Price	Capacity (MW)	COD	Project Location	Price / Value	Dev Score	Community Benefits	Workforce Dev	Enviro
SDCP A	SD County	\$2	100	1/1/24	High	High	High	Med	High	Med
SDCP B	Orange County	\$1.50	200	1/1/24	Med	High	High	High	High	Neutral
SDCP C	SD County	\$2.25	50	1/1/25	High	High	Med	Neutral	High	Neutral
SDCP D	Imperial County	\$2	20	1/1/24	High	High	High	Neutral	High	Neutral
SDCP E	SD County	\$3	75	1/1/25	High	Med	Med	Neutral	Med	Neutral
SDCP F	Riverside County	\$3.50	20	1/1/25	Med	Med	High	Med	Med	Neutral
SDCP G	Imperial County	\$4	50	1/1/24	High	Low	Med	Low	TBD	Neutral
SDCP H	SD County	\$3.75	100	1/1/24	High	Low	High	Neutral	Med	Low



## SAN DIEGO COMMUNITY POWER

### Staff Report – Item 16

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To: San Diego Community Power Board of Directors

From: Nelson Lomeli, Program Manager  
Colin Santulli, Director of Programs

Via: Cody Hooven, Chief Operating Officer

Subject: Update on Community Power Plan

Date: March 24, 2022

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### RECOMMENDATION

Receive and file an update on the Community Power Plan (“CPP”).

### BACKGROUND

In May 2020, San Diego Community Power (“SDCP”) executed a Data Management Agreement with Calpine Energy Solutions (“Calpine”) that included among other services, funding for the creation of a “Community Development Strategic Plan” – or as it is now called, the Community Power Plan– as a value-add service.

In September 2021, Staff presented to the Board on the Energy Program Priorities for Fiscal Year 21-22 which laid out some of the early programmatic activities that Staff was engaged in. Among those priorities was the development of the Community Power Plan. This plan would guide SDGP in the development of program strategies that would address the needs uncovered during a community-wide needs assessment.

In November 2021, Calpine, on behalf of SDGP, issued a Request for Proposals (“RFP”) for a firm (or firms) to provide services to SDGP to prepare a Community Power Plan. The RFP specifically asked for firms that would complete a Community Needs Assessment and develop a multi-faceted plan that would pull together all potential programs and investments into a coherent framework for implementation.

In December 2021, Calpine received four submissions to the RFP. Since this effort is to be community-oriented, Staff in December requested that the Community Advisory Committee (“CAC”) appoint two of its members to help staff with the selection process. The CAC appointed committee members Carolyn

Scofield and Matt Vasilakis to assist Staff and in reviewing and scoring the submissions and interviewing potential firms.

In January 2022, Calpine and SDCP interviewed the top three scoring firms and came to a consensus on a consultant team with previous experience developing a similar plan for Clean Power Alliance and who had assisted the County of San Diego on their Departmental Sustainability Plan and Climate Action Plan Equity Strategies and Engagement.

Since February 2022, Staff has been working with Calpine and the selected consultant to finalize the scope of work to ensure that we are undertaking an equitable approach to engagement.

## **ANALYSIS AND DISCUSSION**

Staff will engage in the development of the Community Power Plan in two phases:

### **Phase 1: Community Needs Assessment**

During this initial phase, SDCP, with the help of the consultant, the CAC, and in partnership with local San Diego-based community-based organizations (“CBOs”), will be conducting a Community Needs Assessment to determine community needs as they relate to energy resilience, energy affordability, energy efficiency, distributed energy resources, and GHG reduction through electrification. The Community Needs Assessment will ensure that any programmatic offerings and strategies developed by SDCP align with the priorities of both the organization and that of the community.

The approach to the Community Needs Assessment can be thought of in two parts:

- 1) **Information Gathering** where we will undertake a rigorous public engagement process in multiple languages involving listening sessions hosted by CBOs (virtual and in-person where feasible), interviews with population interest-groups, development of a community survey, and solicitation of survey participation at community events; and
- 2) **Goal Setting** where we engage back with the community, the CAC, member agency staff, and the Board through Goal Setting Workshops to ensure that we captured the correct priorities and then translate those priorities into program goals.

### **Phase 2: Community Power Plan Development & Adoption**

Based on the community priorities and goals determined in Phase 1, a framework will be developed to evaluate the universe of programs. This framework will take into consideration agency goals and priorities, stakeholder priorities, key performance indicators like GHG impacts, revenue impacts, load impacts, etc., technology readiness, and others.

A market assessment will be conducted to help inform us of the potential universe of programs, determine funding sources accessible to SDCP, analyze relevant policies, and summarize lessons learned from existing CCA and other utility programs in CA.

The list of programs uncovered will be evaluated using the framework, ranked, and categorized to give us a well-rounded portfolio of programs to consider for implementation in the next five years. The recommended programs will be categorized on short-, medium-, and long-term taking into account funding opportunities and other implementation considerations.

All this work will culminate in a formal, public-facing Community Power Plan document that will be presented to the Board for adoption. The plan will transparently illustrate the process of development, including the community engagement process and the findings, document how the findings of the Community Needs Assessment was integrated into the framework and program ranking, and recommend the initial 5-year program suite. Staff expects that this work will take approximately nine months to complete.

Prior to seeking Board adoption, SDCP will re-engage with the community, stakeholders, and the CAC to solicit feedback on the draft plan. The final plan will be translated into Spanish, Tagalog and other languages as needed.

The Community Power Plan will allow SDCP to successfully deliver programs to our customers that, per the JPA, are centered on economic, environmental, and social equity. This will ensure that, as further stated in the JPA, our programs best serve the needs of customers and member agencies, our local communities, and support regional sustainability efforts.

## **FISCAL IMPACT**

None. Calpine is funding the Community Power Plan as part of their Data Management Agreement with SDCP.





## SAN DIEGO COMMUNITY POWER Staff Report – Item 17

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To: San Diego Community Power Board of Directors  
From: Rita de la Fuente, Director of External Affairs  
Via: Bill Carnahan, Interim Chief Executive Officer  
Subject: Residential Enrollment Marketing Public Relations Update  
Date: March 24, 2022

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### RECOMMENDATION

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

### BACKGROUND

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

### ANALYSIS AND DISCUSSION

#### *Enrollment Notices*

SDCP residential customers are currently receiving enrollment notices via direct mail which are sent beginning 60 days prior to each city's enrollment period. Each customer will receive a total of 4 mailers, approximately 30 days apart. The delivery as well as the content of these notices are mandated by the California Public Utilities Commission, however the announcements were designed with creative elements to elevate our brand and help shape our voice.

#### *City Engagement*

SDCP Staff met with Events and Communications teams from each city to collaborate on creative ways to reach communities where residential enrollment will take place. SDGP has or will be presenting to city councils prior to their city's enrollment. City staff and leaders have shown overwhelming enthusiasm and support in helping SDGP connect with their residents.



### *Public Engagement Events*

SDCP has recently participated in the following outreach events:

2/3 San Diego Regional Chamber Sustainability & Industry Committee  
2/3/22 Imperial Beach Democratic Club Presentation  
2/5/22 Imperial Beach Clean-up  
2/12/22 Imperial Beach Artisan Market  
2/21/22 La Mesa Environmental Sustainability Presentation  
2/22/22 La Mesa City Council Presentation  
2/25/22, 3/11/22, 3/18/22 La Mesa Farmer's Market  
3/10/22 Qualcomm Staff Presentation  
3/12/22 SD Loyal Soccer Club Activation  
3/14/22 San Diego Oasis Presentation  
3/16/22 Encinitas City Council Presentation  
3/17/22 Sierra Club San Diego Presentation  
3/17/22 San Diego Environment Committee Presentation  
3/20/22 Imperial Beach Sustainability Fest  
3/22/22 Encinitas Business and Community Resource Expo  
3/23/22 La Mesa Spring Fling Business Expo

SDCP is tentatively scheduled to participate in the following upcoming outreach:

3/25/22 La Mesa Sunrise Rotary  
4/7/22 EV Fleet Day  
4/9/22 South Bay Earth Day  
4/9/22 La Mesa Earth Day Fair  
4/10/22 Encinitas Street Fair  
4/12/22 Chula Vista City Council Presentation  
4/22/22 Chula Vista Rotary  
4/22/22 Scripps Ranch Presentation  
4/24/22 EarthFair Balboa Park  
4/30/22 Encinitas Arbor Day  
4/30/22 NAACP SD's Climate and Environmental Justice committee

Staff is regularly adding event activations and presentations to SDCP's engagement calendar. SDCP Board of Directors, the Community Advisory Committee, and Member Agency staff have been crucial resources in ensuring SDCP's presence in their communities.

### *Creative Concepts and Strategic Messaging*

There are two concepts that have been running during Residential Enrollment created to build trust and relatability. The *Oh Yeah And* concept gives the idea of dropping in on a conversation is taking place between neighbors. The *My Reasons* concept features real people from each member city who have a personal connection to our purpose. Staff has worked with Civilian to develop messaging based on behavioral research performed by See Change Institute to amplify the creative concepts.





They support local jobs, plus it's clean energy!

I love that SDCP is based in the communities they serve

Learn More >

**"I am excited that Imperial Beach residents and businesses now have more options to use clean, renewable energy."**

- Kim Rivero Frink  
SunCoast Market Co-op Board President, Imperial Beach

Learn More

**"It feels great knowing both my home and small business are being powered with 100% renewable energy sources."**

- Jen Derks  
Owner of Four Fin Creative

Learn More

### *Did You Know Social Media Series*

Staff has developed a series of fast facts to be featured on SDCP's social media channels during Residential Enrollment. These are brief explanations of the basic principles of SDCP and includes responses to frequently asked questions. These posts will be disseminated throughout the Residential Enrollment campaign and beyond.

**Did you know?**

**SDCP is your new, local provider of electricity. We are what's known as a Community Choice Aggregator – a type of public agency that provides you with a choice of receiving more renewable electricity at competitive prices. We make our decisions with public input to benefit the communities we serve.**

### *Bill Explainer Video*

Coinciding with the timeline for Residential Enrollment, SDCP introduced a bill explainer video that has been posted to our website in English and Spanish. The animated video is a comprehensive walk-through of what SDCP's customers can expect to see on their

bill as an SDCP customer, including all SDG&E charges. The video has been shared on social media and will be distributed through newsletters and other channels during Residential Enrollment.

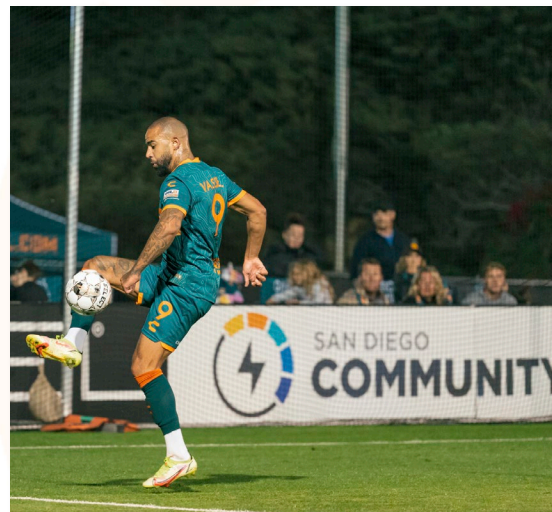
### *Paid Media*

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

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

### *Partnerships*

SDCP has recently entered into two partnership agreements with the San Diego Padres and the SD Loyal Soccer Club. Both teams give SDCP visibility as well as credibility among our local community. Staff is researching other organizations to partner with to continue broadening SDCP's brand awareness and understanding of our services.



### *Communications and Outreach Strategy*

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

SDCP's Board of Directors, Community Advisory Committee members, Member Agency staff and other ambassadors received a partner toolkit containing assets such as speaking points and prepared social media posts to help further SDCP's reach. Supporters of SDCP have proven to be excellent spokespeople in communicating to the public and targeted groups.

Finally, at the end of the enrollment phase, SDCP looks forward to sharing the combined impact of the five city launches. Staff and Civilian are working on a celebratory event to reveal a successful Residential Enrollment and our region's overall progress in June 2022, as well as tactics to keep people engaged beyond the Phase 3 enrollment period.

### **COMMITTEE REVIEW**

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

### **FISCAL IMPACT**

N/A

### **ATTACHMENTS**

N/A







## SAN DIEGO COMMUNITY POWER Staff Report – Item 18

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To: San Diego Community Power Board of Directors

From: Eric W. Washington, Chief Financial Officer

Via: Bill Carnahan, Interim Chief Executive Officer

Subject: Approval of Agreement with River City Bank for the Renewal and Increase of the Credit Facility

Date: March 24, 2022

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### RECOMMENDATION

Authorize the Chief Financial Officer or Chief Executive Officer to execute an amended and restated credit agreement and related documents necessary to implement the renewal and increase to \$50 million and two-year extension of the existing River City Bank credit facility.

### BACKGROUND

On December 3, 2019, the San Diego Community Power (SDCP) Board of Directors (Board) directed staff to finalize negotiations with River City Bank for a credit facility and banking services for SDCP's start-up, operational financing and banking needs. The request-for-proposal (RFP) was issued with the determination that a credit facility of up to \$35 million was sufficient.

Subsequently, on April 23, 2020, the Board authorized the Interim Executive Officer to execute a credit agreement and related documents necessary to implement a \$35 million credit facility with River City Bank. The funds made available pursuant to the River City Bank credit facility are used primarily for working capital, collateral postings for short and long-term power purchases required to meet ongoing power procurement needs.

As part of this financing structure approval, on May 28, 2020, the Board also authorized the Interim Executive Officer to execute promissory notes with Emerald Blue, LLC (Emerald Blue) and B Quest Foundation to borrow \$5 million, used as cash collateral for the credit facility with River City Bank.

With SDCP in its phase 3 enrollment period and with the increase in energy costs discussed in prior Board meetings, SDCP's current projections from its pro forma suggest the need to increase SDCP's credit facility to maintain a prudent financial position. Staff recommends approval to execute the necessary documents for increasing SDCP's credit facility with River City Bank from \$35 million to \$50 million.

## ANALYSIS AND DISCUSSION

The \$15 million increase to the existing \$35 million credit facility, provides SDCP with addition resources to respond fiscally to unexcepted rises in the power supply costs and to support reserves if necessary.

Full terms and conditions are provided in the attached draft agreement which is substantially complete, but still subject to further negotiations between the lenders, the Chief Financial Officer and General Counsel. The key business terms regarding interest rates, terms, and amounts are summarized below.

### *Key terms for the River City Bank agreement:*

The Credit Agreement with River City Bank provides for a 15 million increase from SDCP's current \$35 million revolving credit facility to \$50 million for a 2-year term from the date of renewal with an option to convert the revolving credit balance into a 5-year term loan. The funds would be made available for cash advances for working capital and/or letters of credit that will be used for credit support in power purchase transactions. River City Bank is offering a floating rate calculated based on 3-month Term Secured Overnight Financing Rate (SOFR) plus 2.25% (subject to a floor rate of 2.25%) on the revolving line and on any Letters of Credit. This is a change from the prior agreement which was a floating rate calculated based on the 1-month London Interbank Offered Rate (LIBOR) plus 2.00% (subject to a rate floor of 2.00%) SDCP and River City Bank have also negotiated customary financial covenants based on the updated February 2022 pro forma that SDCP will need to comply with during the term of the credit facility. The obligations of SDCP will be secured by a first priority security interest in the accounts, revenue and contracts of SDCP and SDCP will be required to place 10% of each advance in a loan reserve account – these terms remain unchanged from the prior agreement.

## COMMITTEE REVIEW

This item was discussed at the Financial Risk Management Committee (FRMC) during the meeting held on March 3, 2022.

## FISCAL IMPACT

As SDCP builds reserves, the increased River City Bank credit facility provides a buffer that will allow SDCP to react quickly to unexpected changes in customer demand and market conditions, as well as the ability to take advantage of opportunities to buy energy products.

## ATTACHMENTS

Attachment A: Amended and Restated Credit Agreement with River City Bank

Attachment B: Amended and Restated Revolving Credit Promissory Note with River City Bank

Attachment C: Resolution for the Amended and Restated Credit Agreement with River City Bank



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**AMENDED AND RESTATED CREDIT AGREEMENT**

**Dated as of March \_\_\_, 2022**

**by and between**

**SAN DIEGO COMMUNITY POWER,  
as Borrower**

**and**

**RIVER CITY BANK,  
as Lender**

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## **AMENDED AND RESTATED CREDIT AGREEMENT**

This AMENDED AND RESTATED CREDIT AGREEMENT (this “*Agreement*”) is entered into as of March \_\_\_, 2022, by and between **SAN DIEGO COMMUNITY POWER**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (“*Borrower*”), and **RIVER CITY BANK**, a California corporation (“*Lender*”).

### W I T N E S S E T H:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a credit facility which includes a revolving line of credit;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

#### SECTION 1. DEFINITIONS AND INTERPRETATION.

*Section 1.1. Definitions.* All capitalized terms used in this Agreement and not otherwise defined have the meanings ascribed to them in **Exhibit A**.

#### *Section 1.2. Other Interpretive Provisions.*

(a) **Defined Terms.** Unless otherwise specified herein or therein, all terms defined in this Agreement will have the same defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meaning of defined terms is equally applicable to the singular and plural forms of the defined terms.

(b) **References.** The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement; and subsection, section, schedule and exhibit references are to this Agreement unless otherwise specified.

(c) **Certain Common Terms.** The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term “including” is not limiting and means “including without limitation.”

(d) **Performance; Time.** Whenever any performance obligation hereunder is stated to be due or required to be satisfied on a day other than a Business Day, such performance may be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including.” If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision will be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) Contracts. Unless otherwise expressly provided herein, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, will be deemed to include all subsequent amendments thereto, restatements thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(g) Dollars and \$. All references to “dollars” or “\$” refer to United States dollars.

### *Section 1.3. Accounting Principles.*

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein will be construed, and all financial computations required under this Agreement will be made, in accordance with GAAP, consistently applied.

(b) References herein to “fiscal year”, “fiscal quarter” and “fiscal month” refer to such fiscal periods of Borrower.

(c) If any change in GAAP results in a change in the calculation of the financial covenants or interpretation of related provisions of this Agreement or any other Loan Document, then Borrower and Lender agree to amend such provisions of this Agreement so as to equitably reflect such changes in GAAP with the desired result that the criteria for evaluating Borrower’s financial condition will be the same after such change in GAAP as if such change had not been made.

## SECTION 2. THE REVOLVING LINE OF CREDIT.

*Section 2.1. Revolving Credit.* Subject to the terms and conditions of this Agreement, Lender agrees to make a revolving credit facility (the “*Revolving Credit*”) available to Borrower for the purpose of (a) funding the Debt Service Reserve Account as may be required to maintain the Minimum DSRA Balance, (b) providing short-term working capital (each a “*Working Capital Advance*”), and (c) supporting the issuance of Letters of Credit (each a “*Letter of Credit Advance*”) in accordance with Section 4, in an aggregate principal amount not to exceed, at any one time, the Revolving Credit Commitment. The Revolving Credit will be disbursed in one or more advances (each an “*Advance*”), provided that the conditions precedent to Advances specified in Section 9 are satisfied. Subject to the Revolving Credit Commitment and the other terms and conditions of this Agreement, Borrower may periodically request Advances; provided, however, that Lender will have no obligation to make Advances on or after the Revolving Credit Termination Date.

*Section 2.2. Advances.* Advances under this Agreement may be requested in writing by Borrower or any Authorized Representative appointed by Borrower. Borrower agrees that



Lender may rely upon any written notice given by any person Lender in good faith believes is an Authorized Representative without the necessity of independent investigation.

*Section 2.3. Promissory Note.* The Revolving Credit will be evidenced by an Amended and Restated Revolving Credit Promissory Note (the “*Promissory Note*”) dated as of the date hereof, made, executed and delivered by Borrower and payable to the order of Lender in the original principal amount of \$50,000,000.00. For each Letter of Credit requested by Borrower and issued in accordance with Section 4, Borrower will execute and deliver to Lender a promissory note (each a “*Letter of Credit Note*”) in the stated principal amount equal to the face amount of such Letter of Credit, in the form attached hereto as **Exhibit B**. Each Letter of Credit Note will be deemed an Advance in the full stated principal amount thereof for purposes of determining availability under the Revolving Credit Commitment. However, each Letter of Credit Note will evidence Borrower’s obligation to repay the lesser of the stated principal amount thereof or the unreimbursed amount (the “*Unreimbursed Amount*”) of any drawing actually paid by Lender to a beneficiary under a Letter of Credit, in accordance with Section 4.3. All references to “Advances” in Sections 3.1 shall, with respect to a Letter of Credit Advance, refer solely to the outstanding Unreimbursed Amount evidenced by the corresponding Letter of Credit Note.

*Section 2.4. Repayment.* All outstanding Advances other than Letter of Credit Advances (including all outstanding principal and accrued but unpaid interest) shall be due and payable in full on the Revolving Credit Termination Date. Until the Revolving Credit Termination Date, Borrower shall pay interest on such Advances as provided herein and in the Promissory Note. The amount of any such Advances repaid may be re-borrowed prior to the Revolving Credit Termination Date. Notwithstanding the foregoing, subject to the terms and conditions of this Agreement, Borrower may exercise a one-time option to convert such Advances to a fully amortizing term loan (the “*Term Loan*”) in accordance with Section 6. All outstanding Letter of Credit Advances shall be repaid as provided herein and in the Letter of Credit Notes.

### SECTION 3. INTEREST, LATE FEES, PREPAYMENTS AND APPLICATIONS.

#### *Section 3.1. Interest Payments.*

(a) Advances. The outstanding principal balance of Advances will bear interest prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate, until paid in full. After the occurrence of an Event of Default, including after maturity (whether by lapse of time, acceleration or otherwise), the outstanding principal balance of Advances will bear interest at the Default Rate, until paid in full. The determination of the Applicable Rate by Lender shall be conclusive and binding on Borrower in the absence of demonstrable error.

(b) Interest Payment Dates. Borrower will pay regular monthly payments of all accrued but unpaid interest on Advances as of each Payment Date. Interest on Advances will be payable monthly in arrears on each Payment Date. Borrower will make all payments at the address specified in Section 3.4.

(c) Late Fees. If Borrower fails to make any payment of principal or interest under the Promissory Note or any other sum payable hereunder or under any other Loan Document within five (5) calendar days after its due date, Lender will be entitled at its option to impose a late charge in an amount equal to six percent (6.00%) of the amount of such past due payment, which charge, if imposed by Lender, shall be due and payable by Borrower immediately upon receipt of written notice thereof.

*Section 3.2. Computation of Interest; Minimum and Maximum Interest Rates.* All interest on the Advances will be calculated on the basis of a year of 360 days for the actual number of days elapsed. In no event shall the applicable interest rate exceed the maximum rate allowed by law (including Government Code Section 53854).

*Section 3.3. Prepayments.*

(a) Voluntary Prepayment. Borrower may voluntarily prepay Advances, in whole or in part, at any time without any penalty or fee. In connection with such prepayment, Borrower may prepay the principal amount of any Note, in whole or in part, together with interest accrued on the principal amount prepaid, at its option and without premium, prior to the applicable Maturity Date or the Revolving Credit Termination Date, as the case may be.

(b) Mandatory Prepayment. If for any reason at any time the aggregate total outstanding amount of Advances exceeds the Revolving Credit Commitment, then Borrower shall, within three (3) days after written notice from Lender, prepay Advances (together with all accrued but unpaid interest thereon) in an aggregate amount equal to such excess.

(c) Application of Prepayments. All prepayments shall be applied in accordance with Section 3.4.

*Section 3.4. Place and Application of Payments and Collections.* All payments of principal, interest, fees and all other Obligations payable hereunder will be made to Lender at the following address no later than 2:00 p.m. (Pacific Standard Time) on the date any such payment is due and payable:

River City Bank  
Loan Center  
2485 Natomas Park Drive, Suite 400  
Sacramento, CA 95833

So long as any Event of Default has occurred and is continuing, Borrower agrees that Lender, in its sole and absolute discretion, may apply any payments or collections received by Lender from Borrower to any of the Obligations in any manner or order as Lender desires. Lender's receipt and application of payments or collections shall not constitute a waiver or cure of any Default.

*Section 3.5. Notations.* All Advances made and evidenced by a Note and the rates of interest applicable thereto will be recorded by Lender on its books and records or, at its option in

any instance, endorsed on a schedule to such Note, and the unpaid principal balance and interest rates so recorded or endorsed by Lender will be *prima facie* evidence in any court or other proceeding brought to enforce such Note of the principal amount remaining unpaid, the status of the Advances evidenced by such Note and the applicable interest rates; provided, however, that the failure of Lender to record any of the foregoing will not limit or otherwise affect the obligation of Borrower to repay the principal amount of such Note together with accrued interest thereon. Prior to any negotiation of any Note, Lender will record on a schedule thereto the status of all amounts evidenced by such Note and the rates of interest applicable thereto.

#### SECTION 4. LETTERS OF CREDIT.

##### *Section 4.1. Letter of Credit Commitment.*

(a) Subject to the terms and conditions of this Agreement, Lender agrees (1) to issue Letters of Credit in Dollars for the account of Borrower, and (2) to honor drawings under the Letters of Credit; provided that after giving effect to any Letter of Credit Advance, the aggregate principal amount of all Advances shall not exceed the Revolving Credit Commitment. Each request by Borrower for the issuance of a Letter of Credit shall be deemed to be a representation by Borrower that the Letter of Credit Advance so requested complies with the conditions set forth in the proviso to the preceding sentence and the other terms and conditions of this Agreement.

(b) Lender shall have no obligation to issue any Letter of Credit if:

(i) The initial expiry date of the requested Letter of Credit is more than one year after the date of issuance;

(ii) The initial expiry date of the requested Letter of Credit would occur more than one year after the Revolving Credit Termination Date;

(iii) The expiry date of the requested Letter of Credit, after giving effect to any auto-renewal feature, would occur more than seven (7) years after the date of issuance; provided, however, that this condition shall not apply if (1) the Letter of Credit is secured by Cash Collateral, or (2) Lender's Chief Executive Officer or Chief Credit Officer approves a waiver of this condition in writing;

(iv) The requested Letter of Credit requires Lender to provide a notice of non-renewal, if any, earlier than sixty (60) days before the expiration of the Letter of Credit;

(v) The requested Letter of Credit contains terms and conditions required by the beneficiary that are deemed unacceptable to Lender;

(vi) Any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin Lender from issuing such Letter of Credit, or any law applicable to Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Lender shall prohibit, or request that Lender refrain from, the issuance of letters of credit generally, or such Letter of Credit in particular or

shall impose upon Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which Lender is not otherwise compensated hereunder) not in effect on the date of this Agreement, or shall impose upon Lender any unreimbursed loss, cost or expense which was not applicable as of the date of this Agreement and which Lender in good faith deems material to it;

(vii) The issuance of such Letter of Credit would violate one or more policies of Lender generally applicable to the issuance of letters of credit;

(viii) The Letter of Credit is to be denominated in a currency other than Dollars;

(ix) The Letter of Credit provides for automatic reinstatement or renewal of the stated amount after any drawing thereunder; or

(x) The issuance of the Letter of Credit would cause the aggregate outstanding amount of Advances to exceed the Revolving Credit Commitment at the time of issuance.

#### *Section 4.2. Issuance of Letters of Credit.*

(a) Each Letter of Credit shall be issued upon the request of Borrower delivered to Lender in the form of Lender's standard Letter of Credit Application completed to the satisfaction of Lender and signed by an Authorized Representative of Borrower. Such Letter of Credit Application may be sent via electronic image or other electronic format, by US mail, overnight courier, or by any other means acceptable to Lender and must be received by Lender not later than ten (10) Business Days (or such later date as Lender may agree in its sole discretion) before the proposed issuance date. Such Letter of Credit Application shall specify in form and detail satisfactory to Lender: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) the amount thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in the case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (vii) the purpose and nature of the requested Letter of Credit, which shall be to pay for power purchases or to provide collateral security for power purchases; and (viii) such other matters as Lender may reasonably require. Additionally, Borrower will furnish to Lender such other documents and information pertaining to such requested Letter of Credit issuance as Lender may request.

(b) Subject to the terms and conditions hereof, Lender shall, on the requested date, issue a Letter of Credit for the account of Borrower in such form as may be approved from time to time by Lender and in accordance with Lender's usual and customary business practices.

(c) Promptly after its delivery of any Letter of Credit to the beneficiary thereof, Lender will also deliver to Borrower a true and complete copy of such Letter of Credit.

*Section 4.3. Drawings and Reimbursements of Letters of Credit.* Upon the presentment of any notice of drawing under any Letter of Credit by the beneficiary thereof which Lender determines to be in compliance with the conditions for payment thereunder, Lender will notify Borrower of the intended date of honor of such drawing. Not later than 5:00 p.m. (Pacific Standard Time) on the date (the "*Reimbursement Date*") that is three (3) Business Days after

any payment by Lender under a Letter of Credit (each such date, an “*Honor Date*”), Borrower shall reimburse Lender by making payment to Lender in an amount equal to the amount of such payment. Borrower’s failure to so reimburse Lender on or before the Reimbursement Date shall constitute an Event of Default under this Agreement. Subject to the terms and conditions of this Agreement and provided that no Default or Event of Default has occurred or is continuing, Borrower may reimburse Lender on or before the Honor Date with the proceeds of a Working Capital Advance.

*Section 4.4. Unexpired Letters of Credit.* Borrower agrees that, if (i) any Letter of Credit Advance remains outstanding on the Revolving Credit Termination Date, or (ii) the Revolving Credit Commitment terminates for any reason before the surrender of any outstanding Letter of Credit, then Borrower shall, within three (3) days after written notice from Lender, provide Cash Collateral to Lender with a value of not less than 110% of the aggregate principal amount of all outstanding Letter of Credit Advances, to be held by Lender as security until all Obligations with respect to outstanding Letters of Credit shall have been fully and finally discharged.

*Section 4.5. Obligations Absolute.*

(a) The obligation of Borrower to reimburse Lender for any drawing under a Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any waiver by Lender of any requirement that exists for Lender’s protection and not the protection of Borrower or any waiver by Lender that does not in fact materially prejudice Borrower;

(v) any honor of a demand for payment presented electronically, even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by Lender in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must

be received under such Letter of Credit if presentation after such date is authorized by the UCC, the International Standby Practices (“ISP”) or the Uniform Customs and Practice for Documentary Credits (“UCP”), as applicable;

(vii) any payment by Lender under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or discharge of, any party to the Loan Documents.

(b) Borrower shall promptly examine a copy of each Letter of Credit that is delivered to it, and, in the event of any claim of noncompliance with Borrower’s instructions or other irregularity, Borrower will immediately notify Lender of such claim in writing. Borrower shall be conclusively deemed to have waived any such claim it would have against Lender and its correspondents unless such notice is given.

*Section 4.6. Role of Lender as L/C Issuer.* Borrower agrees that, in paying any drawing under a Letter of Credit, Lender or its correspondent shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering such document. None of Lender, any of its Related Parties nor any correspondent, participant or assignee of Lender shall be liable to Borrower for (i) any action taken or omitted in connection herewith at the request of Borrower; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. Neither Lender, nor any correspondent, participant or assignee of Lender shall be liable or responsible for any of the matters described in Section 4.2; provided, however, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against the Lender to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by Lender’s willful misconduct or gross negligence or Lender’s willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and Lender shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial

Telecommunications (“SWIFT”) message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

*Section 4.7. Applicability of ISP, Limitation of Liability.* Unless otherwise expressly agreed by Lender and Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, Lender shall not be responsible to Borrower for, and Lender’s rights and remedies against Borrower shall not be impaired by, any action or inaction of Lender required or permitted under any law, order or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law of any jurisdiction where Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Finance Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

*Section 4.8. Letter of Credit Fees.* Borrower shall pay to Lender fees upon the issuance, amendment, or any other activity with respect to any Letter of Credit (including the transfer or cancellation of any Letter of Credit), including an issuance fee based on the face amount thereof over the applicable expiration period, a documentation fee, and any reasonable and customary out-of-pocket costs and expenses incurred by Lender in connection with such activity. All such fees and expenses will be due and payable in full upon request by Lender. Borrower acknowledges and agrees that the fees will be determined by Lender at the time of issuance or other activity with respect to each Letter of Credit based on the then-current fee schedule of Lender and its correspondent banks, which are subject to change from time to time.

## SECTION 5. FEES.

*Section 5.1.* Upon execution of this Agreement, Borrower shall pay to Lender fees for this Agreement as follows:

(a) Loan Fee. A loan fee in an amount equal to 0.25% of the Revolving Credit Commitment (\$125,000.00).

(b) Documentation Fee. A documentation fee in the amount of \$5,000.00.

(c) Other Fees; Accrued Interest. Borrower shall be subject to and agrees to pay any and all other reasonable out-of-pocket fees and expenses incurred by Lender associated with the underwriting, documentation and administration of this Agreement, including UCC fees, and all accrued but unpaid interest on outstanding Advances, as set forth on the Invoice delivered to Borrower pursuant to this Agreement.

## SECTION 6. CONVERSION OF REVOLVING CREDIT ADVANCES TO TERM NOTE.

*Section 6.1. Term Loan.* Subject to satisfaction of the Term Loan Conditions, Borrower may exercise a one-time option to convert all outstanding Working Capital Advances to a Term Loan as follows: No later than March 1, 2024, Borrower must notify Lender in writing of its

intent to exercise the option and specify the desired conversion date, which must be not earlier than five (5) business days after the notice date or later than April 1, 2024. If the Term Loan Conditions are satisfied, the Term Loan will be payable over a term of sixty (60) months, with equal fully amortizing monthly payments of principal and interest at the Applicable Rate as determined by Lender, and will be governed by the terms and conditions of this Agreement and evidenced by a separate promissory note (the “*Term Note*”). Upon conversion, the Revolving Credit Commitment shall immediately terminate and Lender shall have no further obligation to make Advances under this Agreement.

## SECTION 7. COLLATERAL.

*Section 7.1. Debt Service Reserve Account and Cash Collateral Account.* As a condition to Lender’s obligation to make any Advances, Borrower will maintain with Lender at all times (a) a non-interest bearing deposit account (the “*Debt Service Reserve Account*”) with a balance of not less than Minimum DSRA Balance at all times, and (b) an interest-bearing restricted deposit account (the “*Cash Collateral Account*”) with a minimum balance of \$5,000,000.00 at all times. The Debt Service Reserve Account and the Cash Collateral Account will be held in the name of Borrower, and Borrower will pay on demand therefor from time to time all customary account activity and other administrative fees and charges in connection with the maintenance and disbursement of the Debt Service Reserve Account and the Cash Collateral Account. Subject to the conditions of this Agreement, Borrower may deposit the proceeds of Advances in the Debt Service Reserve Account to fund the Minimum DSRA Balance.

*Section 7.2. Pledge and Security.* As security for the prompt payment and performance by Borrower of all Obligations, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, transfers, delivers, and confirms unto Lender, and hereby grants to Lender a continuing security interest in all Accounts, Revenues, Resource Adequacy Contracts (to the extent feasible, commercially reasonable and assignable), the Debt Service Reserve Account and the Cash Collateral Account, and (i) all replacements, substitutions or proceeds of the foregoing, (ii) all instruments and documents now or hereafter evidencing the of the foregoing, (iii) all powers, options, rights, privileges and immunities relating to the foregoing, and (iv) all interest, income, profits and proceeds of the foregoing. If an Event of Default shall occur hereunder or under any of the Obligations, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds then remaining in the Debt Service Reserve Account or the Cash Collateral Account and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery, and all reasonable attorneys’ fees, costs and expenses incurred by Lender in connection with the Event of Default, to any amounts due and unpaid under this Agreement, any Note or any other Obligations in such manner and order as Lender shall deem appropriate in its sole discretion, (B) exercise any and all rights and remedies of a secured party under the Uniform Commercial Code or other applicable law, and/or (C) exercise any other remedies available at law or in equity. All rights and remedies of Lender hereunder and under any other Loan Document shall be cumulative.

*Section 7.2. Restrictions on Debt Service Reserve Account.* Borrower hereby acknowledges and agrees that Lender shall have exclusive control over the Debt Service Reserve Account, and Borrower shall have no right to withdraw funds from the Debt Service Reserve



Account; provided, however, that provided no Default or Event of Default has occurred and is continuing, Borrower may withdraw funds from the Debt Service Reserve Account from time to time if the balance of the Debt Service Reserve Account will not be less than the Minimum DSRA Balance after giving effect to such withdrawal.

*Section 7.3. Restrictions on Cash Collateral Account.* Borrower hereby acknowledges and agrees that Lender shall have exclusive control over the Cash Collateral Account, and Borrower shall have no right to withdraw funds from the Cash Collateral Account; provided, however, that provided no Default or Event of Default has occurred and is continuing: (1) Borrower may withdraw funds from the Cash Collateral Account from time to time if the balance of the Cash Collateral Account will not be less than \$5,000,000.00 after giving effect to such withdrawal, and (2) Lender will release all restrictions on withdrawals from the Cash Collateral Account upon the occurrence of the following release conditions: (i) Phase 3 Commencement has occurred, (ii) the actual opt-out rate for Borrower's customers is no greater than 18.75% (i.e., 125% of the 15% opt-out rate projected in the Pro Forma previously received and approved by Lender in January 2021), and (iii) Borrower satisfies the Profitability Requirement.

*Section 7.4. General Obligation.* Notwithstanding any other provision of this Agreement or any other Loan Document to the contrary, Borrower hereby acknowledges and agrees that payment of all Obligations is a general obligation of Borrower secured by a first priority lien on the collateral described in this Agreement. Lender acknowledges that the Obligations of Borrower hereunder are solely obligations of Borrower and are not debts, liabilities or obligations of any JPA Members and no taxing power is pledged therefor. Borrower has no taxing powers.

*Section 7.5. Lockbox Account.* Notwithstanding the terms of this Section 7, Lender acknowledges and agrees that Borrower has established a lockbox account with Lender (the "Lockbox") in which Revenues from the sale of electricity to Borrower's customers will be deposited to make priority payments due to (i) power providers for energy sold to Borrower; (ii) CAISO for charges related to the distribution of energy; and (iii) Lender, as collateral agent for the power providers, for performance of its duties; and from which excess Revenues after payment of amounts due to the foregoing shall be deposited in the operating account of Borrower, where it will be available for the payment of the Obligations. The Lockbox is a mechanism to provide security to power providers in lieu of providing letters of credit and other credit support. The payment of the power providers and the CAISO from the Revenues deposited in the Lockbox will have priority over payments due to Lender with respect to the Obligations. The terms of the agreements governing the Lockbox will be consistent with terms customarily used for community choice aggregation lockbox arrangements in which Lender currently serves as the collateral agent and will be subject to the approval of Lender.

## SECTION 8. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender that, as of the date of this Agreement, as of the date of each Advance, and at all times any Obligations remain outstanding to Lender:

*Section 8.1. Organization and Qualification; Authority; Consents.* Borrower (a) is a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a material adverse effect on its business, operations or assets. Borrower has the agency power to enter into this Agreement and the other Loan Documents to which it is a party, to request the Advances and incur the Obligations provided for herein, to execute the Notes in evidence thereof, to pledge and encumber assets as security therefor, and to perform each and all of the promises herein and therein. This Agreement and the other Loan Documents to which Borrower is a party do not, nor does the performance or observance by Borrower of any of the matters or things herein or therein provided for, contravene any provision of law or the Joint Powers Agreement or any covenant, indenture or agreement of or affecting Borrower or any of its Properties, including any power purchase agreements. The execution, delivery, performance and observance by Borrower of this Agreement and the other Loan Documents do not and, at the time of delivery hereof, will not require any consent or approval of any other Person, other than such consents and approvals that have been given or obtained.

*Section 8.2. Legal Effect.* This Agreement and the other Loan Documents to which Borrower is a party constitute legal, valid and binding agreements of Borrower, enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable remedies if equitable remedies are sought.

*Section 8.3. Subsidiaries.* Borrower has no Subsidiaries.

*Section 8.4. Use of Proceeds.* Borrower will use the proceeds of the Advances as provided herein and solely for purposes consistent with the purpose of Borrower as set forth in the Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by Borrower pursuant to California Public Utilities Code Section 366.2.

*Section 8.5. Financial Reports.* The statements of financial condition of Borrower, when delivered to Lender, fairly present the financial condition of Borrower and the results of its operations and cash flows for the periods then ended in conformity with GAAP applied on a consistent basis, subject (in the case of unaudited statements) to year-end audit adjustments. Borrower has no contingent liabilities which are material to it other than, with respect to any financial statements delivered to Lender, as indicated on said financial statements.

*Section 8.6. Full Disclosure.* The statements and other information furnished to Lender in connection with the negotiation of this Agreement and the other Loan Documents and the commitment by Lender to provide the financing contemplated hereby do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading; provided that Lender acknowledges that, as to any projections furnished to Lender, Borrower only represents that the same were prepared on the basis of information and estimates Borrower believed to be reasonable at the time such information was prepared.

*Section 8.7. Litigation.* There is no litigation or governmental proceeding pending, nor to the knowledge of Borrower threatened in writing, against Borrower which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of Borrower.

*Section 8.8. Good Title.* Borrower has good and defensible title to its Properties as reflected on the most recent balance sheet of Borrower furnished to Lender, subject to no Liens other than Permitted Liens or as otherwise limited by applicable law.

*Section 8.9. Members.* Borrower is not a party to any contract or agreement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

*Section 8.10. Compliance with Laws.* Borrower is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to its Properties or business operations (including, without limitation, laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower. Borrower has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

*Section 8.11. Other Agreements.* Borrower is not in default under the terms of any agreement affecting Borrower or any of its Properties, which default if uncured would have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

*Section 8.12. No Default.* No Default or Event of Default has occurred or is continuing.

*Section 8.13. Sovereign Immunity.* Borrower is not entitled to immunity from legal proceedings to enforce this Agreement or any other Loan Document to which Borrower is a party (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) and is subject to claims and suits for damages in connection with this Agreement or any other Loan Document to which Borrower is a party.

*Section 8.14. Anti-Terrorism Laws.* Borrower is not in violation of any law relating to terrorism or money laundering, including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and the Patriot Act.

#### SECTION 9. CONDITIONS PRECEDENT.

*Section 9.1. All Advances.* The obligation of Lender to make any Advance is subject to the satisfaction of the following conditions precedent:

(a) each of the representations and warranties set forth in Section 8 hereof and in the other Loan Documents shall be true and correct as of said time, except that the representations and warranties made under Section 8.5 shall be deemed to refer to the most recent financial statements furnished to Lender pursuant to Section 10.2; and

(b) Borrower shall be in full compliance with all of the material terms and conditions of this Agreement and all other Loan Documents, and no Default or Event of Default shall have occurred or be continuing.

(c) Lender shall have received properly completed and executed originals of the following in form and substance satisfactory to Lender:

- (i) this Agreement, the Promissory Note, and all other applicable Loan Documents;
- (ii) a favorable written legal opinion from Borrower's counsel as to the formation, existence and good standing of Borrower; the power and authority of Borrower to enter into this Agreement and perform its Obligations hereunder; and the due execution, validity and enforceability of this Agreement and the other Loan Documents;
- (iii) a completed and signed Request for Advance in the form of Exhibit C with supporting documentation;
- (iv) the resolutions adopted by the Board of Directors of Borrower with respect to this Agreement and the other Loan Documents, certified by an Authorized Representative;
- (v) an incumbency certificate containing the name, title and genuine signatures of each of Borrower's Authorized Representatives;
- (vi) payment by Borrower of the fees described in Section 5.1 and all other amounts required to be paid by Borrower pursuant to the terms of this Agreement;
- (vii) copies (executed and certified, as may be appropriate) of the organizational documents of Borrower and all legal documents or

proceedings (including minutes of board meetings) taken in connection with the execution and delivery of this Agreement to the extent Lender or its counsel may reasonably request;

- (viii) customer verification information for officers of Borrower and signers of the Loan Documents as Lender may require;
- (ix) reaffirmations of the Subordination Agreements from the City of San Diego, Emerald Blue LLC and B Quest, each in form and substance satisfactory to Lender; and
- (x) evidence of liability insurance in form and substance satisfactory to Lender, to include business property insurance coverage in the minimum amount of the replacement value of Borrower's inventory and equipment, and general liability insurance in the minimum aggregate amount of \$2,000,000.00, with \$1,000,000.00 per occurrence.

(d) in the case of a Letter of Credit Advance, the request is made in accordance with Section 4;

(e) the Debt Service Reserve Account shall be funded with a balance of not less than the Minimum DSRA Balance (which condition may be satisfied by depositing the proceeds of Advances);

(f) the Cash Collateral Account shall be funded with a balance of not less than \$5,000,000.00 unless and until withdrawals are permitted pursuant to Section 7.3; and

(g) any legal matters incident to the execution and delivery of this Agreement and the other Loan Documents and to the transactions contemplated hereby and thereby shall be reasonably satisfactory to Lender and its counsel.

## SECTION 10. COVENANTS.

Borrower covenants and agrees as follows:

*Section 10.1. Maintenance of Business.* Borrower shall preserve and maintain its existence. Borrower shall preserve and keep in force and effect all licenses, permits and franchises necessary to the proper conduct of its business and shall conduct its business affairs in a reasonable and prudent manner. Borrower shall maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel, and shall provide Lender with written notice of any change in executive and management personnel.

*Section 10.2. Reports.* Borrower shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives such information respecting the business and financial condition of Borrower as Lender may reasonably request; and without any request, Borrower shall furnish to Lender:

(a) monthly, as soon as available, and in any event within forty-five (45) days after the end of each month, an unaudited balance sheet of Borrower as of the last day of the period then ended and statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(b) monthly, as soon as available, and in any event within forty-five (45) days after the end of each month, an aged list of accounts receivable and accounts payable;

(c) annually, as soon as available, and in any event no later than one hundred eighty (180) days after each Fiscal Year End, a CPA-audited balance sheet of Borrower as of Fiscal Year End and CPA-audited statements of income, retained earnings and cash flows of Borrower for the period then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such fiscal year and the results of its operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other review procedures as were considered necessary under the circumstances;

(d) annually, upon Lender's request, Borrower's board-approved operating budget and updated Pro Forma for the next fiscal year, including projected income statements, statements of cash flow and a balance sheet;

(e) monthly, within fifteen (15) days after the end of each month, an energy portfolio report with updated information on Borrower's open and hedged energy positions, fixed energy costs, power purchase agreements, Resource Adequacy Contracts, and any other material information regarding Borrower's energy portfolio;

(f) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(g) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, would materially adversely affect the financial condition, Properties, business or operations of Borrower or result in the occurrence of any Default or Event of Default hereunder; and

(h) promptly upon request, all such other information as Lender may reasonably request.

*Section 10.3. Maintenance of Collateral Accounts.* Borrower shall ensure that the Debt Service Reserve Account, the Cash Collateral Account and the Revenues remain pledged and assigned to Lender as collateral for the Obligations in accordance with Section 7.

*Section 10.4. Exclusive Deposit Relationship.* Borrower shall maintain all of Borrower's deposit accounts exclusively with Lender and authorize all scheduled payments on the Notes to be automatically debited from an account maintained by Borrower with Lender. If this covenant is not satisfied, as determined by Lender, it will not constitute an Event of Default, but the Applicable Rate on any Note will immediately increase by adding an additional **2.00** percentage point margin. This margin shall continue to apply to each succeeding interest rate change that may apply thereafter so long as this covenant is not satisfied.

*Section 10.5. Debt Service Coverage Ratio.* Upon the conversion of Advances to the Term Loan, if applicable, Borrower shall thereafter maintain a minimum Debt Service Coverage Ratio ("DSCR") not at any time less than **1.25**, measured annually as of each Fiscal Year End.

"DSCR" means Annual EBIDA divided by Debt Service.

"Annual EBIDA" means the change in Net Position plus depreciation, amortization and interest expense, for the twelve (12) month period ending the most recent Fiscal Year End.

"Debt Service" means interest expense during the calculated period plus scheduled principal payments during the calculated period.

"Net Position" means total assets less total liabilities.

*Section 10.6. Minimum Cumulative EBIDA.* Borrower will maintain a minimum Cumulative EBIDA, measured quarterly, as follows:

Reporting Period	Minimum Cumulative EBIDA
07/01/2021 – 03/31/2022	\$3,500,000.00
07/01/2021 – 06/30/2022	\$27,900,000.00
07/01/2022 – 09/30/2022	\$33,000,000.00
07/01/2022 – 12/31/2022	\$48,500,000.00
07/01/2022 – 03/31/2023	\$22,200,000.00
07/01/2022 – 06/30/2023	\$56,400,000.00
07/01/2023 – 09/30/2023	\$67,100,000.00
07/01/2023 – 12/31/2023	\$78,300,000.00
07/01/2023 – 03/31/2024	\$46,300,000.00

"Cumulative EBIDA" means Borrower's change in Net Position plus depreciation, amortization and interest expense, for the corresponding three, six, nine and twelve-month periods.

*Section 10.7. Minimum Adjusted Tangible Unrestricted Net Position.* Borrower will maintain a minimum Adjusted Tangible Unrestricted Net Position, measured annually as of Fiscal Year End, as follows:

Reporting Period	Minimum ATUNP
FYE 6/30/2022	\$20,100,000.00
FYE 6/30/2023	\$75,700,000.00

*“Adjusted Tangible Unrestricted Net Position”* means total Adjusted Unrestricted Net Position less any intangible assets.

*“Adjusted Unrestricted Net Position”* means Net Position, less temporarily and permanently restricted net assets as presented in Borrower’s financial statements, plus the Debt Service Reserve Account.

*Section 10.8.* [Intentionally omitted.]

*Section 10.9. Inspection.* Borrower shall permit Lender and its duly authorized representatives and agents, at such times and intervals as Lender may designate, but in any event no more than six (6) times during any twelve (12) month period if no Default or Event of Default has occurred and is continuing: (i) to visit and inspect any of the Properties, books and financial records of Borrower and to examine and make copies of the books of accounts and other financial records of Borrower, and (ii) to discuss the affairs, finances and accounts of Borrower with, and to be advised as to the same by, the executive officers of Borrower and other officers, employees and independent public accountants of Borrower (and by this provision Borrower authorizes such accountants to discuss with Lender or its agents and representatives the finances and affairs of Borrower). Without limiting the generality of the foregoing, Borrower shall promptly provide all information and access requested by Lender as Lender determines is necessary or required in connection with the preparation of its own financial statements.

*Section 10.10. Liens.* Borrower shall not create, incur or permit to exist any Lien of any kind on any Property owned by Borrower; provided, however, that the foregoing shall not apply to nor operate to prevent:

(a) Liens arising by statute in connection with worker’s compensation, unemployment insurance, old age benefits, social security obligations, taxes, assessments, statutory obligations or other similar charges, good faith cash deposits in connection with tenders, contracts or leases to which Borrower is a party or other cash deposits required to be made in the ordinary course of business, provided in each case that the obligation is not Indebtedness for Borrowed Money and that the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves have been established therefor;

(b) mechanics’, workmen’s, materialmen’s, landlords’, carriers’, or other similar Liens arising in the ordinary course of business with respect to obligations which are not due or which are being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest;



(c) the pledge of assets for the purpose of securing an appeal, stay or discharge in the course of any legal proceeding, provided that the aggregate amount of liabilities of Borrower secured by a pledge of assets permitted under this subsection, including interest and penalties thereon, if any, shall not be in excess of \$200,000 at any one time outstanding;

(d) Liens established by the Loan Documents or otherwise in favor of Lender; and

(e) Liens arising in connection with the Lockbox.

The Liens described in clauses (a) through (e) of this Section 10.10 are collectively referred to in this Agreement as the “*Permitted Liens*.”

*Section 10.11. Investments, Acquisitions, Loans, Advances and Guaranties.* Borrower shall not directly or indirectly, make, retain or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances (other than for travel advances and other similar cash advances made to employees in the ordinary course of business) to, any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor, surety or otherwise for any debt, obligation or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person.

*Section 10.12. Compliance with Laws.* Borrower shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower or could result in a Lien upon any of its Property.

*Section 10.13. Contracts With Members.* Borrower shall not enter into any contract, agreement or business arrangement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other.

*Section 10.14. Notices of Claims and Litigation.* Borrower shall promptly inform Lender in writing of (a) all material adverse changes in Borrower’s financial condition and/or (b) all existing or written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower.

*Section 10.15. Other Agreements.* Borrower shall comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower, and notify Lender immediately in writing of any default in connection with any other such agreements.

*Section 10.16. Performance.* Borrower shall timely perform and comply with all terms, conditions, and provisions set forth in this Agreement, the Notes and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender promptly in writing of any Default in connection with any Loan Document.

*Section 10.17. Compliance Certificates.* Borrower shall provide to Lender quarterly, together with the Borrower-prepared financial statements dated as of March 31, June 30, September 30, and December 31, and due within forty-five (45) days after the end of each quarter, a certificate in the form of **Exhibit D** executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that, as of the date of the certificate, no Event of Default has occurred during the period covered by such statements or, if any such Event of Default has occurred during such period, setting forth a description of such Event of Default and specifying the action, if any, taken by Borrower to remedy the same.

*Section 10.18. Fiscal Year.* Borrower shall not change its fiscal year without the prior written consent of Lender.

*Section 10.19. Indebtedness for Borrowed Money.* As of the date hereof, Borrower has no outstanding Indebtedness for Borrowed Money other than loans from the City of San Diego, Emerald Blue LLC and B Quest, all of which are and shall continue to be subordinate to the Obligations. Without Lender's prior written consent, Borrower shall not issue, incur, assume, create or have outstanding any Indebtedness for Borrowed Money; provided, however, that the foregoing shall not restrict nor operate to prevent the Obligations of Borrower owing to Lender hereunder.

*Section 10.20. Resource Adequacy.* As soon as available, Borrower will deliver to Lender all material information with respect to any Resource Adequacy Contract entered into by Borrower from and after the date of this Agreement. On a best efforts basis, Borrower shall endeavor to include in Resource Adequacy Contracts, where commercially reasonable, provisions that allow for collateral assignment to Lender, and to the extent feasible, commercially reasonable and assignable, will deliver to Lender such documents, instruments, assignments, consents and agreements as Lender may reasonably request for the purpose of creating, perfecting, maintaining and enforcing Lender's security interest therein.

## SECTION 11. EVENTS OF DEFAULT AND REMEDIES.

*Section 11.1. Events of Default.* Any one or more of the following will constitute an "Event of Default" hereunder:

(a) any default in the payment when due (whether by lapse of time, acceleration or otherwise) of (i) any payment of principal or interest under any Note, or (ii) any other Obligation within five (5) days after payment or performance is due from Borrower; or

(b) any representation or warranty made by Borrower herein or in any other Loan Document, or in any statement or certificate furnished by it pursuant hereto or thereto, or in

connection with any Advance made hereunder, is inaccurate or untrue in any material respect as of the date of the issuance or making thereof; or

(c) any event occurs or condition exists (other than those described in clauses (a) through (b) above) which is specified as an event of default under any of the other Loan Documents, or any of the Loan Documents for any reason ceases to be in full force and effect, or any of the Loan Documents is declared to be null and void, or Borrower takes any action for the purpose of repudiating or rescinding any Loan Document executed by it; or

(d) any judgment, order, writ of attachment, writ of execution, writ of possession or any similar legal process seeking an amount in excess of One Million Dollars (\$1,000,000) is entered or filed against Borrower or any of Borrower's Properties and remains unvacated, unbonded and unstayed for a period of ten (10) or more calendar days; or

(e) Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement in favor of any other creditor or Person that may materially affect any of Borrower's Properties, Borrower's ability to repay the Advances or Borrower's ability to perform its Obligations under this Agreement or any of the other Loan Documents; or

(f) a material adverse change occurs in Borrower's operations or financial condition, or Lender believes, in its reasonable discretion, the prospect of payment or performance of Borrower's obligations under this Agreement is materially impaired, or a new law or regulation is passed (or an existing law or regulation is changed) which has a material adverse effect on Borrower; or

(g) A JPA Member fails to continue to be a member of Borrower; or

(h) Borrower (i) takes any steps to effect a Winding-Up, or (ii) fails to pay, or admits in writing its inability to pay, its debts generally as they become due;

(i) any custodian, receiver, administrative receiver, administrator, trustee, examiner, liquidator or similar official is appointed over Borrower or any substantial part of any of its Properties, whether by court order, by operation of law or otherwise, or a Winding-Up proceeding is commenced as to Borrower, or Borrower becomes unable to pay or admits in writing its inability to pay its debts as they become due; or

(j) Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any other Loan Document or in any other agreement between Lender and Borrower, which failure is capable of being cured, if such failure is not cured within thirty (30) days after written notice thereof from Lender; provided however, that if any such failure cannot reasonably be cured within such 30-day period, then the period to cure shall be deemed extended for up to an additional thirty (30) days after Lender's initial default notice as long as Borrower diligently and continuously proceeds to cure such failure. Borrower agrees to reimburse Lender for all reasonable costs and expenses (including legal fees) incurred by Lender as a result of any failure described in this paragraph until cured.

*Section 11.2. Non-Insolvency Default Remedies.* Upon the occurrence of any Event of Default described in clauses (a) through (g) or (j) of Section 11.1, Lender or any permitted holder of the Notes may, by notice to Borrower, take any of the following actions:

- (a) terminate any obligation to extend any further credit hereunder (including but not limited to Advances) on the date (which may be the date thereof) stated in such notice;
- (b) declare all Advances and all indebtedness under the Notes then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, to be immediately due and payable without further demand, presentment, protest or notice of any kind; and
- (c) exercise and enforce any and all rights and remedies contained in any other Loan Document or otherwise available to Lender at law or in equity.

*Section 11.3. Insolvency Default Remedies.* Upon the occurrence of any Event of Default described in Section 11.1(h) or (i), all Advances and all indebtedness under any Note then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, will immediately become due and payable without presentment, demand, protest or notice of any kind, and Lender shall have no obligation to extend any further credit hereunder (including but not limited to Advances).

## SECTION 12. MISCELLANEOUS.

*Section 12.1. Holidays.* If any payment hereunder becomes due and payable on a day which is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day on which date such payment will be due and payable. In the case of any principal falling due on a day which is not a Business Day, interest on such principal amount will continue to accrue during such extension at the Applicable Rate, which accrued amount will be due and payable on the next scheduled date for the payment of interest.

*Section 12.2. No Waiver, Cumulative Remedies.* No delay or failure on the part of Lender or the holder of any Note in the exercise of any power or right will operate as a waiver thereof or as an acquiescence in any Default, nor will any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. All rights and remedies of Lender and the holder of any Note are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have. Borrower agrees that in the event of any breach or threatened breach by Borrower of any covenant, obligation or other provision contained in this Agreement, Lender shall be entitled (in addition to any other remedy that may be available to Lender) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach. Borrower further agrees that neither Lender nor any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy

referred to in this Section 12, and Borrower irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

*Section 12.3. Amendments, Etc.* No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by Borrower therefrom, will in any event be effective unless the same is in writing and signed by Lender. No notice to or demand on Borrower in any case will entitle Borrower to any other or further notice or demand in similar or other circumstances.

*Section 12.4. Costs and Expenses.*

(a) Borrower shall pay all reasonable out-of-pocket expenses incurred by Lender in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) including, without limitation, the fees specified in Section 5.1.

(b) Borrower agrees to pay on demand all reasonable costs and expenses (including attorneys' fees and expert witness fees), if any, incurred by Lender or any other holder of the Obligations in connection with any Event of Default or the enforcement of this Agreement, any other Loan Document or any other instrument or document to be delivered hereunder, including without limitation any action, suit or proceeding brought against Lender by any Person which arises out of the transactions contemplated hereby or out of any action or inaction by Lender hereunder or thereunder.

*Section 12.5. Indemnity.* Whether or not the transactions contemplated hereby shall be consummated, Borrower shall, to the extent permitted by law, indemnify, defend and hold harmless Lender and its officers, directors, employees, counsel, agents and attorneys-in-fact (each, an "*Indemnified Person*") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including attorneys' costs and expert witnesses' fees), of any kind or nature whatsoever, that (a) arise from or relate in any way to the execution, delivery, enforcement, performance and administration of this Agreement and any other Loan Document, or the transactions contemplated hereby and thereby, and with respect to any investigation, litigation or proceeding (including any Winding-Up or appellate proceeding) related to this Agreement or the Advances or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto, and/or (b) may be incurred by or asserted against such Indemnified Person in connection with or arising out of any pending or threatened investigation, litigation or proceeding, or any action taken by any Person, arising out of or related to any Property of Borrower (all the foregoing, collectively, the "*Indemnified Liabilities*"); provided that Borrower shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities to the extent arising from the gross negligence or willful misconduct of such Indemnified Person.

No action taken by legal counsel chosen by Lender in defending against any investigation, litigation or proceeding or requested remedial, removal or response action vitiates or in any way impairs Borrower's obligation and duty hereunder to indemnify and hold harmless

Lender unless such action involved gross negligence or willful misconduct. Neither Borrower nor any other Person is entitled to rely on any inspection, observation, or audit by Lender or its representatives or agents. Lender owes no duty of care to protect Borrower or any other Person against, or to inform Borrower or any other Person of, any adverse condition affecting any site or Property. Lender is not obligated to disclose to Borrower or any other Person any report or findings made as a result of, or in connection with, any inspection, observation or audit by Lender or its representatives or agents.

The obligations of Borrower in this Section 12.5 shall survive the payment and performance of all other Obligations. At the election of any Indemnified Person, Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Indemnified Person's sole discretion, at the sole cost and expense of Borrower. All amounts owing under this Section 12.5 shall be paid within thirty (30) days after demand.

*Section 12.6. Right of Set Off.* Without limiting any provision of this Agreement, to the extent permitted by applicable law, Lender reserves a right of setoff in all of Borrower's accounts with Lender (whether checking, savings, or some other account) other than the Lockbox. This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums due and owing from Borrower against any and all such accounts.

*Section 12.7. Survival of Representations.* All representations and warranties made herein or in certificates given pursuant hereto will survive the execution and delivery of this Agreement and the other Loan Documents, and will continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

*Section 12.8. Notices.* Except as otherwise specified herein, all notices hereunder will be in writing (by hand, commercial overnight courier, or e-mail) and will be given to the relevant party at its address or e-mail address set forth below, or such other address as such party may hereafter specify by written notice to the other. Any notice of default under this Agreement will be given by hand or overnight courier in addition to e-mail. Notices hereunder will be addressed:

To Borrower at:

San Diego Community Power

Attention: \_\_\_\_\_

815 E Street, Unit 12716

San Diego, CA 92112

E-mail: \_\_\_\_\_

To Lender at:

River City Bank  
Attention: Loan Center  
2485 Natomas Park Drive, Suite 400  
Sacramento, CA 95833  
E-mail: LoanServices@rivercitybank.com

Each such notice, request or other communication will be effective (i) if given by e-mail, upon transmission, or (ii) if given by any other means, when delivered at the addresses specified in this Section 12.8; *provided that* any notice given pursuant to Section 2.2 hereof will be effective only upon receipt.

For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address.

*Section 12.9. Headings.* Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

*Section 12.10. Severability of Provisions.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

*Section 12.11. Counterparts.* This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same instrument.

*Section 12.12. Assignments, Binding Nature, Governing Law, Etc.* This Agreement will be binding upon Borrower and its permitted successors and assigns, and will inure to the benefit of Lender and the benefit of its permitted successors and assigns, including any permitted subsequent holder of a Note. This Agreement and the rights and duties of the parties hereto will be construed and determined in accordance with the internal laws of the State of California without regard to principles of conflicts of laws. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby. Borrower may not assign its rights hereunder without the written consent of Lender. Lender may assign its rights hereunder without the consent of Borrower, but only if after any such assignment Lender acts as the lead agent or administrative agent with respect to this Agreement.

*Section 12.13. Submission to Jurisdiction; Waiver of Jury Trial.* Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Eastern District of California and of any California State court sitting in the County of Sacramento for purposes of all legal proceedings arising out of or relating to this Agreement, the other Loan Documents or the transactions contemplated hereby or thereby. Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the

laying of the venue of any such proceeding brought in such a court has been brought in an inconvenient forum. Borrower hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to any Loan Document or in the transactions contemplated thereby.

*Section 12.14. Time is of the Essence.* Time is of the essence in the performance and enforcement of this Agreement and the other Loan Documents.

*Section 12.15. Consent to Loan Participation.* Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Revolving Credit or the Term Loan to one or more purchasers, whether related or unrelated to Lender, provided that at all times Lender manages the Revolving Credit and the Term Loan such that Borrower may communicate exclusively with Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to this Agreement, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interest in the Notes and will have all the rights granted under the participation agreement or agreements governing the same of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligations under this Agreement irrespective of the failure or insolvency of any holder of any interest in the Notes. Borrower further agrees that the purchaser of any such participation interests may enforce the interests irrespective of any personal claims or defenses that Borrower may have against Lender.

*Section 12.16. No Recourse Against Constituent Members of Borrower.* Borrower 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 the Joint Powers Agreement and is a public entity separate from its constituent members. Borrower shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Notes. Lender shall not make any claims, take any actions or assert any remedies against any of Borrower's constituent members in connection with any payment default by Borrower under this Agreement or any other Loan Document.

*Section 12.17. Restated Credit Agreement.* This Agreement amends, restates and replaces in its entirety that certain Credit Agreement between Borrower and Lender dated May 21, 2020, as previously amended from time to time.

*[Signatures appear on following page.]*



WHEREFORE, Borrower and Lender have entered into this Agreement as of the first date written above.

**BORROWER:**

SAN DIEGO COMMUNITY POWER

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**LENDER:**

RIVER CITY BANK

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT A

### DEFINITIONS

*“Accounts”* means all rights to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a secondary obligation incurred or to be incurred, or (iv) for energy provided or to be provided.

*“Adjusted Tangible Unrestricted Net Position”* is defined in Section 10.7.

*“Adjusted Unrestricted Net Position”* is defined in Section 10.7.

*“Advance”* is defined in Section 2.1.

*“Agreement”* means this Amended and Restated Credit Agreement, as the same may be amended, modified or restated from time to time in accordance with the terms hereof.

*“Annual EBIDA”* is defined in Section 10.5.

*“Applicable Rate”* means (i) for the Revolving Credit, a variable rate of interest equal to the Three-Month CME Term SOFR plus 2.25% per annum, subject to a floor of 2.25% per annum, adjusting not more frequently than once every three-month period, and (ii) for the Term Loan, a fixed rate of interest equal to the Five-Year CMT plus 2.00% per annum, subject to a floor of 2.00% per annum, at the time of conversion. The Applicable Rate is subject to increase as provided in Section 10.4.

*“Authorized Representative”* means those persons shown on the list of officers provided by Borrower pursuant to Section 9.1(c), or on any update of any such list provided by Borrower to Lender, or any further or different officer of Borrower so named by any Authorized Representative of Borrower in a written notice to Lender.

*“Borrower”* is defined in the introductory paragraph.

*“Business Day”* means a day (other than a Saturday or Sunday) on which banks are not authorized or required to be closed in Sacramento, California.

*“CAISO”* means California ISO, the independent grid operator.

*“Capital Lease”* means at any date any lease of Property which in accordance with GAAP is required to be capitalized on the balance sheet of the lessee.

*“Capitalized Lease Obligation”* means the amount of liability as shown on the balance sheet of any Person in respect of a Capital Lease as determined at any date in accordance with GAAP.

*“Cash Collateral Account”* is defined in Section 7.1.

*“Cash Collateralize”* means, to pledge and deposit with or deliver to Lender, as collateral for the Obligations, in each case, in Dollars and in such amount as Lender may reasonably require, and pursuant to documentation in form and substance reasonably satisfactory to Lender. *“Cash Collateral”* shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

*“CPUC”* means the California Public Utilities Commission.

*“Cumulative EBIDA”* is defined in Section 10.6.

*“Debt Service”* is defined in Section 10.5.

*“Debt Service Reserve Account”* is defined in Section 7.1.

*“Debtor Relief Laws”* means the United States Bankruptcy Code and all other liquidation, conservatorship, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

*“Default”* means any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

*“Default Rate”* means the Applicable Rate plus six percent (6.0%).

*“Dollars and \$”* mean lawful money of the United States.

*“DSCR”* is defined in Section 10.5.

*“Event of Default”* is defined in Section 11.1.

*“Fiscal Year End”* means June 30.

*“Five-Year CMT”* means, as of the date of conversion of Advances to the Term Loan, the rate determined by Lender to be the Five-Year Treasury Constant Maturity rate as published on page H.15 by the Board of Governors of the Federal Reserve System.

*“GAAP”* means generally accepted accounting principles as established and interpreted by the Governmental Accounting Standards Board (GASB) and as applied by Borrower.

*“Governmental Authority”* means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity

exercising executive, legislative, judicial taxing, regulatory or administrative powers or functions of or pertaining to government.

*“Honor Date”* is defined in Section 4.3.

*“Indebtedness for Borrowed Money”* means, for any Person (without duplication), (i) all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (ii) all indebtedness for the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business not more than 90 days past due), (iii) all indebtedness secured by any Lien upon Property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (iv) all Capitalized Lease Obligations of such Person, and (v) all obligations of such Person on or with respect to letters of credit, banker’s acceptances and other evidences of indebtedness representing extensions of credit whether or not representing obligations for borrowed money.

*“Indemnified Liabilities”* is defined in Section 12.5.

*“Indemnified Person”* is defined in Section 12.5.

*“Initial Rate Set Date”* April 1, 2022, at which time Lender will determine the Three-Month CME Term SOFR which shall be in effect until the next Rate Change Date.

*“ISP”* is defined in Section 4.5.

*“JPA Members”* mean the cities of San Diego, Chula Vista, La Mesa, Encinitas, Imperial Beach, and National City, and the County of San Diego.

*“Joint Powers Agreement”* means the Amended and Restated Joint Powers Agreement of Borrower effective as of December 16, 2021, and as amended from time to time.

*“Lender”* is defined in the introductory paragraph.

*“Letter of Credit Advance”* is defined in Section 2.1.

*“Letter of Credit Note”* is defined in Section 2.3.

*“Lien”* means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

*“Loan Documents”* means this Agreement, the Notes, and all other documents, certificates, instruments and agreements relating to the foregoing or otherwise executed by Borrower in connection with the Revolving Credit.

*“Lockbox”* is defined in Section 7.5.

*“Maturity Date”* means, for any Note, the date so specified in such Note as the Maturity Date.

*“Minimum DSRA Balance”* means an amount not less than ten percent (10.0%) of the applicable Revolving Credit Commitment.

*“Net Position”* is defined in Section 10.5.

*“Note”* means the Promissory Note, any Letter of Credit Note and the Term Note, as applicable.

*“Obligations”* means and includes all loans, advances, debts, liabilities and obligations of Borrower to Lender, of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter owed by Borrower to Lender, whether in connection with the Loan Documents or otherwise, including without limitation all interest, fees, charges, expenses, attorneys’ fees and accountants’ fees chargeable to Borrower or payable by Borrower thereunder.

*“Payment Date”* means, other than the Revolving Credit Termination Date or any Maturity Date, the 1st day of each calendar month.

*“Permitted Liens”* is defined in Section 10.10.

*“Person”* means an individual, partnership, corporation, company, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

*“Phase 3 Commencement”* means the enrollment and commencement of service to residential customers comprising approximately 35% of Borrower’s total projected customer load, which commencement must occur no later than June 30, 2022 unless such date is extended by Lender.

*“Profitability Requirement”* means, for any consecutive twelve (12) month period, a positive change in Borrower’s Net Position plus depreciation, amortization and interest expense in the amount of not less than \$30,000,000.00.

*“Pro Forma”* means a pro forma financial model prepared by Borrower in form and substance deemed acceptable to Lender in its sole discretion, to include, without limitation, overhead cost estimates, monthly and annual financial projections and revenue estimates, assumed opt-out rates and power portfolio composition, power supply cost assumptions, projected cash flows, financing requirements, working capital requirements, rate assumptions and rate changes.

*“Property”* means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

*“Promissory Note”* is defined in Section 2.3.

*“Rate Change Date”* means July 1, 2022 and the first calendar day of each calendar quarter thereafter.

*“Reimbursement Date”* is defined in Section 4.3.

*“Related Parties”* means, with respect to any Person, such Person’s affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s affiliates.

*“Resource Adequacy Contract”* means any agreement entered into by Borrower for the purpose of complying with CPUC resource adequacy requirements.

*“Revenues”* means the revenues of Borrower, as determined in accordance with GAAP; but excluding (i) any unrealized gain or loss resulting from changes in the value of investment securities, (ii) any gains on the sale or other disposition of fixed or capital assets not in the ordinary course of business and (iii) earnings resulting from any reappraisal, revaluation or write-up of fixed or capital assets.

*“Revolving Credit”* is defined in Section 2.1.

*“Revolving Credit Commitment”* means \$50,000,000.00.

*“Revolving Credit Termination Date”* means April 1, 2024.

*“SWIFT”* is defined in Section 4.6.

*“Term Loan”* is defined in Section 2.4.

*“Term Loan Conditions”* means all of the following:

- (a) No Event of Default has occurred and is continuing;
- (b) Without limiting the foregoing, no material adverse change has occurred in Borrower’s operations or financial condition, and all of the Loan Documents continue to be in full force and effect; and
- (c) Lender has received and approved an updated Pro Forma and determined that the projections contained therein will not result in materially worse financial performance than Borrower’s most recently ended fiscal year.

*“Term Note”* is defined in Section 6.1.

*“Three-Month CME Term SOFR”* means, as of each Rate Change Date or the Initial Rate Set Date, the rate determined by Lender to be the Three-Month CME Term SOFR rate as published by CME Group; provided that if Lender determines, in its sole discretion, that this rate has become unavailable or unreliable, either temporarily, indefinitely or permanently, Lender may amend this Agreement and the other Loan Documents by designating a substantially similar rate. Lender may also amend and add a

positive or negative margin (percentage added to or subtracted from the substitute rate) as part of the rate determination. In making these amendments, Lender may take into consideration any then-prevailing market convention for selecting a substitute rate and margin for the Three-Month CME Term SOFR. Such amendment will be effective and bind Borrower ten (10) Business Days after Lender gives written notice to Borrower (without the need for any action or consent of Borrower).

“*UCC*” means the Uniform Commercial Code as enacted in the State of California.

“*UCP*” is defined in Section 4.5.

“*Unreimbursed Amount*” is defined in Section 2.3.

“*Winding-Up*” means, in relation to a Person, a voluntary or involuntary case or other proceeding or petition seeking dissolution, liquidation, reorganization, administration, assignment for the benefit of creditors or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official over that Person or any substantial part of that Person’s Properties.

“*Working Capital Advance*” is defined in Section 2.1.

## EXHIBIT B

### FORM OF LETTER OF CREDIT NOTE

\$ \_\_\_\_\_

Date: \_\_\_\_\_

FOR VALUE RECEIVED, **SAN DIEGO COMMUNITY POWER**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_,000.00) pursuant to the terms of that certain Amended and Restated Credit Agreement (the "*Credit Agreement*") dated as of March \_\_\_, 2022, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Letter of Credit Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

**Letter of Credit.** This Note is executed in connection with a Letter of Credit issued by \_\_\_\_\_ ("*Issuing Bank*"), dated \_\_\_\_\_, in the face amount of \$ \_\_\_\_\_, in favor of \_\_\_\_\_ (as Beneficiary) and identified as number: \_\_\_\_\_ (the "*Letter of Credit*").

**Draw or Demand under the Letter of Credit.** Borrower directs and authorizes Lender to immediately advance funds under this Note to repay in full any demand or draw request form Beneficiary under the Letter of Credit (the "*Disbursement*").

**Payment Terms.** Borrower agrees to pay any Disbursement immediately upon demand from Lender and in no event less than three (3) calendar days from the date of the Disbursement (the "*Demand Date*"). From the date of the Disbursement to the Demand Date, Borrower shall pay interest only on the unpaid principal balance of this Note (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after the Demand Date (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

**Maturity Date.** The repayment obligations from Borrower to Lender under this Note shall remain in full force and effect until the original Letter of Credit including any and all amendments is surrendered to Issuing Bank undrawn and cancelled to the satisfaction of Issuing Bank.

**Credit Agreement and Cash Collateral.** If the Letter of Credit has been issued and remains unexpired on the Revolving Credit Termination Date, then upon request by Lender, Borrower shall immediately provide Cash Collateral to Lender with a value of not less than 110% of the stated principal amount of this Note.



**Default and Acceleration.** Upon the occurrence of any Event of Default described in Section 11.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

**Miscellaneous.** This Note and the holder hereof are entitled to all of the rights and benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

**Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.**

SAN DIEGO COMMUNITY POWER

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT C**  
**FORM OF REQUEST FOR ADVANCE**

**LOAN NO. 5084549243-101**

**Borrower:** San Diego Community Power hereby requests an Advance under the Revolving Credit in accordance with the terms of the Amended and Restated Credit Agreement dated as of March \_\_, 2022, between Borrower and Lender.

**Request Date:** \_\_\_\_\_

**Amount of Advance:** \$ \_\_\_\_\_

**PURPOSE OF ADVANCE**

\_\_\_ **Working Capital Advance.** You are authorized and instructed to deposit the Advance proceeds into checking account:           #5093687892          

\_\_\_ **Attached are copies of invoices and other documentation in support of this request.**

\_\_\_ **Letter of Credit Advance for the benefit of:** \_\_\_\_\_

\_\_\_ **You are authorized to remit this payment directly to a third party as follows:**

**Company Name:** \_\_\_\_\_

**Wire Instructions**

**Bank Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Routing Number:** \_\_\_\_\_

**Account Number:** \_\_\_\_\_

**Other Reference:** \_\_\_\_\_

## **BORROWER CERTIFICATION**

Borrower hereby certifies that:

- (I) After making the requested Advance, the sum of all outstanding Advances will not exceed the Revolving Credit Commitment then in effect;
- (II) As of the Request Date, the representations and warranties contained in the Credit Agreement are true and correct in all material respects on and as of such Request Date to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties are true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and
- (III) As of the Request Date, no Event of Default has occurred and is continuing or would result from the consummation of the borrowing contemplated hereby.
- (IV) This Advance will be used for purposes permitted under the terms of the Credit Agreement and no portion of this Advance will be used to fund operating losses.

SAN DIEGO COMMUNITY POWER

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT D

### FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate is executed and delivered by San Diego Community Power (“*Borrower*”) pursuant to the terms of that certain Amended and Restated Credit Agreement dated as of March \_\_, 2022, as the same may be amended from time to time (the “*Credit Agreement*”). All capitalized terms used in this Compliance Certificate and not otherwise defined herein shall have the same meaning given to them in the Credit Agreement.

This Compliance Certificate is delivered with respect to the period commencing on \_\_\_\_\_, \_\_\_\_\_ and ending on \_\_\_\_\_, \_\_\_\_\_.

Borrower hereby certifies, represents and warrants to Lender as follows:

As of the date of this Compliance Certificate, no Event of Default has occurred during such period. Borrower has fulfilled its obligations under the Credit Agreement and the other Loan Documents and all representations made therein continue to be true and correct in all material respects.

Borrower is in material compliance with the following covenants for such period:

Covenant	Required	Actual	Compliance (Y/N)
Adjusted Tangible Unrestricted Net Position			
EBIDA			
Other:			

[Or, if any such Event of Default has occurred during such period, set forth a description of such Event of Default and specifying the action, if any, taken by Borrower to remedy the same.]

SAN DIEGO COMMUNITY POWER

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## AMENDED AND RESTATED REVOLVING CREDIT PROMISSORY NOTE

\$50,000,000.00

Date: March \_\_, 2022

FOR VALUE RECEIVED, **SAN DIEGO COMMUNITY POWER**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of up to FIFTY MILLION and No/100 DOLLARS (\$50,000,000.00), pursuant to the terms of that certain Amended and Restated Credit Agreement (the "*Credit Agreement*") dated as of March \_\_, 2022, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Amended and Restated Revolving Credit Promissory Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on May 1, 2022, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the Revolving Credit Termination Date. Under the terms of the Credit Agreement and subject to the conditions set forth therein, Borrower may request that certain Advances outstanding under this Note be converted into a Term Loan evidenced by a Term Note.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 11.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

This Note amends, restates and replaces in its entirety that certain Revolving Credit Promissory Note dated May 21, 2020, made by Borrower and payable to the order of Lender in the original principal amount of \$35,000,000.00.

**Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.**

SAN DIEGO COMMUNITY POWER

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

## **RESOLUTION NUMBER 2022-04**

### **A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER ADOPTING FINANCING AGREEMENTS**

WHEREAS, San Diego Community Power is a California joint powers authority formed to operate a Community Choice Aggregation Plan for its members (“SDCP”); and

WHEREAS, SDCP entered into a Credit Agreement with River City Bank to provide a revolving credit facility in the amount of \$35,000,000 in May, 2020 (“Credit Agreement”), which comes due on May 31, 2022; and

WHEREAS, SDCP continues to require financing to provide working capital and credit support for power purchases and to fund operations until such time as SDCP has accumulated sufficient operating reserves to be self-sustaining; and

WHEREAS, SDCP has negotiated an Amended and Restated Credit Agreement with River City Bank that will (i) increase in the credit facility to \$50,000,000 to support increased costs for energy and the expansion of SDCP operations with the addition of new members; and (ii) provide an extension of the credit facility to April 1, 2024;

WHEREAS, SDCP is in the process of obtaining consent to the Amended and Restated Credit Agreement from Emerald Blue, LLC, and B Quest Foundation, each of which provided collateral for the River City Bank credit facility in the amount of \$5,000,000 (which loans are subordinate to the River City Bank funding pursuant to a separate subordination agreement between Emerald Blue, B Quest Foundation and River City Bank); and

WHEREAS, the Board has previously approved a memorandum of understanding with the City of San Diego for the repayment of startup funding provided by the City, which funding will continue to be subordinate to the River City Bank, Emerald Blue, LLC and B Quest financing, subject to obtaining the consent of the City of San Diego to the changes set forth in the Amended and Restated Credit Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of SDCP as follows:

1. The Board of Directors has determined that the recitals herein are true and correct.
2. The Board of Directors hereby approves the Amended and Restated Credit Agreement with River City Bank and authorizes the Chief Financial Officer, or his designee, to (i) finalize the terms of the Amended and Restated Credit Agreement with the advice of legal counsel and all ancillary agreements and documents in connection therewith; and (ii) to execute such Amended and Restated Credit Agreement and Amended Revolving Credit Note, and such other ancillary agreements or documents as are approved by legal counsel as to form.



3. The Board of Directors hereby directs the Chief Financial Officer, or his designee, to work with Emerald Blue, LLC, B Quest Foundation and the City of San Diego to obtain the their consent to the terms of the Amended and Restated Credit Agreement as required by their respective Subordination Agreements with River City Bank.
4. This Resolution shall be effective immediately after its adoption by the Board of Directors.

**PASSED AND ADOPTED** at a meeting of the Board of Directors of San Diego Community Power on March 24, 2022.

\_\_\_\_\_

\_\_\_\_\_

Approved as to form:

\_\_\_\_\_

Ryan Baron  
SDCP Legal Counsel

AYES: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

## GLOSSARY OF TERMS

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

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

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

**CEC – California Energy Commission**

**CPUC – California Public Utilities Commission**

**C&I – Commercial and Industrial** – Business customers

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

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

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

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

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

**DAC – Disadvantaged Community**

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

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

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

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

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

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

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

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

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

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

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

**EV – Electric Vehicle**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

**NRDC – Natural Resources Defense Council**

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

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

**MWH – Megawatt-hour** – measure of energy

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

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

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



### **PCC3 – RPS Portfolio Content Category 3 – Unbundled REC**

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

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

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

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

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

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

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

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

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

**SCE – Southern California Edison**

**SDG&E – San Diego Gas & Electric**

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

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

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



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

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

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

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



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ALJ	Administrative Law Judge
ARB	Air Resources Board
AReM	Alliance for Retail Energy Markets
BayREN	Bay Area Regional Energy Network
CAISO	California Independent System Operator
CalCCA	California Community Choice Association
CALSEIA	California Solar Energy Industries Association
CALSLA	California City County Street Light Association
CAM	Cost Allocation Mechanism
CARE	California Alternate Rates for Energy
CBE	Communities for a Better Environment
CCA	Community Choice Aggregator
CCSF	City and County of San Francisco
CEC	California Energy Commission
CEE	Coalition for Energy Efficiency
CLECA	California Large Energy Consumers Association
CPUC	California Public Utilities Commission
DA	Direct Access
DACC	Direct Access Customer Coalition
DER	Distributed Energy Resources
DR	Demand Response
DRP	Distributed Resource Plans
DWR	Department of Water Resources
ECR	Enhanced Community Renewable
ED	Energy Division
EE	Energy Efficiency
ELCC	Effective Load Carrying Capacity
EPIC	Electric Program Investment Charge
ERRA	Energy Resource Recovery Account

ES	Energy Storage
ESA	Energy Storage Agreements
ESP	Electric Service Provider
EV	Electric Vehicle
FCR	Flexible Capacity Requirements
GHG	Greenhouse Gas
GRC	General Rate Case
GTSR	Green Tariff Shared Renewables
ICA	Integration Capacity Analysis
IDER	Integrated Distributed Energy Resources
IDSMD	Integrated Demand-Side Management
IEP	Independent Energy Producers
IMD	Independent Marketing Division
IOU	Investor Owned Utility
IRP	Integrated Resource Planning
LCE	Lancaster Choice Energy
LCFS	Low Carbon Fuel Standard
LCR	Local (RA) Capacity Requirements
LNBA	Locational Net Benefits Analysis
LSE	Load-Serving Entity
LTPP	Long- Term Procurement Rulemaking
MCE	Marin Clean Energy
MEO	Marketing, Education And Outreach
MW	Megawatt
NAESCO	National Association of Energy Service Companies
NDA	Non-Disclosure Agreement
NEM	Net Energy Metering
NBC	Non-Bypassable Charge
NRDC	Natural Resources Defense Council
OIR	Order Instituting Rulemaking
OSC	Order to Show Cause
ORA	Office of Ratepayer Advocates
PA	Program Administrator (for EE Business

	Plans)
PAC	Public Agency Coalition
PAM	Portfolio Allocation Methodology
PCE	Peninsula Clean Energy Authority
PCIA	Power Charge Indifference Adjustment
PD	Proposed Decision
PG&E	Pacific Gas & Electric
PHC	Prehearing Conference
PPA	Power Purchase Agreement
PRP	Priority Review Project
PRRR	Progress On Residential Rate Reform
PUC	Public Utilities Code
PURPA	Public Utilities Regulatory Policy Act
RA	Resource Adequacy
RAM	Renewables Auction Mechanism
REC	Renewable Energy Credit
RES-BCT	Renewable Energy Self-Generation Bill Credit Transfer
RFO	Request for Offers
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RPS	Renewables Portfolio Standard
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SDG&E	San Diego Gas & Electric
SGIP	Self-Generation Incentive Program
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