

AGENDA

REGULAR MEETING OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER (SDCP)

May 28, 2020

5:00 p.m.

DUE TO THE STAY AT HOME ORDER IN CALIFORNIA AND IN ACCORDANCE WITH THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20, MEMBERS OF THE SDCP BOARD OF DIRECTORS WILL BE PARTICIPATING REMOTELY FOR THIS MEETING AND THERE WILL BE NO LOCATION FOR IN-PERSON ATTENDANCE. SDCP IS PROVIDING ALTERNATIVES TO IN-PERSON ATTENDANCE FOR VIEWING AND PARTICIPATING IN THE MEETING. FURTHER DETAILS ARE BELOW.

Note: Any member of the public may provide comments to the San Diego Community Power Board of Directors on any agenda item or on a matter not appearing on the agenda, but within the jurisdiction of the Board. Public comments must be submitted using this ([web form](#)). Please indicate whether your comment is on a specific agenda item or a non-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 are limited to four hundred (400) words on the form. If you have anything that you wish to be distributed to the Board, please provide it to the Board Clerk via info@sdcommunitypower.org, who will distribute the information to the Members. It is requested that comments and other information be provided at least two (2) hours before the start of the Board meeting. All comments received by such time will be provided to the Board members in writing. In the discretion of the Chair, the first ten (10) comments received on each agenda item, or on non-agenda matters, may be read into the record at the meeting. Comments received after the two (2) hour limit will be collected, sent to the Board members in writing, and be part of the public record.

The public may participate using the following remote options:

Teleconference Meeting Webinar

<https://zoom.us/j/94585320711>

Telephone (Audio Only)

(669) 900 6833 or (346) 248 7799 | Webinar ID: 945 8532 0711

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

ITEMS TO BE ADDED, WITHDRAWN OR REORDERED ON THE AGENDA

PRESENTATION

Presentation providing an update from San Diego Gas & Electric.

PUBLIC COMMENTS

Opportunity for members of the public to address the Board on any items not on the agenda but within the jurisdiction of the Board. Members of the public may use the web form noted above to provide a comment.

CONSENT CALENDAR

All matters are approved by one motion without discussion unless a member of the Board of Directors requests a specific item to be removed from the Consent Agenda for discussion. A member of the public may use the web form noted above to comment on any item on the Consent Agenda.

1. Approval of the minutes for the Board of Directors of San Diego Community Power Regular Meeting held Thursday, April 23, 2020

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.

2. Operations and Administration Report from the Interim Executive Officer

Receive update on various operational and administrative activities and file this report.

Report includes:

- Financial Update
- Vendor RFPs
- Committee Meeting(s) Update
- Discussions with SDG&E and Other Compliance Matters
- Regulatory Update

3. Ad Hoc Subcommittee Update on Chief Executive Officer Recruitment

Receive report and provide direction as needed.

4. Update on River City Bank Financing and Promissory Note with B Quest Foundation

1. Update on operational funding from River City Bank and the addition of B Quest as a lender to share the \$5 million cash collateral funding obligation approved by the Board with Emerald Blue.
2. Ratification of the promissory note with B Quest in the same form as signed with Emerald Blue.

5. Approval of Tenaska Power Services Co. for SDCP Schedule Coordination Services

1. Approve Agreement with Tenaska Power Services Co. for SDCP Power schedule coordination services ending on December 31, 2022 with annual contract renewals at the discretion of SDCP management.

2. Authorize the Interim Executive Officer to execute the Agreement in a form approved by the Interim Executive Officer and reviewed and approved as to form by General Counsel.

6. Presentation on Types and Categories of Power Procurements, Procurement/Board Approval Timeline, RPS and GHG-free Targets, and Preview of Risk Management Policy with Delegation of Authority

1. Receive update on types and categories of power procurements.
2. Receive update on 2020/2021 timeline for procurement and Board approvals.
3. Receive update on 2021 RPS/GHG-free targets.
4. Receive preview on Energy Risk Management Policy and Delegation of Authority.

7. Approval of SDCP's Participation in SDG&E Request for Proposals (RFP)

Approve SDCP's participation in SDG&E's resource adequacy and renewable power RFPs.

8. Approval of the La Mesa Cooperation and Administrative Services Agreement

Authorize the execution of the Cooperation and Administrative Services Agreement with the City of La Mesa, providing certain services to San Diego Community Power (SDCP) by the City and reimbursement to the City for these services.

9. Approval of Community Advisory Committee Nominees for the City of Chula Vista and Amendment of Term End Date for all CAC Members

1. Approve nominees from the City of Chula Vista to the inaugural Community Advisory Committee.
2. Approve amendment to adjust the term end date for all CAC members to be May 2022 and May 2023.

DIRECTOR COMMENTS

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

REPORTS BY MANAGEMENT AND GENERAL COUNSEL

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

CLOSED SESSION

10. Public Employment

Title: Chief Executive Officer.

11. Conference with Labor Negotiators

Agency designed representatives: Shawn Marshall, LEAN Energy US, Tom Bokosky, City of Encinitas HR Department, and Ryan Baron, BB&K/Outside General Counsel.
Unrepresented employee: Chief Executive Officer

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 (858) 492-6005 or info@sdcommunitypower.org. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Board Documents

Copies of the agenda and agenda packet are available at www.sdcommunitypower.org/board-meetings. 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. Until SDCP obtains offices, those public records are 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, that is now suspended and can instead be made available electronically at info@sdcommunitypower.org. The documents may also be posted at the above website. Late-arriving documents received during the meeting are available for review by making an electronic request to the Board Secretary via info@sdcommunitypower.org.

**SAN DIEGO COMMUNITY POWER (SDCP)
BOARD OF DIRECTORS**
San Diego City Administration Building, 12th Floor
202 "C" Street
San Diego, CA 92101

MINUTES

April 23, 2020

This meeting was conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic.

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, except for Item 4 which was considered after Item 8.

CALL TO ORDER

Chair Mosca (Encinitas) called the SDCP Board of Directors meeting to order at 5:03 p.m.

PLEDGE OF ALLEGIANCE

Chair Mosca (Encinitas) led the Pledge of Allegiance.

ROLL CALL

PRESENT: Chair Mosca (Encinitas), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)

ABSENT: Vice Chair Padilla (Chula Vista)

Also Present: Interim Executive Officer Hooven, General Counsel Baron, Assistant General Counsel Norvell, Interim Board Clerk Wiegelman

ITEMS TO BE ADDED, WITHDRAWN OR REORDERED ON THE AGENDA

Chair Mosca (Encinitas) announced Item 4 would be considered following Item 8.

PRESENTATION

Presentation from the City of San Diego on its Franchise Agreement negotiations with San Diego Gas & Electric

Lee Friedman, City of San Diego Program Manager, provided a PowerPoint presentation on the City of San Diego's (San Diego) Franchise Fee highlighting San Diego's franchise agreements, San Diego's franchise agreement history with San Diego Gas & Electric (SDG&E), San Diego's utility undergrounding program, San Diego's energy history, San Diego's current franchise agreement for electricity and gas, SDG&E's franchise fee in San Diego's budget, utility undergrounding projects, the possibilities for a new franchise agreement, and the projected timeline for approving and adopting a new franchise agreement.

Board questions and comments ensued.

PUBLIC COMMENTS

There were no public comments.

CONSENT CALENDAR **(Item 1)**

1. Approval of the minutes for the Board of Directors of San Diego Community Power Regular Meeting held Thursday, February 27, 2020

ACTION: Motioned by Board Member Baber (La Mesa) and seconded by Board Member West (Imperial Beach) to approve Consent Calendar Item 1. The motion carried by the following vote:

Vote: 4-0

Yes: Chair Mosca (Encinitas), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)

No: None

Abstained: None

Absent: Vice Chair Padilla (Chula Vista)

REGULAR AGENDA

2. Operations and Administration Report from the Interim Executive Officer

Interim Executive Officer Hooven provided an update on the impact of COVID-19 on SDCP operations, the status of the various vendor requests for proposals (RFPs), staff discussions with SDG&E, compliance matters, and regulatory and legislative matters.

Ty Tosdal, Tosdal APC, provided an update on energy regulatory affairs as they relate to the interests of SDCP.

Board questions and comments ensued.

Kirby Dusel, Pacific Energy Advisors, spoke on the impacts the COVID-19 public health emergency has had on the energy industry.

Board questions and comments continued.

Following Board questions and comments, no action was taken.

3. Ad Hoc Subcommittee Update on Chief Executive Officer Recruitment

Interim Executive Officer Hooven left the meeting at 5:44 p.m.

Chair Mosca (Encinitas) provided an update on the progress of the recruitment for a Chief Executive Officer (CEO). Chair Mosca (Encinitas) reviewed the tasks that had been completed and the outreach efforts, stated the application deadline was May 20, 2020, and provided a timeline for the remainder of the recruitment process.

Board questions and comments ensued.

Following Board questions and comments, no action was taken.

Interim Executive Officer Hooven rejoined the meeting at 5:54 p.m.

4. Report from Finance and Risk Management Committee

Interim Executive Officer Hooven reported on the April 17, 2020 Finance and Risk Management Committee meeting. Interim Executive Officer Hooven said the Committee considered two items: (1) discussion and recommendation on credit and banking services and collateral agreements; and (2) discussion and provide direction on rate discount, power content, and phasing plan. Interim Executive Officer Hooven stated the Committee recommended the Board approve the credit and banking services and collateral agreements, provided consensus and general direction on the customer phasing plan, and directed staff to conduct further research on rate discount and power content.

Following Board questions and comments, no action was taken.

5. Review of San Diego Community Power Bylaws

Assistant General Counsel Norvell summarized the SDCP draft bylaws highlighting the provisions regarding SDCP's formation and Board structure, Board officers' terms of office, Board meeting procedures, preparation of Board agendas, and Board committees. Assistant General Counsel Norvell explained the roles of alternate Board Members as it relates to closed session meetings and the circumstances in which JPA Board Members may disclose certain closed session items to the legislative bodies and legal counsel of their home agency.

Board questions and comments ensued.

ACTION: Following questions and comments, it was the consensus of the Board to direct staff to provide SDCP Member Agencies with a copy of the proposed Bylaws, as amended, to allow a member of the public to pull an item from the Consent Calendar without the support of a Board Member, and place the amended Bylaws on a future SDCP agenda for final approval.

6. Review and Approve Procurement Policy

Interim Executive Officer Hooven provided an overview of the proposed procurement policy. Interim Executive Officer Hooven stated the procurement policy outlines a series of procedures and requirements for procurement of professional services, general services, and supplies.

Assistant General Counsel Norvell stated the proposed procurement policy would establish a set of competitive procurements for everything over \$10,000 with increasing formality as the cost increases. Assistant General Counsel Norvell said the proposed procurement policy would allow sole source procurement only in specific limited circumstances.

Board questions and comments ensued.

Board Clerk Wiegelman read aloud the first 400 words of the emailed public comments submitted by 3:00 p.m. the day of the Board meeting.

Jason Anderson, San Diego resident, submitted a comment in support of the proposed procurement policy.

ACTION: Motioned by Board Member Montgomery (San Diego) and seconded by Board Member Baber (La Mesa) to adopt Resolution No. 2020-02 adopting a Procurement Policy for SDCP, as amended, to increase the diversity bonus from 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations to 5% or 5 points out of a 100-point scoring system in competitive solicitations. The motion carried by the following vote:

Vote: 4-0

Yes:	Chair Mosca (Encinitas), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)
No:	None
Abstained:	None
Absent:	Vice Chair Padilla (Chula Vista)

7. Review and Approve Policy on Delegation of Authority to Chief Executive Officer For Regulatory and Legislative Matters

Interim Executive Officer Hooven provided an overview of the proposed policy on the delegation of authority to the CEO for regulatory and legislative matters. Interim Executive Officer Hooven stated the proposed policy would allow the SDCP's CEO to appropriately

and timely respond to regulatory or legislative actions that may impact the mission and/or operations of SDCP. Interim Executive Officer Hooven said the proposed policy would delegate authority to the CEO and/or relevant designees when certain conditions are met.

Board questions and comments ensued.

ACTION: Motioned by Board Member Montgomery (San Diego) and seconded by Board Member West (Imperial Beach) to adopt Resolution No. 2020-03 adopting a policy on delegation of authority to the Chief/Interim Executive Officer on regulatory and legislative matters impacting SDCP functions. The motion carried by the following vote:

Vote: 4-0

Yes: Chair Mosca (Encinitas), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)
No: None
Abstained: None
Absent: Vice Chair Padilla (Chula Vista)

8. Approve Conflict of Interest Code for San Diego Community Power

Assistant General Counsel Norvell explained the purpose of the proposed Conflict of Interest Code (Code). Assistant General Counsel Norvell stated that because SDCP was new the proposed Code only identified a handful of positions but as positions are added to SDCP, persons in those positions would be required to file a Form 700 – Statements of Economic Interests, and the Code would be amended in the future to include those positions.

Board questions and comments ensued.

ACTION: Motioned by Board Member Baber (La Mesa) and seconded by Board Member West (Imperial Beach) to (1) adopt Resolution No. 2020-04 adopting a Conflict of Interest Code for San Diego Community Power; and (2) authorize staff to execute the appropriate documents and submit the adopted Code to the Board of Supervisors of San Diego County as SDCP’s code-reviewing body and request approval of the Code pursuant to Government Code Section 87303. The motion carried by the following vote:

Vote: 4-0

Yes: Chair Mosca (Encinitas), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)
No: None
Abstained: None
Absent: Vice Chair Padilla (Chula Vista)

9. Approval of Agreements with River City Bank and Emerald Blue for Credit and Banking Services

Interim Executive Officer Hooven provided an overview of the agreement process for the credit and banking services agreements with River City Bank and Emerald Blue.

Glen Price, Best Best & Krieger, reviewed the provisions of the credit agreement with River City Bank.

Board questions and comments ensued.

Glen Price, Best Best & Krieger, reviewed the provisions of the loan agreement with Emerald Blue for the cash collateral account.

Board questions and comments continued.

ACTION: Motioned by Board Member Baber (La Mesa) and seconded by Board Member West (Imperial Beach) to (1) authorize the Interim Executive Officer to execute a Credit Agreement and related documents necessary to implement a \$35 million credit facility with River City Bank in a form approved by the Interim Executive Director and reviewed and approved as to form by the General Counsel and adopt the formal Resolution required by River City Bank. Related documents would include documents necessary to open accounts and obtain banking services from River City Bank as required by the Credit Agreement; and (2) authorize the Interim Executive Officer to execute a promissory note with Emerald Blue, LLC, to borrow \$5 million that would be used as cash collateral for the credit facility with River City Bank in a form approved by the Interim Executive Director and reviewed and approved as to form by the General Counsel. The motion carried by the following vote:

Vote: 4-0

Yes: Chair Mosca (Encinitas), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)
No: None
Abstained: None
Absent: Vice Chair Padilla (Chula Vista)

10. Approval of Agreement with Calpine Energy Solutions for Data Management and Customer Call Center Services

Interim Executive Director Hooven explained the scope of work and selection process and reviewed the provisions of the agreement with Calpine Energy Solutions for data management and customer call center services.

Board questions and comments ensued.

Josh Brock, Calpine Energy Solutions, LLC, explained the process for determining the number of agents needed to staff the customer call center.

Board questions and comments continued.

Board Clerk Wiegelman read aloud the first 400 words of the emailed public comments submitted by 3:00 p.m. the day of the Board meeting.

Jason Anderson, San Diego resident, submitted a comment in support of approving the agreement with Calpine Energy Solutions for data management and customer call center services.

ACTION: Motioned by Board Member Baber (La Mesa) and seconded by Board Member West (Imperial Beach) to (1) approve the Data Management and Customer Service Center Agreement with Calpine Energy Solutions, LLC, for a 3-year term beginning in March 2021 with optional 1-year extension; and (2) authorize the Interim Executive Officer to execute the Agreement in a form approved by the Interim Executive Director and reviewed and approved as to form by the General Counsel. The motion carried by the following vote:

Vote: 4-0

Yes: Chair Mosca (Encinitas), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)
No: None
Abstained: None
Absent: Vice Chair Padilla (Chula Vista)

11. Approval of CCA Registration and Bond Agreement

Interim Executive Officer Hooven stated that the California Public Utilities Commission (CPUC) requires a registration packet that includes a signed agreement with the incumbent utility and a bond be submitted as part of the Community Choice Aggregation Implementation Plan. Interim Executive Officer said the agreement governs the business relationship between the Community Choice Aggregation program and SDG&E.

Board questions and comments ensued.

ACTION: Motioned by Chair Mosca (Encinitas) and seconded by Board Member Montgomery (San Diego) to (1) authorize the Interim Executive Officer to sign the Community Choice Aggregator (CCA) Service Agreement between SDCP and SDG&E; (2) authorize River City Bank or the Interim Executive Officer to post the \$100,000 bond with CPUC; and (3) authorize staff to submit SDCP's CCA Registration Packet to CPUC for approval. The motion carried by the following vote:

Vote: 4-0

Yes: Chair Mosca (Encinitas), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)
No: None
Abstained: None
Absent: Vice Chair Padilla (Chula Vista)

12. Approval of Community Advisory Committee nominees

Chair Mosca (Encinitas) commented on the importance of the Community Advisory Committee.

Interim Executive Officer provided an overview of the recruitment and selection process and stated that the City of Chula Vista nominees would be brought before the Board for approval at the SDCP Board meeting in May.

Board Clerk Wiegelman read aloud the first 400 words of the emailed public comments submitted by 3:00 p.m. the day of the Board meeting.

Jason Anderson, San Diego resident, submitted a comment in support of approving the City of San Diego nominees, Eddie Price and Matthew Vasilakis.

The Chair and each Board Member stated the reasons for their nominations.

ACTION: Motioned by Board Member Montgomery (San Diego) and seconded by Board Member West (Imperial Beach) to approve the appointment of City of San Diego nominees Eddie Price and Matthew Vasilakis, City of La Mesa nominees Lacy Bird and David Harris, City of Encinitas nominees Gary Lorens Jahns and Tara Hammond, and City of Imperial Beach nominees Anna Web and Charles T. Summers to the SDCP Community Advisory Committee. The motion carried by the following vote:

Vote: 4-0

Yes: Chair Mosca (Encinitas), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)
No: None
Abstained: None
Absent: Vice Chair Padilla (Chula Vista)

DIRECTOR COMMENTS

There were no comments.

REPORTS BY MANAGEMENT AND GENERAL COUNSEL

There were no reports.

CLOSED SESSION

Chair Mosca adjourned the meeting to Closed Session at 7:19 p.m.

13. Public Employment

Title: Chief Executive Officer

14. Conference with Labor Negotiators

Agency designated representative: Shawn Marshall, LEAN
Unrepresented employee: Chief Executive Officer

At 8:12 p.m. General Counsel Baron announced there were no reportable actions.

ADJOURNMENT

General Counsel Baron adjourned the meeting at 8:12 p.m.

Megan Wiegelman, CMC
Interim Board Clerk

SAN DIEGO COMMUNITY POWER
Staff Report – Item 2

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Subject: Operations and Administration Report from the Interim Executive Officer

Date: May 28, 2020

Recommendation

Receive update on various operational and administration activities and file this report.

Analysis and Discussion

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

A) COVID-19 Impact

Staff are monitoring the safe reopening guidance provided by the State and County to determine when in-person meetings will resume. Until then, operations and meetings have continued productively via remote connectivity. Staff and our consultants are collectively monitoring potential impacts to startup activities in light of the economic impacts of this global pandemic and will keep the Board apprised if any concerns arise.

B) Financial Update

An update on financing will be provided during a following agenda item on this meeting agenda. Staff expect to present on the fiscal year budget and expenditures to-date at the June Board meeting.

C) Request for Proposals (RFPs) and other Solicitations

Our outstanding professional services RFP is for marketing and communication services, released April 30th and closing May 29, 2020. This is a broad scope of services that covers tasks from branding to community outreach and media relations. Depending on the response volume and review process, we anticipate recommending a contract to the Board at the June 25th meeting.

SDCP also launched its 2021-2023 Local Resource Adequacy (RA) solicitation on May 18th, with responses due May 26, 2020. This solicitation is likely the first of several solicitations for power

this year. Additional information will be provided by Pacific Energy Advisors later in this meeting agenda.

D) Committee Meetings

- a. Finance and Risk Management – This committee met again on May 12th and agreed to set regular, monthly meetings for the remainder of 2020. Topics covered will be discussed on this Board agenda, including a financing update, power procurement, and portfolio management decisions/timeline.
- b. Community Advisory Committee – This committee had its inaugural meeting on May 22nd. The committee members were sworn in, elected an interim Chair, and discussed various foundation items such as an SDCP overview, the Board-approved Scope of Work, and development of a work plan. They will elect permanent officers and continue their start up activities once the Chula Vista representatives are seated.

E) Discussions with San Diego Gas & Electric (SDG&E)

Staff and SDCP consultants, including Pacific Energy Advisors, continue to offer an open dialogue with SDG&E staff to discuss coordination needs and opportunities for collaboration. Areas of discussion include load forecasting, integrated resource planning, resource adequacy, etc. Recent discussions included options for RA power procurement, as SDG&E will have an excess RA available once SDCP starts service. SDG&E intends to issue a Request for Offers (RFO) in the coming months to manage this excess power. SDCP, Pacific Energy Advisors, and BB&K (SDCP's legal counsel) are preparing to respond to this RFO.

In previous meetings, SDG&E reaffirmed a January 2021 operational start of their new bill system replacement project, known as Envision. This system will be critical to SDCP's own launch, and SDCP's data management firm will be a key partner in testing this system prior to our launch.

F) Regulatory Update

The California Public Utilities Commission (CPUC) has broad regulatory authority over the energy sector in California, including partial jurisdiction over Community Choice Aggregation (CCA) programs. SDCP and other CCA program customers are regularly affected by CPUC decisions regarding power resources, rates, financial obligations and data retention among other things.

SDCP filed for an extension with the CPUC through May 31, 2020 to submit materials related to the CCA registration packet required by Resolution E-4907. These materials include a \$100,000 bond payment, a draft customer notice, and an executed CCA Service Agreement with SDG&E. Registration materials have all been submitted, with \$100,000 bond payment being submitted this week. This completes our CCA registration process with the CPUC.

SDCP continues to engage in regulatory matters in order to establish a position on matters or provide input based on our position on various decisions or actions being considered. The

regulatory update (attached) includes CPUC proceedings that are currently active and will have an impact on SDCP. This is not an exhaustive list. Staff and Tosdal, APC will continue to monitor or engage in these proceedings, and other regulatory activities, as needed to ensure SDCP's interests are represented. Staff from Tosdal, APC will be available at the Board meeting to provide additional details. Below are an example of recent actions.

- SDCP filed a Protest to SDG&E's Advice Letter (AL-3523) which requested authorization to extend the capacity limits in its current Bundled Procurement Plan (BPP). SDCP requests that CPUC instruct SDG&E to demonstrate actual need and include explicit capacity limitations tied to forthcoming departing load forecasts in the RA or IRP proceeding. The CPUC has suspended Advice Letter-3523 for up to 120 days for staff review.
- SDCP filed a Protest to SDG&E's AL-3524 seeking extension of its BPP procurement authority to enter short-term and medium-term procurement contracts without CPUC approval. SDCP's position is extension would allow SDG&E to enter into short-term and medium-term contracts without adequate oversight, potentially resulting in excessive procurement and unnecessary cost exposure to CCA and Direct Access customers. The CPUC has suspended Advice Letter-3524 for up to 120 days pending a resolution.
- SDCP has filed a Protest of SDG&E's 2021 Electric Procurement Revenue Requirement Forecasts and GHG-Related Forecasts Application ("ERRA"). The ERRA proceeding tracks the difference between a utility's authorized revenue recovered in customer rates and the actual cost of purchasing power. It also includes requests for approval of its proposed 2021 vintage Power Charge Indifference Adjustment ("PCIA") rates. SDCP customers will be directly affected by the PCIA charges that are adopted. Protesting the Application gives party status to SDCP, which allows SDCP provide testimony and submit comments in the proceeding.

Attachments:

Attachment A: May Regulatory Update

ENERGY REGULATORY UPDATE

To: Cody Hooven, Executive Officer, San Diego Community Power

From: Ty Tosdal, Regulatory Counsel, Tosdal APC

Date: May 22, 2020

RE: Energy Regulatory Update

Dear Ms. Hooven:

The energy regulatory update summarizes important decisions, orders, notices and other developments that have occurred at the California Public Utilities Commission (“Commission”) and that may affect San Diego Community Power (“SDCP”). The summary presented here is not an exhaustive list of the regulatory proceedings that are currently being monitored or the subject of active engagement by SDCP. In addition to the proceedings discussed below, Tosdal APC monitors a number of other regulatory proceedings as well as related activity by San Diego Gas & Electric (“SDG&E”) and other Investor-Owned Utilities (“IOUs”).

Disconnection Proceeding (R. 18-07-005)

The Public Utilities Commission issued a Proposed Decision on May 6, 2020, that would establish broad protections for residential customers at risk of disconnection and related matters. This action was taken in response to rising disconnection rates. These measures include:

- Disconnections in SDG&E territory are capped at 3% through 2024, based on the 2017 disconnect rate;
- IOUs are prohibited from requiring new service or reestablishment deposits;
- Reconnection fees are eliminated;
- No disconnections are permissible for any customer on a utility’s low-income plan, with a child under 12 months old, or in a household with *anyone* over age 65; and
- IOUs area also ordered to do the following:
 - Enter into an MOU and NDA with local CCAs to promote data sharing.
 - Provide automatic notice to CCA programs when a customer receives a 15-day and/or 48-hour shutoff notice, and when a customer is reconnected.
 - Provide ongoing access to CCA programs about customer disconnections without the CCA programs having to request the data.

These changes could adversely affect SDCP’s future revenue in various ways. One concern is that the Proposed Decision does not address how payments for customers on

payment plans will be allocated by IOUs to CCA programs. The California Community Choice Association (“CalCCA”) has been participating in this proceeding and may address this and other issues before the final decision is made.

The Commission plans to vote on the Proposed Decision as soon as June 11, 2020, and the measures described above will be effective on the date of the final decision. However, several of the changes described above require adjustments to existing tariffs, i.e., rate components and provisions, for which the IOUs will be required to submit an advice letter within 30 days and implementation will occur on a delayed schedule.

SDG&E ERRA Forecast Application (A. 20-04-014)

SDG&E filed an application to recover the cost of its electric procurement revenue requirement forecast (“ERRA Forecast Application”) on April 15, 2020. This is an annual process designed to reconcile revenues and costs previously approved in rates with forecasts that are informed by actual revenues and costs. PCIA rates for the following year are also approved as part of the ERRA Forecast proceeding. SDG&E has proposed a PCIA rate as part of its application but stresses there is uncertainty and plans to update the rate proposal with additional data later this year.

SDG&E’s ERRA Forecast Application seeks approval for the following:

- Forecasted 2021 revenue of \$920.317 million, a decrease of \$574.9 million compared to the amounts currently effective in SDG&E’s rates;
- Collectively, SDG&E’s proposal would decrease the current system average rate by 2.696 cents/KWh, or 11.24%.
- A typical residential customer in the inland climate zone using 400 kilowatt-hours could see a monthly summer bill decrease of 8.5% or \$10.03 and a monthly winter bill decrease of 9.2% or \$9.95;
- A system total PCIA charge of 3.413 cents/KWh for 2020 vintage customers.

SDCP filed a protest to SDG&E’s ERRA Forecast Application on May 18, 2020, and plans to participate in the proceeding. See Attachment A.

Gas System Planning (R. 20-01-007)

The Commission has opened a proceeding to improve the safety and reliability of the natural gas system and plan for long-term changes that are anticipated to result from the adoption of Greenhouse Gas (“GHG”) emissions reduction plans and policies throughout the state. Specifically, the Commission anticipates that such policies will result in the replacement of gas-fueled technologies and, in turn, reduce the demand for natural gas over the next 25 years.

Reduction in the use of natural gas over the long-term is consistent with and will advance state and local GHG policies. However, this trend presents risks to CCA program customers, specifically related to costs that may result from the changes being considered in the

proceeding. SDCP filed a motion for party status in this proceeding on May 22, 2020. See Attachment A.

Renewable Portfolio Standard (R. 18-07-003)

A ruling was issued in the Renewable Portfolio Standard (“RPS”) proceeding on May 6, 2020, establishing requirements for 2020 RPS plans. There are a number of new requirements that broaden the scope of existing reporting requirements. The ruling prescribes 15 detailed narrative sections that must accompany RPS filing documents, including descriptions of how renewable procurement conforms with the IRP proceeding and how Load-Serving Entities (“LSEs”) plan to meet long-term contracting requirements. In addition, there are several new quantitative revisions to reporting templates. Draft plans are due on June 29, 2020, and final RPS Plans due in the fourth quarter of 2020.

Attachment A

San Diego Community Power Regulatory Filings and Related Materials

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

Application of SAN DIEGO GAS & ELECTRIC
COMPANY (U 902-E) for Approval of its 2021
Electric Procurement Revenue Requirement
Forecasts and GHG-Related Forecasts.

Application No. 20-04-014
(Filed April 15, 2019)

**PROTEST OF
SAN DIEGO COMMUNITY POWER TO THE APPLICATION OF SAN DIEGO GAS &
ELECTRIC COMPANY FOR APPROVAL OF ITS 2021 ELECTRIC PROCUREMENT
REVENUE REQUIREMENT FORECASTS AND GHG-RELATED FORECASTS**

Ty Tosdal
Tosdal APC
777 S. Highway 101, Suite 215
Solana Beach, CA 92075
(858) 704-4709
ty@tosdalapc.com

Attorney for San Diego Community
Power

May 18, 2020

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

Application of SAN DIEGO GAS & ELECTRIC
COMPANY (U 902-E) for Approval of its 2021
Electric Procurement Revenue Requirement
Forecasts and GHG-Related Forecasts.

Application No. 20-04-014
(Filed April 15, 2019)

**PROTEST OF
SAN DIEGO COMMUNITY POWER TO THE APPLICATION OF SAN DIEGO GAS &
ELECTRIC COMPANY FOR APPROVAL OF ITS 2021 ELECTRIC PROCUREMENT
REVENUE REQUIREMENT FORECASTS AND GHG-RELATED FORECASTS**

I. INTRODUCTION

Pursuant to Rule 2.6 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), San Diego Community Power (“SDCP”) respectfully files this protest to the *Amended Application of San Diego Gas & Electric Company (U-902-E) for Approval of its 2021 Electric Procurement Revenue Requirement Forecasts and GHG-Related Forecasts* (“Application”) A. 20-04-014, filed on April 20, 2021.¹ San Diego Gas & Electric Company’s (“SDG&E”) Application requests approval of a total 2021 forecasted revenue requirement of \$920.317 million comprised of revenue requirement forecasts for several types of electric procurement.² The Application also includes requests for approval of its proposed 2021 vintage Power Charge Indifference Adjustment (“PCIA”) rates and proposed rate

¹ A previous version of the application titled *Application of San Diego Gas & Electric Company (U 902-E) For Approval of its 2021 Electric Procurement Revenue Requirement Forecasts and GHG-Related Forecasts* was filed on April 15, 2020 but has been subsequently revised. References made in this protest are to the amended application (“Application”) filed on April 20, 2020.

² SDG&E Application at 2.

components for the Green Tariff Shared Renewables (“GTSR”) program. The Commission made a preliminary determination on May 7, 2020 that this Application is categorized as a ratesetting proceeding and that hearings will be necessary.³

The nature of SDCP’s interest in the Application and supporting testimony primarily concerns SDG&E’s requests for approval of proposed rates for the PCIA and the GTSR program. SDCP customers will be directly affected by the PCIA charges that are adopted because they are required to pay the charge each month, and indirectly affected by rates established for the GTSR program, which SDG&E refers to as the “EcoChoice” program⁴ and is a competitive product offered by SDG&E that provides subscribing customers access to certain renewable resources. The GTSR portfolio is separate and distinct from SDG&E’s bundled customer portfolio. SDG&E seeks Commission approval of these proposals for recovery through rates beginning January 1, 2021.

As further explained below, SDCP files this protest on grounds that SDG&E’s Application and supporting testimony do not demonstrate that its requests are just and reasonable,⁵ consistent with the law, compliant with the rules and regulations set forth by the Commission, including but not limited to Decisions (“D.”) 18-10-019, D. 19-10-001, D. 15-01-051, and lastly that SDG&E’s requests fail to adequately prevent impermissible shifting of costs from bundled to unbundled customers.⁶ SDG&E has the burden of proof based on preponderance of the evidence, and must demonstrate that the Application meets this standard as well as the

³ Resolution ALJ 176-3460 at 3.

⁴ See <https://www.sdge.com/residential/savings-center/solar-power-renewable-energy/ecochoice>

⁵ Pub. Util. Code § 451.

⁶ Pub. Util. Code §§ 366.2(f)(2), (g).

requirements previously set forth by the California Legislature (“Legislature”) and the Commission.⁷

Given the breadth of issues at stake in this proceeding and the complexity of several of the issues, SDCP is proposing a procedural schedule that affords the parties an adequate opportunity to obtain and review a substantial amount of data and other information, and submit meaningful comments that will assist the Commission in arriving at a decision that meets applicable standards. The proposed schedule can be found in Section IV.C. below.

II. BACKGROUND

SDCP was formed when five member cities – the City of San Diego, City of Encinitas, City of La Mesa, City of Chula Vista, and the City of Imperial Beach – entered into a Joint Powers Agreement (“JPA”) effective October 1, 2019.⁸ The goals of the program include addressing climate change by reducing energy related greenhouse gas emissions, promoting electrical rate price stability, and fostering local economic benefits such as job creation, local energy programs and local power development.

Reducing the greenhouse gas (“GHG”) emissions generated by each city’s residents and businesses was a key driving factor in the formation of SDCP. The City of San Diego adopted its Climate Action Plan (“CAP”) in December 2015⁹ which sets a goal for 100% renewable energy city-wide by 2035.¹⁰ The City of Encinitas adopted its CAP in January 2018 which sets a goal to reduce emissions by 45,456 metric tons of carbon dioxide equivalent (MTCO₂e) by 2030

⁷ See, e.g., D.12-12-030 at 42.

⁸ See [San Diego Regional Community Choice Energy Authority Joint Powers Agreement](#), October 1, 2019.

⁹ Adopted by the City Council on December 15, 2015 by Resolution Number R-2016-309. Amended by the City Council on July 12, 2016 by Resolution Number R-2016-762.

¹⁰ See [City of San Diego Climate Action Plan](#) at 35.

through renewable energy.¹¹ The City of La Mesa adopted its CAP in March 2018 which sets a goal to reduce emissions by 68,450 MTCO₂e by 2035.¹² The City of Chula Vista adopted its CAP in September 2017 which sets a goal for up to 100% clean energy through a CCA program.¹³ The City of Imperial Beach adopted a CAP in July 2019 which sets a goal for 75% renewable energy by 2030.¹⁴ The member cities intend to achieve these goals collaboratively by forming SDCP.

SDCP submitted its Implementation Plan and Statement of Intent to establish a CCA program on December 9, 2019, and intends to offer service to customers over three phases beginning in 2021.¹⁵ Ultimately, SDCP anticipates serving 937,000 customer accounts within SDG&E's service territory by the end of 2021.¹⁶

III. PROTEST

SDCP's primary interests in this proceeding are ensuring that the PCIA charges and GTSR charges are reasonable and comply with the law and applicable regulations.

A. SDG&E's Proposed PCIA Rate Must Be Reasonable and Comply with Previous Commission Decisions

The PCIA accounts for a significant percentage of CCA program customer rates,¹⁷ and barring major changes to SDG&E's portfolio, it is anticipated that the PCIA will similarly

¹¹ See [City of Encinitas Climate Action Plan](#) at 3-2.

¹² See [City of La Mesa Climate Action Plan](#) at 45.

¹³ See [City of Chula Vista Climate Action Plan](#) at 20.

¹⁴ See [City of Imperial Beach Local Coastal Program Resilient Imperial Beach Climate Action Plan](#) at 31.

¹⁵ See [San Diego Community Power Community Choice Aggregation Implementation Plan and Statement of Intent](#) ("SDCP Implementation Plan"), December 9, 2019.

¹⁶ SDCP Implementation Plan at 22.

¹⁷ For example, the PCIA accounts for 11.4% of the average residential bill for customers of Solana Energy Alliance, presently the only CCA program operating in SDG&E territory. SDG&E-SEA Joint

account for a significant percentage of SDCP customer rates when SDCP begins serving customers next year and in subsequent years. No sunset date or other termination date for the PCIA has been established by the Legislature or the Commission, and so for the time being, the charge is a permanent fixture of CCA customer rates. CCA programs have no control over the PCIA rate, which is a function of utility portfolios and market conditions, changes from year to year based on a complex formula and various data that are regularly updated, and is ultimately subject to approval by the Commission.

The primary avenue for CCA programs to address the complex issues related to the PCIA, including the proper administration of recent changes, is through Commission proceedings and related actions, perhaps most importantly, Energy Resource Recovery Account (“ERRA”) proceedings, in which the PCIA is determined each year and related aspects are subsequently reviewed. Accordingly, SDCP and other CCA programs responsible for acting in the best interest of their customers have an interest in SDG&E’s Application and will have an interest in various aspects of ERRA proceedings for the foreseeable future.

At a high-level, the PCIA charge is relatively simple in concept. To provide an overview, it can be summarized as follows:¹⁸

$$\text{Total Portfolio Costs} - \text{Market Value of Portfolio} = \text{Indifference Amount}$$

Once this amount is calculated, the indifference amount is then adjusted to arrive at the PCIA. However, simplicity vanishes when calculating the indifference amount for any particular customer vintage. There are many contributing factors that makeup each of the two main components – total portfolio cost and market value – and various calculations are required to

Rate Comparisons, February 1, 2020, available at <https://solanaenergyalliance.org/wp-content/uploads/2020/03/JRC-Online-Template-02.01.2020-Updated.pdf>.

¹⁸ D. 18-10-019 at 33.

arrive at the values for these contributing factors. Furthermore, the total values change from year to year based on changing input values.

The methodology for determining the PCIA charge and implementation of the charge have also undergone significant changes recently as a result of Commission decisions and other actions related to an ongoing rulemaking proceeding, R. 17-06-026.¹⁹ The Commission concluded in D. 18-10-019 that the current PCIA methodology could not prevent cost shifts.²⁰ As a result, the Commission adopted a corrected Market Price Benchmark (“MPB”) methodology, an annual true-up mechanism, and a cap on annual changes to the PCIA rate.²¹ Further refinements were made to the methodology and implementation of the MPB in D. 19-10-001.

The key issues in this proceeding related to the PCIA are the reasonableness and accuracy of the MPB, PCIA-eligible costs, the Portfolio Allocation Balancing Account (“PABA”). These subjects are discussed in greater detail below. Notably, SDG&E acknowledges in its application that it has not provided final PCIA rates, and that they will not be provided until November of this year, after additional data becomes available.²²

1. The Market Price Benchmark Must Rely on Correct Data and Be Calculated in a Manner that Complies with D. 18-10-019 and D. 19-10-001

Several changes to the MPB have been made recently and SDG&E’s Application requires close scrutiny by the parties and the Commission in this proceeding to ensure that they have been implemented properly. The Commission adopted several changes to the MPB in D. 18-10-019. Among them, the Commission instructed the Energy Division to calculate values each year for

¹⁹ See *Order Instituting Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment*, R. 17-06-026, June 29, 2017.

²⁰ D. 18-10-019 at 39.

²¹ D. 18-10-019 at 72.

²² SDG&E Application at 12.

the (1) the Brown Power Index, (2) the renewable procurement standard (RPS) Adder, and (3) the resource adequacy (RA) adder.²³ Subsequently, in D. 19-10-001, the Commission made further adjustments to these calculations, and specifically instructed IOUs to use values provided in that decision to forecast RPS and RA values in ERRA forecast proceedings.²⁴ Proper use of these figures and related calculations should be carefully reviewed to ensure that the MPB is reasonable and complies with these prior decisions.

2. Portfolio Costs Must Be Examined to Determine PCIA Eligibility

Portfolio costs are one of the major components of the PCIA rate. They are calculated by summing an IOU's base generation capital revenue requirement, UOG fuel and direct GhG costs, Qualifying Facility ("QF") and Combined Heat and Power contracts, bilateral and Request for Offer ("RFO"), and refunds and adjustments.²⁵ Determining eligible costs involves not only quantifying past costs in each of these categories, but also involves applying the appropriate customer vintage. Whether SDG&E has accurately calculated portfolio costs and done so in a manner that is consistent with the legal and regulatory boundaries established by the Legislature and the Commission are issues that should be addressed during the course of this proceeding.

3. PABA Must Be Reasonable, Accurate and in Compliance with D. 18-10-019

The Commission adopted PABA in D. 18-10-019 and instructed the IOUs to record the above-market cost and revenue associated with PCIA-eligible generation resources, including Utility Owned Generation ("UOG").²⁶ PABA is comprised of a series of subaccounts referred to

²³ D. 18-10-019 at OP 1.

²⁴ D. 19-10-001 at OP 1, 2.

²⁵ D. 18-10-019 at 33.

²⁶ D. 18-10-019 at Ordering Paragraph ("OP") 7-10.

as “vintage subaccounts” and costs recorded in each vintage subaccount include, but are not limited to, fuel, GHG costs, Power Purchase Agreements (“PPAs”), and UOG-related costs.²⁷

SDG&E’s forecast of above-market costs for PABA in 2021 is \$369.4 million.²⁸

Determining the amount in each vintage subaccount requires collecting cost and revenue data from various sources, calculating costs and revenues and making calculations that are then subject to forecasting assumptions and related adjustments. Arriving at the final figure requires compiling the amounts in each subaccount. There may be additional issues related to SDG&E’s ERRA Trigger Application that also need to be examined.²⁹ The data used and analysis conducted to arrive at the final PABA figure must be reasonable, accurate and compliant with D. 18-10-019 and decisions related to the PCIA.

B. SDG&E’s Proposed GTSR Rate Components Must Adhere to Legislative Intent and Comply with Previous Commission Decisions

In accordance with Resolution E-5028, SDG&E included GTSR its proposed rate components for review and approval in the annual Energy Resource Recovery Account (“ERRA”) forecast proceeding.³⁰ The Commission’s ERRA review must properly consider the reasonableness of proposed GTSR rate components, and SDCP is concerned primarily with issues related to the ratepayer indifference principle required by Senate Bill (“SB”) 43 and the overall reasonableness of the proposed rates. These issues should be included in the scope of

²⁷ SDG&E Application at 9.

²⁸ Prepared Direct Testimony of Stefan Covic at SC-10-11.

²⁹ SDG&E filed an application last year seeking authorization to return an overcollection of \$138 million to bundled customers but not unbundled customers. A. 19-12-001 at 4. The request was granted in D. 20-02-057. The Commission observed that, according to SDG&E, the primary reason for the overcollection was the implementation of PABA. D. 20-02-057 at 7.

³⁰ Resolution E-5028 at 31-32.

this ERRA forecast proceeding so that the Commission may request additional information from SDG&E and require revisions where necessary.

1. SDG&E Must Demonstrate that GTSR Rate Components Achieve Ratepayer Indifference

SB 43 requires that the GTSR program “be implemented in a manner that ensures nonparticipating ratepayer indifference for the remaining bundled service, direct access, and community choice aggregation customers.”³¹ In Decision (“D.”) 15-01-051 (“2015 GTSR Decision”), the Commission emphasized that GTSR customer rates must ensure GTSR customers are responsible for costs incurred on their behalf.³² SDG&E’s proposed GTSR rate components must be properly examined as to verify accordance with SB 43’s ratepayer indifference principle.

SDG&E’s Application must show that the 2021 PCIA vintage is properly calculated. To protect non-participating customers from procurement cost-shifting resulting from customers switching to GTSR, the Commission directed utilities to set the PCIA as the GTSR customer indifference adjustment vintaged by the year the customer enrolled in the GTSR Program.³³ Accordingly, SDG&E’s Application reflects that GTSR customers’ rates will be billed by customer class and customer specific vintage using the 2021 PCIA rates.³⁴ SDG&E must verify that this proposed rate sufficiently achieves the required indifference. The Commission should require SDG&E’s Application to provide support for the proposed rate and indicate that this proposed rate accurately reflects procurement costs incurred on behalf of 2021 GTSR customers.

³¹ Pub. Util. Code § 2831(h).

³² See D.15-01-051 at 177, Conclusions of Law (“COL”) 52.

³³ See D. 15-01-051 at 100-103.

³⁴ *Prepared Direct Testimony of Stacy Fuhrer on Behalf of San Diego Gas & Electric Company* (“Fuhrer Testimony”) at SF-23:1-2

This additional information will allow the Commission to verify that GTSR rates properly achieve ratepayer indifference.

SDG&E must also show that the proposed marketing costs rate component does not violate ratepayer indifference. Marketing costs are composed of labor and non-labor tactical aspects of GTSR implementation.³⁵ In 2019, the Commission approved SDG&E's total estimated budget for the 2019 through 2023 Program Cycle which included expected Program Management, IT, and Marketing costs.³⁶ In the current Application, SDG&E proposes the 2021 GTSR marketing charge component rates to be \$0.00267/kWh for the Green Tariff ("GT") portion and \$0.00092/kWh for the Enhanced Community Renewables ("ECR") portion.³⁷ SDG&E's Application provides no justification or calculation as to how it arrived at those numbers as a portion of the total approved budget. As such, it is unclear whether 2021 forecast GTSR marketing costs were properly calculated and whether the costs will be properly applied to GTSR customer rates instead of nonparticipating customer rates.

SDG&E should provide additional information showing how it arrived at the proposed marketing cost rate component to allow the Commission to verify that the 2021 marketing costs component accurately reflects costs associated with forecast labor and non-labor marketing tactical aspects of GTSR implementation. Without requiring this showing, the Commission risks allowing SDG&E to improperly allocate GTSR marketing costs to non-participating customers. This improper allocation would violate the ratepayer indifference principle required by SB 43 and constitute anticompetitive behavior.

³⁵ See Fuhrer Testimony at SF-18:18-24.

³⁶ See SDG&E Advice Letter ("AL") 3168-E Table at 11.

³⁷ Fuhrer Testimony at SF-18:22-24.

The Commission has acknowledged that IOUs must not be able to use existing market power resources to achieve an anticompetitive impact.³⁸ To minimize this risk, the Commission requires marketing costs to be tracked in memorandum accounts subject to reasonableness review in each IOU's annual ERRR compliance review.³⁹ As SDCP begins to roll out service, however, the Commission must carefully consider in this ERRR forecast proceeding whether SDG&E's proposed 2021 GTSR marketing rates properly reflect GTSR marketing activity. This consideration will further prevent SDG&E from using its existing market power resources in an anticompetitive manner. Failure to prevent this could provide SDG&E with an unfair advantage, an outcome the Commission sought to avoid when it approved the GTSR program.

2. SDG&E Must Demonstrate that Proposed Rate Components Are Reasonable

SDG&E's Application also includes proposed 2021 rates for commodity based GTSR rate components. These components include the Renewable Power Rate ("RPR"), Renewable Energy Commodity Price ("RECP"), Renewable Energy Value Adjustment ("REVA"), Renewable Energy Commodity Credit ("RECC"), and Renewable Integration Cost ("RIC").⁴⁰ Improper allocation of forecast portfolio costs to these components could result in artificially lower rates and thus provide SDG&E's GTSR program with an unfair anticompetitive advantage. As such, SDCP requests that the Commission conduct a thorough reasonableness review of these proposed rate components to ensure that they properly achieve SB 43's legislative intent and accurately reflect the true costs of the program.

³⁸ D. 15-01-051 at 111.

³⁹ *Id.* at 112.

⁴⁰ *See* Fuhrer Testimony at SF-19 - SF-20.

The Commission’s review of SDG&E’s proposed commodity based rate components must consider whether the GTSR program’s portfolio aligns with SB 43, through which the Legislature sought to build upon existing renewable energy initiatives and encourage the development of *additional* renewable energy generation facilities.⁴¹ The Commission emphasized that this key “additionality” requirement could not be achieved by relying on existing Renewables Portfolio Standard (“RPS”) resources.⁴² Instead, the Commission ruled that SB 43 required utilities to meet GTSR customer demand from resources developed specifically for the GTSR program.⁴³ Given this, a reasonableness review of proposed commodity-based rates should focus on whether the GTSR portfolio accomplishes SB 43’s additionality goal.

The Commission did not intend to allow for open-ended use of the Interim GTSR Pool. When the Commission approved the GTSR program in 2015, it allowed for IOUs to meet immediate GTSR customer demand by drawing from an “Interim GTSR Pool” comprised of existing RPS resources that are eligible for GTSR.⁴⁴ However, the Commission specified that that this was to be a short-term approach and that IOUs were simultaneously expected to engage in advance procurement to start the long process of putting additional facilities online.⁴⁵ Given this background, SDCP believes the Commission only intended for Interim GTSR Pool procurement to meet customer demand at program launch. Alternative interpretations allowing for indefinite use of the Interim GTSR Pool to meet immediate customer demand as customers

⁴¹ See Pub. Util. Code, § 2831(a)-(h).

⁴² See D. 15-01-051 at 25-26.

⁴³ D. 15-01-051 at Conclusion of Law 1 at 173.

⁴⁴ *Id.* at 39.

⁴⁵ *Id.*

register for GTSR would violate SB 43's additionality principle and hinder advanced procurement.

Since continued reliance on the Interim GTSR Pool violates SB 43's additionality principle, the proposed rates should be deemed unreasonable to the extent that they are derived from costs associated with these resources. Customer enrollment in the GT component of SDG&E's GTSR program began in the fourth quarter of 2016. In 2019, three years after GTSR program launch, customers enrolled in the GT component purchased 87,617 MWh of generation from the Interim GTSR Pool.⁴⁶ Presently, testimony supporting these estimated costs derived from 2021 GTSR procurement indicates that immediate GT customer demand will draw on the Interim GTSR Pool.⁴⁷ SDCP believes the Commission should require SDG&E's Application to include further information on the extent to which its forecast relies the transfer of interim RPS resources to meet 2021 GTSR customer demand.⁴⁸ This information will allow for a proper reasonableness review of the proposed rates and prevent SDG&E from undermining SDCP's CCA program by imposing lower rates and violating statutory and Commission requirements.

C. Additional Subjects Raised During the Proceeding May Need to Be Addressed

SDG&E's Application is broad in scope, diverse in subject matter and complex in nature. Furthermore, the potential impacts on bundled and unbundled customers may be significant. SDCP has examined SDG&E's proposals and identified several issues above, nevertheless, given the complexity of the accounting mechanisms employed to arrive at the figures in the

⁴⁶ *Annual GTSR Program Progress Report of San Diego Gas & Electric Company (U 902-E) for Activities Occurring in 2019*, dated March 15, 2020, at 6.

⁴⁷ Prepared Direct Testimony of Stefan Covic on Behalf of San Diego Gas & Electric Company ("Covic Testimony") at footnote 15, SC-13.

Application and the significant impacts that may result, it is possible that important issues are raised during the course of the proceeding that may require further attention from the Commission. SDCP reserves the right to address issues that come to light as the parties examine the evidence.

IV. PROCEDURAL MATTERS

Pursuant to Rule 2.6(d), SDCP provides the following procedural comments:

A. Proposed Category

The proceeding is properly categorized as a “ratesetting.”

B. Need for Hearing

SDCP agrees that evidentiary hearings will be necessary.

C. Proposed Schedule

The proposed schedule submitted by SDG&E⁴⁹ reflects inherent constraints in the ERRRA process, including the calculation of MPB inputs for the PCIA by the Commission’s Energy Division in early November,⁵⁰ and the goal of issuing a decision in this matter prior to January 1, 2021. Nevertheless, within these constraints in mind, there is a critical need to make adjustments to the proposed schedule, particularly around the November Update, in order to afford parties adequate time to review SDG&E’s testimony and workpapers, obtain additional information through data requests and meetings, and prepare meaningful comments for Commission review. SDG&E’s proposed schedule provides only seven days between the time the November Update

⁴⁹ SDG&E Application at 18-19.

⁵⁰ See e.g., D. 19-10-001, OP 1 (“The Commission’s Energy Division shall calculate the following values and make them available to interested parties at the beginning of November each year: (1) the Energy Index, (2) the Renewables Portfolio Standard (RPS) Adder, and (3) the Resource Adequacy (RA) Adder.”); See also, OP 3, 4.

is submitted and the time that comments are due.⁵¹ A detailed explanation of the changes made to SDG&E’s Application with respect to PCIA-related data and inputs, as well as changes to calculations and results, will assist the parties and Commission in reviewing SDG&E’s updated testimony. In addition, because the bulk of data that is ultimately used to calculate the PCIA rate for next year is first made available during the November Update, SDCP is proposing that supplemental hearings be held, and that the applicable comment period be extended to provide additional time for discovery, review and hearings. As further described below in its proposed schedule, SDCP recommends that the comment period be extended to 21 days with supplemental hearings to be held within that timeframe.

To improve the efficiency of the proceeding and afford adequate time for review of supporting materials, SDG&E should also be required to serve workpapers concurrently with subsequent testimony, specifically, its rebuttal testimony and November update testimony as noted in the proposed schedule. SDCP also proposes that the typical response time for data requests be reduced from 10 business days to five calendar days throughout the course of this proceeding, and that the response time be further reduced to three calendar days following the November testimony update, when the majority of the data regarding the PCIA is provided.

SDCP proposes the following schedule:

<u>ACTION</u>	<u>DATE</u>
Application Filed	April 15, 2020
Approx. End of Respond Period (Including Applicant Reply)	June 1, 2020
Prehearing Conference	June 12, 2020
PAO and Intervener Testimony	July 17, 2020

⁵¹ SDG&E Application at 18-19.

Rebuttal Testimony and Workpapers	August 7, 2020
Evidentiary Hearings	August 24-28, 2020
Concurrent Opening Briefs	September 18, 2020
Concurrent Reply Briefs	October 9, 2020
SDG&E November Update, Workpapers and Detailed Explanation of Changes	November 2, 2020
Supplemental Evidentiary Hearings	November 12-13, 2020
PAO/Intervenor Comments on November Update	November 23, 2020
SDG&E Reply Comments on November Update	November 30, 2020
Commission Final Decision	December 21, 2020

SDCP will reach out to SDG&E in advance of the prehearing conference regarding the procedural schedule to identify areas where the parties can agree on the sequence of events.

V. PARTY STATUS

Pursuant to Rule 1.4(a)(2), SDCP hereby requests party status in this proceeding. As described above, SDCP has a material interest in the matters being addressed in this proceeding and designate the following person as the “interested party” in the proceeding:

Ty Tosdal
Tosdal APC
777 S. Highway 101, Suite 215
Solana Beach, CA 92075
(858) 252-6416
ty@tosdalapc.com

VI. CONCLUSION

SDCP appreciates the Commission's attention to the matters raised in this protest and looks forward to addressing the issues raised above.

Dated: May 18, 2020

Respectfully submitted,

/s/Ty Tosdal

Ty Tosdal
Tosdal APC
777 S. Highway 101, Suite 215
Solana Beach, CA 92075
(858) 704-4709
ty@tosdalapc.com

Attorney for San Diego Community
Power

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

Order Instituting Rulemaking to Establish
Policies, Processes, and Rules to Ensure Safe
and Reliable Gas Systems in California and
Perform Long-Term Gas System Planning

Rulemaking 20-01-007
(Filed January 16, 2020)

MOTION FOR PARTY STATUS OF SAN DIEGO COMMUNITY POWER

Ty Tosdal
Tosdal, APC
777 South Highway 101, Suite 215
Solana Beach, CA 92075
(858) 704-4709
ty@tosdalapc.com

May 22, 2020

Attorney for San Diego Community Power

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

Order Instituting Rulemaking to Establish
Policies, Processes, and Rules to Ensure Safe
and Reliable Gas Systems in California and
Perform Long-Term Gas System Planning

Rulemaking 20-01-007
(Filed January 16, 2020)

**MOTION FOR PARTY STATUS OF
SAN DIEGO COMMUNITY POWER**

I. INTRODUCTION

Pursuant to Rule 1.4(a)(4) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), San Diego Community Power (“SDCP”) respectfully moves for party status in the above-captioned proceeding. SDCP is a new Community Choice Aggregation (“CCA”) program formed by the Cities of San Diego, Encinitas, La Mesa, Chula Vista and Imperial Beach that will begin enrolling and serving customers in 2021. As a CCA Program, SDCP has a direct interest in participating in the policy and planning discussions taking place in this proceeding regarding gas system planning and the impacts it will have on California’s energy sector and economy. SDCP and its future customers will be affected by the Commission’s decisions in this proceeding well into the future. SDCP’s participation in this proceeding will not broaden the scope of the issues or prejudice any party. For these reasons, the motion should be granted.

II. DESCRIPTION OF SAN DIEGO COMMUNITY POWER

SDCP is a newly formed CCA program that will serve customers in the City of San Diego, City of Encinitas, City of La Mesa, City of Chula Vista, and the City of Imperial Beach beginning next year. SDCP was formed when the five member cities formed a Joint Powers

Authority effective October 1, 2019.¹ The Commission certified SDCP’s Implementation Plan and Statement of Intent (“Implementation Plan”) on March 9, 2020.² SDCP intends to begin serving customers in March 2021.³

Reducing greenhouse gas (“GHG”) emissions generated by residents and businesses was a key driving factor in the formation of SDCP. The City of San Diego adopted its Climate Action Plan (“CAP”) in December 2015 which sets a goal for 100% renewable energy city-wide by 2035.⁴ The City of Encinitas adopted its CAP in January 2018 which sets a goal to reduce emissions by 45,456 metric tons of carbon dioxide equivalent (“MTCO₂e”) by 2030 through the deployment of renewable energy.⁵ Similarly, the City of La Mesa adopted its CAP in March 2018 which set a goal to reduce emissions by 68,450 MTCO₂e by 2035.⁶ The City of Chula Vista adopted its CAP in September 2017 that established a goal for up to 100% clean energy through the formation of a CCA program.⁷ The City of Imperial Beach adopted a CAP in July 2019 which set a goal for 75% renewable energy by 2030.⁸ The member cities intend to achieve

¹ See *Joint Powers Agreement*, San Diego Regional Community Choice Energy Authority, October 1, 2019, available at https://www.sandiego.gov/sites/default/files/sdrceea_jpa_agreement_signed_0.pdf.

² See *Letter Certifying San Diego Community Power’s Implementation Plan and Statement of Intent*, California Public Utilities Commission, March 9, 2020.

³ See [San Diego Community Power Community Choice Aggregation Implementation Plan and Statement of Intent](#), December 9, 2019, at 1.

⁴ See *Climate Action Plan*, City of San Diego, December 2015, at 35, available at https://www.sandiego.gov/sites/default/files/final_july_2016_cap.pdf.

⁵ See *Climate Action Plan*, City of Encinitas, January 2018, at 3-2, available at https://encinitasca.gov/Portals/0/City%20Documents/Documents/City%20Manager/Climate%20Action/Encinitas_Climate%20Action%20Plan_Final_01-17-18.pdf?ver=2018-01-24-114612-100.

⁶ See *Climate Action Plan*, City of La Mesa, March 13, 2018, at 45, available at https://www.cityoflamesa.us/DocumentCenter/View/11008/LMCAP_CC03132018?bidId=.

⁷ See *Climate Action Plan*, City of Chula Vista, September 2017, at 20, available at <https://www.chulavistaca.gov/home/showdocument?id=15586>.

⁸ See *Local Coastal Program Resilient Imperial Beach Climate Action Plan*, City of Imperial Beach, July 17, 2019, at 31, available at https://www.imperialbeachca.gov/vertical/Sites/%7B6283CA4C-E2BD-4DFA-A7F7-8D4ECD543E0F%7D/uploads/Approved_CAP_071719_MF_1234_Climate_Action_Plan_Reso_2019-8054.pdf.

these goals collaboratively by forming and operating SDCP to provide energy to its residents, businesses and government agencies.

To advance climate and other objectives, SDCP has adopted the following guiding framework for the program:⁹

- **Rates:** SDCP will offer rates that are competitive with San Diego Gas & Electric’s (“SDG&E”) electric generation rates, striving for generation rates that are below that of the incumbent utility.
- **Power Mix:** SDCP plans to launch with two power options, one that is a minimum 50%-60% renewable content and a second which is a voluntary, opt-up option that is 100% renewable.
- **Programs:** SDCP intends to offer a variety of energy-related programs, which could include energy efficiency and demand response, net energy metering, electric vehicle incentives, advanced energy technologies, and the like.
- **Community Input:** Community input is a priority for SDCP through participation in SDCP Board meetings, public comment through the Agency’s website, or participation [in] one of SDCP’s Advisory Committees.
- **General Fund Impact:** SDCP is formed as a CA Joint Powers Authority and does not anticipate any impact on the General Funds of its member agencies.

III. SAN DIEGO COMMUNITY POWER’S INTEREST IN THIS PROCEEDING

SDCP has a strong interest in reducing the GHG emissions of the residents and businesses of its member cities. As the OIR notes, state and municipal laws concerning GHG emissions will result in the replacement of gas-fueled technologies and reduce the demand for natural gas over the next 25 years.¹⁰ Cities such as Berkley, San Francisco, and Los Angeles have already enacted ordinances that favor or incentivize electrification over natural gas use in residential and commercial buildings.¹¹ SDCP anticipates that other cities and government

⁹ *Implementation Plan*, at 1-2.

¹⁰ OIR at 2.

¹¹ *Id.* at 11-12.

agencies in California will adopt electrification policies of various kinds in order to advance emissions-related goals. Planning ahead for resulting changes to the gas system is not only important from an emissions reduction policy standpoint, but is also critical to ensuring that ratepayer costs established for bundled and departing load customers are managed effectively. As a result, SDCP has a direct interest in the policy decisions related to the effects of electrification on the gas system.

At the same time, the regulatory and market adjustments, as well as operational issues, that result from this transition may cause instability or price spikes in the local gas and wholesale electricity markets in California.¹² These uncertainties may expose gas-fired electric generators to price volatility that will negatively impact rate-paying customers. While SDCP intends to increase the proportion of energy generated and supplied by eligible renewable and carbon-free resources for purposes of reducing electric sector GHG emissions, natural gas will likely remain a component of SDCP's energy portfolio in the immediate and near future.¹³ As a CCA program, SDCP has a strong interest in protecting its customers from rate-shock resulting from gas price spikes. Therefore, SDCP also has a direct interest in participating in decisions that may improve coordination between gas utilities and gas-fired electric generators and inform long-term natural gas planning strategies that ensure supply stability and affordability as California transitions to a clean energy future.¹⁴

IV. SERVICE

Service of notices, orders, and other communications and correspondence in this proceeding should be directed to SDCP's counsel at the address set forth below:

¹² *Id.* at 9.

¹³ *Implementation Plan* at 19, 21.

¹⁴ OIR at 17, 19.

Ty Tosdal
Tosdal, APC
777 South Highway 101, Suite 215
Solana Beach, CA 92075
(858) 704-4709
ty@tosdalapc.com

V. CONCLUSION

SDCP respectfully requests that the Commission grant this Motion for Party Status.

Respectfully submitted,

/s/ Ty Tosdal

Ty Tosdal
Tosdal, APC
777 South Highway 101, Suite 215
Solana Beach, CA 92075
Telephone: (858) 704-4711
E-mail: ty@tosdalapc.com

May 22, 2020

Attorney for San Diego Community Power

SAN DIEGO COMMUNITY POWER
Staff Report – Item 3

To: San Diego Community Power Board of Directors

From: Exec. Search Ad-Hoc Committee – Joe Mosca, Chair and Steve Padilla, Vice Chair
Shawn Marshall, LEAN Energy US

Subject: Ad-Hoc Committee Update on CEO Recruitment and Next Steps

Date: May 28, 2020

Recommendation

Receive report and provide direction as needed.

Background

At its meeting on February 27, 2020, the San Diego Community Power (“SDCP”) Board appointed Chair Mosca and Vice Chair Padilla to serve as Board representatives on its ad-hoc Executive Search Committee. The ad-hoc committee is supported by Shawn Marshall of LEAN Energy US and the CEO recruitment is being led by Bill Avery with Avery & Associates, an executive recruitment firm with decades of experience in public agency and executive recruitments.

Analysis & Discussion

Since the last Board meeting, the search team and recruiter have completed the following tasks:

- 1) Conducted additional candidate outreach through multiple organizations and platforms
- 2) Conducted additional research related to CEO compensation and benefits
- 3) Formed an interview panel for the first-round interviews, consisting of Ted Bardacke, CEO of Clean Power Alliance, Tara Hammond of SDCP’s Community Advisory Committee, Shawn Marshall, Bill Avery, Vice Chair Padilla, and Chair Mosca.
- 4) Applicant Deadline: May 20. Final applicant review/sorting underway.

SDCP received a record number of 58 applicants for this position! Once Avery & Associates completes its initial vetting, the ad-hoc committee will meet to select the top 6-7 candidates for first-round interviews which are scheduled for June 16th. From there, it is expected that the Board will interview the finalists on June 25th. Additional finalist interview(s) will be added if needed. Please see the timeline below for a review of the whole recruitment process.

The Board will meet in closed session after the Board meeting with representatives from LEAN Energy and the City of Encinitas' HR department to discuss options for medical and other benefits.

Date	Action
March 2020	Development of candidate profile including stakeholder feedback; CCA CEO salary survey, develop job description and digital brochure
April 10 – May 20	Job formally posted; May 20 application deadline; recruitment and outreach underway
April 16	Kick-off call with City of Encinitas HR team for temporary HR support
April 23 Board Mtg	SDCP Board Update
Mid-May/Early June	Candidate screening for base qualifications; select top 15-20 for further vetting; select top 6-7 for first round interview
May 28 Board Mtg.	SDCP Board closed session to discuss CEO salary range and benefits options
June 16	First-round interviews with top 6-7 candidates; selection of top 2-3 candidates for finalist interviews
June 25 Board Mtg.	Second round interviews with top 2-3 candidates; with full Board in closed session, prior to 6/25 Board meeting
Week of June 28	Final/third interview if needed; candidate selection
By Mid-July	Finalize CEO compensation package and employment agreement
July 23 Board Mtg.	Board Approves CEO Hire and Compensation Package in Open Session
August 2020	CEO On Boarding Process Begins

Attachments

- A. Recruitment update from Avery Associates (dated 5/21/20)

San Diego Community Power – CEO Recruitment Update – May 21, 2020

The position has now closed with a final applicant tally of **58 candidates**. Moving forward, we will continue to review the latest applicants and work with the hiring authority to determine the candidates that we will qualify for formal interviews with the firm. Following the formal interviews, we will narrow the applicant field further and begin conducting preliminary reference checks and writing assessments for the candidates who will be included in the final interview process.

Completed Tasks:

- Brochure was drafted, approved and received.
- Potential sources/candidates have been identified from our database and other sources.
- Brochure has been posted on the Avery website.
- Web postings were placed on: California City News, CSAC, Careers In Government, Jobs Available, Public Power, CMUA, NWPPA, MMANC, MMASC, Western City, and LinkedIn.
- Brochure was mailed out to lists and targeted candidates.
- Candidate outreach was conducted through LinkedIn and email.
- **Close Date: May 20, 2020.**

Pending Tasks

- Identify individuals to be phone “qualified” to determine if appropriate for formal interviews with the firm.
- Conduct preliminary reference checks on the interviewed and recommended candidates.
- Prepare assessments and other materials for candidate presentations.
- Establish dates for both presentation of candidate recommendations and final interviews.



SAN DIEGO COMMUNITY POWER
Staff Report – Item 4

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Glen Price, General Counsel, BB&K

Subject: Update on River City Bank Financing and Promissory Note with B Quest Foundation

Date: May 28, 2020

Recommendation

1. Update on operational funding from River City Bank and the addition of B Quest as a lender to share the \$5 million cash collateral funding obligation approved by the Board with Emerald Blue.
2. Ratification of the promissory note with B Quest in the same form as signed with Emerald Blue.

Background

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 that will be made available pursuant to the River City Bank credit facility will be used primarily for short term and long-term power purchase agreements and to provide collateral as security for ongoing power procurement needs. An initial \$5 million in funding will be used to for working capital to support the full costs of start-up activities, including staffing, energy services, marketing, and compliance. While the City of San Diego has provided early support to SDCP in this initial startup period, startup activities are increasing and will continue until program launch in 2021 and require full funding as provided by a credit facility.

As part of this financing structure approval, the Board also authorized the Interim Executive Officer to execute a promissory note with Emerald Blue, LLC (Emerald Blue), to borrow \$5 million that will be used as cash collateral for the credit facility with River City Bank.

Analysis and Discussion

As a result of the COVID-19 global pandemic, shortly after the Board action on April 23rd, Emerald Blue indicated a preference to reduce their collateral loan amount to \$3 million. In order to maintain the terms of the agreement with River City Bank, SDCP staff sought an

additional \$2 million loan from B Quest Foundation to make the \$5 million collateral requirement whole. B Quest, like Emerald Blue, is a local, philanthropic organization supporting climate action. This accomplished SDCP's objective of not requiring JPA member cities to provide collateral. And this continues to meet River City Bank's collateral request. With the addition of the B Quest commitment, River City Bank has confirmed their final credit approval.

Key terms from the B Quest agreement:

B Quest offered to lend \$2 million that will be used as collateral by SDCP to fund a cash collateral account that was required by River City Bank, added to the \$3 million provided by Emerald Blue to make the \$5 million collateral requirement whole. All terms of this loan are the same as those for Emerald Blue and approved by the Board. The only change is that B Quest is now sharing the risk with Emerald Blue. In summary, the loan will be subordinate to the River City Bank credit facility. The \$2 million will be held in an interest earning account, which will accrue until residential operations commence, and will be released quarterly thereafter. SDCP will make interest only payments to B Quest on a quarterly basis after operations have been launched at an interest rate calculated at 1-Month LIBOR plus 2.00%, subject to SDCP's compliance with its financial covenants to River City Bank. The cash collateral requirement is subject to release conditions based on SDCP operations and profitability and once those conditions have been satisfied, the collateral will be released and used by SDCP to repay the principal balance to B Quest. If the collateral is used by River City Bank, then SDCP will repay the principal to B quest in equal monthly payments over a period of 36 months when it is allowed to do so under the subordination agreement with River City Bank. The loan with B Quest is unsecured.

While the general structure and terms of the Emerald Blue loan as approved by the Board on April 23rd have not changed, the Board is asked to ratify the additional of B Quest as a lender and the additional promissory note as executed.

Attachments:

Attachment A: Promissory Note with B Quest

May 21, 2020

\$2,000,000.00 U.S.

PROMISSORY NOTE

FOR VALUE RECEIVED, San Diego Community Power, a California joint powers authority ("Borrower"), promises to pay to B Quest, a charitable foundation formed under the laws of the State of California ("Lender"), the principal sum of Two Million Dollars (\$2,000,000.00) U.S. dollars (the "Note"), on or prior to May 21, 2023 ("Maturity Date"), and to pay interest on the principal sum outstanding at the rate of interest set forth herein. The principal of, and interest on, this Note is payable in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, at the address of the Lender as may be designated in writing by the Lender from time to time. This Note is issued as of May 21, 2020 ("Issuance Date").

This Note is subject to the following additional provisions:

1. Subordination of Note. Lender agrees that the repayment of indebtedness evidenced by this Note is subordinated in right of payment, to the extent and in the manner provided in that certain Subordination Agreement between Lender and Senior Lender of even date herewith ("Subordination Agreement").

2. Use of Funds. The principal amount of the Note will be advanced in a single lump sum within three (3) business days of the execution of the Note for the purpose of funding a collateral account ("Collateral") to be held by River City Bank ("Senior Lender"). The Collateral is a condition precedent to an initial debt funding to Borrower by Senior Lender in the amount of Five Million Dollars (\$5,000,000), which will be used for startup costs associated with Borrower's community choice aggregation program and is the first funding tranche of a Thirty-Five Million Dollar (\$35,000,000) facility to provide working capital for Borrower's purchase of power for its operations ("Senior Loan"). The terms of the Senior Loan are set forth in that certain Credit Agreement between Borrower and Senior Lender ("Credit Agreement"). The commitment of the Senior Lender to make the Senior Loan available to the Borrower is contingent on the funding of the Collateral (along with an additional \$3,000,000 in collateral being provided by Emerald Blue, LLC) and the Collateral will be released by Senior Lender upon the occurrence of certain release conditions for the Collateral as set forth in Section 4.1(c) of the Subordination Agreement. It is anticipated that the release conditions will be fulfilled by December 31, 2022.

3. Interest Earned on Collateral. The account in which the Collateral is held by Senior Lender will accrue interest, which interest will be available to the Borrower on a quarterly basis, commencing with the first calendar quarter after which Borrower has commenced operations for the first phase of customers (which is currently anticipated to be March, 2021) ("Launch Date"), as described in Section 4.1(a) of the Subordination Agreement. Provided that the requirements of the Subordination Agreement have been met, Borrower agrees that it will request such interest from Senior Lender and pay the same to Lender within three (3) days of

receipt. Such interest earned on the Collateral is separate from the payment of interest by Borrower pursuant to Section 4 of this Note.

4. Quarterly Interest Payments.

(a) The outstanding principal balance of this note shall bear interest at a rate equal to the Reference Rate plus two percent (2%). The “Reference Rate” means and refers to the one month London Inter-Bank Offered Rate (“LIBOR”) or at such time as LIBOR is no longer available, then such future indexed rate such as the Secured Overnight Financing Rate that is generally accepted as the closest approximation to the one month LIBOR for commercial loans in the reasonable discretion of Lender.

(b) Interest payments by Borrower will commence on a quarterly basis in arrears with the first interest payment payable within sixty (60) days of the end of the calendar quarter immediately following the Launch Date and each calendar quarter thereafter, provided, however, that quarterly interest payments by Borrower are subject to the conditions precedent that Borrower is in compliance with all quarterly financial covenants to the Senior Lender under the Credit Agreement (which shall be measured within 45 days of the end of each calendar quarter) and Borrower is not in default under the terms of the Senior Loan, as permitted by Section 4.1(b) of the Subordination Agreement. To the extent that Borrower is unable to make an interest payment as a result of failing to meet the requirements set forth above, such interest will be added to the accrued and unpaid interest accumulated under the Note.

(c) The entire balance of interest that has accrued and remains unpaid as of the Maturity Date (as defined below) will be paid together with the outstanding principal balance as set forth in Section 4.

5. Payments of Principal and Unpaid Accrued Interest.

(a) Notwithstanding the Maturity Date, Borrower will repay the principal balance of this Note within five (5) business days of the release of the Collateral by Senior Lender upon satisfaction of the release conditions set forth in Section 4.1(c) of the Subordination Agreement. Thereafter, Borrower will repay the accrued interest on the Note within one hundred eighty (180) days of the payment of the principal.

(b) Except as set forth in Section 5(a), within thirty (30) days of the Maturity Date, the Borrower will pay to Lender the outstanding principal balance due on the Note together with all accrued and unpaid interest via wire transfer to an account designated by Lender and Borrower will pay to Lender. If Borrower is not allowed to make such payment on the Maturity Date as a result of restrictions in the Subordination Agreement, then interest will continue to accrue on the unpaid principal balance and Borrower will repay the outstanding balance of principal and accrued and unpaid interest within one hundred eighty (180) days of the date upon which such restrictions are no longer applicable.

6. Events of Default. The following shall constitute an “Event of Default” for the purposes of this Note:

(a) Borrower defaults in the payment of principal or interest on this Note and such default is not cured within thirty (30) days of the date thereof; or

(b) The Borrower is adjudicated as bankrupt or insolvent, or the consent by Borrower to the institution of bankruptcy or insolvency proceedings against him or the filing by Borrower of a petition or answer or consent seeking release under the federal bankruptcy laws, or any other applicable federal or state law, or the consent by Borrower to the filing of any such petition.

7. Remedies on Default. Lender shall have the right to pursue all remedies available at law or equity against Borrower upon the occurrence of an Event of Default, subject to any restrictions contained in the Subordination Agreement.

8. Lost or Destroyed Note. If this Note shall be mutilated, lost, stolen or destroyed, the Borrower shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Note, or in lieu of or in substitution for a lost, stolen or destroyed Note, a new Note for the principal amount of this Note so mutilated, lost, stolen or destroyed but only upon receipt of evidence of such loss, theft or destruction of such Note, and of the ownership thereof, and indemnity, if requested, all reasonably satisfactory to the Borrower.

9. Attorneys’ Fees and Costs. Should any litigation be commenced between the parties hereto or their personal representatives concerning any provision of this Agreement or the rights and duties of any person in relation thereto, the party prevailing in such litigation shall be entitled to, in addition to such other relief that may be granted, a reasonable sum as and for their or his or its attorneys’ fees in such litigation.

10. Modifications, Amendments, Terminations. This rights and preferences of the Lender of this Note may not be changed, modified, amended or terminated except by a writing signed by the Lender and Borrower.

11. Interpretation. Caption headings in this Note are for convenience purposes only and are not to be used to interpret or define the provisions of this Note. If a court of competent jurisdiction finds any provision of this Note to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other person or circumstances, and all provisions of this Note in all other respects shall remain valid and enforceable.

12. Indemnification. Borrower agrees to Indemnify and hold harmless Lender, its directors and officers, representatives, and its affiliates, including but not limited to Hammond Climate Solutions, LLC, and Tara Hammond as an individual, from and against all damages, losses, costs and expense, which they may incur by reason of the failure of the Borrower to fulfill any of the terms, conditions or agreements of this Note, or by reason of any breach of the

representations and warranties by the Borrower herein or in any document provided by Borrower to Lender.

13. Governing Law and Venue. THE TERMS OF THIS NOTE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA. ANY ACTION TO ENFORCE THE TERMS OF THIS NOTE SHALL BE BROUGHT IN THE APPLICABLE FEDERAL OR STATE COURTS OF THE COUNTY OF SAN DIEGO AND THE PARTIES HEREBY SUBMIT TO THE JURISDICTION OF SUCH COURTS.

14. Periodic Reporting. Borrower will provide Lender with a copy of all financial statements and other reports that are required to be provided by Borrower to the Senior Lender pursuant to the Credit Agreement. Furthermore, Borrower agrees to update Lender from time to time on the progress of Borrower with respect to the timing of the Launch Date and the ongoing implementation of the first, second and third phases of service.

[Remainder of Page Intentionally Left Blank—Signature Page Follows]

IN WITNESS WHEREOF, the Borrower has caused this instrument to be duly executed by an officer thereunto duly authorized.

“BORROWER”

SAN DIEGO COMMUNITY POWER,
A California joint powers authority

By:



Cody Hooven

Interim Executive Officer

SAN DIEGO COMMUNITY POWER
Staff Report – Item 5

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Subject: Agreement with Tenaska Power Services Co. for SDCP Schedule Coordination Services

Date: May 28, 2020

Recommendation

1. Approve Agreement with Tenaska Power Services Co. for SDCP power schedule coordination services ending on December 31, 2022 with annual contract renewals at the discretion of SDCP management.
2. Authorize the Interim Executive Officer to execute the Agreement in a form approved by the Interim Executive Officer and reviewed and approved as to form by General Counsel.

Background

On November 27, 2019 SDCP issued Request for Proposal (RFP) 19-001 for wholesale power services to provide energy planning and procurement support, power contract negotiation, rate design assistance, risk management, schedule coordination, integrated resource planning and long-term renewables procurement. The RFP was organized into three task areas including:

Task Area 1: Project planning, portfolio design/management, and energy advisory services;

Task Area 2: California Independent System Operator (CAISO) scheduling coordinator and settlement services; and,

Task Area 3: Integrated Resource Planning and IRP development, long-term renewables procurement and distributed energy resource assessment/procurement.

The RFP was sent to hundreds of recipients through the City of San Diego's PlanetBids platform and various other energy networks. Bidders were invited to propose services in one or more task areas. A total of 13 proposals were received by the December 23, 2019, including six that included schedule coordination services. Bids were reviewed and scored according to evaluation criteria set forth in the RFP and interviews were held with short-listed finalists on January 16, 2020.

Evaluation team members included: Cody Hooven, SDCP Interim Executive Officer; Natasha Keefer, Director of Power Planning & Procurement for Clean Power Alliance; Deb Emerson, Director of Power Services, Sonoma Clean Power; Mark Fulmer, Principal and Partner, MRW & Associates; and, Crystal Najera, Climate Action Plan Program Administrator, City of Encinitas. Shawn Marshall from LEAN Energy US provided coordination and advisory support for this effort.

Analysis and Discussion

Term and Task Area: The approval of this Agreement with Tenaska Power Services Co. focuses on Task Area 2. At its February meeting, the Board approved an Agreement with Pacific Energy Advisors for Task Areas 1 and 3. Staff is requesting approval of a 2.5 year agreement with Tenaska concluding on December 31, 2022 with the option to extend in annual increments at the discretion of SDCP management. The timeframe of this initial Agreement is anticipated to cover both pre-launch, set-up tasks through all phases of customer enrollment in 2021 and service of all SDCP load in 2022.

Reasons for Selection. Among the finalist companies for schedule coordination services, Tenaska received the highest composite score in three out of four evaluation categories (see page 10 of the RFP, found here: <https://www.sandiego.gov/sustainability/clean-and-renewable-energy/ccea>) which focused on the company's qualifications and experience providing power scheduling services across the western region of the US including California. Tenaska originally scored somewhat higher on pricing, but agreed to provide set-up and integration services on a complimentary basis prior to launch and also lowered their monthly fee to \$0.03/Mwh per month once SDCP begins serving customers. These adjustments made Tenaska's bid very competitive in the California marketplace. Furthermore, Tenaska's team proved very knowledgeable during the interview process and their references came from long-time customers that offered highest recommendations on their behalf. Staff feels that SDCP will be well served by Tenaska's interface with CAISO for power scheduling and settlements.

Contract Document. The SDCP Agreement with Tenaska Power Services Co. was developed by BB&K, SDCP's outside legal counsel. It includes a detailed scope of work and description of Tenaska's monthly volumetric pricing structure at \$0.03/MWh which will commence once SDCP begins serving load in March, 2021. SDCP is still in the process of finalizing Agreement language with Tenaska, and is therefore requesting approval of the Agreement in substantially the form attached hereto, with such changes as are approved by the Interim Executive Officer and reviewed and approved as to form by General Counsel.

Fiscal Impact

Approximately \$250,000 over the initial term of the Agreement.

Attachments:

Attachment A: Agreement between SDCP and Tenaska Power Services Co.

AGREEMENT BETWEEN SAN DIEGO COMMUNITY POWER AND TENASKA POWER SERVICES CO. FOR SCHEDULING COORDINATOR SERVICES

This Scheduling Coordinator Agreement (“**Agreement**”) is made and entered into on _____, 2020 (“**Effective Date**”), by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority (“**SDCP**”) and TENASKA POWER SERVICES CO, a Nebraska corporation (“**TPS**”). SDCP and TPS are sometimes individually referred to as a “**Party**” and collectively as “**Parties.**”

RECITALS

A. TPS desires to perform and assumes responsibility for the provision of certain professional services required by SDCP as part of its community choice aggregation program on the terms and conditions set forth in this Agreement. TPS represents that it is experienced in providing scheduling coordinator services and is familiar with the plans of SDCP.

B. SDCP desires to engage TPS to render such professional services for SDCP’s community choice aggregation program (“**Project**”), as set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties hereto hereby agree as follows:

1. Scope of Services and Term.

1.1. General Scope of Services. TPS promises and agrees to furnish to SDCP all services, and incidental and customary work necessary to fully and adequately provide scheduling coordinator services necessary for the Project (“**Services**”), which Services are more particularly described in Exhibit A, and which are stated in the proposal to SDCP (RFP No. 20-001). All Services shall be subject to, and performed in accordance with, this Agreement, the schedules and/or exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

1.2 Transition Services. The Parties acknowledge and agree that TPS will be unable to commence providing Services contemplated by this Agreement until all necessary registrations, acknowledgements, agreements and other documentation (“**Documentation**”) has been provided to and approved by CAISO to enable TPS to commence providing the Services, and Customer is ready to start scheduling deliveries to its load under this Agreement. the date which is the later of (a) the date on which TPS receives confirmation that CAISO has authorized TPS to commence representing the Resource, or (b) the date Customer notifies TP that it is ready to start scheduling to its load hereunder shall be referenced as the “**Commencement Date**”. The period of time from the Effective Date of this Agreement until the Commencement Date is defined as the “**Transition Period**”. During the Transition Period, SDCP and TPS shall each work diligently to ensure that all necessary Documentation is completed and necessary approvals are obtained expeditiously. SDCP shall notify TPS of the completion of all necessary Documentation and approvals. Subject to the terms of this Agreement and starting on the

Effective Date, TPS shall provide to SDCP the services necessary to ensure the commencement of the Services on or prior to the first date performance of Services is required in connection with the testing and commissioning of the Resource, described as follows (the “**Transition Services**”):

- (a) establish and implement operational information technology and interfaces with CAISO;
- (b) establish itself as the Scheduling Coordinator for the Resource;
- (c) one (1) Business Day prior to the Commencement Date, submit offers to CAISO applicable to the Resource for the Commencement Date; and
- (d) provide such other assistance with respect to the Documentation as Customer may reasonably require.

All Services under this Agreement (other than Transition Services and Testing Services) will commence on the Commencement Date. TPS shall charge no fees during the Transition Period.

1.3. Term. This Agreement shall be effective on the Effective Date. Full Services under this Agreement will commence on the Commencement Date and unless earlier terminated as provided herein, this Agreement shall remain in effect through December 31, 2022 (“**Initial Term**”). At the end of the Initial Term, the Agreement shall renew on an annual basis for successive one (1) year terms (each, a “**Renewal Term**”), unless a Party provides six (6) months prior written notice of its intent not to extend the term of the Agreement. TPS shall provide the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

1.4 Future Generation Resources. If SDCP adds generation resources where SDCP has ownership or a PPA requiring a Scheduling Coordinator, SDCP and TPS will negotiate in good faith and amend this Agreement to reflect incremental responsibilities and compensation.

2. Responsibilities of TPS.

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

2.2. Schedule of Services. TPS shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the terms of Exhibit A. TPS represents that it

has the professional and technical personnel required to perform the Services in conformance with such conditions.

2.3 Conformance to Applicable Requirements. All work prepared by TPS shall be subject to the approval of SDCP.

2.4. Sub-Contracting. TPS shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of SDCP. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3. **Conditions to TPS's Performance.**

3.1 SDCP SCID. SDCP represents and warrants that it is a registered Scheduling Coordinator at the California Independent System Operator (“CAISO”) and has its own SCID to be used for this Project and Services. SDCP will maintain its SCID throughout the term of the Agreement. Under this SCID, SDCP will be receiving payments from and making payments to CAISO. SDCP will maintain its own SCID through the term of the Agreement as a condition precedent to TPS's obligation to provide the Services listed in Exhibit A. TPS will manage SDCP's SCID as agent; provided however, SDCP must inform TPS of any transaction sufficiently in advance of any applicable CAISO deadline for scheduling transactions.

3.2 Information and Assistance. Upon TPS's reasonable request, SDCP shall provide such information and assistance as is reasonably required for TPS to provide the Services. If SDCP fails to provide TPS with such requested information or assistance, then TPS shall continue to provide in a timely manner any such portion(s) of the affected Services that TPS can reasonably provide to the extent possible in the absence of such information or assistance.

3.3 Notification. SDCP shall notify all other relevant parties, including, but not limited to, its data manager (“Data Manager”), the Utility Distribution Company (“UDC”), which is currently San Diego Gas & Electric, the CAISO and SDCP's lender(s), as necessary, of the existence of this Agreement and TPS's role as contemplated in this Agreement.

3.4 SDCP's Representative. SDCP hereby designates **Cody Hooven, Interim Executive Officer** or her designee, to act as its representative for the performance of this Agreement (“SDCP's Representative”). SDCP's Representative shall have the power to act on behalf of SDCP for all purposes under this Agreement. TPS shall not accept direction or orders from any person other than SDCP's Representative, or designee. TPS shall be entitled to rely upon, and SDCP shall be bound by, the oral and written communications, directions, requests and decisions made by SDCP's Representative with regard to this Agreement.

3.5 TPS's Representative. Tenaska Power Services hereby designates **Carey Morris, Director of Origination** or his or her designee, to act as its Representative for the performance of this Agreement (“TPS's Representative”). TPS's Representative shall have full authority to represent and act on behalf of TPS for all purposes under this Agreement. SDCP shall be entitled to rely upon, and TPS shall be bound by, the oral and written communications, directions, requests and decisions made by TPS's Representative with regard to this Agreement.

3.6 Coordination of Services. TPS agrees to work closely with SDCP staff in the performance of Services and shall be available to SDCP's staff, consultants and other staff at all reasonable times.

3.7 Standard of Care; Performance of Employees. The Parties shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. TPS represents and maintains that it is skilled in the professional calling necessary to perform the Services. TPS warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, TPS represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, TPS shall perform, at its own cost and expense and without reimbursement from SDCP, any services necessary to correct errors or omissions which are caused by the TPS's failure to comply with the standard of care provided for herein.

3.8 Laws and Regulations. The Parties shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, and shall give all notices required by law. The Parties shall be liable for all violations of such laws and regulations in connection with Services. If either of the Parties performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the other Party, then the Party in violation shall be solely responsible for all costs arising therefrom. The Parties shall defend, indemnify and hold the other Party, and its affiliated companies, partners, officials, directors, officers, employees, auditors and agents (collectively the "**Representatives**") free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

4. Insurance

4.1 Time for Compliance. TPS shall not commence the Services under this Agreement until it has provided evidence satisfactory to SDCP that it has secured all insurance required under this section.

4.2 Minimum Requirements. TPS shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the TPS, its agents, representatives, employees or subcontractors. TPS shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or

equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

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

4.3 Insurance Endorsements. The insurance policies shall contain the following provisions:

(A) General Liability.

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

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

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

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

(B) Automobile Liability.

(i) (1) SDCP, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the TPS or for which the TPS is responsible; and (2) the insurance coverage shall be primary insurance as respects SDCP, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the TPS's scheduled underlying coverage. Any insurance or self-insurance maintained by SDCP, its directors, officials, officers, employees, agents and volunteers shall be excess of the TPS's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage.

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

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

(D) All Coverages.

(i) Defense costs shall be payable in addition to the limits set forth hereunder.

(ii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

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

(iv) TPS shall provide SDCP at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the TPS shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the TPS shall deliver renewal certificate(s) to SDCP not more than ten (10) days following the effective date of cancellation or expiration.

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

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

(vii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, SDCP may cancel this Agreement.

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

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

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

4.6. Verification of Coverage. TPS shall furnish SDCP with original certificates of insurance effecting coverage required by this Agreement. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by SDCP before work commences.

4.7. Sub-consultant Insurance Requirements. TPS shall not allow any subcontractors or sub-consultants to commence work on any subcontract until they have provided evidence satisfactory to SDCP that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or sub-consultants shall include SDCP as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing equivalent coverage. If requested by TPS, SDCP may approve different scopes or minimum limits of insurance for particular subcontractors or sub-consultants.

4.8. (This proposed section will deal with the treatment of any deductible applicable to any insurance policy to which SDCP will be an additional insured under this Agreement. This language is under review by Tenaska's Insurance Department, and will be supplied to you once we have sign off.)

5. Fees, Payments and Security.

¹ TPS Note to Draft: Treatment of any deductible amounts under Tenaska's insurance policies is under review – new language to follow.

5.1. Compensation. TPS shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit B. Extra Work may be authorized, as described in Section 5.4 below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

5.2 Payment of Compensation. TPS shall submit to SDCP a monthly itemized invoice which shall include all fees related to Services during the previous month. SDCP shall, within 10 days of receiving such invoice, review the invoice and pay all charges thereon.

5.3. Reimbursement for Expenses. TPS shall not be reimbursed for any expenses unless authorized in writing by SDCP. For all authorized expenses, TPS shall submit to SDCP a monthly itemized invoice which shall include all expenses paid by TPS on behalf of SDCP during the previous month. SDCP shall, within 30 days of receiving such invoice, review the invoice and pay all approved charges thereon.

5.4. Extra Work. At any time during the term of this Agreement, the Parties may identify opportunities to perform Extra Work. As used herein, “Extra Work” means any work which is determined by the Parties to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. The Parties will negotiate in good faith to reach agreement on the implementation and compensation of such Extra Work.

6. Settlements, Reimbursable Amounts, and Accounting Records.

6.1 Reimbursable Amounts. SDCP shall reimburse TPS for all actual costs and charges assessed against TPS incurred in the performance of Services related to the Project. These obligations survive the termination of this Agreement.

6.2 Shadow Settlements and Reconciliation. TPS shall have no liability for making payments to CAISO on SDCP’s behalf. SDCP shall be responsible for any payment obligations to CAISO. TPS will use its proprietary data management and calculation engine, PowerTools Platform®© (“PTP”®) to shadow settle all CAISO settlement statement versions regarding the Project. TPS will analyze discrepancies found between TPS’s internally generated settlement statements and CAISO’s settlement statements and will report any significant discrepancies to SDCP. SDCP will provide TPS parameters for further investigation of such discrepancies and filing of disputes with CAISO. For discrepancies falling within SDCP’s parameters, TPS will file disputes at SDCP’s cost with CAISO on behalf of SDCP, will manage these disputes with CAISO, and will regularly provide SDCP a status report on all filed disputes. TPS will also review all additional CAISO settlement statements to verify CAISO has made requested changes to prior statements and to verify the accuracy of any additional CAISO charges and credits. TPS is authorized to receive from CAISO historic and real time data collected by CAISO from, or provided to CAISO by, SDCP with respect to the Project. TPS is authorized to have access to SDCP’s SCID at CAISO to review CAISO’s bills and settlement statements concerning the Project.

6.3 Audit. TPS shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. No more than once per year, TPS shall allow a representative of SDCP, at SDCP’s sole cost and expense, during normal business hours to examine, audit, and make transcripts or copies of such

records and any other documents created pursuant to this Agreement. TPS shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement. Any audit or inspection shall, at TPS's exclusive option, take place off of TPS's premises.

7. Termination and Expiration of Agreement: Meet and Confer.

7.1 Termination for Convenience. After the Commencement Date, either Party may, by providing nine (9) months written notice to the other Party, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to the other Party of such termination, and specifying the effective date thereof.

7.2 Termination for Cause. The following events (each an “**Event of Default**”) occurs with respect to a Party, then the other Party may terminate this Agreement (inclusive of Schedules, Exhibits and Addenda) upon written notice to the defaulting Party: (i) with respect to SDCP, SDCP fails to pay amounts due hereunder, and such failure continues for fifteen (15) business days following written notice from TPS; (ii) either Party defaults in the observance or performance of any of its material covenants or agreements in this Agreement and such default continues uncured for twenty (20) business days following written notice to the defaulting Party; (iii) either Party makes an assignment for the benefit of creditors (other than a collateral assignment to an entity providing financing to such Party), files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or has such a petition filed against it or otherwise becomes bankrupt or insolvent (however evidenced), or is unable to pay its debts as they become due; or (iv) with respect to SDCP, SDCP fails to satisfy UDC's credit-worthiness requirements set forth in the UDC tariffs and such failure continues uncured for twenty (20) business days following written notice to SDCP from UDC.

7.3. Effect of Termination. Upon the date of expiration or termination of this Agreement (whether terminated for cause, or whether expiring at the end of a term): (i) TPS shall cease providing Services and Extra Work hereunder except as required or authorized in Section 7.3.c below; (ii) TPS shall issue an invoice (the “**Termination Invoice**”) to SDCP for (a) all outstanding fees for Services rendered by TPS through and including the date of expiration or termination, (b) all expenses outstanding and unpaid as of the date of expiration or termination, (c) monies paid by TPS on behalf of SDCP, if any, (d) unpaid or unreimbursed Deferred Financing and Deposits, if any, (e) unpaid or unreimbursed Credit Support, if any, (f) unreimbursed CAISO charges, if any, and (g) unpaid or unreimbursed Revenue Shortfall Payments, if any (collectively the forgoing fees and costs shall be referred to as the “**Termination Payment**”); and (iii) SDCP shall pay the Termination Payment within thirty (30) days of the date of expiration or termination of the Agreement.

7.4. Transition of Services Upon Termination or Expiration. Upon such expiration or termination, and upon request of SDCP, TPS shall reasonably cooperate with SDCP to ensure a prompt and efficient transfer of all data, documents and other materials to SDCP or a new services provider, in an industry standard format or formats, and in a manner such as to attempt to minimize the impact of expiration or termination on SDCP's customers. TPS shall develop with reasonable assistance from SDCP a written transition plan specifying in detail all activities, and the timing of such activities, necessary to facilitate an orderly and effective

transition of Services. TPS shall provide to SDCP data and documentation, and other TPS non-proprietary information reasonably requested by SDCP in connection with the transition that is reasonably sufficient to enable a new services provider to fully assume the provision of the transitioning services. TPS shall provide transition assistance in such a manner as to attempt to reasonably: (a) ensure the uninterrupted performance of the services, (b) with no degradation in quality, and (c) to avoid disruption in the operation. If SDCP is the defaulting Party, SDCP agrees to pay TPS reasonable compensation for additional services performed in connection with such transfer, to the extent not otherwise provided for or contemplated in the Agreement, and not otherwise included in the Termination Payment. TPS shall (1) return all documents and other materials received from SDCP and all copies (if any) of such documents and tangible materials, and (ii) destroy all other documents or materials in TPS's possession that contain SDCP customer data; provided, however, that TPS may retain copies of information necessary for TPS's tax, billing or other financial purposes, to be used solely for such purposes.

(A) TPS shall not cease providing Services to SDCP under this Agreement until clear and unequivocal arrangements for (i) SDCP to assume provision of the Services under this Agreement, (ii) a third party provided to assume provision of the Services under this Agreement, or (iii) a return to Utility electric procurement, is established, unless SDCP is in default under the Agreement.

(B) If TPS ceases to be the representative for the Project due to termination of this Agreement or any other reason, TPS and SDCP will be responsible for notifying CAISO, and any Third Parties, if applicable, involved or relating to this Agreement of such.

7.4. Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, SDCP may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

7.5. Dispute Resolution. The Parties shall meet and confer together in good faith regarding any dispute, controversy or claim (each, a "**Dispute**") arising out of or relating to this Agreement, or any breach or alleged breach hereof, prior to either Party declaring a breach of the Agreement. A meet and confer shall occur within ten (10) business days of any Dispute whereby the Parties agree to cooperate in good faith to resolve the Dispute, and may use a mutually agreeable third party to resolve such Dispute. In no event shall either Party be delayed or impeded from exercising any of its rights at law or equity, including, without limitation, petitioning a court for provisional relief, including injunctive relief, prior to invoking the meet and confer resolution process.

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

TPS:

300 E. John Carpenter Freeway
Suite 1100
Irving, TX 75062

Schedule Coordinator Services Agreement – Page 10

Attn: Contract Administration
Ph: 817-303-1860
Email: TPSCContractAdmins@tnsk.com

SDCP:

Such notice shall be deemed made when personally delivered or sent by mail, e-mail, or facsimile to such Persons or locations listed above and will be deemed given and effective when delivered by hand or upon:

- (a) three (3) days after such notice is deposited in the United States mail with postage prepaid for transmittal by registered or certified mail, return receipt requested;
- (b) one (1) day after such notice is placed in the hands of a recognized commercial mail or courier service for overnight delivery; or
- (c) the Business Day on the date such notice was sent by e-mail or facsimile with confirmation of receipt of such facsimile by confirmed facsimile transmission, provided that such e-mail or facsimile receipt occurred during Business Hours of such Business Day. For email or facsimile transmissions received after such Business Hours of such Business Day at the receiving location, notice will be deemed effective upon the opening of Business Hours of the next Business Day.

9. Intellectual Property and Confidentiality.

SDCP owns all right, title and interest in and to all SDCP Materials. Upon the expiration of this Agreement, or in the event of termination, SDCP Materials and all SDCP customer data, in whatever form and in any state of completion, shall remain the property of SDCP and shall be promptly returned to SDCP; provided however, notwithstanding the other terms of this agreement related to return or destruction of Confidential Information, receiving Party is not obligated to remove the Confidential Information from its backed-up electronic records outside of normally scheduled retention policies, provided receiving Party does not make use of the Confidential Information. SDCP Materials shall mean any and all data created by TPS specifically for SDCP in the performance of the Services and Extra Work pursuant to this Agreement (“**SDCP Materials**”).

For the avoidance of doubt, TPS’s intellectual property, including, but not limited to, TPS’s trademarks, service marks, trade names and other designations, web site(s), web design(s), internal systems, computer systems, programs, software (including software code), ideas, know-how, work product, copyrights, patents, trade secrets and other proprietary and/or intellectual property shall remain the exclusive property of TPS.

10. Confidentiality.

(A) Subject to the remaining provisions of this Section, each Party agrees, for itself, its Affiliates, and its Representatives, to keep confidential to the extent permitted under the California Public Records Act all Information furnished by either Party related to schedules,

services and Transactions under this Agreement unless the information (i) is required to be disclosed to effect the requested Transaction or to enforce a Party's rights under the Agreement, (ii) is required to be disclosed by lenders, insurers, or underwriters in connection with financing, or (iii) is required to be disclosed pursuant to the California Public Records Act ("**Confidential Information**"). This confidentiality obligation will expire three (3) years past the expiration or termination of this Agreement.

(B) Subject to Section 10(a) of this Agreement, the receiving Party, its Affiliates, and its Representatives must not disclose any Confidential Information to any Third Party without the prior written consent of the disclosing Party unless requested or required by a governmental authority or self-regulatory organization or as permitted in accordance hereof, except that a Party may disclose Confidential Information to any Affiliate, Representative, current or future financing sources, or potential purchaser of the Party and its parent, or affiliated entities without such prior written consent. Except with regard to disclosures permitted by this Section, the disclosing Party must require such Third Party to agree to treat the Confidential Information in accordance with this Agreement.

(C) In the event any Party is requested or required to disclose such Confidential Information by law or by a court, agency, or other governing body having or purporting to have jurisdiction over the Party, to the extent permitted by law such Party must notify the other Party prior to any disclosure so as to allow the other Party to resist such disclosure before the governing body or to seek appropriate protection from further disclosure.

(D) The Parties agree that disclosure of Confidential Information in breach of the confidentiality provisions of this Agreement constitutes an irreparable injury and that injunctive relief is an appropriate remedy to prevent the unwarranted disclosure of any Confidential Information.

(E) The confidentiality provisions of this Agreement will not apply to any Confidential Information (i) the receiving Party developed independently without using the Confidential Information, (ii) that was in the public domain at the time of its disclosure, (iii) which passes into the public domain by acts other than the acts of or caused by the Party receiving said Confidential Information, or (iv) is disclosed to the receiving Party by a Third Party, provided that the receiving Party does not know (or has no reasonable basis to know) that the information was received or disclosed unlawfully.

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

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

13. **Indemnification, Liabilities, and Warranty Disclaimer.**

13.1 Indemnification. TPS (including its officials, officers, employees, agents, sub-consultants and contractors, collectively the “Indemnifying Party”) shall, to the extent of its own willful or reckless misconduct, defend, indemnify and hold SDCP, its officials, officers, consultants, employees, and volunteers (“**Indemnified Party**”) free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident, arising out of or in connection with the performance of the Services, the Project or this Agreement, including reasonable attorney’s fees and other related costs and expenses. TPS’s obligation to indemnify shall not be restricted to insurance proceeds, if any, received by SDCP, its directors, officials, officers, consultants, employees, agents or volunteers. TPS’s indemnification obligations herein are conditioned upon the Indemnified Party: (i) promptly notifying TPS of any claim in writing; and (ii) cooperating with TPS in the defense of the claim.

13.2 LIMITATION OF LIABILITY. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, LOST PROFIT, LOST OPPORTUNITY, BUSINESS INTERRUPTION, OR EXEMPLARY DAMAGES FOR ANY CLAIM OR CAUSE OF ACTION RELATED TO THIS AGREEMENT, WHETHER ARISING FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), STATUTE, OR OTHERWISE. MOREOVER, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, UNLESS THE CLAIMS OR OBLIGATIONS ARE CAUSED BY TPS’ WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, FOR EACH SIX (6) MONTH PERIOD OF SERVICES, THE AGGREGATE LIABILITY OF TPS TO SDCP FOR ANY OBLIGATIONS, UNDER THIS AGREEMENT SHALL BE LIMITED TO A MAXIMUM OF THE VOLUMETRIC FEES AND PAYMENTS OWED BY SDCP TO TPS PURSUANT TO EXHIBIT B FOR THE CONSECUTIVE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED, EXCLUSIVE OF REIMBURSEMENTS OF THIRD PARTY COSTS AND CHARGES. AMOUNTS PAYABLE UNDER SECTION 13.1, OR AMOUNTS PAYABLE TO CUSTOMER PURSUANT TO THE INSURANCE COVERAGES PROVIDED IN SECTION 4 SHALL NOT BE SUBJECT TO THE FOREGOING LIABILITY LIMITS. FOR AVOIDANCE OF DOUBT, THE PARTIES AGREE AND ACKNOWLEDGE THAT IF (1) A PRIOR EVENT CAUSING LIABILITY CLAIMS HAS ALREADY TAKEN INTO ACCOUNT VOLUMETRIC FEES CHARGED IN ANY OF THE MONTHS WITHIN THE THREE (3) CONSECUTIVE MONTH PERIOD OF EVALUATION RELATED TO THE EVENT IN QUESTION, AND (2) CLAIMS WERE PAID FROM SUCH VOLUMETRIC FEES TO SDCP UNDER THIS AGREEMENT FOR THE PRIOR EVENT, THEN IN CALCULATING THE APPLICABLE LIMITATION OF LIABILITY FOR AN EVENT, VOLUMETRIC FEES SHALL BE CONSIDERED TO BE REDUCED FOR MONTHS IN THE PRIOR SIX (6) CONSECUTIVE MONTH PERIOD BEFORE THE EVENT IN QUESTION TO THE EXTENT PRIOR DAMAGE CLAIMS HAD RESULTED IN A PAYOUT TO SDCP OF SUCH MONTHS’ VOLUMETRIC FEES, SUCH THAT IN NO EVENT SHALL TPS PAY OUT IN DAMAGES FOR ANY CONSECUTIVE SIX (6) BILLING MONTH PERIOD MORE THAN IT HAS RECEIVED IN VOLUMETRIC FEES FOR SUCH PERIOD.

13.3 ADDITIONAL INDEMNITIES. AN INDEMNIFYING PARTY'S INDEMNITY OBLIGATIONS, AND ANY WAIVERS AND RELEASES OF CLAIMS IN THIS AGREEMENT WILL EXTEND TO THE INDEMNIFIED PARTY, ITS AFFILIATED COMPANIES, INCLUDING ANY ENTITY CONTROLLING, UNDER THE CONTROL OF, OR UNDER COMMON CONTROL WITH SUCH PARTY, AND TO THE RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, OWNERS, SHAREHOLDERS AND INSURERS OF EACH THEREOF.

14. Governing Rules.

14.1 Governing Rules. Both Parties agree to abide by all rules, market guides, tariffs, protocols, business practice manuals, and any applicable rules or directives of CAISO, transmission service provider, market monitor, any reliability entity, the North American Electric Reliability Corporation (“NERC”), or any of their successors (collectively “**Governing Rules**”). For purposes of determining responsibility and rights of the Parties at any given time, in addition to the terms and conditions of this Agreement, the Governing Rules which are in effect at the time of performance or non-performance of an action, subject to the continuation of any grandfathered provisions, will govern with respect to that action. In the event of a conflict between the Governing Rules and the terms and conditions set forth in this Agreement, the Governing Rules will prevail.

14.2 NERC Compliance. TPS will use commercially reasonable efforts to assist SDCP in any audit of SDCP initiated by a regional reliability coordinator, or NERC including preparation of responses to the regional reliability coordinator or NERC data requests related to NERC standards for which TPS has information useful to SDCP for the demonstration of compliance. Nothing contained in this Agreement will be construed to make TPS a Generator Owner (“GO”), Generator Operator (“GOP”), or any similar entity, or to make TPS subject to any classification under applicable NERC rules as a result of TPS's execution of this Agreement or TPS's performance of the services or otherwise. As between the Parties, SDCP will be responsible for meeting any GO, GOP, or load serving entity (“LSE”) requirements or for arranging for a party other than TPS to assume that responsibility. In the event NERC, a regional reliability entity, or other party seeks to designate TPS in any of these categories, SDCP will cause itself or a Third Party to accept such designation in lieu of TPS.

14.3 Compliance with Laws. TPS and SDCP will at all times comply in all material aspects with all Governing Rules and Applicable Laws. In the event that actions or omissions of one Party (“**Responsible Party**”) cause the other Party (“**Affected Party**”) to (A) be materially non-compliant with the Governing Rules or Applicable Laws, or (B) have assessed or brought against it any fines, penalties, reprimands, censures, sanctions, assessments, or other material adverse actions by CAISO, market monitor, or any other regulatory authority (“**Assessments**”) (which, for the avoidance of doubt, will not include ordinary course settlement charges or penalties, such as imbalance penalties or charges, mismatched schedule charges, uninstructed deviation charges, or late fees), then, in addition to any other rights or remedies under this Agreement (including the right, if any, to indemnification against such Assessments), the Affected Party may exercise any or all of the following:

- (i) may give written notice to the Responsible Party setting forth the circumstances of non-compliance and, if cure is practicable, demanding cure; or

(ii) must use commercially reasonable efforts to cooperate with the Responsible Party in its defense against such allegation or Assessment (provided the foregoing will not require the Affected Party to incur material expenses, unless reimbursed by the Responsible Party, nor take any position in any regulatory proceeding contrary to its interests or policies).

The Responsible Party for such Assessments will reimburse the affected party for Assessments paid by the Affected Party; provided, however, TPS's payment obligation hereunder will be governed by Section 13.3.

15. **Force Majeure and Due Diligence.**

15.1 **Force Majeure.** Subject to Section 14.2, neither Party will be considered to be in default in the performance of any obligations under this Agreement (other than the obligation to make a payment of amounts owed) when a failure of performance results from Force Majeure. The term "**Force Majeure**" means causes that are beyond the control of the Party affected which, by exercise of due diligence, such Party could not reasonably have been expected to avoid and which, by exercise of due diligence, it has been unable to overcome and not the result of the fault or negligence of such Party including, but not limited to: flood, earthquake, tornado, hurricane, storm, or fire; acts of terrorism; civil disobedience; sabotage; pandemic or epidemic, restraint, order, rule, or regulation of any court, governmental body, or public authority (whether valid or invalid); equipment malfunction or failure not caused by the Party claiming Force Majeure (including computer hardware or software malfunction); loss or disruption of essential office equipment and services, such as loss or disruption of electric power, telephone service, internet, or satellite communications.

15.2 **Due Diligence.** No Party, however, shall be relieved of liability for failure of performance hereunder based on Force Majeure if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. A Party claiming Force Majeure will exercise due diligence to overcome the Force Majeure event. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of Force Majeure shall give prompt written notice of such fact to the other Party, and as soon as practicable thereafter shall provide a detailed written explanation of the claim of Force Majeure, and shall exercise due diligence to remove such inability with all reasonable dispatch.

15.3 **Obligations During Force Majeure.** Notwithstanding any other provisions as stated in Section 14, an event of Force Majeure does not relieve a Party of any of its obligations under the Governing Rules and this Agreement that the Party can reasonably perform during a Force Majeure event, and does not excuse a Party of its obligations to make payments for obligations arising prior to the Force Majeure event, or of any payment obligations for non-performance arising pursuant to the Governing Rules and this Agreement.

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

17. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be governed by a court of competent jurisdiction in San Diego County.

18. SDCP's Right to Employ Other Consultants. SDCP reserves right to employ other consultants in connection with this Project for services other than those listed in Exhibit A.

19. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

20. Assignment or Transfer. Neither Party shall assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the other Party. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Notwithstanding the foregoing, the Parties agree that in the absence of a merger, the sale or transfer of all or substantially all of the shares of the other Party shall not constitute an assignment or transfer of this Agreement.

21. Construction: References; Captions. Since the Parties have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

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

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

24. No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

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

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

27. Equal Opportunity Employment. Both Parties represent that they are equal opportunity employers and shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

28. Labor Certification. By its signature hereunder, both Parties certify that they are aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agree to comply with such provisions before commencing the performance of the Services.

29. Authority to Enter Agreement. Both Parties have all requisite power and authority to conduct their business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

30. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

[SIGNATURES ON FOLLOWING PAGE]

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

SAN DIEGO COMMUNITY POWER

TENASKA POWER SERVICES CO.

By : _____
Name:
Title:

By : _____
Name: Kevin R. Smith
Title: President

ATTEST:

Secretary, SDCP Board of Directors

APPROVED AS TO FORM:

SDCP General Counsel

* A corporation requires the signatures of two corporate officers.

One signature shall be that of the chairman of board, the president or any vice president and the second signature (on the attest line) shall be that of the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation.

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

EXHIBIT A

SERVICES/TERMS AND CONDITIONS

The Parties agree that the following scheduling services (“**Scheduling Services**”) shall be provided as described herein. The services to be provided under this Exhibit will commence upon execution of the Agreement.

1. Scheduling Services:

- a. TPS will perform all CAISO/WECC scheduling functions for SDCP in Day-Ahead and Real-Time markets, utilizing the TPS trade group on a 24/7, 365 days per year basis.
- b. TPS is a certified and registered CAISO Scheduling Coordinator and included on the CAISO Scheduling Coordinator list. In the SC Services function for SDCP, TPS will perform all required functions of a Scheduling Coordinator, including emergency operational actions, all scheduling and bidding functions in the applicable market(s), OMS updates, NQC establishment and maintenance, and RA plan filings. (Some of these functions are for generation and will apply once SDCP acquires generation assets/PPAs)
- c. As applicable, TPS will submit, update and monitor all e-tags.
- d. TPS will monitor LMPs that impacts the SDCP portfolio and curtailment opportunities and decisions.
- e. TPS will monitor and minimize all energy imbalances to optimize the financial impact of the SDCP portfolio.

2. Load Forecasting Services:

- a. TPS will provide load-forecasting services across all market tenors, including real-time, hour-ahead, day-ahead, week-ahead and month-ahead.
- b. TPS will monitor and adjust load forecast per agreed upon methodology.

3. Market Monitoring and Congestion Revenue Rights Services:

- a. TPS shall work with SDCP for the acquisition, management and disposition of Congestion Revenue Rights (CRR), as allocated to SDCP or secured via auction, as well as provide monthly CRR effectiveness reports.

4. Settlements and Reporting Services:

- a. TPS shall perform and provide access to shadow and predictive CAISO settlements for the SDCP portfolio.
- b. TPS will provide a suite of reports to SDCP. As applicable, customized reports may be created if standard suite of reports do not address a need by SDCP.

5. Other Items:

- a. TPS will perform all services in a professional manner consistent with Good Industry Practices and Applicable Laws, including the CAISO Tariff.
- b. TPS will be responsible for submitting data to appropriate Balancing Authorities to satisfy planning requirements.

EXHIBIT B

SCHEDULE COORDINATOR FEE SCHEDULE AND PAYMENTS

This Exhibit B describes the Services Fees (“Service Fees”) to be remitted to Tenaska Power Services from SDCP for all Services performed pursuant to this Agreement.

Service Fees

Volumetric fee: \$0.03/MWh of SDCP metered load (billed monthly)

Setup fee: waived

Starting with the first month in which Tenaska provides Scheduling Services and Service Fees begin to accrue, Tenaska agrees to postpone the issuance of the monthly invoice (the “**Initial Invoice**”) for Service Fees until after the third month for which it has provided Scheduling Services. After the third month, Tenaska will issue the Initial Invoice which will include all Service Fees due to Tenaska for the prior three months.

- a. For example, if Tenaska begins submitting schedules on behalf of SDCP on March 14, 2021, payment for Service Fees for the months of March, April, and May Of 2021 will not be due to Tenaska until issues the Initial Invoice for the applicable months in June of 2021 and payment is due to Tenaska as provided in this Agreement.

For avoidance of doubt, after the for all months after the Initial Invoice period, Tenaska shall issue monthly invoices to SDCP pursuant to Section 5 of the Agreement.

Parent Guaranty

TPS will provide a Parent Guaranty in the amount of \$2,000,000 (two million) US Dollars which will guaranty payment to customer of amounts TPS owes under this Agreement.

SAN DIEGO COMMUNITY POWER
Staff Report – Item 6

To: San Diego Community Power Board of Directors

From: Sam Kang, Pacific Energy Advisors

CC: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Subject: Presentation on Types and Categories of Power Procurements,
Procurement/Board Approval Timeline, RPS and GHG-free Targets, and Preview
of Risk Management Policy with Delegation of Authority

Date: May 28, 2020

Recommendation

1. Receive update on types and categories of power procurements
2. Receive update on 2020/2021 timeline for procurement and Board approvals
3. Receive update on 2021 RPS/GHG-free targets
4. Receive preview on Energy Risk Management Policy and Delegation of Authority

Background

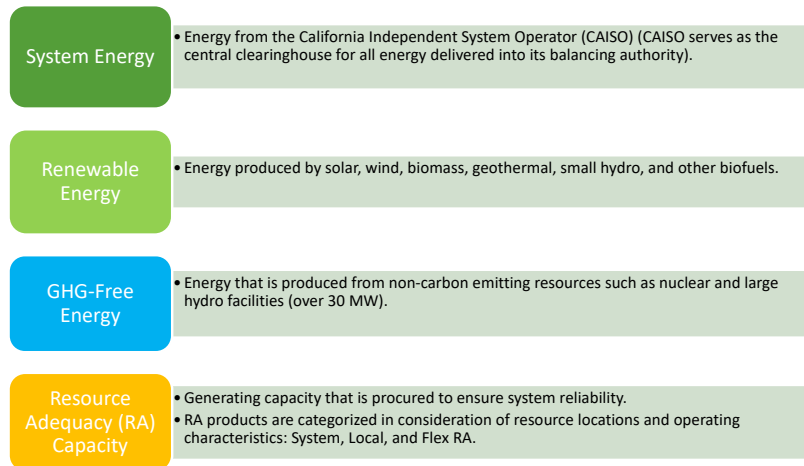
At its February 27, 2020 Board meeting, the SDCP Board approved a technical consulting services agreement with Pacific Energy Advisors (PEA). The scope of services included portfolio management, risk management, energy procurement, and regulatory compliance. During the course of service delivery, routine discussion and direction from the SDCP Board will be required. This presentation relates to the types and categories of power resources to be procured, energy contract timing and targets, and the corresponding approval levels required for contract execution. A preview of SDCP's proposed risk management policy will also be presented.

Analysis and Discussion:

A) Receive Update on Types and Categories of Power Procurements

One of the primary activities associated with power procurement is planning for and assembling a power portfolio that meets both SDCP's goals as well as the State's compliance requirements. The following are the types of power that SDCP will need to procure to satisfy its resource needs. More detail will be provided about how these sources are procured and "counted" for state compliance during the Board presentation.

Resources SDCP Will Need to Procure



B) Receive Update on 2020/2021 Timeline for Procurement and Board Approvals

As a load-serving entity, SDCP has compliance requirements related to the types (e.g., renewables, resource adequacy) and corresponding quantity of power it needs to procure to serve its customers beginning in March 2021. In order to provide the Board with a summary of expected procurement activity and corresponding Board approvals that will be required, PEA will present a draft timeline coupling the two activities showing how procurement activity will roll out for the remainder of this year.

C) Receive Update on 2021 RPS/GHG-Free Targets

A component of planning for energy procurement is establishing RPS and GHG-free targets to help determine the quantity of renewable and GHG-free energy to procure. This discussion item describes the preliminary recommendation for SDCP's 2021 RPS and GHG-free targets with respect to what the default service offering could be. It is based on current market conditions and will also reflect a voluntary 100% renewable option that communities and customers may choose to "opt up" to.

D) Receive Preview on Energy Risk Management Policy and Delegation of Authority

During its normal course of business, SDCP will be managing risks associated with its participation in California's wholesale energy markets. The Energy Risk Management Policy will provide the framework around which SDCP manages various market and credit risks and outlines the roles and responsibilities for those responsible for managing risks.

This discussion item is a high-level preview of the Energy Risk Management Policy with a focus on the Delegation of Authority (DOA) component of the Policy. As SDCP's energy procurement activity has just started, discussion and possible direction on the DOA to SDCP's CEO in order to

effectuate timely and efficient responses to offers in the ordinary course of business (based on expected transactions and related frequency) is recommended. The draft recommendation is to provide DOA to the CEO that is broken out by resource type, transaction size, term, and notional value as described in the table below.

DRAFT EXAMPLE Delegation of Authority per Transaction by Position/Title	Product Type	Tenor Limit	Volumetric Limit	Notional Value Limit
Chief Executive Officer	System Power	3 years	1,500,000 MWh	\$ 50,000,000
	Resource Adequacy	3 years	10,000 MW	\$ 50,000,000
	Renewables	3 years	2,500,000 MWh	\$ 50,000,000
	GHG-free	3 years	5,000,000 MWh	\$ 50,000,000
SDCP Board	All Products	Any	Unlimited	Unlimited

It is envisioned that the oversight of the Risk Management Policy development and implementation will be delegated from the Board to the Finance and Risk Management Committee (FRMC) until SDCP is operational, whereupon the FRMC will then delegate its oversight to its future Risk Oversight Committee.

SAN DIEGO COMMUNITY POWER
Staff Report – Item 7

To: San Diego Community Power Board of Directors

From: Sam Kang, Pacific Energy Advisors

CC: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Subject: Approve Participation in SDG&E’s Renewables and Resource Adequacy Request for Proposals

Date: May 28, 2020

Recommendation

Approve SDCP’s participation in SDG&E’s renewable energy and Resource Adequacy (RA) Request for Proposals (RFPs) to facilitate achievement of key statewide compliance mandates during SDCP’s initial operations.

Background

As a load-serving entity, SDCP must fulfill several compliance requirements focused on renewable energy and reserve capacity. The State of California administers the Renewables Portfolio Standard (RPS) Program to ensure that retail sellers, including SDCP, procure sufficient quantities of renewable energy to promote the state’s achievement of the currently effective 60 percent renewable energy mandate (measured as a percentage of total energy sales) by 2030. The state also administers the Resource Adequacy program to support reliable grid operation. Through the state’s RA program, load-serving entities, including SDCP, must procure reserve capacity¹ to meet 115 percent of expected peak demand (the point at which customer energy usage is projected to be at its highest) – such procurement helps ensure generator sufficiency even when various contingencies exist, including hotter than expected weather, generator and other infrastructure outages, and various other issues. Under the state’s RA program, reserve capacity is placed under contract and must remain available to produce electric power, if directed to do so by operators of the state’s electric grid. It is important to note that resources placed under reserve capacity contracts with SDCP may not necessarily deliver electric power to SDCP, as electric energy and reserve capacity are often procured separately (from a diverse fleet of generating resources).

¹ For purposes of this staff report, the terms “Resource Adequacy”, “RA” and “Reserve Capacity” are used interchangeably.

To secure necessary quantities of renewable energy and resource adequacy capacity, SDCP will regularly participate in various solicitation processes until the desired/required levels of renewable energy and reserve capacity have been procured. Certain of these solicitations will be independently administered by SDCP (as a buyer of such products) while others may be administered by various third-party suppliers/sellers, including the incumbent utility, SDG&E.

SDG&E recently announced via email its schedule for issuing two distinct Request for Proposals: (1) one indicating its intent to sell California RPS-eligible renewable energy; and (2) another indicating its intent to sell Resource Adequacy capacity. Prior to participating in the aforementioned solicitations announced by SDG&E, staff is requesting Board approval. Once SDCP's Risk Management Policy (Policy) and corresponding Delegation of Authority (DOA) are adopted by the Board, which is expected to occur at your Board's upcoming June Meeting, there will be clearer guidance and defined parameters regarding the manner in which SDCP will pursue future procurement opportunities when open/short positions are identified. But until such Policy and related Authority are adopted, staff determined that it was prudent to request/receive your approval to participate in SDG&E's upcoming solicitations.

Analysis and Discussion

As previously noted, SDCP will be required to meet certain compliance mandates focused on renewable energy and reserve capacity. For new community choice aggregation programs like SDCP, there are often challenges in balancing organizational interests in supporting the development of local clean energy infrastructure with the achievement of time-sensitive (and highly inflexible) compliance requirements that exist at the time of (or prior to) launch. As such, SDCP's intended planning and procurement processes have been structured with these interests in mind. In particular, SDCP's participation in the noted SDG&E RFPs would be part of its "laddered" procurement strategy through which SDCP will endeavor to secure contractual commitments for a portion of its near-term/initial resource requirements with lower levels of contracted purchases occurring in the future. For example, through its participation in SDG&E's RFP and other independently administered RFPs, SDCP might procure 90-100 percent of its anticipated renewable energy requirements during the first year of operations but would secure lower levels in year two (80-90 percent, for example), year three (70-80 percent), etc. The unfilled, or "open", positions in future operating years are deliberate, leaving room to pursue opportunistic purchases, minimizing concentrated exposure to market price risk at a single point in time, allowing for variations in customer participation/energy usage and, importantly, providing the opportunity for SDCP to engage local project developers in a manner that is considerate of realistic project development timelines. Over time, SDCP will undertake the process of filling outstanding open positions on a rolling basis, providing near-term budgetary and rate-setting certainty while promoting planning flexibility and risk mitigation in future operating periods. Because local project development often takes time, and development schedules may be somewhat unpredictable (particularly, during the current pandemic), it is important to balance near-term compliance needs with other organizational goals. The previously described planning and procurement process is intended to strike such balance.

While details related to SDG&E's RFPs have not yet been provided, and its bidding requirements have not yet been finalized, SDCP's participation in both RFPs is important, as SDG&E should have considerable renewable energy and reserve capacity surplus due to customer departures for locally administered CCA programs. SDCP will need to tactically pursue procurement options in an effort to promote achievement of its near-term compliance obligations, and SDG&E is expected to represent a significant seller of such products. Accordingly, SDCP seeks approval to submit bids, and ultimately purchase, RA and RPS products under each SDG&E-administered RFP to further its achievement of pertinent compliance mandates (with the objective of minimizing customer costs). As previously noted, participation in such processes is not expected to impact SDCP's plans to engage local project developers as an important component of its overall procurement strategy.

Attachments

Attachment A: Content of email from SDG&E regarding Renewables RFP

Attachment B: Content of email from SDG&E regarding Resource Adequacy RFP

Appendix A – SDG&E RPS RFP

On May 29, 2020, San Diego Gas & Electric Company (“SDG&E”) anticipates issuing a Request for Proposals (“RFP”) to sell products from eligible renewable resources under contract with SDG&E (“Resources”) to third parties (“Respondents” or “Participants”). Products will be derived from Resources that meet the California Renewables Portfolio Standard (“RPS”) eligibility criteria set forth by the California Energy Commission (“CEC”).

Anticipated Product Types

	REC Sales
Product Types:	Bundled Energy and Unbundled RECs
Minimum Term:	1 month
Maximum Term:	10 years (120 months)
Delivery Window:	Start no earlier than CPUC Approval, End no later than X+60 months
Point of Delivery:	Point of Interconnection of the Project to the CAISO Grid or WREGIS Account
Min Volume:	No Min

The below RFP schedule summarizes the key deadlines that apply to this RFP:

No	Event	Date
1	Launch RFP	Fri-May-29
2	Bidder's Conference	Fri-Jun-05
3	Offer package due no later than 12 pm PPT on this date	Tue-Jun-19
4	SDG&E Notifies Offerors of Selection	Fri-Jul-31
5	All contracts are executed	Mon-Aug-31
6	Submit Tier 1 or Tier 3 Advice Letter Seeking CPUC Approval of Contracts	Wed-Sep-30
7	Commencement of Deliveries	Q1 2021

SDG&E reserves the right to revise this schedule at any time and at SDG&E’s sole discretion.

More information, as updated from time to time, including the RFP schedule, shall be available on SDG&E’s RFP website: <https://www.sdge.com/more-information/doing-business-with-us/rfps-rfos>

Thank you,
SDG&E Evaluation Team

Appendix B – SDG&E RA RFP

On June 15, 2020 San Diego Gas & Electric Company (“SDG&E”) anticipates issuing its 2021-2023 Resource Adequacy RFP seeking to sell 2021, 2022 and 2023 Local Resource Adequacy (“RA”) capacity products with load serving entities, marketers and generators (“Respondents”).

The below RFP schedule summarizes the key deadlines that apply to this RFP:

No	Event	Date
1	Launch RFP	Mon-Jun-15
2	Deadline to submit any questions	Mon-Jun-22
3	Answers to all Questions will be posted	Wed-Jun-24
4	Offer package due no later than 12 pm PPT on this date	Thu-Jul-02
5	SDG&E Notifies Offerors of selection	Fri-Jul-31
6	All contracts are executed	Fri-Sep-04

SDG&E reserves the right to revise this schedule at any time and at SDG&E’s sole discretion.

More information, as updated from time to time, including the RFP schedule, shall be available on SDG&E’s RFP website

<https://www.sdge.com/more-information/doing-business-with-us/rfps-rfos>

Thank you,
SDG&E Evaluation Team

SAN DIEGO COMMUNITY POWER
Staff Report – Item 8

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Subject: Approve Cooperation and Administrative Services Agreement with the City of La Mesa for SDCP Board Secretary Services

Date: May 28, 2020

Recommendation

Approve the Cooperation and Administrative Services Agreement with City of La Mesa (City) providing certain services to San Diego Community Power (SDCP) by the City and reimbursement to the City for these services, and authorize the Interim Executive Director to execute the agreement.

Background

By Ordinance No. 2019-2871 authorizing the implementation of a Community Choice Aggregation program and Resolution No. 2019-088 from the City of La Mesa authorizing the City to enter into a Joint Powers Agreement relating to and creating the San Diego Regional Community Choice Energy Authority, the City of La Mesa has since provided administrative services and expenditures to the operations of San Diego Community Power (SDCP).

Section 7.3.2 of the JPA Agreement acknowledges that the Member Agencies, including the City of La Mesa, may fund certain activities necessary for the implementation of the CCA Program, and that SDCP shall reimburse the Member Agencies for such costs pursuant to the execution of an agreement specifying the services provided and their related costs.

Analysis and Discussion

This Cooperation and Administrative Services formalizes the ongoing relationship between the City of La Mesa and San Diego Community Power, where the City will provide support at meetings for SDCP to carry out its functions under the JPA Agreement and in furtherance of the CCA Program. Such assistance and services shall include clerking for SDCP Board and special meetings.

This draft agreement states that SDCP agrees to reimburse the City for all costs incurred for services by the City from and to the extent that funds are available to SDCP from charges to CCA customers receiving electric services from the SDCP, seed funding received as part of its credit package, and/or from revenues from grants or other third-party sources; provided,

however, that SDCP shall have the sole and exclusive right to pledge any such sources of funds to the repayment of other indebtedness incurred by the SDCP in implementing the CCA Program.

The agreement states that the City shall be reimbursed for costs described in the agreement in a total amount not to exceed \$40,000, to assist with staffing of startup operations as referenced in Section 7.3.2 of the JPA Agreement and the draft agreement before the Board.

Lastly, the City will keep records of activities and services undertaken pursuant to this Agreement and the costs thereof so that an accurate determination of the SDCP's liability to the City can be made. The City shall provide as needed reports to the SDCP providing a breakdown of the costs and expenses incurred by the City in rendering activities and services of the City to or on behalf of the SDCP pursuant to this Agreement, together with documentation satisfactory to the SDCP of such costs. Such statement of costs may include the City's administrative and salary expense attributable to services of City employees rendered for the SDCP.

Staff is recommending that the Board approve the Cooperation and Administrative Services Agreement, which would then be presented to the City Council of La Mesa for approval and final execution.

Fiscal Impact

The Cooperation and Administrative Services Agreement allows SDCP to continue to rely on City services until such time as it can finance its own operations and hire staff to perform the necessary services, while ensuring that a framework is in place to structure the reimbursement process of City services provided to SDCP.

Attachments

Attachment A: SDCP and City of La Mesa Cooperation and Administrative Services Agreement

COOPERATION AND ADMINISTRATIVE SERVICES AGREEMENT

THIS COOPERATION AND ADMINISTRATIVE SERVICES AGREEMENT (this “Agreement”) is entered into as of _____, 2020, by and between SAN DIEGO COMMUNITY POWER (“SDCP”) and the CITY OF LA MESA (the “City”) and shall become effective upon the terms set forth herein. SDCP and the City are sometimes referred to in this Agreement individually as a “**Party**,” or collectively as “**Parties**.”

Recitals

A. The City Council of the City of La Mesa, by Ordinance No. 2019-2871, adopted on September 10, 2019, and the City Council of the City of San Diego, by Ordinance No. 21133, adopted on October 1 2019, and the City Council of the City of Chula Vista, by Ordinance No. 3463, adopted on September 24, 2019, and the City Council of the City of Encinitas, by Ordinance No. 2019-18 adopted on September 18, 2019, and the City Council of the City of Imperial Beach, by Ordinance No. 2019-1187, adopted on October 2, 2019, authorized the implementation of a Community Choice Aggregation Program (“CCA Program”) to be operated by the San Diego Regional Community Choice Energy Authority (“SDRCCEA”), pursuant to California Public Utilities Code Section 366.2(c)(12).

B. The City Council of the City of La Mesa, by Resolution No. 2019-088, adopted on September 24, 2019, and the City Council of the City of San Diego, by Resolution No. 312666, adopted on September 20, 2019, and the City Council of the City of Chula Vista, by Resolution No. 2019-179, adopted on September 10, 2019, and the City Council of the City of Encinitas, by Resolution No. 2019-80 adopted on September 11, 2019, and the City Council of the City of Imperial Beach, by Resolution No. 2019-8087, adopted on September 18, 2019, authorized each city, respectively, to enter into a Joint Powers Agreement Relating to and Creating SDRCCEA (the “JPA Agreement”) pursuant to the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (the “Act”).

C. The Board of Directors of the SDRCCEA, by Resolution No. 2020-01, adopted on November 21, 2019, amended the JPA Agreement to change the name of SDRCCEA from “San Diego Regional Community Choice Energy Authority” to “San Diego Community Power.”

D. Section 3.2.9 of the JPA Agreement authorizes the SDCP to make and enter into contracts and accept loans or other aids from any federal, state or local public agency. Section 3.2.13 of the JPA Agreement authorizes the SDCP to enter into a Cooperation and Administrative Services Agreement with the City for the provision of administrative services to the SDCP.

E. Section 7.3.2(b) of the JPA Agreement acknowledges that the City of La Mesa, as an SDCP “Founding Member” (as defined in the JPA Agreement) may fund certain activities necessary to implement the CCA Program, and that SDCP shall reimburse Founding Members for such costs pursuant to the execution of an agreement specifying the services provided and their related costs.

F. The SDCP and City desire to enter into this Agreement for the following purposes:

(1) To set forth activities and services that the City has rendered and shall render for and make available to the SDCP in furtherance of the activities and functions of the SDCP under the JPA Agreement and in furtherance of the CCA Program; and

(2) To provide that the SDCP shall reimburse the City for past and future actions undertaken, and costs and expenses incurred by the City for and on behalf of the SDCP.

AGREEMENT

1. The City agrees to provide staff support at meetings for the SDCP to carry out its functions under the JPA Agreement and in furtherance of the CCA Program. Such assistance and services shall include clerking services for SDCP Board and special meetings.

2. The City will keep records of activities and services undertaken pursuant to this Agreement and the costs thereof so that an accurate determination of the SDCP's liability to the City can be made. The City shall provide as needed reports to the SDCP providing a breakdown of the costs and expenses incurred by the City in rendering activities and services of the City to or on behalf of the SDCP pursuant to this Agreement, together with documentation satisfactory to the SDCP of such costs. Such statement of costs may include the City's administrative and salary expense attributable to services of City employees rendered for the SDCP.

3. The SDCP agrees to reimburse the City for all costs incurred for services by the City pursuant to this Agreement from and to the extent that funds are available to the SDCP from charges to CCA customers receiving electric services from the SDCP, seed funding received as part of its credit package, and/or from revenues from grants or other third-party sources; provided, however, that SDCP shall have the sole and exclusive right to pledge any such sources of funds to the repayment of other indebtedness incurred by the SDCP in implementing the CCA Program.

The costs of the City under this Agreement will be shown on statements submitted to the SDCP pursuant to Section 3 above. Although the Parties recognize that payment may not occur for a few years and that repayment may also occur over a period of time, it is the express intent of the parties that the City shall be entitled to repayment of the expenses incurred by the City under this Agreement, consistent with the SDCP's financial ability, in order to make the City whole as soon as practically possible and no later than the earlier of five (5) years after SDCP formation date or two (2) years after initial loans/lines of credit are repaid.

4. The SDCP may enter into similar Cooperation and Administrative Services Agreements with one or more Founding Members which provides for reimbursement to the Founding Member for any costs and funds advanced to or on behalf of the SDCP by the Founding Member.

5. The City shall be reimbursed for costs described in this Agreement incurred by City, in a total amount not to exceed Forty Thousand Dollars (\$40,000.00), to assist with staffing of startup operations as referenced in Section 7.3.2 of the JPA Agreement and the provisions of this Agreement. Said amount shall be deemed the initial amount owed by SDCP under this Agreement, and further costs incurred by the City, or funding provided to SDCP, pursuant to this Agreement

shall be added to such amount, as incurred from time to time, up to the aggregate total set forth above and reimbursement shall include the interest rate set forth in Section 13 below.

6. The City agrees to perform all services required by this Agreement in a manner commensurate with the standards of a reasonable professional having knowledge and expertise in the services provided under this Agreement.

7. Under no circumstances shall the employees of City be considered employees of the SDCP, nor shall employees of the SDCP be considered employees of the City. The City shall be solely responsible and liable for paying all compensation and benefits owed to its employees for the service provided by the City under this Agreement.

8. The SDCP 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 JPA Agreement, and is a public entity separate from its constituent members. The SDCP shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. The City shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the SDCP's constituent members in connection with this Agreement.

9. Each party shall defend, indemnify and hold harmless the other party (including its officers, employees and agents) against any claim, loss or liability arising out of the performance of this Agreement by such party. Nothing contained herein shall be construed as a waiver of any immunities or defenses that a party may have under applicable provisions of the law, including the provisions of the California Tort Claims Act (Government Code Section 801 et seq.). This mutual indemnification agreement is adopted pursuant to Government Code Section 895.4 and in lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6. This provision shall survive expiration or termination of this Agreement.

10. The City shall make all documentation and records concerning all services performed under this Agreement available to the SDCP for inspection and copying at any reasonable time. The City shall maintain such records for a period of three (3) years following completion of work hereunder.

11. Either party may terminate this Agreement by providing no less than sixty calendar (60) days written notice to the other party. The SDCP shall pay the City for services satisfactorily performed up to the effective date of termination; provided, however, that the terms and conditions set forth in Sections 4 and 5 of this Agreement shall continue in effect following such termination until all amounts due and owing the City hereunder have been repaid in full. In the event of termination, the City, within thirty calendar (30) days following the date of termination, shall deliver to the authority all records and work products generated by the City under this Agreement.

12. This Agreement and obligations of the parties hereunder are subject to all valid laws, orders, rules and regulations of the authorities having jurisdiction over this Agreement (or the successor of those authorities). Any suits brought pursuant to this Agreement shall be filed in the Superior Court of the County of San Diego, State of California. A waiver by any party of any breach of any term, covenant, or conditions contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or conditions contained herein, whether of the same or a different character.

13. The obligations of the City hereunder shall constitute a contribution and use of personnel, equipment and property as authorized under Government Code Section 6504, to be repaid to the City by the SDCP as authorized under Government Code Section 6512.1, plus two percent (2%) per annum.

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

SIGNATURES ON FOLLOWING PAGE

**SIGNATURE PAGE TO
COOPERATION AND ADMINISTRATIVE SERVICES AGREEMENT
BETWEEN SAN DIEGO COMMUNITY POWER AND THE CITY OF LA MESA**

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

SAN DIEGO COMMUNITY POWER

CITY OF LA MESA

By : _____
Name: _____
Title: _____

By : _____
Name: _____
Title: _____

ATTEST:

ATTEST:

Secretary, SDCP Board of Directors

Name: _____
Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

SDCP General Counsel

La Mesa City Attorney

SAN DIEGO COMMUNITY POWER
Staff Report – Item 9

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Subject: Approval of Community Advisory Committee Nominees for the
City of Chula Vista and Amendment of Term End Date for all CAC Members

Date: May 28, 2020

Recommendation

1. Approve nominees from the City of Chula Vista to the inaugural Community Advisory Committee.
2. Approve amendment to adjust the term end date for all CAC members to be May 2022 and May 2023.

Background

Section 5.10.3 of the SDCP Joint Powers Authority (JPA) Agreement provides as follows:

The Board shall establish a Community Advisory Committee comprised of non-Board members. The primary purpose of the Community Advisory Committee shall be to advise the Board of Directors and provide for a venue for ongoing citizen support and engagement in the strategic direction, goals, and program of the Authority. The Community Advisory Committee is advisory only, and shall not have decision-making authority, nor receive any delegation of authority from the Board of Directors. Each Party may nominate a committee member(s) and the Board shall determine the final selection of committee members, who should represent a diverse cross-section of interests, skills sets and geographic regions.

At the April 23rd Board of Directors meeting, the nominees for the four other member cities were approved. Due to Director Padilla's illness, staff recommended postponing the nomination and approval of Chula Vista's nominees until the May Board of Directors meeting.

Given this change, CAC members appointed in April currently have their terms ending on either April 2022 or April 2023, while the Chula Vista nominees – if approved by the Board, would have their terms end on May 2022 or May 2023.

Analysis and Discussion

Below are Director Padilla’s nominees for the Community Advisory Committee. Nominee 1 will serve their term until May 2022, and Nominee 2 will serve their term until May 2023.

	NOMINEE 1	NOMINEE 2
CHULA VISTA	Edward Lopez	Carolyn Scofield

Moreover, in order to avoid any issues that may arise and streamline the CAC recruitment process once it begins again in the years 2022 and 2023, staff recommends adjusting the term end date for all CAC members be set to May 2022 and May 2023 in order to be in alignment with the Chula Vista nominees.

Fiscal Impact

Cost of this action may include staff time to support the meetings.