AGENDA

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

December 17, 2020

5:00 p.m.

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

Note: Any member of the public may provide comments to the SDCP Board of Directors on any agenda item or on a matter not appearing on the agenda, but within the jurisdiction of the Board. **Written public comments or requests to speak during the meeting must be submitted at least one (1) hour before the start of the meeting by using this (web form).** Please indicate whether your comment is on a specific agenda item or a non-agenda item when submitting your comment or requesting to speak. When providing comments to the Board, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Board as a whole through the Chair. Comments may be provided in one of the following manners:

1. Written Comments. All written comments received at least one (1) hour before the meeting will be provided to the Board members in writing. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting. Comments received after the one (1) hour limit will be collected, sent to the Board members in writing, and be part of the public record.

2. Requests to Speak. Members of the public who have requested to speak at least one (1) hour before the meeting will be recognized at the appropriate time during the meeting. To allow the Chair to call on you, please provide the following minimum information with your request to speak: your name (if attending by videoconference) or telephone number (if attending by phone).

Comments shall be limited to either 400 words, or 3 minutes when speaking. If you have anything that you wish to be distributed to the Board, please provide it via info@sdcommunitypower.org, who will distribute the information to the Members.

The public may participate using the following remote options:

Teleconference Meeting Webinar

https://zoom.us/j/98634531203

Telephone (Audio Only)

(669) 900-6833 or (346) 248-7799 | Webinar ID: 986 3453 1203

Welcome and Oath of Office for Mayor Serge Dedina

Call to Order

Pledge of Allegiance

Roll Call

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

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

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

1. **Approval of the minutes of the Regular Meeting of the Board of Directors of San Diego Community Power held on November 19, 2020.**
2. **Approval of a Social Media Policy**
3. **Approval of a Customer Data Confidentiality Policy**
4. **Approval of the 2021 Board Meeting Schedule by Resolution**

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.

5. **Approval of a Resolution Recognizing Mark West as a Founding Board Member of San Diego Community Power**

   Recommendation: Adopt Resolution No. 2020-09 recognizing Mark West as a Founding Board Member of San Diego Community Power.

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

   Recommendation:
   1. Receive and file update on various operational and administration activities.
   2. Receive and file update on Regulatory Affairs.

7. Committee Reports

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

8. Treasurer's Report – Presentation of First Quarter FY20/21 Financial Results

Recommendation: Receive and file financial update.

9. Approval of a Net Energy Metering Program

Recommendation: Adopt a NEM Program pending subsequent approval of Net Surplus Compensation.

10. Approval of a Feed-In Tariff Program

Recommendation:
1. Adopt initial Feed-In Tariff (FIT) and the related FIT application.
2. Authorize staff to work with transactional counsel in developing a FIT Power Purchase Agreement (to be reviewed and approved at a future Board meeting)

11. Approval of Power Purchase Agreement with Southern California Edison; Approval of Master Power Purchase and Sale Agreements and Lockbox Agreements

Recommendation:
1. Adopt Resolution No. 2020-10, a Resolution of the Board of Directors of San Diego Community Power Approving a Master Power Purchase Agreement and Sales Confirmation with Southern California Edison and Authorizing the Interim CEO to Execute the Agreement, Confirmation and Related Documents.
2. Adopt Resolution No. 2020-11, a Resolution of the Board of Directors of San Diego Community Power Approving the Edison Electric Institute (EEI) and Western Systems Power Pool (WSPP) Master Purchase and Sale Agreements, Approving a Deposit Account Control Agreement, Security Agreement, and Intercreditor and Agency Collateral Agreement ("Lockbox Agreements") and Delegating Authority to the Chief Executive Officer to execute EEI and WSPP Master Agreements and Lockbox Agreements with Energy Service Providers in Substantially Similar Form as Approved by General Counsel.

12. Appoint Board Members to the Finance and Risk Management Committee for the 2021 Calendar Year

Recommendation: Appoint two Board Members to serve on the Finance and Risk Management Committee (FRMC) until December 2021.

Director Comments

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

Reports by Management and General Counsel

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

ADJOURNMENT

Compliance with the Americans with Disabilities Act

SDCP Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact (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

November 19, 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.

CALL TO ORDER

Chair Mosca (Encinitas) called the SDCP Board of Directors meeting to order at 5:12 p.m.

PLEDGE OF ALLEGIANCE

Chair Mosca (Encinitas) led the Pledge of Allegiance.

ROLL CALL

PRESENT: Chair Mosca (Encinitas), Vice Chair Padilla (Chula Vista), Director Baber (La Mesa), Director Montgomery (San Diego), and Director West (Imperial Beach)

ABSENT: None

Also Present: *Interim Chief Executive Officer (CEO) Carnahan, General Counsel Baron, Interim Board Clerk Wiegelman*

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

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

There were no additions or deletions to the agenda.

PUBLIC COMMENTS

Interim 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, Cleantech San Diego, submitted a comment regarding the working relationship of SDCP and San Diego Gas and Electric (SDG&E).

CONSENT CALENDAR

(Items 1 through 2)

Interim 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.

Matthew Vasilakis, Climate Action Campaign, submitted a comment on Item 2 regarding SDG&E's pattern and practice of seeking to undermine SDCP's establishment.

1. **Approval of the minutes of the Regular Meeting of the Board of Directors of San Diego Community Power held on October 22, 2020**

   Approved.

2. **Delegate Authority to the Interim CEO to Approve and Pay for Financial Security Requirement upon the CPUC Determining SDCP's Amount**

   Approved.

   ACTION: Motioned by Director West (Imperial Beach) and seconded by Director Baber (La Mesa) to approve Consent Calendar Items 1 through 2. The motion carried by the following vote:

   Vote: 5-0

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

REGULAR AGENDA

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

Interim CEO Carnahan provided an update on the implementation of the organization plan and the hiring and recruitment efforts. Interim CEO Carnahan announced Cody Hooven had been hired as the Chief Operating Officer of SDCP.

Cody Hooven, City of San Diego Director/Chief Sustainability Officer, provided an update on the executed and pending contracts, the status of the various vendor requests for proposals (RFP) and other solicitations, the sponsorship policy, SDCP's request with the California Public Utilities Commission (CPUC) seeking a waiver of local Resource Adequacy (RA) penalties, the policy matrix, and staff discussions with SDG&E.

Board questions and comments ensued.

Ty Tosdal, Tosdal APC, provided an update on SDG&E's Power Charge Indifference Adjustment (PCIA) Trigger application that would substantially increase the PCIA rate for current CCA customers, SDG&E's Energy Resource Recovery Account (ERRA) forecasting proceedings, the Arrearage Management Payment plan (AMP), the Financial Security Requirements for CCAs, and other energy regulatory affairs as they relate to the interests of SDCP.

Board questions and comments continued.

Interim 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.

Matthew Vasilakis, Climate Action Campaign, submitted a comment regarding SDG&E's manipulation of the ERRA process to create the illusion that SDG&E's rates would be lower than SDCP's at next year's launch.

Following Board questions and comments, no action was taken.

4. Committee Reports

Director West (Imperial Beach) provided an update on the proceedings of the Finance and Risk Management Committee. Director West (Imperial Beach) announced the next Finance and Risk Management Committee meeting would be held on Tuesday, December 1, 2020 at 3:00 p.m.

Community Advisory Committee ("CAC") Chair Price provided an update on the proceedings of the CAC. CAC Chair Price recommended replacing the term 'communities of color' with 'communities of concern' in the Inclusive and Sustainable Workforce policy.

Chair Mosca (Encinitas) congratulated CAC Chair Price on being selected as a Clean Energy Champion for the inaugural cohort of recipients of the California Energy Commission's Clean Energy Hall of Fame Awards.

Board questions and comments ensued.

Following Board questions and comments, no action was taken.

5. Discussion of Near-Term Launch Tasks and Schedule

Cody Hooven, City of San Diego Director/Chief Sustainability Officer, provided an overview of the near-term launch tasks and schedule driving SDCP operations for the next several months. Cody Hooven, City of San Diego Director/Chief Sustainability Officer, summarized the three key areas of the near-term tasks: power products and rates; customers and marketing; and administrative/financial.

Board questions and comments ensued.

Following Board questions and comments, no action was taken.

6. Approval of SDCP Product Names

Sean Connacher, Civilian, reviewed the naming system for SDCP's product offerings (both the default power portfolio and the premium "opt-up" portfolio) and reviewed the insights that drove Civilian's recommendations for the naming system. Sean Connacher, Civilian, stated the recommended SDCP core names were PowerOn for the default power portfolio and PowerFull for the premium "opt-up" portfolio.

Board questions and comments ensued.

ACTION: Motioned by Director West (Imperial Beach) and seconded by Director Baber (La Mesa) to adopt PowerOn (default power portfolio) and Power100 (premium "opt-up" portfolio) as SDCP's product names. The motion carried by the following vote:

Vote: 5-0

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

7. Approval of Inclusive and Sustainable Workforce Policy

Program and Policy Coordinator Sarria summarized the proposed Inclusive and Sustainable Workforce Policy and reviewed the process for drafting the policy.
Board questions and comments ensued.

Interim 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, Cleantech San Diego, submitted a comment in support of the Inclusive and Sustainable Workforce Policy.

ACTION: Motioned by Director Baber (La Mesa) and seconded by Director West (Imperial Beach) to adopt the Inclusive and Sustainable Workforce Policy, as amended, to correct any typographical errors and replace 'communities of color' with 'communities of concern'. The motion carried by the following vote:

Vote: 5-0

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

DIRECTOR COMMENTS

Director West (Imperial Beach) announced that the November 19, 2020 meeting was his last SDCP Board of Directors meeting. Director West (Imperial Beach) reflected on his time on the Board and expressed his appreciation for the other Directors, staff, and the organization as a whole.

Chair Mosca (Encinitas), Vice Chair Padilla (Chula Vista), Director Baber (La Mesa), and Director Montgomery (San Diego) thanked outgoing Director West (Imperial Beach) for his service to SDCP.

REPORTS BY MANAGEMENT AND GENERAL COUNSEL

There were no reports.

ADJOURNMENT

Chair Mosca (Encinitas) adjourned the meeting at 7:01 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: Sebastian Sarria, Programs and Policy Coordinator, LEAN Energy US

CC: Sean Connacher, Civilian

Subject: Approval of Social Media Policy

Date: December 17, 2020

RECOMMENDATION

Adopt social media policy.

BACKGROUND

Social media has become the most influential virtual space and an integral component of nearly every marketing campaign today. It is a place where we can be ourselves, and brands or businesses interacting with individuals will often find a more receptive and engaging environment. Social media gives an organization a great opportunity to show their audience the brand's true values and personality, while also learning about their customers.

ANALYSIS AND DISCUSSION

SDCP's social media pages were created to update and inform those in our participating communities and are intended to serve as a means of communication between SDCP and the public. After review of legal requirements and best practices for social media by other CCAs, it is recommended that SDCP publicly post this Social Media Policy to inform the public about SDCP's social media policies and to ensure compliance with applicable law, including the First Amendment and Public Records Act. Pending Board approval, SDCP will publicly post the agency's Social Media Policy on the SDCP website as a living document that will be regularly reviewed and updated given the existing state of applicable legislation. Under the proposed policy, the Chief Executive Officer would be authorized to update the policy as needed to reflect changes in SDCP practices and applicable law. The policy would also authorize the CEO to issue a more detailed internal policy to guide SDCP employees and consultants and ensure compliance with this public-facing policy.

Given current best practices and the present state of applicable legislation, SDCP will also enter into a social media records retention contract with a vetted social media

archiving vendor. SDCP's forthcoming Records Retention Policy and Schedule will include social media.

FISCAL IMPACT

Professional service cost associated with the use of a social media archiving vendor estimated at less than $2,500 per year.

ATTACHMENTS

Attachment A: Social Media Policy

Social Media Policy

San Diego Community Power's social media pages were created to update and inform those in our participating communities and are intended to serve as a means of communication between SDCP and the public. This policy is adopted to provide guidance and information both to the public and for SDCP's use of social media. This document establishes protocol for best practices when engaging with customers on social media and shall be revised as needed by SDCP.

The Chief Executive Officer shall implement this policy and is authorized to revise this policy as needed to reflect updated SDCP practices and legal developments. The Chief Executive Officer is also authorized to adopt a more detailed internal social media policy for use by SDCP employees, consultants, and agents for administering SDCP's social media pages.

Unless otherwise specifically noted, when SDCP establishes SDCP social media pages it does so to communicate to and inform the public and relay official SDCP content. SDCP therefore regulates the SDCP social media pages. SDCP social media pages, unless expressly noted, are not intended to operate as a traditional open public forum as there are ample open forums for purposes of expressing opinions and views.

When an SDCP social media page has not been opened as a traditional public forum or where the SDCP social media page has been opened as a non-public or limited public forum, SDCP is authorized to remove unauthorized content, comments, or links posted on that page that do not conform with the requirements of this policy; provided, however, that this will be performed in a viewpoint-neutral manner.

Comments containing any of the following are prohibited and are subject to removal by SDCP:

- Obscene, indecent, or profane language or content
- Direct threats
- Content that promotes, fosters, or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, national origin, physical or mental disability, sexual orientation, gender identity or gender expression
- Disparaging, harassing or threatening content
- Sexual content or links to sexual content
- Spam or comments that are clearly unrelated to the topic raised for discussion
- Links to any site or content posted by automatic software programs (i.e. "bots")
- Promotion or encouragement of illegal activity
- Solicitation, promotion or endorsement of specific commercial services, products, or entities
- Content that appears to violate the intellectual property right of SDCP or a third party under federal or state law, including copyrights or trademarks

- Information that may compromise the safety or security of the public, public systems, or employees
- Personally identifiable information or sensitive personal information that if released violates federal or state law
- Promotion or endorsement of a political campaign or candidate
- Inaccurately implying the endorsement, approval, or sponsorship by SDCP

Any comments that are removed may be considered public records and will be retained by SDCP for a period of at least two (2) years, or for such other period as required by law or provided in SDCP's record retention schedule.

To the extent consistent with applicable law, SDCP reserves the right to deny access to its social media pages to any individual who, in the discretion of the Chief Executive Officer or his or her designee, violates the above standards. SDCP will make every effort to respond to comments and messages on social media accounts that require a response within one business day.

A comment posted by a member of the public on an SDCP social media page is the opinion of the commentator or poster only, and does not imply endorsement of, or agreement by, SDCP. SDCP does not guarantee the authenticity, accuracy, appropriateness, or security of external links, websites, or content linked thereto. Any content posted to a SDCP social media page, including posts by members of the public, may be considered a public record and subject to public disclosure.

SAN DIEGO COMMUNITY POWER
Staff Report – Item 3

To: San Diego Community Power Board of Directors

From: Sebastian Sarria, Programs and Policy Coordinator, LEAN Energy US

CC: Sean Connacher, Civilian

Subject: Approval of Customer Data Confidentiality Policy

Date: December 17, 2020

RECOMMENDATION
Adopt Customer Data Confidentiality policy.

BACKGROUND
As laid out in our Policy Matrix, staff expected to complete a Customer Data Confidentiality policy as we prepare for our first launch of service on March 1st, and the launch of our new website on January 19th.

ANALYSIS AND DISCUSSION
In preparing this draft policy, staff and Civilian researched existing policies at other CCA programs, including Peninsula Clean Energy and Clean Power Alliance. Moreover, this policy received a robust legal review to ensure compliance and the privacy of our future customers.

The policy lays out uses of a customers' data for the purposes of SDCP's operations, states that we will be compliant with CPUC decision 12-08-045, gives customers an opportunity to ask questions about the uses of their data.

Staff believes this is a strong policy to move forward with at the time. As we grow and mature, revisions may be necessary in the near future.

FISCAL IMPACT
Possible staff time to handle questions from customers on the use of their data by SDCP.

ATTACHMENTS
Attachment A: Customer Data Confidentiality Policy

Customer Data Confidentiality Policy

San Diego Community Power (SDCP), its employees, agents, contractors, and affiliates will maintain the confidentiality of customer information, which may include, but not be limited to, individual customers' names, service addresses, billing addresses, telephone numbers, e-mail addresses, account numbers, social security numbers, taxpayer identification numbers, and electricity consumption information except where reasonably necessary to conduct SDCP's business or to provide services to customers as required by the California Public Utilities Commission (CPUC).

Examples of reasonably necessary business purposes include but are not limited to when such disclosure is necessary to (a) comply with an applicable law, regulation or court order; (b) enable SDCP to provide service to its customers; (c) collect unpaid bills; (d) obtain and provide credit reporting information; (e) resolve customer disputes or inquiries; (f) communicate about demand response, energy efficiency, energy management, and conservation programs, or (g) in situations of imminent threat to life or property, or to prevent or resolve service interruptions. SDCP will not disclose customer information for telemarketing, e-mail, or direct mail solicitation. Aggregate data that cannot be traced to specific customers may be released at SDCP's discretion.

Customer information, including individual customer names, addresses, and electric energy usage data, is collected via SDG&E's metering systems. For the circumstances constituting reasonably necessary disclosures cited herein, SDCP may share customer information with contractors and vendors for purposes of providing services and operating programs. Contractors and vendors are required to agree to only use customer information for program operational purposes and protect it under the same standards as SDCP. SDCP maintains customer-specific energy usage and billing information for only as long as is reasonably necessary, typically not more than five years unless otherwise required by law or regulation.

SDCP will handle customer energy usage information in a manner that is fully compliant with applicable law, which includes, but is not limited to, the California Public Utility Commission's required privacy protections for customers of Community Choice Aggregators defined in Decision 12-08-045, as may be amended or replaced from time to time.

SDCP will provide notices related to this policy as required by applicable law, including Decision 12-08-045. Such notice may include, but not be limited to: (a) providing notice in writing when confirming a new customer account; (b) informing customers at least once annually how they may obtain a copy of the notice, inclusive of any updates or revisions to this policy; and (c) providing links to the notice on SDCP's website at www.sdcommunitypower.org and in electronic communications with customers. Any changes to this policy between notification periods will be communicated through SDCP's website. Previous versions of this policy may be requested via email at customerservice@sdcommunitypower.org.

Upon request, SDCP will provide customers convenient and secure access to customer information in an easily readable format that is no less detailed than the data SDCP discloses to authorized third parties.

Customers having any questions or concerns regarding the collection, storage, use, or distribution of customer information, or who wish to view, inquire about, or dispute any customer information held by SDCP or request to limit the collection, use or disclosure of such information, may contact us at customerservice@sdcommunitypower.org.

Employees of SDCP and covered entities doing business with SDCP shall be provided a copy of this policy, and it shall be construed and implemented consistent with any other policies relating to the protection of confidential information.

To ensure timely compliance with legal developments and/or changes in SDCP's practices or procedures, SDCP's Chief Executive Officer, in consultation with SDCP's General Counsel, is authorized to amend this policy without further approval of the Board of Directors.

SAN DIEGO COMMUNITY POWER
Staff Report – Item 4

To: San Diego Community Power Board of Directors

From: Sebastian Sarria, Programs and Policy Coordinator, LEAN Energy US

Subject: Approval of 2021 Board Meeting Schedule by Resolution

Date: December 17, 2020

RECOMMENDATION

Adopt a resolution to establish a regular date, time and location for San Diego Community Power (SDCP) Board Meetings for the year 2021.

BACKGROUND

Section 4.8 of the Joint Powers Authority (JPA) Agreement states that the date, hour, and place of each regular meeting shall be fixed annually by resolution of the Board.

ANALYSIS AND DISCUSSION

For the 2020 calendar year, the Board of Directors held their meetings every fourth Thursday at 5 pm, except when holidays required an adjustment, either at the San Diego City Council Chambers or virtually due to the COVID-19 pandemic. Moving forward, staff recommends maintaining the same schedule and virtual meeting format, as long as the Governor's Executive Orders N-25-20 and N-29-20 are in place and it is not safe to return to in-person meetings due to the pandemic. Once the Governor's Order is lifted and it is deemed safe to return to in-person meetings, staff expects to return the San Diego City Council Chambers for these meetings.

Below are proposed 2021 Board meeting dates with all but the first meeting starting at 5 pm:

- January 28, 2021
- February 25, 2021
- March 25, 2021
- April 22, 2021
- May 27, 2021
- June 24, 2021
- July 22, 2021
- August 26, 2021
- September 23, 2021
- October 28, 2021

- November 18, 2021 (Third Thursday)
- December 16, 2021 (Third Thursday).

FISCAL IMPACT

Besides staff time, the fiscal impact to conduct virtual meetings is minimal. There is no cost to use the City of San Diego Council Chambers.

ATTACHMENTS

Attachment A: Resolution 2020-08 establishing a 2021 Board Meeting schedule.

RESOLUTION NO. 2020-08

A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER ESTABLISHING ITS REGULAR MEETING SCHEDULE FOR CALENDAR YEAR 2021

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

B. The Ralph M. Brown Act (Cal. Gov. Code § 54950, *et seq.*) provides that the legislative body of each local agency shall provide, by ordinance, resolution, bylaws, or other rule, the time and place for holding its regular meetings.

C. Section 4.8 of the JPA Agreement provides that the "date, hour, and place of each regular meeting shall be fixed annually by resolution of the Board."

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

Section 1. For calendar year 2021, regular meetings of the Board of Directors shall take place on the dates set forth below and shall begin at 5:00 P.M. All regular meetings shall take place on the 12th Floor of the San Diego City Administration Building, 202 "C" Street, San Diego, CA 92101; provided that pursuant to the Governor's Executive Orders related to COVID-19 (or any additional Executive Orders issued after the effective date of this Resolution), SDCP's meetings may be held fully or partially by videoconference or teleconference while applicable orders remain in effect.

Regular Meeting Dates

January 28, 2021
February 25, 2021
March 25, 2021
April 22, 2021
May 27, 2021
June 24, 2021
July 22, 2021
August 26, 2021
September 23, 2021
October 28, 2021
November 18, 2021
December 16, 2021

Section 2. Special and adjourned meetings of the Board of Directors may be called and held in the manner authorized in the Ralph M. Brown Act, Cal. Gov. Code § 54950, *et seq.*, as may be amended from time to time or as may be modified or suspended by Executive Order.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power held on December 17, 2020.

_____	_____
Joe Mosca, Chair San Diego Community Power	Megan Wiegelman, Interim Secretary San Diego Community Power

SAN DIEGO COMMUNITY POWER
Staff Report – Item 5

To: San Diego Community Power Board of Directors

From: Cody Hooven, Chief Operating Officer

Subject: Approval of a Resolution Recognizing Mark West as a Founding Board Member of San Diego Community Power

Date: December 17, 2020

RECOMMENDATION

Adopt Resolution No. 2020-09 recognizing Mark West as a Founding Board Member of San Diego Community Power.

BACKGROUND

San Diego Community Power (SDCP) was formed on October 1, 2019 and held its first Board meeting on October 31, 2019. Each of the five member agencies appointed its first Board Member and alternate to represent their city on the Board of Directors.

Mark West, Coucilmember for the City of Imperial Beach was selected at the founding Board Member to represent Imperial Beach.

ANALYSIS AND DISCUSSION

Mr. West was instrumental in his role on City Council to ensure Imperial Beach was a founding member city of SDCP. Once formed, SDCP became a startup agency with extensive financial, regulatory, and operational obligations, as well as a tremendous amount of stakeholder interest. Mr. West, just one of five Board Members serving SDCP, provided invaluable leadership and support since SDCP's inception. In just over one year, under the Board's leadership including Mr. West, SDCP has accomplished a tremendous series of startup tasks ranging from securing both philanthropic and intuitional capital, building a best-in-class team of consultants and staff, and meeting every complex regulatory requirement to secure a pathway to launch.

Mr. West has championed the vision of a clean energy future for the families and businesses of both Imperial Beach and the other San Diego Community Power cities, and his willingness to take on the challenge in making that a reality will always be appreciated.

FISCAL IMPACT

Not applicable

ATTACHMENTS

Attachment A: Resolution 2020-09 Recognizing and Honoring Mark West

RESOLUTION NO. 2020-09

A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER RECOGNIZING AND HONORING MARK WEST

A. WHEREAS, Mark West has served on the Imperial Beach City Council since December 2016, representing more than 26,000 residents in the most southwesterly city in the continental United States and the home of world-class surfing; and

B. WHEREAS, Councilmember West served a distinguished twenty-four-year career in the United States Navy, ensuring the safety and freedom of the United States of America; and

C. WHEREAS, Councilmember West has demonstrated continued support for environmental stewardship and renewable energy by acting as the Chair of the San Diego chapter of Surfrider, acting as program leader for Surfrider's "No Border Sewage" Committee, and helping to pass a climate action plan in Imperial Beach that included a social justice component and a plan to utilize 100% clean renewable energy by 2030; and

D. WHEREAS, since October 2019, Councilmember West has served as a founding member on the Board of Directors of San Diego Community Power, California's second-largest community choice aggregator, which will provide profound regional energy benefits to the residents of Imperial Beach and its other member cities for decades to come; and

E. WHEREAS, Councilmember West has also served as a founding member of the San Diego Community Power's Finance and Risk Management Committee, on which he provided key input and direction to guide SDCP's establishment and implementation of its community choice aggregation program; and

F. WHEREAS, through his service to San Diego Community Power, Councilmember West's many contributions and dedication to public service have provided significant benefits to the residents of Imperial Beach and SDCP's other member cities.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of San Diego Community Power that it hereby commends and honors Councilmember Mark West for his accomplishments and extends its gratitude for his service.

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power held on December 17, 2020.

_____	_____
Joe Mosca, Chair San Diego Community Power	Megan Wiegelman, Interim Secretary San Diego Community Power

SAN DIEGO COMMUNITY POWER
Staff Report – Item 3

To: San Diego Community Power Board of Directors

From: Bill Carnahan, Interim CEO

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

Date: December 17, 2020

RECOMMENDATION

1. Receive and file update on various operational and administration activities.
2. Receive and file update on Regulatory Affairs.

BACKGROUND

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.

ANALYSIS AND DISCUSSION

A) General Administrative Updates

Under the delegation of authority to the CEO, additional contracts have or will be executed in support of the organization. A contract has been executed with Neyenesch Printers, the vendor to provide printing and mailing services for customer enrollment notices. Multiple informal requests for proposals were solicited for this service and this local firm proved to be the best selection.

SDCP recently sponsored a Community Choice Energy Forum hosted by the Climate Action Campaign on December 4, 2020. This was a regional event that covered a range of topics from the future of renewable energy and the vision of various elected officials and energy executives. SDCP unveiled it's new brand and logo at the event, and several SDCP representatives from the Board and staff participated as speakers or moderators; including Bill Carnahan speaking at the VIP opening, and Bill, Chair Mosca, and SDCP Board Member Steppe appearing on a panel. Also, Cody and Sebastian chaired panels.

As art of the event, Director Baber was the recipient of the inaugural “Clean Energy Courage” award at the forum for his commitment and efforts to helping not only La Mesa, but other cities, join SDCP.

B) Staffing

Staff continue working with Tom Bokosky (Director of Human Resources with the City of Encinitas in a consultative role to SDCP) to recruit and fill various critical staffing roles for SDCP. We are appreciative for Encinitas making him and his staff available to us since we will have a need to bring on key people throughout this budget year and into the next. We will keep the Board posted on our progress. An Executive Assistant has been brought on full time. In addition to alleviating the administrative tasks previously placed on programmatic staff, she will also begin to train in the Board Clerk functions. Interviews for the Director of Power Services and Regulatory and Legislative Affairs were completed this week. The next tranche of staffing recruitment will be in the areas of finance, customer data/back office, and account management.

C) Power Resource Solicitations

Renewable:

Negotiations for short-listed contracts selected through SDCP’s first long-term renewables portfolio standard solicitation are still underway and contracts will be presented to the Board as needed in the near future to meet our Phase 1 and Phase 2 needs.

Staff, supported by Pacific Energy Advisors, submitted bids in response to SDG&E’s Renewable Energy solicitation on June 22, 2020 for power to fill some of SDCP’s initial resource needs. SDCP received notice on August 19, 2020 that our offers were not selected for further consideration by SDG&E. Staff have reached out to SDG&E to seek feedback on why SDCP’s offers were rejected, and SDG&E staff have since agreed to entertain bilateral discussions on procurement. In a meeting on October 15, 2020 SDG&E proposed a schedule for bilateral discussions beginning immediately, anticipated filing to the California Public Utilities Commission (CPUC) in February, and power deliveries commencing in June. This timeline is tentative and dependent on various items including CPUC approval and agreement between the parties. Staff are reviewing a master agreement and have prepared a request for information for submittal to SDG&E.

Resource Adequacy:

As of now, SDCP has contracted for about 94% of its RA obligations due on November 2nd. Per discussion at the last Board meeting, SDCP filed a request with the CPUC seeking a waiver of local RA penalties for the remaining 4%, consistent with CPUC rules that allow for penalty waivers when good faith efforts to procure local RA yield insufficient supply. Waivers are not available for deficiencies in system RA, and uncured deficiencies are subject to penalties from the CPUC. SDCP will continue procurement efforts as

necessary to cure any deficiencies that may exist. SDCP's ability to comply with RA requirements is subject to availability constraints in the San Diego area market.

D) Update on 2020 Policy Matrix

Interim SDCP staff and consultants continue to work on start-up policy items as time permits and as directed by the Board. These policies range from operational to customer-based to financial. An updated schedule of planned policies is attached for reference (Attachment A) and will evolve as items are completed or new items are contemplated. Several items scheduled for completion are on this agenda for Board approval.

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

SDCP and Calpine continue to revise the details customer phasing with SDG&E, discussed in weekly meetings. There have been several iterations of this information between SDG&E and the SDCP team based on new information or discussion each week such as accounts to be excluded, when to enroll Net Energy Metering accounts, etc. Staff are drafting an agreement based on discussions with SDG&E. These weekly meetings are a touch-point opportunity to bring up various other items with SDG&E, and determine which staff at SDG&E need to be addressed for various issues.

F) Regulatory Affairs

The CPUC has broad regulatory authority over the energy sector in California, including partial jurisdiction over CCA programs. SDCP and other CCA programs are regularly affected by CPUC decisions regarding power resources, rates, financial obligations and data retention among other things. SDCP continues to engage in regulatory matters in order to establish a position on key issues and/or provide input on various decisions or actions being considered by the PUC. The importance of these activities is evidenced by the filling of the Regulatory and Legislative position slated for filling early on in the process (in fact it is coincidental with the filling of the Resource position.)

This month's regulatory update (Attachment B) 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 an overview of key actions and proceedings.

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: Updated SDCP Policy Matrix
Attachment B: Tosdal APC Energy Regulatory Update

San Diego Community Power
2020 Policy Matrix

Purpose:

This matrix reflects the broader Implementation Timeline while focusing on an abbreviated overview of the policies staff is working on through 2020.

Notes:

1. Policies listed below are drawn from the most recent Implementation Timeline adopted at the January 30th Board of Directors meeting and 11 California CCAs[1]
2. Policies are intended to guide SDCP operations and procedures rather than set future or aspirational goals.
3. SDCP may wish to consider blending (or bundling) specific policies within general policy categories to reduce the number of individual policies it manages. It may also update completed policies or consider additional policies not included here as its program develops and operational needs evolve.

POLICY CATEGORY/SUBJECT	DESCRIPTION	2020 TIMING/STATUS
ADMINISTRATIVE & OPERATIONS		
SDCP Conflict of Interest Code	Standard C of I policy for seated Board members and relevant SDCP staff members.	DONE
CEO Spending Authority	Authorizes CEO signing authority without prior Board approval; SDCP may consider two policies – one for operational contracts and one for power supply contracts. Describes Board reporting requirements.	DONE
Delegation of Authority to CEO for Regulatory and Legislative Matters	Authorizes CEO to respond timely to requests for regulatory and legislative action that directly impact CCA and SDCP operations. Includes Board reporting requirement.	DONE
Enterprise Risk Management	Describes how operational/business risk is determined and mitigated; may also include energy risk management as a component.	DONE (Energy Risk)
Agency Vendor and Contracting Practices	Describes procurement/vendor contracting guidelines including but not limited to: issuance of RFPs and bid evaluation, local hire, diversity, sustainable and ethical vendor preferences, signing authorities, reporting etc.	DONE (addresses professional services)
Records Retention; Public Access	Compliant with state and federal law, the length of time records of various types will be retained and/or discarded; includes guidelines for public access to SDCP records.	DONE
Information Technology Security	Policies and standards developed by IT security team to manage regulatory compliance, ensure proper staff training and customer satisfaction and minimize legal and criminal risk related to data and information breach. Could also include the AMI data policy described below.	Q4 (In process)
Social Media	Describes purpose of using these channels and defines rights/reasons for comment or post removals.	DONE
JPA Expansion/New Members	Considerations when exploring program expansion to areas outside original service area and method of approving new JPA members.	Q4+
Process for Amending/Adopting Agency Policies and JPA Agreement Amendments	Procedures to review/adopt new or amend Agency policies and JPA Amendments. This could also be part of the bylaws.	Q4
PERSONNEL/WORKFORCE		

[1] *Clean Power Alliance, Clean Power SF, East Bay Community Energy, Monterey Bay Community Energy, MCE Clean Energy, Peninsula Clean Energy, Redwood Coast Energy Authority, San Jose Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, Valley Clean Energy.*

Employee Handbook/Personnel Policies	Describes all legally required elements of an employee policy including fair employment practices, non- discrimination, standard business hours, paid and personal time off, holidays, sick leave, etc.	Q3 (In process – Handbook DONE in Sept 2020, Benefits presented Oct 2020)
Other Personnel Policies: Travel and expense reimbursement, laptop/cell phone usage, work from home, etc.	Could be included in the employee handbook or handled as separate policies.	Q3 (In process)
Inclusive and Sustainable Workforce Policy	Describes SDCP goals and requirements related to sustainable workforce practices, local hire preferences, livable wages, union engagement/project labor agreements, gender and ethnic diversity, etc.	DONE
CUSTOMER AND COMMUNITY		
Prohibition Against Dissemination of Untrue or Misleading Information	Prohibits dissemination, by SDCP or other organization, of SDCP rates, terms and conditions of service, or other operational elements that are untrue or misleading.	Q4+
Customer Data Confidentiality	How customer data is to be treated and how to deal with any privacy or security breaches. States that personal customer shall not be shared unless necessary to conduct specific Agency business. Ensures the privacy and security of Advance Metering Infrastructure (AMI) data and customer usage information pursuant to Attachment B of the California Public Utilities Commission Decision 12-08-045.	Q4 (In process)
Terms and Conditions of Service	Publicly posted customer service policy that provides information on rates, billing, enrollment process, opting out, opting in and failure to pay. If applicable; articulates process for customers who wish to voluntarily enroll in the 100% renewable product in an earlier phase than otherwise scheduled.	Q3 (In process)
Customer Billing, Enrollment, Delinquent Accounts and Collections	Outlines procedures for customer billing and enrollments, physical address changes, and handling customer accounts that are past due.	Q4
FINANCIAL POLICIES		
Budget Policy	Describes process, reporting and principals for a balanced annual budget and its oversight.	Q1-2 2021 (prior to fiscal year end)
Rate Setting Procedures	Describes rate setting principals, goals and general process.	Q4/Q1 2021
Bad Debt	A set percentage revenue reserve to cover bad debt; usually reviewed annually. Could be included in general budget policy.	Q1-2 2021 (prior to fiscal year end)
Reserve Policy	Budgeting policy to allow for long-term financial stability, accounts receivable reserves, debt reduction and/or funding of new programs and projects.	Q2 2021
Signatories on SDCP checks and financial documents	Describes who is authorized to sign checks and legally binding financial documents on behalf of the Agency; could be part of the budget and finance policy.	DONE
Investment Policy	If needed; provides guidelines to consider Agency investments in real property or other investment vehicles.	Q1-2 2021 (prior to fiscal year end)
Sponsorship Guidelines	Provides guidance to staff when determining which events to sponsor.	Q3 (DONE)
POWER SUPPLY		
Energy Risk Management Policy/ Procedures and	Developed in partnership with power services vendor; Describes energy market strategy and processes to regularly monitor, report and	DONE

Controls for Supply Management and Transactions	manage risk such as credit, liquidity and market risk. Outlines participation in CAISO markets and monitoring transactions. Provides general overview of procurement approach, criteria and practices including open season RFOs and signing authorities. Could also be part of the overall energy risk management policy.	
Evaluation Criteria	**NEW** – Describes how proposals for power will be evaluated for selection.	Q4 (In process)
Power Content Guidelines	Provides description of renewable and carbon free content targets as well as types of power that may or may not be procured by SDCP	Done
Net Energy Metering Policy	Describes NEM rates, credits and participation process for NEM customers.	DONE (second part – surplus compensation in process)
Feed in Tariff	**NEW** – Describes a feed in tariff rate structure and participation process.	DONE

ENERGY REGULATORY UPDATE

To: Bill Carnahan, Interim Executive Officer, San Diego Community Power

From: Ty Tosdal, Regulatory Counsel, Tosdal APC

Re: Energy Regulatory Update

Date: December 11, 2020

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 describes high priority developments and 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").

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

Following briefing and ex parte meetings requested by SDCP and other local CCA programs, the Commission issued a Proposed Decision that directs SDG&E to update its billing determinants using the methodology put forward by SDCP and CEA and agrees with the CCAs that SDG&E failed to support its position that it is required to rely on an outdated sales forecast that will result in inaccurate rates. The Proposed Decision states that adoption of an updated sales forecast would lead to a 2.06 percent reduction in class average rates, rather than a 12.35 percent reduction in rates under SDG&E's original proposal. The Proposed Decision also agrees with SDCP and CEA that SDG&E should routinely provide greater data transparency and directs SDG&E to provide more detailed information in monthly ERRA reports and in testimony supporting future ERRA Applications. The Commission declined to address issues surrounding the CAPBA balance refund and how the CAPBA adder will be apportioned to certain vintages. The Proposed Decision states these issues are more suitably addressed in other proceedings. The Proposed Decision can be found in Attachment A.

Special counsel for SDCP and CEA submitted comments supporting the Proposed Decision's position on the billing determinants and data transparency issues

and requesting the Commission to reconsider the CAPBA refund in this proceeding. The Joint Comments on the PD are included in Attachment A. SDG&E also submitted comments on the PD in which it largely reiterated its position on the billing determinants issue without providing any additional legal justification or proposed alternatives. SDG&E also states that updating its billing determinants would be difficult and time-consuming to develop and adoption of the PD would lead to rate volatility. Additionally, Cal Advocates submitted comments in support of SDG&E's position that billing determinants cannot be updated with a more accurate sales forecast. Counsel for SDCP and CEA is currently preparing Reply Comments on the PD due to be filed December 11. SDG&E's Application is scheduled to be heard and decided at the Commission's meeting on December 17, 2020.

2. Financial Security Requirements (FSR) for CCAs (R. 03-10-003)

San Diego Community Power submitted a protest to CPUC Energy Division Director Edward Randolph on November 30, 2020, pointing out that SDG&E's FSR calculation applied costs but not revenue for certain procurement costs during months that SDCP was operational and failed to reflect mutually agreed upon adjustments meant to accommodate SDG&E. These errors result in an FSR amount that significantly exceeds potential reentry fees in violation of D. 18-05-022. SDG&E's response acknowledged some of the issues raised, but stated that it had followed the prescribed methodology for calculating the FSR amount.

SDCP also sent a letter to CPUC Acting Executive Director Rachel Peterson requesting an extension of time to comply with Resolution E-5059 to allow for settlement of disputes surrounding SDG&E's calculation of SDCP's FSR amount and requesting clarification regarding conflicting FSR due date language between Resolution 5059-E and SDG&E AL 3646. Director Peterson has granted SDCP an extension of time to comply with Resolution E-5059 until 30 days after the Commission approves an FSR calculation submitted by SDG&E. The issues around the advice letter may be able to be resolved following additional discussions with the Energy Division.

Finally, SDCP submitted Advice Letter 20-2 CCA Financial Security Requirement Instrument, in compliance with Resolution 5059-E, on December 8, 2020 which includes SDCP's Pro Forma Letter of Credit. As directed in D. 18-05-022, SDCP's Advice Letter 20-2 also requests the return of SDCP's initial bond of $100,000 from SDG&E. The letters to the CPUC Directors, Director Peterson's letter granting SDCP its requested extension, and SDCP's AL 20-2 are in Attachment A.

3. SDG&E PCIA Trigger Application (A. 20-07-009)

Following the issuance of the Proposed Decision, The San Diego CCAs, CalCCA, and SDG&E entered a Joint Stipulation by which SDG&E agrees to propose to recover the CAPBA undercollection over a 36-month amortization period beginning January 1, 2021 and ending December 31, 2023. This extended amortization period will reduce the PCIA rate increase from roughly $7.50 per month to $2.54 per month. SDG&E also agreed as part of the stipulation to clarify that it will not recover the CAPBA balance from customers in PCIA vintage 2020 who will be departing for CCA service in 2021. Finally, if the PCIA Trigger is reached in 2021, SDG&E agrees to propose a 12-month amortization period in its recovery application. In exchange, the San Diego CCAs and CalCCA agreed to affirmatively support the termination of the PCIA cap-and-trigger in a joint petition for modification of D. 18-10-019 in early 2021.

Counsel for SDCP, CEA and SEA filed Joint Opening Comments on the Proposed Decision in which the CCAs support a 36-month amortization period and request the PD be modified to clarify that the CAPBA balance cannot not be recovered from customers in PCIA vintage 2020. The Joint Opening Comments also urge the Commission to consider addressing the CAPBA refund in this proceeding to ensure that bundled customers who depart for CCA service in 2021 will receive their full refund.

Counsel for SDCP, CEA and SEA also filed Joint Reply Comments on the Proposed Decision reiterating its support for a 36-month amortization period and supporting SDG&E's request for PD clarification that SDG&E may recover the balance by an amount less than 1.9¢/kWh. This revision would provide SDG&E with the ability to implement a reduced rate increase over a longer amortization period. SDG&E's Application is scheduled to be heard and decided at the Commission's meeting on December 17, 2020. Attachment A includes the Joint Comments on the PD and the executed Joint Stipulation between SDG&E and CCA Parties.

Attachment A

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED
12/02/20
10:01 AM

December 2, 2020

Agenda ID #19032
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 20-04-014

This is the proposed decision of Administrative Law Judge (ALJ) Peter Wercinski. It will appear on the Commission's December 17, 2020 agenda. The Commission may act then, or it may postpone action until later. This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Upon the request of any Commissioner, a Ratesetting Deliberative Meeting (RDM) may be held. If that occurs, the Commission will prepare and publish an agenda for the RDM 10 days beforehand. When the RDM is held, there is a related *ex parte* communications prohibition period. (See Rule 8.3(c)(4).)

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 14.6(b), comments on the proposed decision must be filed by December 8, 2020 and reply comments must be filed by December 11, 2020.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic copies of comments should be sent to ALJ Wercinski at peter.wercinski@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES:gp2

Attachment

Decision **PROPOSED DECISION OF ALJ WERCINSKI (Mailed 12/2/2020)**

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 20-04-014

DECISION ADOPTING 2021 ELECTRIC PROCUREMENT REVENUE REQUIREMENT FORECASTS AND GREENHOUSE GAS-RELATED FORECASTS FOR SAN DIEGO GAS & ELECTRIC COMPANY

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DECISION ADOPTING 2021 ELECTRIC PROCUREMENT REVENUE REQUIREMENT FORECASTS AND GREENHOUSE GAS-RELATED FORECASTS FOR SAN DIEGO GAS & ELECTRIC COMPANY

Summary

This decision adopts a 2021 forecast electric procurement revenue requirement for San Diego Gas & Electric Company (SDG&E) of $1,161.437 million[1] consisting of (1) a $663.435 million Energy Resource Recovery Account revenue requirement, (2) a $332.469 million Portfolio Allocation Balancing Account (PABA) revenue requirement and 2020 PABA under-collected balance of $123.812 million, (3) a $11.401 million Competition Transition Charge revenue requirement, (4) a $124.439 million Local Generation revenue requirement, and (5) a $1.073 million San Onofre Nuclear Generating Station Unit 1 Offsite Spent Fuel Storage Cost revenue requirement. We also adopt a 2021 forecast Tree Mortality Non-Bypassable Charge revenue requirement and approve SDG&E's request for confidentiality.

In addition, this decision approves SDG&E's 2021 (1) forecast greenhouse gas (GHG) allowance revenues of $115.836 million and its adjusted forecast GHG allowance revenues eligible to return to customers of $96.031 million, (2) forecast GHG clean energy/energy efficiency program set-asides of $17.774 million, including $16.744 million for the Solar on Multifamily Affordable Housing program and $1.030 million for the Disadvantaged Communities Single Family Solar Homes program, (3) forecast GHG revenue returns of $(1.657) million to small business and $(0.839) million to emissions-intensive trade-exposed retail customers, (4) forecast GHG administration, customer education, and outreach plan costs of $45,133, (5) forecast revenue returns to residential customers via the

[1] Except where otherwise stated, all dollar amounts in this decision include franchise fees and uncollectibles (FF&U).

California Climate Credit of $(93.536) million, and the associated semi-annual California Climate Credit of $34.60 per household, (6) proposed Power Charge Indifference Adjustment rates, and (7) proposed rate components for the Green Tariff Shared Renewables program.

All forecasts approved in this proceeding are subject to reconciliation of revenues and costs in subsequent proceedings.

SDG&E's revenue requirements will be consolidated with the revenue requirement changes under other Commission decisions in the Annual Electric True-up process. The rate changes are effective upon approval of the Tier 1 advice letters to be filed in accordance with this decision.

This proceeding is closed.

1. Historical Background

1.1. Energy Resource Recovery Account

Pursuant to Decision (D.) 02-10-062, the California Public Utilities Commission (Commission) established the Energy Resource Recovery Account (ERRA) required by Public Utilities (Pub. Util.) Code Section 454.5(d)(3) to provide recovery of energy procurement costs, including expenses associated with fuel and purchased power, utility retained generation, California Independent System Operator (CAISO) related costs, and costs associated with the residual net short procurement requirements to serve the bundled electric service customers of utilities, including San Diego Gas & Electric Company (SDG&E). The ERRA regulatory process includes (1) an annual forecast proceeding to adopt a forecast of the utility's electric procurement cost revenue requirement and electricity sales for the upcoming year, (2) an annual compliance proceeding to review the utility's compliance in the preceding year regarding energy resource contract administration, least cost dispatch, and prudent maintenance of Utility Owned Generation (UOG) and the ERRA

balancing account, and (3) a quarterly compliance report in which the Commission's Energy Division reviews procurement transactions "to ensure the prices, types of products, and quantities of each product conform to the approved plan."[2]

Pursuant to D.12-12-033, SDG&E filed Advice Letter (AL) 2452-E-A to establish a sub-account within the ERRA to record greenhouse gas (GHG) costs. The AL also created the GHG Customer Outreach and Education Memorandum Account (GHGCOEMA), the GHG Administrative Costs Memorandum Account (GHGACMA), and the GHG Revenue Balancing Account (GHGRBA). The GHGRBA is a two-way balancing account that records GHG revenues less revenue returns and any revenues approved to be set aside for outreach and administrative expenses.

As set forth in Pub. Util. Code Section 454.5(d)(3), the balance of the ERRA is not to exceed five percent of the electrical corporation's actual recorded generation revenues for the prior calendar year, excluding revenues collected for the California Department of Water Resources. D.02-10-062 established a trigger calculation designed to avoid the five percent threshold point that requires SDG&E to file an expedited application for approval to adjust its rates 60 days from when the ERRA balance reaches an under- or over-collection of four percent and is projected to exceed the five percent trigger.

1.2. Portfolio Allocation Balancing Account

Pursuant to D.18-10-019 and Advice Letter (AL) 3318-E, the purpose of the Portfolio Allocation Balancing Account (PABA) is to record the above-market costs and revenues associated with all generation resources that are eligible for

[2] D.02-10-062 at 47, 50 and Conclusion of Law (COL) 7.

cost recovery through Power Charge Indifference Adjustment (PCIA)[3] rates, including SDG&E's UOG. Costs recorded in each vintage subaccount include fuel, GHG costs, third-party power purchase contract costs, and UOG's revenue requirement.

1.3. San Onofre Generating Station Unit 1 Offsite Spent Fuel Storage Costs

Southern California Edison (SCE) is the majority owner and SDG&E is a minority owner in the San Onofre Generating Station (SONGS) facility. SCE has included the SONGS Offsite Spent Fuel Storage Costs in its ERRA proceedings, and SDG&E elected for the first time in 2015 to request recovery of SONGS Unit 1 Offsite Spent Fuel Storage Costs in its ERRA forecast proceeding rather than in its General Rate Case. D.15-12-032 authorized SDG&E to recover SONGS Unit 1 Offsite Spent Fuel Storage Costs in the ERRA proceeding.

1.4. Tree Mortality Non-Bypassable Charge

The Tree Mortality Non-Bypassable Charge (TMNBC) Balancing Account was established pursuant to D.18-12-003 and AL 3343-E to record tree mortality related procurement costs to be recovered through the Public Purpose Program (PPP) charge.[4] AL 3343-E-B approved the 2019 year-end balances in the Bio-MASS Memorandum Account and the Bio-fuel Renewable Auction Mechanism Memorandum Account and the transfer of the balances in those accounts to the TMNBC Balancing Account.

1.5. GHG Allowance Revenues and Costs

Rulemaking (R.) 11-03-012 addresses GHG-related allowance revenues and costs for an investor-owned electric utility (IOU), including SDG&E. In D.12-12-033, the Commission required utilities to file applications for approval of

[3] The PCIA is discussed in more detail in Section 1.6 below.

[4] D.18-12-003 Ordering Paragraph (OP) 9.

forecast GHG-related allowance revenues and costs, including administrative and customer outreach expenses, sufficient to calculate the amount of GHG allowance revenues to be returned to the different customer classes.

Pursuant to D.12-12-033, five utilities[5] filed 2014 GHG Revenue Forecast Applications that were consolidated in Application (A.) 13-08-002 et al. D.13-12-041, the Phase 1 decision in the consolidated proceeding, was limited to information and approvals necessary to incorporate GHG costs and allowance proceeds into 2014 rates and to issue the first California Climate Credit.[6] D.13-12-041 approved the forecasts with modifications for inclusion in 2014 rates and concluded that the forecasts "should remain subject to true up against actual amounts in future GHG Revenue and Reconciliation Applications and actual administrative and customer outreach expenses remain subject to reasonableness review."[7]

The Commission adopted D.14-10-033 resolving Phase 2 of the consolidated proceeding on October 16, 2014, and its appendices were corrected by D.14-10-055 on October 30, 2014, and D.15-01-024 on January 21, 2015. D.14-10-033 describes methodologies and conventions to be used in GHG Revenue and Reconciliation Applications filed after 2013.[8] The decision further adopted Confidentiality Protocols for cap-and-trade related data and required the utilities to use a proxy price in their forecasts. Lastly, the decision required the utilities to file GHG Forecast Revenue and Reconciliation Applications

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[5] The five utilities are SDG&E, SCE, Pacific Gas and Electric Company, PacifiCorp, an Oregon Company, and Liberty Utilities (CalPeco Electric) LLC.

[6] The California Climate Credit, previously referred to as the "Climate Dividend," received its official name in April 2014 by ruling in R.11-03-012.

[7] D.13-12-041 COL 3.

[8] A.13-08-002, *et al.*, Assigned Commissioner's and Administrative Law Judge's Phase 2 Scoping Memo and Ruling, February 19, 2014.

annually as part of their ERRA forecast applications. We use the standards adopted in D.14-10-033 to review SDG&E's current application and in A.17-04-016 to determine the reasonableness of both the recorded and forecast variables discussed below. In addition, the distribution of GHG allowance revenues must comport with the Commission's recent decision in D.20-10-002 reflecting an Industry Assistance Factor for the Small Business Climate Credit of 50 percent for 2021 and the extension of the existing California Industry Assistance Credit for emissions-intensive trade-exposed (EITE) retail customers.

The variables necessary to authorize rate changes and determine the GHG-related allowance revenues and costs are:

1. **Recorded and Forecast Allowance Revenues**. These are the revenues received by a utility as a result of selling the allowances allocated to ratepayers by the state.
2. **Recorded and Forecast Administrative and Customer Outreach Expenses**. These are the costs incurred by a utility for administrative and customer outreach purposes that relate to the allowance revenue return program.
3. **Recorded and Forecast Expenses for Approved Incremental Energy Efficiency and Clean Energy Programs**. D.12-12-033 allows utilities to use a portion of allowance revenues to fund energy efficiency and clean energy programs that have been approved by the Commission in other proceedings.
4. **Recorded and Forecast EITE Customer Return**. Using the methodology adopted in D.14-12-037, as modified by D.15-08-066 and D.16-07-007, a portion of allowance revenues is returned to customers who qualify as EITE. The EITE customer return is based on formulas and made once per year.
5. **Recorded and Forecast Small Business Return**. Using the methodology adopted in D.14-12-037, as modified by D.15-08-006 and D.16-07-007, a portion of allowance revenues is returned to customers who meet the definition

of small business developed in R.11-03-012.[9] The Forecast Small Business Return is volumetric and is calculated using the Forecast GHG Cost (*see* Item 7 below) and the volume of electricity used by the customer and is returned as a credit to the delivery component of the customer's monthly bill.

6. **Recorded and Forecast Residential California Climate Credit**. The Climate Credit is distributed to residential households after all of the above expenses and customer returns have been made. It appears as a credit on the customer's bill twice per year. The Climate Credit is not related to the volume of electricity used by the household; each household within a utility's territory receives the same Climate Credit.
7. **Recorded and Forecast GHG Costs**. These are the GHG emissions costs incurred directly or indirectly by a utility as a result of the GHG cap-and-trade program. Direct costs include the costs incurred to purchase compliance instruments[10] for plants run by the utility or costs from plants not owned or operated by the utility. Indirect costs generally reflect GHG costs embedded in the price of power purchased on the market or through contracts that do not include GHG settlement terms.

D.14-10-033 also requires electric utilities to incorporate GHG costs into the generation component of electricity rates through the ERRA process. Incorporating the costs of GHG emissions into rates results in a carbon price signal intended to incentivize an overall decrease in energy consumption and

[9] D.12-12-033 sets forth an overview of the methodology sufficient for purposes of forecasting the small business customer return for 2014. D.13-12-002 adopted a specific methodology.

[10] A covered entity must surrender one compliance instrument for each metric ton of carbon dioxide equivalent of GHG emissions for its compliance obligations. Allowances and offsets are the two types of compliance instruments in the cap-and-trade program. (California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms, Title 17 CCR Section 95856.) The regulation also limits the use of offsets to no more than 8 percent of compliance instruments in a compliance period (Title 17 CCR Section 95854).

reduction in GHG emissions. Finally, the electric utilities are required to report and return annual GHG allowance revenues to eligible customers.

1.6. PCIA

In D.06-07-030 (as modified by D.07-01-030), the Commission adopted the PCIA to require that departing load customers pay their share of the above-market costs of the utilities' total procurement resource portfolio and that bundled customers remain indifferent to customer departures. The PCIA implements a total portfolio methodology that recognizes that bundled customers are served from the entire portfolio of commodity resources and that a utility generally may offset a portion of the costs of departing load through additional market sales. Under the PCIA, a total indifference amount is calculated by subtracting a utility's supply portfolio market value from the total portfolio cost.

In D.08-09-012, the Commission introduced the requirement to "vintage" departing load customers based on their departure date when determining the customers' cost responsibility for the total portfolio of resources.

D.18-10-019 modified the PCIA methodology by revising inputs to the market price benchmarks (MPBs) used to calculate the PCIA. The decision also adopted an annual true-up mechanism and a cap that limits the annual change of the PCIA rate to 0.5 cents per kilowatt hour (kWh) more than the prior year's PCIA, differentiated by vintage.

In D.19-10-001, the Commission directed utilities to use vintage-specific billing determinants to calculate PCIA rates, calculate true-ups based on updated MPBs provided by the Commission's Energy Division for PABA costs, and include in the ERRA forecast November update any under- or over-collected balance associated with PABA.

Pursuant to D.18-10-019 and AL 3436-E, the PCIA Undercollection Balancing Account (CAPBA) was established to record the obligation that accrues for departing load customers in excess of the 0.5 cents/kWh PCIA rate cap. The CAPBA includes a subaccount for each customer vintage and a specific bundled subaccount to capture the shortfall amount financed by bundled customers for departing load customers when the PCIA rate is capped.

2. Procedural Background

On April 15, 2020, SDG&E filed its Application for approval of its 2021 Electric Procurement Revenue Requirement Forecasts and GHG-Related Forecasts. On April 20, 2020, SDG&E filed an Amended Application (Application) to correct language in the April 15, 2020 Application. By Resolution ALJ 176-3460 adopted on May 7, 2020, the Commission preliminarily determined that this proceeding was ratesetting and that hearings were necessary. On May 18, 2020, the California Public Advocates Office (Cal Advocates) and San Diego Community Power (SDCP) filed protests to the Application. A prehearing conference (PHC) was held on June 17, 2020. Utility Consumers' Action Network (UCAN) was granted party status at the PHC.

A Scoping Memo and Ruling of Assigned Commissioner (Scoping Memo) on July 6, 2020 affirmed the Commission's preliminary categorization of this proceeding as ratesetting and the necessity for hearings. By rulings filed on August 19, 2020, California Community Choice Association (CalCCA) and Sunrun Inc. (Sunrun) were granted party status. By ruling filed on September 4, 2020, Clean Energy Alliance (CEA) was granted party status. The parties in this proceeding submitted reports and confirmed at the September 4, 2020 status conference that evidentiary hearings were not needed, and therefore evidentiary hearings were not conducted. Pursuant to rulings granting motions for the admission of testimony and documents into evidence and for the admission of

confidential documents into evidence under seal, the exhibits identified in Appendix B were admitted into evidence. The documents placed under seal shall remain under seal for the applicable period of time set forth in the Confidentiality Matrix in D.14-10-033.

3. November Update, Comments, and Reply

On November 6, 2020, SDG&E filed a November Update to Application to reflect changes in its forecasts and Commission decisions since the filing of the Application, including (1) a fourth quarter update to its GHG forecast revenue and expenses to include actual revenues and estimated expenses from January through September 2020 and forecast revenues and expenses from October through December 2020 and reconciliation of prior years reflecting 2019 emission volumes that became final in August 2020,[11] (2) SDG&E's Solar on Multifamily Affordable Housing (SOMAH) funding request and true-up of its prior year's authorized SOMAH set-aside amount as required in D.20-04-012,[12] and (3) the distribution of GHG allowance revenues pursuant to D.20-10-002 reflecting an Industry Assistance Factor for the Small Business Climate Credit of 50 percent for 2021 and the extension of the existing California Industry Assistance Credit for EITE retail customers.[13] In its November Update to Application, SDG&E requests a 2021 forecast revenue requirement of $1,161.437 million[14] and consisting of (1) $663.435 million for ERRA, (2) $332.469 million for PABA, (3) $11.401 million for Competition Transition Charge, (4) $124.439 million for Local Generation, (5) $1.073 million for SONGS Unit 1 Offsite Spent Fuel Storage

[11] November Update to Application at 3-4.

[12] *Id.* at 4.

[13] *Id.* at 4-5.

[14] Excluding a 2021 forecast Tree Mortality Non-Bypassable Charge (TMNBC) revenue requirement for which SDG&E asserts confidentiality.

Cost, (6) GHG allowance revenue return allocations of $(0.839) million for EITE retail customers, $(1.657) million for small business, and $(93.536) million for residential California Climate Credit, and (7) a PABA balance of $123.812 million.[15] In addition, the November Update to Application requests approval of (1) 2021 forecast GHG allowance revenues of $115.836 million, (2) a 2021 forecast GHG allowance revenue set aside for clean energy/energy efficiency programs of $17.774 million, and (3) 2021 forecast GHG administration, customer outreach and outreach plan costs of $45,133.[16] In the November Update to Application, SDG&E states that it is removing its request to return Local Generation Balancing Account activity of $(91.08) million from the Application because the overcollection is subject to approval in the 2018 ERRA Compliance proceeding A.19-05-007 for which a decision has not yet been issued, and SDG&E will seek the return of the overcollection in its 2022 ERRA Forecast Application.[17]

In the November Update to Application, SDG&E projects a combined total rate decrease of $334.173 million compared to the currently effective rates, a decrease of 12.35 percent or 2.964 cents/kWh from the current system average bundled rate. SDG&E projects that a typical bundled non-California Alternative Rates for Energy residential customer in the inland climate zone using 400 kWh could see a monthly winter bill decrease of 9.71 percent or $10.91 and a monthly summer bill decrease of 9.91 percent or $11.07.[18] SDG&E submitted updated

[15] November Update to Application at 5-6.

[16] *Id.* at 6.

[17] *Id.* at fn. 9.

[18] *Id.* at 7.

prepared direct testimony of six SDG&E witnesses with the November Update to Application and subsequently submitted corrected testimony and templates.[19]

On November 18, 2020, SDCP, CEA, and CalCCA (CCA November Commenters) filed joint comments (CCA November Comments) to the November Update. The CCA November Commenters contend that SDG&E's calculation of its 2021 commodity rate forecast for bundled customers relies on an inaccurate and outdated sales forecast that fail to account for the departure of about 24 percent of SDG&E's 2021 bundled load sales that will occur in 2021 with the launch of SDCP and CEA. More specifically, the CCA November Commenters claim that SDG&E's 2021 commodity rate forecast is based upon an outdated 2019 sales forecast rather than SDG&E's 2021 energy requirements forecast that SDG&E used to derive the ERRA revenue requirement in this proceeding.[20] Although under-collections resulting from the inaccurate forecast will be trued up in the future, the CCA November Commenters assert that the artificially low 2021 commodity rates will mislead customers by creating a false price signal that bundled rates are lower than they should be. In response to SDG&E's contentions that it must rely on the outdated forecast because a final decision on the forecast is still pending in SDG&E's GRC proceeding and that it does not have authority from the Commission to update its bundled billing determinants,[21] the CCA November Commenters state that SDG&E's position lacks merit because SDG&E has revised other inputs in this ERRA application to

[19] Exhibits SDGE-13, SDGE-14, SDGE-14C, SDGE-15, SDGE-15C,SDGE-16, SDGE-16C, SDGE-17, SDGE-17C, SDGE-18, SDGE-19, SDGE-19C, SDGE-20, and SDGE-20C (the November Update to Application, the accompanying updated prepared direct testimony of the six SDG&E witnesses, and the subsequent corrected testimony and templates are collectively referred to as the "November Update.")

[20] Exhibits SDCP-47, SDCP-48, and SDCP-49.

[21] Exhibits SDCP-50 and SDCP-51.

reflect its latest sales forecast. The CCA November Commenters request that SDG&E revise its 2021 commodity rate forecast to reflect the same billing determinants (sales) used to derive the 2021 ERRA forecast revenue requirement in this proceeding.[22]

The CCA November Commenters also seek clarification that the 0.5 cents/kWh year-over-year PCIA rate cap established in D.18-10-019 will apply to the PCIA rates adopted in the 2020 ERRA forecast proceeding and not to the temporary PCIA rate adjustment to be adopted in the PCIA trigger proceeding A.20-07-009.[23] In addition, the CCA November Commenters request that the Commission (1) not apply the CAPBA adder to be adopted in A.20-07-009 to 2020 vintage customers and equitably apportion the adder among the 2009 through 2019 vintages because the 2020 vintage customers did not cause the under-collection and would otherwise be unfairly charged the CAPBA rate adder[24] and (2) should adopt SDG&E's proposal for a one-time transfer of the CAPBA over-collection due to bundled customers into PABA.[25]

In its November 25, 2020 Reply to Comments Regarding November Update Application (SDG&E November Reply), SDG&E states that in D.18-11-035 the Commission directed SDG&E to seek approval of future sales forecasts in its next GRC Phase 2 proceeding, that approval of its 2021 sales forecast is currently being litigated in the GRC Phase 2 proceeding A.19-03-002, and that SDG&E is not authorized to update its 2021 sales forecast outside of the proceeding in A.19-03-002. SDG&E also argues that the 2021 energy

[22] CCA November Comments at 2-11.

[23] *Id.* at 12-15.

[24] *Id.* at 15-17.

[25] *Id.* at 17-18.

requirements forecast is not the equivalent of the sales forecast submitted for approval in the GRC proceeding and would need to be transformed to derive the proper bundled rate billing determinants necessary to create 2021 customer commodity rates by a process that requires roughly four months due to complexities.[26]

In the SDG&E November Reply, SDG&E also disputes that it has changed its position regarding the applicability of the PCIA rate cap to those PCIA rates in effect at the time of the November Update. SDG&E also contends that issues regarding the recovery of the CAPBA balance and a transfer of a 2020 CAPBA refund to bundled customers are outside the scope of this proceeding.[27]

4. Issues

As set forth in the Scoping Memo, the issues to be determined are:

1. Whether the Commission should approve SDG&E's total 2021 forecast revenue requirement of $920.317 million and the amount of the 2021 Tree Mortality Non-Bypassable Charge forecast revenue requirement, to become effective in rates on January 1, 2021;
2. Whether the Commission should approve SDG&E's 2021 Energy Resource Recovery Account forecast revenue requirement of $604.409 million (including 2021 forecast greenhouse gas (GHG) costs of $12.793 million);
3. Whether the Commission should approve a 2021 Portfolio Allocation Balancing Account forecast revenue requirement of $373.828 million;
4. Whether the Commission should approve a 2021 Competition Transition Charge forecast revenue requirement of $16.673 million;
5. Whether the Commission should approve a 2021 Local Generation forecast revenue requirement of

[26] SDG&E November Reply at 2-12.

[27] *Id.* at 12-16.

$137.895 million (which excludes the Local Generation Balancing Account 2018 overcollection of $(91.084) million);

6. Whether the Commission should approve the 2021 San Onofre Nuclear Generating Station Unit 1 Offsite Spent Fuel Storage Cost forecast revenue requirement of $1.073 million;
7. Whether the Commission should approve SDG&E's 2021 Tree Mortality Non-Bypassable Charge forecast revenue requirement;
8. Whether the Commission should approve SDG&E's 2021 forecasts of GHG revenues, revenue set-asides and returns and administrative expenses, which include:
    a. Forecast GHG allowance revenues;
    b. Forecast set asides for clean energy/energy efficiency programs. Commission-authorized programs in this category include the Solar on Multifamily Affordable Housing Program, the Disadvantaged Communities Single Family Solar Homes Program, the Disadvantaged Communities Green Tariff Program, and the Community Solar Green Tariff Program. Although SDG&E's application did not propose to allocate funding to these programs, this proceeding shall determine the appropriate set asides for these programs pursuant to Decision (D.) 20-04-012, D.18-06-027, and any other applicable decisions;
    c. Forecast revenue returns to small business and emissions-intensive trade-exposed retail customers. SDG&E did not propose to set aside amounts for return to these customers as required by Pub. Util. Code section 748.5. This proceeding shall determine the appropriate amount for return to these customers;
    d. GHG administration, customer education and outreach plan costs; and
    e. Forecast revenue returns to residential customers via the California Climate Credit. SDG&E's application proposed to return to residential customers an amount

greater than its forecasted revenues; this proceeding shall determine the appropriate overall amount to be returned to residential customers as a class, and the individual California Climate Credit amount.

9. Whether the Commission should approve SDG&E's proposed vintage Power Charge Indifference Adjustment in rates;
10. Whether the Commission should approve SDG&E's proposed 2021 rate components for the Green Tariff Shared Renewables Program;
11. Whether the Commission should approve SDG&E's request to return the overcollected 2018 Local Generation Balancing Account recorded activity of $(91.084) million; and
12. Whether there are any safety considerations pursuant to Pub. Util. Code Section 451 raised by the Application.[28]

5. Discussion

5.1. Standard of Review

All charges demanded or received by a public utility for any product or service shall be just and reasonable.[29] A public utility shall not change any rate except upon a showing before the Commission and a finding by the Commission that the new rate is justified.[30]

As set forth in Section 1.1 above, the ERRA regulatory process includes an annual compliance proceeding and an annual forecast proceeding. In an ERRA compliance application, the Commission is required to perform a compliance review of the ERRA compliance application. A compliance review considers whether a utility has complied with all applicable rules, regulations, opinions, and laws, while a reasonableness review evaluates not only a utility's

[28] Scoping Memo at 2-4.

[29] Pub. Util. Code Section 451.

[30] Pub. Util. Code Section 454(a).

compliance, but also whether the data or actions resulting from, for example, the calculation of a forecasted expense, are reasonable, based on the methods and inputs used.[31] Because this case is a forecast proceeding, we apply these principles by conducting a reasonableness review to determine whether SDG&E's positions regarding the issues in scope are reasonable, based upon appropriate methodologies and calculations, and compliant with all applicable laws, regulations, rules, orders and Commission decisions,

5.2. ERRA

SDG&E's energy requirements sales forecast utilized in the November Update was developed internally by SDG&E and updates previous demographic and economic assumptions, including the impacts of COVID-19. The forecast reflects the load departure of community choice aggregators[32] (CCAs) SDCP and CEA and the expected 2021 departure of CCA Solana Energy Alliance. The forecast reflects significant load departures as CCAs are expected to depart SDG&E's bundled service throughout the year. SDG&E states that the inputs and assumptions used to develop the forecast could be impacted by issues such as the specific timing and magnitude of CCA load departures, the Commission's direction on portfolio optimization and resource allocation to departing load, and other issues being addressed in the Commission's PCIA rulemaking proceeding R.17-06-026.[33]

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[31] D.16-05-003 at 3.

[32] Under Pub. Util. Code Section 331.1, a community choice aggregator is any city, county, city and county, and any group of cities, counties, or cities and counties that elect to combine the loads of their residents, businesses, and municipal facilities in a communitywide electricity buyers' program, and any California public agency possessing statutory authority to generate and deliver electricity at retail within its designated jurisdiction.

[33] Exhibit SDGE-15 at 3.

SDG&E developed a forecast of the supply resources needed to meet demand using the same production cost model it had used in previous ERRA forecasts. Inputs to the model include the characteristics of the various generation resources, including heat rate, variable operating and maintenance costs, other factors that impact the plant's dispatch, and natural gas and electric market prices. The model simulates a least-cost dispatch of the portfolio of SDG&E's resources for every hour of 2021. The supply resources include SDG&E-contracted conventional generation, SDG&E-owned dispatchable generation, renewable energy contracts, and Qualifying Facilities contracts.[34]

Electric procurement expenses incurred by SDG&E to serve its bundled load are also recorded to the ERRA. These expenses include costs and revenues for energy and capacity cleared through the CAISO market, power purchase contract costs, generation fuel costs, market energy purchase costs, CAISO charges, brokerage fees, and hedging costs.

SDG&E's total ERRA revenue requirement also includes GHG costs. SDG&E's two categories of GHG costs are direct costs and indirect costs. Direct costs reflect SDG&E's GHG costs from UOG plants in California, California generators with whom SDG&E has contracts in which SDG&E is responsible for GHG costs, and electricity imports. Indirect costs are embedded in market electricity prices or charged to SDG&E by third parties pursuant to energy supply contracts.

SDG&E's authorized GHG costs are collected from bundled customers through the generation component of rates. SDG&E does not pass any of its GHG costs onto unbundled customers. Instead, the electricity provider of the

[34] Exhibit SDGE-15 at 3-10.

unbundled customer collects GHG costs via the generation component of the customer's bill.

SDG&E asserts that the GHG-related cost information is confidential because it contains material, market sensitive, electric procurement-related information that is within the scope of Pub. Util. Code Section 454.5(g).[35] After review, we agree that SDG&E's GHG-related cost information is confidential and is subject to the Confidentiality Matrix set forth in D.14-10-033.

Template D-2 of the November Update contains SDG&E's Annual GHG Emissions and Associated Costs.[36] The evidence reflects that SDG&E's recorded GHG costs were calculated appropriately.

SDG&E seeks recovery of its forecast 2021 GHG costs in this application as part of the total ERRA revenue requirement. The GHG cost forecast is equal to the expected emissions, both direct and indirect, multiplied by the forecasted proxy GHG price, resulting in forecasted GHG costs for 2021 of $52.8 million for ERRA.[37]

In its Opening Brief,[38] UCAN raises several arguments regarding the methodology used by SDG&E in calculating the ERRA revenue requirement. UCAN claims that SDG&E's "modeling does not reflect actual financial costs incurred in the CAISO-market" and that "the financial forecast is inaccurate because SDG&E fails to settle bundled load customers per actual energy load data." Referencing SDG&E's argument that CAISO-market factors are not relevant to the ERRA forecast, UCAN asserts that the "ERRA forecast is

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[35] Exhibits SDGE-15 Attachment F at 2 and SDGE-17 Attachment A at 2.

[36] Exhibits SDGE-20 and SDGE-20C.

[37] Exhibits SDGE-19 and SDGE-20.

[38] UCAN recites the language of Scoping Memo Issue No. 2 as the issue it addresses in the Opening Brief but inaccurately refers to "Scoping Issue No. 1" earlier in the Opening Brief.

essentially a simulation of hourly CAISO market prices and generation dispatch costs" and that the "forecasted hourly pattern of electricity usage by bundled customers is, thus, a primary determinant to the revenue requirement calculation."[39] UCAN claims that SDG&E is "forecasting and settling a portion of bundled customer load in the CAISO market using hourly load profiles that are based on the usage patterns of both bundled customers and customers that depart specifically to CCAs."[40] UCAN urges the Commission to confirm that SDG&E is forecasting and settling bundled customer load in the CAISO market based solely on bundled customer interval load data. Although it acknowledges that SDG&E's forecasting modeling distinguishes between bundled and CCA departing customer load usage patterns, UCAN claims that "SDG&E fails to capture how bundled load costs are being incurred in the 'real world' of the CAISO market."[41]

SDG&E rejects UCAN's arguments in its Reply Brief. First, SDG&E dismisses UCAN's position as irrelevant because the manner in which load financial settlement transactions are conducted has no bearing on the forecasts produced.[42] Second, SDG&E asserts that its model relies on day-ahead prices and does not consider real-time market transactions in the CAISO market.[43] Third, SDG&E confirms that it does settle bundled customer load in the CAISO market based exclusively on bundled customer interval meter usage data in accordance with the CAISO Business Practice Manual.[44]

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[39] UCAN Opening Brief at 3.

[40] *Id.* at 5; Exhibit UCAN-1 at 5-7.

[41] *Id.* at 7.

[42] Exhibit SDGE-07 at 3.

[43] *Id.* at 3-4.

[44] *Id.* at 4; Exhibit SDGE-08 at 3; SDG&E Reply Brief at 2-3.

After review of the admitted evidence, we agree with SDG&E that the manner in which load financial settlement transactions are conducted does not affect the forecasts and that SDG&E is properly forecasting and settling bundled customer load in the CAISO market based solely on bundled customer interval load data.

As reflected in the November Update,[45] SDG&E seeks a 2021 ERRA forecast revenue requirement of $663.435 million. SDG&E's 2021 ERRA forecast revenue requirement of $663.435 million is reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be adopted in 2021 rates.

5.3. PABA

SDCP and CEA assert that the Commission should require SDG&E to provide "its year to date PABA balance as well as its forecasted year-end PABA balance" and "monthly forecast PABA dollar balance amounts and the underlying volumetric data ….required to review actual PABA activity" in future applications and "in routine updates throughout the proceeding." Citing SDG&E's position that the 2020 PABA balance will be reflected in the November update, SDCP and CEA claim that SDG&E's "lack of transparency" could result in "huge shifts in forecasted PCIA rates between the Application and ultimate disposition of the proceeding" and impede the parties' ability to understand and forecast changes in the PABA balance. [46]

SDG&E stated in its Reply Brief that it intends to include a year-end forecast of PABA over- or under-collections in its future ERRA forecast applications. However, SDG&E objects to a requirement to provide monthly

[45] Exhibits SDGE-15 at 3-19 and SDGE-17 at 3-4.

[46] SDCP and CEA Opening Brief at 7-10.

PABA balances and underlying volumetric data because it has already provided sufficient responsive information, does not have reports for particular requested subcategories, and a more detailed review is more appropriate in an ERRA compliance proceeding. As a result, SDG&E believes that the data it has already provided are sufficient for SDCP and CEA to conclude that the proposed PCIA rates that reflect the PABA true-up are accurate and reasonable.[47]

Given the importance of an expedited process to review and adopt SDG&E's ERRA-related revenue requirement prior to the annual electric true-up, we recognize the need for certain market participants, such as CCAs, to have more detailed information on a routine basis ahead of the annual November Update testimony.

Throughout this proceeding, SDCP and CEA requested that the Commission direct SDG&E to provide certain information in confidential workpapers and routine reports, including:

- Confidential versions of the monthly ERRA/PABA/CAPBA reports;
- Additional detail supporting the monthly PABA reports, including subcategories for summarized line items such as UOG costs and Contracts (e.g. provide by resource type and identify whether Renewables Portfolio Standard (RPS) or non-RPS eligible);
- Actual volumetric quantities underlying each relevant dollar figure in PABA reports; such categories include UOG generation, power purchases and sales, CAISO market sales, and retail customer sales;
- Monthly volumes of Actual Sold, Retained, and Unsold Resource Adequacy; and

[47] SDG&E Reply Brief at 4-7.

- Monthly volumes of Actual Sold, Retained, and Unsold RPS.[48]

As part of the discovery process, SDG&E provided substantial verifiable data to SDCP and CEA reviewing representatives through data requests, including:

- Confidential versions of its monthly PABA reports to the Commission's Energy Division;
- Monthly volumes of customer usage, SDG&E-owned generation, energy and Resource Adequacy purchased;
- Monthly capacity of Resource Adequacy sold and retained; and
- Monthly volumes of RPS sold and retained. [49]

Delaying access to the ERRA/PABA/CAPBA and other reports concerning the validity of SDG&E's ERRA forecast application until the November Update, and requiring extensive discovery requests to obtain this information, create additional administrative burdens for the parties as well as Commission staff. Accordingly, SDG&E must provide the following information in confidential workpapers for future ERRA forecast proceedings and in monthly ERRA compliance reports, beginning with the filing of the ERRA forecast application and continuing each month through the submission of the November Update:

- Volume of RPS generation, sold RPS and retained RPS used to calculate the retained RPS value;
- Volume of non-RPS Generation for both UOG and non-UOG resources, segregated by technology;

[48] SDCP and CEA Opening Brief at 7-11; SDCP and CEA Reply Brief at 3-4.

[49] SDG&E Reply Brief at 4-8.

- Total Resource Adequacy capacity, segregated by sold, unsold and retained used to calculate the retained Resource Adequacy value; and
- Billed retail sales volume used to calculate the PCIA revenue, distinguished by bundled, Direct Access, and CCA customer groups.

Due to the sensitivity of much of the information contained in these reports, we only direct SDG&E to distribute these reports to an independent reviewing representative or consultant appointed by market participants who have signed appropriate nondisclosure agreements.

In addition, we recognize the importance of SDG&E's rate and bill impact information in the Commission's reasonableness review of SDG&E's revenue requirement, and we direct SDG&E to provide the following information in all future Energy Resource Recovery Account forecast proceedings in both its initial testimony and its November Update testimony:

- Forecast class average rates and average generation rates;
- Forecast rate changes by customer group relative to current rates in both absolute dollars and percentage; and
- Forecast bill impact changes by customer group relative to current bills in both absolute dollars and percentage.

In their Opening Brief, SDCP and CEA also argue that SDG&E mistakenly calculated the indifference amount.[50] In its Opening and Reply Briefs, SDG&E has acknowledged the miscalculations and has agreed to correct the proposed indifference amount in the November update.[51]

The updated prepared direct testimony of Khoang T. Ngo submitted with the November Update sets forth the bases for SDG&E's 2021 PABA forecast

[50] SDCP and CEA Opening Brief at 12.

[51] SDG&E Opening Brief at 15; SDG&E Reply Brief at 8-9.

revenue requirement of $332.469 million and the 2020 PABA under-collected balance of $123.812 million.[52] Pursuant to D.18-10-019, SDG&E's proposed PABA revenue requirement includes the PCIA under-collection balancing account (CAPBA) portion of $9.373 million.[53] The November Update reflects SDG&E's correction of its proposed indifference amount. SDG&E's 2021 PABA forecast revenue requirement of $332.469 million and the 2020 PABA under-collected balance of $123.812 million are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be adopted in 2021 rates.

5.4. Competition Transition Charge

The Competition Transition Charge (CTC) reflects the above-market costs of resources procured prior to market restructuring after the 2000-2001 energy crisis. The Transition Cost Balancing Account (TCBA) is used to accrue all ongoing CTC revenues and recover all ongoing CTC-eligible generation-related costs.

As reflected in the November Update,[54] SDG&E requests that the Commission adopt a 2021 CTC forecast revenue requirement of $11.401 million. No Intervenor offered any evidence or presented any argument to dispute whether the Commission should approve SDG&E's 2021 CTC forecast revenue requirement. SDG&E's 2021 CTC forecast revenue requirement of $11.401 million is reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be adopted in 2021 rates.

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[52] Exhibit SDGE-17 at 12-16.

[53] D.18-10-019 OP 9; Exhibit SDGE-18 at fn. 6.

[54] Exhibit SDGE-17 at 4-5.

5.5. Local Generation

No Intervenor offered any evidence or presented any argument to dispute whether the Commission should adopt SDG&E's 2021 Local Generation forecast revenue requirement of $124.439 million as reflected in the November Update.[55] SDG&E's 2021 Local Generation forecast revenue requirement of $11.401 million (excluding SDG&E's 2018 Local Generation Balancing Account overcollection of $(91.084) million that SDG&E will propose to return in its 2022 ERRA forecast application) is reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be adopted in 2021 rates.

5.6. SONGS Unit 1 Offsite Spent Fuel Storage Cost

As shown in the November Update,[56] SDG&E requests that the Commission adopt a 2021 SONGS Unit 1 Offsite Spent Fuel Storage Cost forecast revenue requirement of $1.073 million in this proceeding. No Intervenor offered any evidence or presented any argument to dispute whether the Commission should approve SDG&E's requested 2021 SONGS Unit 1 Offsite Spent Fuel Storage Cost forecast revenue requirement. SDG&E's 2021 SONGS Unit 1 Offsite Spent Fuel Storage Cost forecast revenue requirement of $1.073 million is reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be adopted in 2021 rates.

5.7. TMNBC

The November Update reflects SDG&E's request of a 2021 TMNBC forecast revenue requirement for which SDG&E asserts confidentiality.[57] No

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[55] *Id.* at 5.

[56] Exhibit SDGE-15 at 19-20.

[57] Exhibit SDGE-17C at 10.

Intervenor offered any evidence or presented any argument to dispute SDG&E's confidentiality claim or to dispute whether the Commission should approve SDG&E's 2021 TMNBC forecast revenue requirement. SDG&E's 2021 TMNBC forecast revenue requirement is reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be adopted in 2021 rates. The TMNBC revenue requirement constitutes material, market-sensitive, electric procurement-related information for which confidential treatment is appropriate in accordance with the IOU Matrix in D.14-10-033.

5.8. GHG Revenues, Expenses, and Revenue Set-Asides and Returns

In the November Update, SDG&E provides forecasts of 2021 GHG revenues and costs, a 2020 GHG Allowance Revenue and Expense Reconciliation, and a comparison of 2019 recorded versus actual year end balances in its GHG balancing accounts.[58] The November Update for SDG&E's 2020 GHG allowance revenues and expenses uses actual data through September 2020 and estimates for October through December of 2020. As set forth below, we find that SDG&E has appropriately followed the requirements of D.12-12-033, D.14-10-033 and D.13-12-002 in forecasting its 2021 GHG allowance revenues and costs, reconciling its 2019 and 2020 GHG recorded costs, and establishing its 2019 and 2020 GHG outreach and administrative expenses.

5.8.1. GHG Allowance Revenues

Each utility forecasts and records the total allowance revenues it receives each year. To determine the amount of these revenues that are available to return to customers in that year, the utility adjusts the forecast allowance revenues to account for (1) any variance between the forecast and recorded

[58] Exhibits SDGE-15 at 27-29 and SDGE-17 at 6-9.

allowance revenues in previous years that resulted in an over- or under-collection, (2) any applicable interest, (3) any applicable franchise fees and uncollectibles, (4) funding set-asides for Commission approved clean energy/energy efficiency projects, and (5) authorized outreach and administrative expenses. In accordance with the GHG allocation methodology adopted in D.12-12-033, SDG&E's GHG allowance revenues returned will be allocated to ratepayers, including direct access and CCA customers.

From Template D-1 of the November Update, SDG&E's recorded GHG allowance revenues (excluding FF&U) for 2019 and 2020 are $104.157 million and $106.782 million, respectively. The recorded 2019 data include actual recorded data for the 2019 year, while the recorded data for 2020 includes actuals from January to September 2020 plus forecasts for October to December 2020. SDG&E appropriately calculated the allowance revenues recorded for 2019 and 2020.

SDG&E's 2021 forecast GHG allowance revenues are $115.836 million. After adjustments for (1) reconciliation of 2020 forecast with 2020 year-end actuals recorded in the GHGRBA, (2) GHG administration, customer education, and outreach plan costs described in Section 5.8.4 below, (3) SOMAH and DAC-SASH program funding described in Section 5.8.2 below, (4) SOMAH true-up funding requests for October through December 2019, January through June 2020, and July through December 2020, and (5) interest and FF&U, SDG&E forecasts 2021 GHG allowance revenues eligible for return to customers of $96.031 million.[59] These revenues are forecast to be returned to EITE, small business, and residential customers in 2021 in the amounts shown in Template D-1 of SDG&E's November Update and as described in Sections 5.8.3 and 5.8.5 below.

[59] Exhibit SDGE-18 at 7-9.

SDG&E provided sufficient information for evaluating forecast GHG allowance revenues. The methodologies used for forecasting GHG revenues and expenses and calculating the revenue returns are consistent with D.14-10-033 (as corrected by D.14-10-055 and D.15-01-024) and the guidance provided in R.11-03-012. Further, the assumptions used by SDG&E when making its calculations are appropriate for purposes of calculating revenues distribution.

No Intervenor offered any evidence or presented any argument to dispute whether the Commission should approve SDG&E's requested 2021 forecast GHG allowance revenues as reflected in the November Update. SDG&E's 2021 forecast GHG allowance revenues of $115.836 million and adjusted GHG allowance revenues eligible for return to customers of $96.031 million are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

5.8.2 Clean Energy/Energy Efficiency Programs

The Air Resources Board (ARB) allocates cap-and-trade allowances to SDG&E. SDG&E is required to place all of these allowances for sale in ARB's 2021 quarterly auctions. As provided in Pub. Util. Code § 748.5(c), the Commission may allocate up to 15 percent of the utilities' resulting revenues for clean energy and energy efficiency projects. Commission-authorized programs in this category include the SOMAH program, the Disadvantaged Communities Single Family Solar Homes (DAC-SASH) program, the Disadvantaged Communities Green Tariff (DAC-GT) program, and the Community Solar Green Tariff (CSGT) program. SDG&E's November Update reflects that $17.774 million is forecast to be available for those projects in 2021.[60]

[60] *Id.* at 9; November Update to Application Template D-1.

5.8.2.1 SOMAH Program

D.17-12-022 requires IOUs to reserve 10 percent of the proceeds from the sale of GHG allowances for use in the SOMAH program.[61] D.20-04-012 continues the authorization of funds to the SOMAH program through June 30, 2026 and requires IOUs to provide July 1 through December 31, 2020 SOMAH funding as a true-up value in the applicable ERRA forecast proceeding. As reflected in the November Update, SDG&E proposes a 2021 total forecast SOMAH funding set-aside of $16.744 million, comprised of a 2021 forecast of $11.584 million, a prior year true-up for October through December 2019 of $0.100 million, a January through June 2020 true-up of (0.761 million), and a July through December 2020 true-up as required by D.20-04-012 of $5.820 million.[62]

In its Opening Brief, Sunrun supports the SOMAH funding set-aside proposed by SDG&E in its August 14, 2020 supplemental testimony. In addition, Sunrun requests that the Commission order SDG&E to release SOMAH funding on a quarterly basis to the program administrator as needed to prevent waitlists and to ensure that transfers are carried out properly and timely. Sunrun also proposes that the Commission order SDG&E to provide quarterly reports showing GHG auction proceeds received, set-asides for the SOMAH program, transfers of funds to the program administrator, and details of administrative costs.[63]

In its Reply Brief, SDG&E notes that it provides SOMAH funds to SCE, not the program administrator, and that SDG&E funds its SOMAH balancing account at the beginning of each year and therefore a Commission order

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[61] D.17-12-022 OP 4.

[62] Exhibits SDGE-17 at 10-11 and SDGE-18 at 7-8; November Update to Application Template D-1.

[63] Sunrun Opening Brief at 3-4.

regarding the transfer of SOMAH funds is unnecessary. SDG&E also notes that Sunrun has not issued any data requests in this proceeding and disputes whether SDG&E has stymied any efforts by Sunrun to obtain SOMAH-related information. SDG&E also argues that the program-wide SOMAH issues raised by Sunrun are more appropriately addressed in the Net Energy Metering Rulemaking proceeding R.20-08-020. We decline Sunrun's request to address the issues described above in this decision because we agree with SDG&E that those issues are more appropriately addressed in the Net Energy Metering proceeding R.20-08-020.

SDG&E's proposed 2021 SOMAH program funding set-aside of $16.744 million is reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

5.8.2.2 DAC-SASH, DAC-GT, and CSGT Programs

D.18-06-027 adopted the DAC-SASH, DAC-GT, and CSGT programs to promote the installation of renewable generation among residential customers in disadvantaged communities. SDG&E funds these programs first through available GHG allowance revenues proceeds and, if such funds are exhausted, through PPP funds. As reflected in the November Update, SDG&E proposes a 2021 forecast DAC-SASH program funding set-aside of $1.030 million. SDG&E states that the previously requested and available funding for the DAC-GT and CSGT programs is expected to cover all 2021 expenses, and therefore SDG&E does not request additional funding set-asides for those two programs.[64]

SDG&E's proposed 2021 DAC-SASH funding set-aside of $1.030 million is reasonable, based upon appropriate methodologies and calculations, compliant

[64] Exhibits SDGE-15 at 28-29 and SDGE-18 at 7-8.

with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

5.8.3. Small Business and EITE Retail Customers

Pub. Util. Code Section 748.5(a) requires electric utilities to credit GHG allowance revenues to small business and EITE retail customers. In the November Update, SDG&E proposes a 2021 forecast small business volumetric return of $(1.657) million and an EITE customer return of $(0.839) million.[65] No Intervenor offered any evidence or presented any argument to dispute whether the Commission should approve the forecast returns to small business and EITE retail customers as reflected in the November Update. SDG&E's 2021 forecast returns to small business of $(1.657) million and to EITE retail customers of $(0.839) million are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

5.8.4. GHG Administration, Customer Education and Outreach Plan Costs

In the November Update, SDG&E forecasts $45,133 in administrative costs for education and outreach related to communications with customers regarding the California Climate Credit distribution described in Section 5.8.5 below.[66] No Intervenor offered any evidence or presented any argument to dispute those costs. SDG&E's 2021 forecast GHG administration, customer education and outreach plan costs of $45,133 are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

[65] Exhibit SDGE-18 at 10-12; November Update to Application Template D-1.

[66] Exhibit SDGE-13 at 3-4; November Update to Application Template D-3.

5.8.5. California Climate Credit

Pursuant to Pub. Util. Code Section 748.5(a) and D.13-12-003, all residential households receive a California Climate Credit distributed as a separate on-bill line item credit twice a year. To calculate the amount of each Climate Credit payment, SDG&E divides the total remaining GHG allowance revenues among all eligible residential households based on service accounts, including master meter subaccounts. As a result, direct access and CCA customers receive their fair portion of GHG allowance revenues as mandated by D.13-12-003.

In the November Update, SDG&E proposes a 2021 forecast GHG allowance revenue return to residential customers via the California Climate Credit of $(93.536) million and a semi-annual credit of $34.60 per household.[67] No Intervenor offered any evidence or presented any argument to dispute whether the Commission should approve SDG&E's requested 2021 forecast California Climate Credit. SDG&E's 2021 forecast revenue return to residential customers via the California Climate Credit of $(93.536) million and a semi-annual California Climate Credit of $34.60 per household are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

5.9. PCIA

The Commission shall ensure that bundled retail customers of an electrical corporation do not experience any cost increases as a result of retail customers electing to receive service from other providers. The Commission shall also

[67] Exhibit SDGE-18 at 12; November Update to Application Template D-1.

ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.[68]

Departing load customers are responsible for their share of above-market costs incurred by the utility on their behalf when electric generation costs exceed the current market price. To maintain bundled customer indifference to the departure of SDG&E customers, SDG&E determines the cost responsibility of the departing load customers by calculating an indifference amount using the formula:

Indifference Amount = CTC + PCIA

The above-market costs for both the CTC and PCIA are determined using a MPB, a calculated proxy for the market value of electricity.[69] Customer cost responsibility for the indifference amount is differentiated by their departure date, known as "vintage."[70]

SDG&E proposes to update the currently effective vintage PCIA rates and to include new vintage 2021 PCIA rates to account for customers' departing load in the second half of 2021. SDG&E's portfolio of resources that are used to calculate the vintage 2021 indifference amounts and the resulting 2021 PCIA rates include applicable costs from SDG&E's (1) forecast 2021 PABA and CTC revenue requirements, (2) 2020 PABA year-end balance, and (3) authorized 2021 Non-Fuel Generation Balancing Account revenue requirement.[71]

In D.18-10-009, the Commission adopted a cap that limits the year-over-year change in PCIA rates. Beginning in forecast year 2020, "the cap

[68] Pub. Util. Code Section 365.2.

[69] Exhibit SDGE-18 at 15-16.

[70] D.08-09-012 OP 10.

[71] Exhibit SDGE-18 at 16.

level of the PCIA rate is set at 0.5 cents/kWh more than the prior year's PCIA, differentiated by vintage."[72] As a result, if the system average PCIA rate by customer vintage is forecast to increase by more than 0.5 cents/kWh, then all PCIA rates for that customer vintage would be capped.

In their Opening Brief, SDCP and CEA contend that SDG&E proposes a method for capping vintage PCIA rates that would result in increases greater than the year-over-year limit of 0.5 cents/kWh established in D.18-10-019. SDCP and CEA note that SDG&E has filed an expedited trigger application in A.20-07-009 because the balance in CAPBA, the balancing account that tracks the accrued obligations of departing load customers, has reached seven percent and is forecast to reach 10 percent. SDCP and CEA argue that SDG&E seeks to adjust its PCIA rates to recover the full CAPBA balance rather than an amount that would lower the balance below seven percent and that the 0.5 cents/kWh year-over-year cap would apply to the rates to be ordered in A.20-07-009 rather than the PCIA rates approved in D.20-01-005 as part of A.19-04-010, the 2020 ERRA forecast proceeding. SDCP and CEA argue that SDG&E's proposed cap calculation would undercut the Commission's policy preference for price stability and the avoidance of rate shock for unbundled customers and could result in capped rates that would be three times what they otherwise would be.[73]

In its Reply Brief, SDG&E asserts that the PCIA rates set in A.20-07-009 would be the rates to which the cap applies if a decision in that proceeding was implemented in 2020 but that the PCIA rates set in the 2020 ERRA proceeding would otherwise be the rates to which the cap applies. SDG&E also claims that the concern of SDCP and CEA is premature because the Commission is not

[72] D.18-10-019 OP 9a.

[73] SDCP and CEA Opening Brief at 12-15.

expected to approve new PCIA rates until the end of 2020 and SDG&E could not implement new rates until 2021.[74]

January 1, 2021 is the effective date of the PCIA rate adjustments in the decision in the PCIA trigger proceeding, A.20-07-009, considered by the Commission on the same date as this decision, and therefore the PCIA rate adjustments implemented in that proceeding are not the "prior year's PCIA" referenced in D.18-10-019 to which the cap applies. Given that the effective date of the rate adjustments in the decision in A.20-07-009 will not be in 2020, SDG&E, SDCP, and CEA agree that the 0.5 cents/kWh cap applies to the prior year's PCIA rates set in D.20-01-005, the 2020 ERRA forecast proceeding decision. We concur. As a result, we approve a cap of the 2021 PCIA rates set at 0.5 cents/kWh more than the PCIA rates established in D.20-01-005.

The November Update contains SDG&E's proposed 2021 PCIA rates reflecting a cap of 0.5 cents/kWh above the 2020 PCIA rates approved in D.20-01-005.[75] SDG&E's proposed 2021 PCIA rates are attached to this decision as Appendix C. SDG&E's PCIA rate cap analysis reflects that multiple PCIA customer vintages have increases that exceed the 0.5 cents/kWh cap. SDG&E estimates that (1) the revenue shortfall resulting from the rate caps and tracked within CAPBA will be $9.373 million in 2021, (2) the forecast portion of PABA revenues that departing load customers will be responsible for in 2021 is $134.305 million, (3) the 2021 CAPBA seven percent trigger point is $9.401 million, and (4) the 2021 CAPBA 10 percent trigger threshold is $13.430 million.[76]

[74] SDG&E Reply Brief at 15-16.

[75] Exhibit SDGE-18 Attachment A.

[76] *Id.* at 18-19.

SDG&E's proposed 2021 PCIA rates reflected in Appendix C to this decision are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved. The PCIA rates approved by this decision are subject to adjustment pursuant to the decision in the PCIA trigger proceeding A.20-07-009 considered by the Commission on the same date as this decision.

The CCA November Commenters request that the Commission not apply the CAPBA adder to be adopted in A.20-07-009 to 2020 vintage customers and equitably apportion the adder among the 2009 through 2019 vintages because the 2020 vintage customers did not cause the under-collection and would otherwise be unfairly charged the CAPBA rate adder.[77] However, the resolution of that issue is more appropriately addressed in the decision in the PCIA trigger proceeding A.20-07-009, and therefore we decline to address it in this decision.

The CCA November Commenters also request that the Commission adopt SDG&E's proposal for a one-time transfer of the CAPBA over-collection due to bundled customers into PABA.[78] However, we determine that the resolution of that issue is more appropriately addressed in the PCIA rulemaking proceeding R.17-06-026, and therefore we decline to address it in this decision.

5.10. Rate Components for Green Tariff Shared Renewables Program

The Green Tariff Shared Renewables (GTSR) program seeks to expand access to all eligible renewable energy resources to all bundled ratepayers who are currently unable to access the benefits of onsite generation. The program creates a mechanism for institutional and commercial customers and groups of individuals to meet their energy needs with electrical generation from eligible

[77] CCA November Comments at 15-17.

[78] *Id.* at 17-18.

renewable energy resources. The GTSR program is intended to facilitate a large, sustainable market for offsite electrical generation from eligible renewable energy resource facilities while fairly compensating utilities for the services they provide without affecting nonparticipating ratepayers.[79]

The GTSR program allows bundled customers to opt for a Green Tariff (GT) rate or an Enhanced Community Renewables (ECR) rate. Under the GT option, a bundled customer can purchase energy with a higher percentage of renewable power than offered under other scheduled service. Under the ECR option, a bundled customer can purchase energy from community-based projects directly from the project developers.[80]

Pursuant to D.15-01-051, the components of GTSR rates should be updated annually.[81]

SDG&E's November Update sets forth the proposed 2021 rate components for the GTSR program's GT and ECR options.[82] SDG&E's proposed 2021 rate components for the GTSR program are set forth in Appendix D to this decision.

SDCP and CEA allege in their Opening Brief that SDG&E provided incomplete data responses regarding the commodity rate component known as the Renewable Power Rate for the GT portion of the GTSR Program and that there was a lack of clarity regarding how the 2021 forecast GT customer usage was determined.[83] In its Reply Brief, SDG&E claimed that it had provided copies of all power purchase agreements whose resources will be used to supply power to SDG&E's GTSR customers in 2021. SDG&E also asserts that it has provided

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[79] Pub. Util. Code Section 2831(b), (f), and (g).

[80] Exhibit SDGE-18 at 20.

[81] D.15-01-051 COL 53.

[82] Exhibit SDGE-18 at 20-26 and Attachments B and C.

[83] SDCP and CEA Opening Brief at 17-18.

requested workpapers to allow SDCP and CEA to confirm whether the proposed Renewable Power Rate was calculated in accordance with the Commission's requirements and will provide the workpaper showing forecast GTSR usage after the November Update. SDG&E also agreed to update its weighted average cost of its GTSR interim pool and will include a reduction in power purchase expenses in PABA as a result of forecast GTSR interim pool usage to be transferred to the GTSR balancing account in the November Update.[84] In their Reply Brief, SDCP and CEA acknowledge that SDG&E has agreed to update the GT interim pool price in the November update to reflect the power purchase agreement cost escalators.[85] SDG&E has provided the information it agreed to provide in its Reply Brief, and that information has allowed the parties to properly evaluate SDG&E's rate components for the GTSR program.

In the Application, SDG&E sought recovery of the under-collected 2018 ending balance of $0.125 million in the GTSR Balancing Account. However, SDG&E stated in the November Update that it would seek recovery of that amount in its 2022 ERRA forecast application and not in this proceeding because there has not been a final decision in the 2018 ERRA compliance proceeding A.19-05-007.[86]

SDG&E's proposed 2021 GTSR rate components reflected in Appendix D to this decision and its request not to seek the recovery of the under-collected 2018 ending balance of $0.125 million in the GTSR Balancing Account in this proceeding and to seek the recovery of that balance in its 2022 ERRA forecast application are reasonable, based upon appropriate methodologies and

[84] SDG&E Reply Brief at 17-19.

[85] SDCP and CEA Reply Brief at 8-9.

[86] Exhibit SDGE-18 at fn. 74.

calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

5.11. Return of Over-Collected 2018 Local Generation Balancing Account

In the November Update, SDG&E states that it is removing its request to return the over-collected 2018 Local Generation Balancing Account recorded activity of $(91.084) million as part of this proceeding because the over-collection is subject to approval in the 2018 ERRA Compliance proceeding A.19-05-007 for which a decision has not yet been issued, and SDG&E will seek the return of the over-collection in its 2022 ERRA forecast application.[87] SDG&E's request not to return the over-collected 2018 Local Generation Balancing Account recorded activity of $(91.084) million as part of this proceeding and its request to return those funds as part of its 2022 ERRA forecast application are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

5.12. Billing Determinants in Setting Rates

The CCA November Commenters request that SDG&E revise its 2021 commodity rate forecast to reflect the same billing determinants (sales) used to derive SDG&E's 2021 ERRA forecast revenue requirement in this proceeding, arguing that SDG&E's 2021 commodity rate forecast that is a component in setting rates is based upon an outdated 2019 forecast of 2021 bundled sales rather than SDG&E's 2021 bundled energy requirements forecast that SDG&E used to derive the ERRA revenue requirement in this proceeding.[88] In the SDG&E November Reply, SDG&E agrees that the 2021 sales forecast submitted in 2019

[87] *Id.* at fn. 9.

[88] CCA November Comments at 2-11.

does not reflect the anticipated load departure to CCAs in 2021. However, SDG&E contends that the Commission's decision D.18-11-035 directing SDG&E to seek approval of future sales forecasts in its next GRC Phase 2 proceeding did not authorize SDG&E to update its 2021 sales forecast outside of a GRC proceeding.[89] SDG&E's argument is not persuasive. D.18-11-035 did not purport to prohibit or limit the use of updated sales forecasts outside of GRC proceedings, and SDG&E fails to cite any Commission decision that would prevent use of an updated and more accurate sales forecast in an ERRA forecast proceeding. We reject SDG&E's view that an outdated sales forecast from another proceeding must be blindly followed, particularly given the existence of SDG&E's own updated forecast that properly takes account of anticipated load departures that were not known at the time the outdated sales forecast was created.

Without citation to supporting evidence, SDG&E claims that several components of the updated energy requirements forecast would need to be transformed to derive the proper bundled rate billing determinants by a process that could take four months.[90] We disagree. The CCA November Commenters set forth a straightforward method for calculating a corrected system average commodity rate,[91] a method that SDG&E failed to refute in the SDG&E November Reply. In addition, the evidentiary record is sufficient for the Commission to conclude that SDG&E's implementation of this decision with the updated billing determinants referenced in this section will decrease the current system average bundled rate by 2.06 percent rather than 12.35 percent as

[89] SDG&E November Reply at 7-8; Exhibits SDCP-50 and SDCP-51.

[90] SDG&E November Reply at 10.

[91] CCA November Comments at 3-4.

projected by SDG&E in the November Update to Application and that there would be corresponding adjustments to SDG&E's other projected rate changes. As a result, we conclude that SDG&E can timely implement its own completed energy requirements forecast to calculate commodity rates in this proceeding.

We agree with the CCA November Commenters that the rates to be set pursuant to this decision should reflect the most accurate bundled energy requirements forecast. We also agree with the CCA November Commenters that no statute, Commission decision, or other legal authority requires the use of outdated billing determinants in setting rates. The evidence reflects that the most accurate forecast is SDG&E's 2021 bundled energy requirements forecast used to derive the ERRA revenue requirement adopted in this proceeding.[92] As a result, we direct SDG&E to use the same billing determinants used to derive the 2021 ERRA forecast revenue requirement to set the applicable rates to be implemented pursuant to this decision.

5.13. Safety Considerations

The health and safety impacts of GHGs are among the many reasons that the Legislature enacted AB 32. Specifically, the Legislature found and declared that global warming caused by GHG "poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems

[92] Exhibits SDCP-47, SDCP-48, and SDCP-49.

and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems."[93]

By implementing a key part of the GHG reduction program envisioned by AB 32 and Public Utilities Code Section 748.5, this decision facilitates the reduction of GHGs and will improve the health and safety of California residents.

6. Change in Determination of Need for Hearings

By Resolution ALJ 176-3460 adopted on May 7, 2020, the Commission preliminarily determined that hearings were necessary, and the Scoping Memo affirmed the necessity for hearings. However, the parties in this proceeding submitted reports and confirmed at the September 4, 2020 status conference that evidentiary hearings were not needed, and therefore evidentiary hearings were not held. As a result, we change our preliminary and Scoping Memo determination and determine that no hearings are necessary.

7. Implementation of Rate Changes

Within 30 days of the effective date of this decision, SDG&E shall submit the necessary ALs with the Energy Division under Tier 1 to implement the rate changes authorized by this decision.

8. Comments on Proposed Decision

The proposed decision was issued on December 2, 2020. Pursuant to Rule 14.6(b), all parties agreed to reduce the 30-day public review and comment period required by Pub. Util. Code Section 311. The parties filed opening comments on _____and reply comments on_____.

[93] AB 32 Section 38501(a).

9. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Peter Wercinski is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. SDG&E's total 2021 forecast revenue requirement (excluding the TMNBC revenue requirement) is $1,161.437 million.

2. SDG&E's 2021 forecast ERRA revenue requirement is $663.435 million.

3. SDG&E's 2021 forecast PABA revenue requirement is $332.469 million and the 2020 PABA under-collected balance is $123.812 million.

4. SDG&E's 2021 forecast CTC revenue requirement is $11.401 million.

5. SDG&E's 2021 forecast Local Generation revenue requirement (excluding the 2018 Local Generation Balancing Account over-collection of $(91.084) million) is $124.439 million.

6. SDG&E's 2021 forecast SONGS Unit 1 Offsite Spent Fuel Storage Cost revenue requirement is $1.073 million.

7. SDG&E's 2021 forecast TMNBC revenue requirement is identified in Exhibit SDGE-17C.

8. SDG&E's 2021 forecast TMNBC revenue requirement constitutes material, market-sensitive, electric procurement-related information.

9. SDG&E's 2021 forecast GHG allowance revenues are $115.836 million and its adjusted 2021 forecast GHG allowance revenues eligible to return to customers are $96.031 million.

10. SDG&E's 2021 forecast GHG clean energy/energy efficiency program set-asides are $17.774 million, including $16.744 million for the SOMAH program and $1.030 million for the DAC-SASH program.

11. SDG&E's 2021 forecast GHG revenue returns are $(1.657) million to small business and $(0.839) million to EITE retail customers.

12. SDG&E's 2021 forecast GHG administration, customer education, and outreach plan costs are $45,133.

13. SDG&E's 2021 forecast revenue returns to residential customers via the California Climate Credit are $(93.536) million, and the associated semi-annual California Climate Credit is $34.60 per household.

14. SDG&E's 2021 proposed PCIA rates are set forth in Appendix C to this decision.

15. The decision in A.20-07-009 considered by the Commission on December 17, 2020 will, if approved by the Commission, adjust SDG&E's PCIA rates effective January 1, 2021.

16. SDG&E's 2021 proposed rate components for the GTSR program are set forth in Appendix D to this decision.

17. Certain market participants, including CCAs, require timely access to SDG&E's ERRA/PABA/CAPBA reporting as well as precise volumes of Resource Adequacy, RPS and other metrics in order to adequately address the issues raised in the ERRA forecast proceeding.

18. SDG&E already provides certain data regarding its ERRA/ PABA/CAPBA balances and other metrics associated with its ERRA forecast to the Commission on a monthly basis.

19. Delaying access to the ERRA/PABA/CAPBA and other reports concerning the validity of SDG&E's ERRA forecast application until the November Update, and requiring extensive discovery requests to obtain this information, create additional administrative burdens for the parties as well as Commission staff.

20. The Commission has not issued a final decision in the 2018 ERRA compliance proceeding A.19-05-007.

21. The most accurate forecast of SDG&E's 2021 bundled billing determinants is SDG&E's 2021 bundled energy requirements forecast used to derive the ERRA revenue requirement adopted in this proceeding.

22. SDG&E can timely set the applicable rates to be implemented pursuant to this decision through the use of its 2021 bundled energy requirements forecast used to derive the ERRA revenue requirement adopted in this proceeding.

23. This decision facilitates the reduction of GHGs and will improve the health and safety of California residents.

Conclusions of Law

1. SDG&E's total 2021 forecast revenue requirement (excluding the TMNBC revenue requirement) of $l,161.437 million is reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be adopted in 2021 rates.

2. SDG&E's 2021 forecast ERRA revenue requirement of $663.435 million is reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be adopted in 2021 rates.

3. SDG&E's 2021 forecast PABA revenue requirement of $332.469 million and the 2020 PABA under-collected balance of $123.812 million are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be adopted in 2021 rates.

4. SDG&E's 2021 forecast CTC revenue requirement of $11.401 million is reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be adopted in 2021 rates.

5. SDG&E's 2021 forecast Local Generation revenue requirement (excluding the 2018 Local Generation Balancing Account overcollection of $(91.084) million) of $l37.895 million is reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be adopted in 2021 rates.

6. SDG&E's 2021 forecast SONGS Unit 1 Offsite Spent Fuel Storage Cost revenue requirement of $l.073 million is reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be adopted in 2021 rates.

7. SDG&E's 2021 forecast TMNBC revenue requirement is reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be adopted in 2021 rates.

8. The Commission should afford confidential treatment to SDG&E's 2021 forecast TMNBC revenue requirement in accordance with the IOU Matrix in D.14-10-033.

9. SDG&E's 2021 forecast GHG allowance revenues of $l15.836 million and its adjusted 2021 forecast GHG allowance revenues eligible to return to customers of $96.031 million are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

10. SDG&E's 2021 GHG forecast clean energy/energy efficiency program set-asides of $17.774 million, including $16.744 million for the SOMAH program and $1.030 million for the DAC-SASH program, are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

11. SDG&E's 2021 forecast GHG revenue returns of $(1.657) million to small business and $(0.839) million to EITE retail customers are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

12. SDG&E's 2021 forecast GHG administration, customer education, and outreach plan costs of $45,133 are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

13. SDG&E's 2021 forecast GHG revenue returns to residential customers via the California Climate Credit of $(93.536) million and a semi-annual California Climate Credit of $34.60 per household are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

14. SDG&E's proposed 2021 PCIA rates set forth in Appendix C to this decision are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

15. SDG&E's 2021 PCIA rates approved by this decision will be adjusted effective January 1, 2021 pursuant to the decision considered by the Commission in A.20-07-009.

16. SDG&E's proposed 2021 rate components for the GTSR program set forth in Appendix D to this decision are reasonable, based upon appropriate methodologies and calculations, compliant with all applicable laws, regulations, rules, orders and Commission decisions, and should be approved.

17. The Commission should approve SDG&E's request not to seek the recovery of the under-collected 2018 ending balance of $0.125 million in the

GTSR Balancing Account in this proceeding and to seek the recovery of that balance as part of its 2022 ERRA forecast application.

18. The Commission should approve SDG&E's request not to seek the return of the over-collected 2018 Local Generation Balancing Account recorded activity of $(91.084) million in this proceeding and to seek the return of those funds as part of its 2022 ERRA forecast application.

19. Granting independent consultants access to confidential, market-sensitive information under an appropriate non-disclosure agreement is a reasonable means of allowing market participants to review confidential versions of ERRA/PABA/CAPBA reports.

20. The Commission should order SDG&E to use its 2021 bundled energy requirements forecast used to derive the ERRA revenue requirement adopted in this proceeding to set the applicable rates to be implemented pursuant to this decision.

21. ALs to implement changed tariff sheets in accordance with this decision should be filed as Tier 1 ALs.

22. The Commission should change its preliminary and Scoping Memo determination to determine that no hearings are necessary.

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company's 2021 forecast (a) total revenue requirement (excluding the Tree Mortality Non-Bypassable Charge revenue requirement) of $1,161.437 million, (b) Energy Resource Recovery Account revenue requirement of $663.435 million, (c) Portfolio Allocation Balancing Account revenue requirement of $332.469 million, (d) Competition Transition Charge revenue requirement of $11.401 million, (e) Local Generation revenue requirement (excluding the 2018 Local Generation Balancing Account

overcollection of $(91.084) million) of $124.439 million, (f) San Onofre Nuclear Generating Station Unit 1 Offsite Spent Fuel Storage Cost revenue requirement of $1.073 million, and (g) Tree Mortality Non-Bypassable Charge revenue requirement identified in Exhibit SDGE-17C, are adopted.

2. San Diego Gas & Electric Company's 2021 (a) forecast greenhouse gas (GHG) allowance revenues of $115.836 million and its adjusted forecast GHG allowance revenues eligible to return to customers of $96.031 million, (b) forecast GHG clean energy/energy efficiency program set-asides of $17.774 million, including $16.744 million for the Solar on Multifamily Affordable Housing program and $1.030 million for the Disadvantaged Communities Single Family Solar Homes program, (c) forecast GHG revenue returns of $(1.657) million to small business and $(0.839) million to emissions-intensive trade-exposed retail customers, (d) forecast GHG administration, customer education, and outreach plan costs of $45,133, (e) forecast revenue returns to residential customers via the California Climate Credit of $(93.536) million and the associated semi-annual California Climate Credit of $34.60 per household, (f) proposed Power Charge Indifference Adjustment rates set forth in Appendix C to this decision, and (g) proposed rate components for the Green Tariff Shared Renewables program set forth in Appendix D to this decision, are approved.

3. San Diego Gas & Electric Company's 2021 forecast Tree Mortality Non-Bypassable Charge revenue requirement shall be confidential and afforded confidential treatment in accordance with the Investor Owned Utility Matrix in D.14-10-033.

4. San Diego Gas & Electric Company's request not to seek the recovery of the under-collected 2018 ending balance of $0.125 million in the Green Tariff Shared Renewables Balancing Account in this proceeding and to seek the

recovery of that balance as part of its 2022 Energy Resource Recovery Account forecast application is approved.

5. San Diego Gas & Electric Company's request not to seek the return of the over-collected 2018 Local Generation Balancing Account recorded activity of $(91.084) million in this proceeding and to seek the return of those funds as part of its 2022 Energy Resource Recovery Account forecast application is approved.

6. San Diego Gas & Electric Company must provide in confidential workpapers for future Energy Resource Recovery Account (ERRA) forecast proceedings and in monthly ERRA compliance reports, beginning with the filing of the ERRA forecast application and continuing each month through the submission of the November Update:

- Volume of Renewables Portfolio Standard (RPS) generation, sold RPS and retained RPS used to calculate the retained RPS value;
- Volume of non-RPS Generation for both Utility Owned Generation (UOG) and non-UOG resources, segregated by technology;
- Total Resource Adequacy capacity, segregated by sold, unsold and retained used to calculate the retained Resource Adequacy value; and
- Billed retail sales volume used to calculate the Power Charge Indifference Adjustment revenue, distinguished by bundled, Direct Access, and Community Choice Aggregator customer groups.

7. San Diego Gas & Electric Company must provide the following information in all future Energy Resource Recovery Account forecast proceedings in both its initial testimony and its November Update testimony:

- Forecast class average rates and average generation rates;
- Forecast rate changes by customer group relative to current rates in both absolute dollars and percentage; and
- Forecast bill impact changes by customer group relative to current bills in both absolute dollars and percentage.

8. San Diego Gas & Electric Company shall use its 2021 bundled energy requirements forecast used to derive the Energy Resource Recovery Account revenue requirement adopted in this proceeding to set the applicable rates to be implemented pursuant to this decision.

9. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company shall submit the necessary Advice Letters (ALs) with the Energy Division under Tier 1 to implement the authority and rate changes authorized by this decision. The ALs shall include changed tariff sheets and all appropriate supporting documentation for the amounts adopted and approved in Ordering Paragraphs 1 and 2.

10. The determination made in the Scoping Memo and Ruling of Assigned Commissioner dated July 6, 2020 that hearings were necessary is changed to no hearings necessary.

11. This decision is effective immediately.

12. Application 19-04-014 is closed.

This order is effective today.

Dated _____at San Francisco, California.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of SAN DIEGO GAS & ELECTRIC COMPANY (U902E) for Approval of its 2021 Electric Procurement Revenue Requirement Forecasts and GHG Related Forecasts	Application 20-04-014 (Filed April 15, 2020)

SAN DIEGO COMMUNITY POWER, CLEAN ENERGY ALLIANCE AND CALIFORNIA COMMUNITY CHOICE ASSOCIATION OPENING COMMENTS ON PROPOSED DECISION

[PUBLIC VERSION]

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December 8, 2020

Counsel to San Diego Community Power and Clean Energy Alliance

SUBJECT MATTER INDEX

TABLE OF AUTHORITIES

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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SAN DIEGO COMMUNITY POWER AND CLEAN ENERGY ALLIANCE AND CALIFORNIA COMMUNITY CHOICE ASSOCIATION OPENING COMMENTS ON PROPOSED DECISION

Pursuant to California Public Utilities Commission ("Commission") Rules of Practice and Procedure Rule 14.6(b), San Diego Community Power ("SDCP") and the Clean Energy Alliance ("CEA"), together with the California Community Choice Association ("CalCCA") (collectively, the "CCA Parties"),[1] submit these comments on the Proposed Decision of Administrative Law Judge Wercinski, issued on December 2, 2020, Adopting San Diego Gas & Electric Company's ("SDG&E") 2021 Electric Procurement Revenue Requirement Forecasts and GHG Related Forecasts (the "Proposed Decision").

Overall, the CCA Parties strongly support the Proposed Decision and the Commission's commitment to implementing rates that accurately reflect SDG&E's 2021 load forecast and that will allow customers to make generation service decisions in 2021 based upon accurate price signals. CCA Parties additionally appreciate the Commission's commitment to improving transparency and efficiencies by requiring SDG&E to routinely provide more detailed information, including volumetric data and monthly Energy Resource Recovery Account ("ERRA") / Portfolio Allocation Balancing Account ("PABA") / Power Charge Indifference Adjustment ("PCIA")

[1] Pursuant to Rule 1.8(d) of the Commission's Rules of Practice and Procedure, the California Community Choice Association has authorized counsel to SDCP and CEA to file these Opening Comments CalCCA's behalf.

Under-collection Balancing Account ("CAPBA") reports.[2] This requirement is also consistent with recent Proposed Decisions applicable to the other major investor-owned utilities ("IOUs").[3] These data-sharing requirements across all IOU ERRA Forecast proceedings create the foundation for timely and consistent access to such data in all future ERRA Forecast proceedings, thereby streamlining the resolution of those proceedings and reducing controversy surrounding the November Update.

However, the Commission should modify the Proposed Decision to address two issues relating to SDG&E's implementation of the CAPBA as it relates to customers in the 2020 vintage. Customers that will make up the 2020 vintage have been bundled customers during 2020 and will depart from SDG&E's service by June 30, 2021. As such, the Commission should ensure that their rates reflect the timing of their departure. First, because these customers funded unbundled customers' share of the CAPBA during 2020 (when they were bundled) they are owed a refund for doing so, just as other bundled customers that do not depart. Second, since they were bundled customers in 2020, these customers did not cause the CAPBA balance to accrue and, therefore, should not pay a PCIA rate adder to collect that balance. If neither of these issues is addressed by the Commission now, customers in the 2020 vintage will not be paid back what they are owed and, worse, will overpay their PCIA obligations *twice* (once as bundled customers via their ERRA rates in 2020, and again as unbundled customers via the CAPBA surcharge in 2021).

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[2] A.20-04-014, *[Proposed] Decision Adopting Electric Procurement Revenue Requirement Forecasts and Greenhouse Gas-Related Forecasts for San Diego Gas & Electric Company*, pp. 23-25 (December 2, 2020) ("Proposed Decision").

[3] *See* A.20-07-002/A.20-09-014, *Administrative Law Judge Stephanie Wang's Proposed Decision Re: PGE ERRA Forecast / PCIA Trigger*, Conclusions of Law 11-14 and Ordering Paragraph 4, (December 4, 2020) and A.20-04-004, *Administrative Law Judge Zita Kline's Proposed Decision Re: Approving 2021 SCE ERRA Forecast and PCIA Trigger*, pp. 56-57 and Conclusion of Law 4 (November 30, 2020).

Both of these issues must be resolved in either this proceeding or in Application ("A.") 20-07-009, SDG&E's Expedited Application Under the Power Charge Indifference Adjustment Account Trigger Mechanism ("Trigger Application"). However, neither proposed decision addresses these critical issues, with both proposed decisions either pointing at the other proceeding, or the PCIA rulemaking, as the correct venue for resolution. But these issues must be resolved prior to the implementation of 2021 rates in order to prevent substantial injustice to customers in the 2020 vintage. Either the Proposed Decision in this docket or the proposed decision in the Trigger Application must be modified.

I. THE PROPOSED DECISION SHOULD BE REVISED TO RESOLVE HOW SDG&E WILL RECOVER ITS 2020 CAPBA BALANCE.

The Proposed Decision states that the issue of how SDG&E should recover its 2020 CAPBA balance, including whether the Commission should adopt SDG&E's alternative proposal "for a one-time transfer of the CAPBA over-collection due to bundled customers into [the 2020 vintage of] PABA," is an issue "more appropriately addressed in the PCIA rulemaking proceeding R.17-06-026."[4] The CCA Parties disagree and respectfully urge the Commission to modify the Proposed Decision to require SDG&E to adjust forecasted 2021 PCIA rates to reflect the proposed transfer of the CAPBA refund to the 2020/2021 vintage of PABA. Doing so will ensure that customers in the 2020 vintage will be paid back what they are owed from the CAPBA balance.

SDG&E's proposal to include the CAPBA refund as a "rate adder" (functionally, a rate reduction) for bundled customers that fall into the 2020 and/or 2021 PCIA vintage is a simple, transparent, and timely solution that can be readily implemented through this Application.[5] If

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[4] Proposed Decision, p. 38.

[5] A.20-07-009, *Reply Brief of San Diego Gas and Electric Company in Support of its Application Under the Power Charge Indifference Adjustment Account Trigger Mechanism*, p. 21 (October 30, 2020) ("SDG&E Reply Brief").

resolution of this issue were pushed into the PCIA rulemaking proceeding R.17-06-026, as recommended in the Proposed Decision, then it is highly unlikely that the issue will be resolved in 2021, when the refund is owed.[6] Likewise, SDG&E's suggestion that the issue may be resolved in some "subsequent ERRA forecast proceeding" is vague and would unnecessarily delay resolution of the issue, and, more importantly, application of the refund for the customers to which it is owed.[7]

Moreover, as SDG&E noted, "the inclusion of the bundled overcollection in the 2021 vintage *is dependent on SDG&E's 2021 ERRA Application*, and the establishment of the 2021 vintage, being implemented prior to or simultaneous to this CAPBA Trigger implementation."[8] Given this interdependence on the subject Application, it makes far more sense to resolve this issue here in SDG&E's 2021 ERRA Forecast proceeding so that the refund may be timely implemented for customers next year. Alternatively, the Commission could address the issue in the Trigger Application, but it must be addressed prior to the implementation of 2021 rates, which will not occur if put off for the PCIA rulemaking.

Accordingly, CCA Parties respectfully urge the Commission to revise the Proposed Decision to include a direction for SDG&E to apply the CAPBA refund as a credit to vintage 2020 of the PABA balancing account, as SDG&E has itself proposed, effectively allowing the credit to flow back to all deserving customers regardless of whether they receive bundled or unbundled service during 2021. This clarification and direction will not delay nor add complexity to resolution of this docket.

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[6] Given the current status of this rulemaking proceeding, which is already in Phase 2, it is not clear how this issue would be incorporated into the ongoing proceeding.

[7] SDG&E Reply Brief, p. 21.

[8] *Id.* (emphasis added).

II. THE PROPOSED DECISION SHOULD BE REVISED TO CONFIRM WHICH VINTAGES WILL BE SUBJECT TO THE CAPBA RATE ADDER IN 2021.

Joint CCA Parties also reiterate their request that the Proposed Decision include direction and clarification regarding which vintages will be responsible for paying the CAPBA rate adder that was approved in a Proposed Decision pending resolution in A.20-07-009. More specifically, CCA Parties request that the Proposed Decision be revised to specify that SDG&E should apply its CAPBA rate adder only to departing load customers in vintages 2019 and prior, and not to vintage 2020 customers, which did not cause the undercollection.[9] If SDG&E were to apply the rate adder to vintage 2020 customers, it would violate the Commission's obligation to ensure that "customers who depart for another provider or due to formation of a CCA do not experience any cost increases due to an allocation of costs that were not incurred on behalf of the departing load."[10] It is necessary to resolve this issue in the current proceeding so that rates can be accurately set in January 2021, when SDG&E will implement the updated PCIA rates and CAPBA adder.

The Proposed Decision's conclusion that this issue is "more appropriately addressed in the PCIA trigger proceeding, A.20-07-009" directly conflicts with the findings already in the proposed decision that issued in that proceeding on November 13, 2020.[11] In A.20-07-009, the proposed decision is limited to whether SDG&E may recover its CAPBA overcollection, whereas here, in the ERRA Forecast, the Commission is considering whether it should "approve SDG&E's proposed *vintage* Power Charge Indifference Adjustment in rates," implicating the issue of how PCIA rates will or will not be impacted by SDG&E's proposed rate adder.[12]

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[9] *See* A.20-07-009*, [Proposed] Decision Regarding Power Charge Indifference Adjustment Trigger Application of San Diego Gas & Electric Company*, Ordering Paragraph 1 (November 13, 2020) ("Trigger PD").

[10] Decision 18-10-019, *Decision Modifying the Power Charge Indifference Adjustment Methodology*, p. 7 (citing Pub. Util. Code § 366.3) (October 19, 2018).

[11] Trigger PD, p. 9.

[12] A.20-04-014, Scoping Ruling, p. 3, issue 9.

The first introduction of vintage 2020 departed load is in this current 2021 ERRA docket. In the 2020 ERRA proceeding (where rates were set that caused the CAPBA undercollection), vintage 2020 reflected the current year and thus bundled sales alone; there were no vintage 2020 departing load sales in the 2020 ERRA proceeding. Given that in this ERRA proceeding SDG&E is setting PCIA rates for vintage 2020 departed load for the first time, it is relevant to address how the adder will be handled for vintage 2020 departed load. In fact, it is necessary to handle the CAPBA vintage 2020 issue in the current proceeding so that rates can be accurately set in January 2021 when SDG&E will implement the updated PCIA rates and CAPBA adder.

Regardless, the issue must be addressed in one of the two proceedings. As explained in the CCA Parties' November 18 comments, if SDG&E were to apply the CAPBA adder to vintage 2020, then SDG&E will *overcollect* in its 2021 rates by [redacted], which is [redacted] times greater than the actual CAPBA balance being recovered.[13] If the Commission allows for this overcollection from vintage 2020, then SDG&E will have to implement a refund for the overcollection, which will be administratively burdensome to implement—certainly more so than simply directing SDG&E in this proceeding to only apply its CAPBA rate adder to vintages 2019 and prior. More importantly, customers in the 2020 vintage will overpay their PCIA obligations *twice* (once as bundled customers paying ERRA rates in 2020 and again as unbundled customers paying the CAPBA surcharge in 2021) in clear violation of the requirement that departing load customers *not* experience any cost increases on account of an allocation of costs that were not incurred on their behalf.[14]

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[13] A.20-04-014, *Joint Comments of California Community Choice Association, San Diego Community Power and Clean Energy Alliance to San Diego Gas & Electric Company's (U 902 E) November Update to Application*, p. 17 (November 18, 2020).

[14] Pub. Util. Code § 366.3 (providing that "The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.")

III. CCA PARTIES WHOLLY SUPPORT THE PROPOSED DECISION'S CONCLUSION THAT SDG&E SHOULD BE DIRECTED TO UPDATE ITS BILLING DETERMINANTS.

CCA Parties appreciate the Proposed Decision's clearly articulated rationale that not only should SDG&E update its bundled billing determinants forecast to ensure that fair and accurate rates are set for 2021, but also that nothing in the Commission's precedent prohibits SDG&E from preparing a more accurate rate forecast, and also that SDG&E can implement this update in a timely manner.[15] As explained in briefing submitted by the CCA Parties, this issue is extremely consequential for CCAs that are launching in SDG&E's service territory next year, which CCAs would otherwise be forced to compete against SDG&E's artificially low proposed commodity rate if SDG&E were permitted to (inconsistently) rely on its outdated sales forecast in setting rates. Moreover, adoption of SDG&E's inaccurate billing determinants would create severe rate volatility and confusion for bundled customers, who would significantly underpay commodity rates in the near term, but would also face significant true-ups. As identified in the Proposed Decision, SDG&E has wholly failed to support its position that it must rely on its outdated, 2019 sales forecast, particularly where it has nonetheless calculated its bundled revenue requirements forecast to accurately reflect anticipated load departure in 2021, thereby creating a mismatched numerator and denominator when calculating its final proposed commodity rates.

The Proposed Decision properly sets aside SDG&E's argument that it cannot utilize an updated sales forecast because doing so would be complicated or cumbersome.[16] SDG&E's proposed reliance on a sales forecast that ignores an anticipated departure of approximately *24%* of SDG&E's bundled sales in 2021 would create an undeniable and significant rate distortion that

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[15] Proposed Decision, p. 43.

[16] Proposed Decision, pp. 42-43; *see* A.20-04-014, *Reply of San Diego Gas & Electric Company (U 902 E) to Comments Regarding November Update Application*, pp. 9-12 (November 25, 2020).

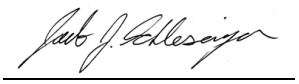
cannot be permitted simply because requiring SDG&E to accurately calculate its 2021 sales forecast might not be a simple process. Moreover, SDG&E could (and should) have begun the processes necessary to update its sales forecast much earlier in the pendency of this proceeding, and should not be permitted, because of its own delay and inaccuracies, to now claim that there is insufficient time for it to calculate and implement a commodity rate that truly reflects anticipated 2021 load. This is especially true where doing so has a significant anti-competitive impact on the launch of new CCA programs.

For these reasons, CCA Parties strongly support the Proposed Decision's conclusions and orders related to SDG&E's billing determinants, and we respectfully urge the Commission to adopt the subject proposal without modification.

IV. CONCLUSION

The CCA Parties reiterate their strong support for the Proposed Decision but respectfully request modifications to address issues concerning SDG&E's CAPBA refund, and its application to particular PCIA vintage rates, which issues are directly relevant to, and readily resolvable in, this proceeding.

Respectfully submitted,



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December 8, 2020

Counsel to San Diego Community Power and Clean Energy Alliance

ATTACHMENT A

Pursuant to Rule 14.3(b) of the Commission's Rules of Practice and Procedure, the CCA Parties offer the following index of recommended changes to the *[PROPOSED] DECISION ADOPTING 2021 ELECTRIC PROCUREMENT REVENUE REQUIREMENT FORECASTS AND GREENHOUSE GAS-RELATED FORECASTS FOR SAN DIEGO GAS & ELECTRIC COMPANY*, including proposed changes to the body of the Proposed Decision, Findings of Fact, Conclusions of Law and Ordering Paragraphs. The CCA Parties proposed revisions appear in underline and strike-through.

Body of the Proposed Decision

Page 38: The CCA November Commenters request that the Commission not apply the CAPBA adder to be adopted in A.20-07-009 to 2020 vintage customers and equitably apportion the adder among the 2009 through 2019 vintages because the 2020 vintage customers did not cause the under-collection and would otherwise be unfairly charged the CAPBA rate adder. ~~However, the resolution of that issue is more appropriately addressed in the decision in the PCIA trigger proceeding A.20-07-009, and therefore we decline to address it in this decision.~~ We agree that this approach is more equitable and is also consistent with the prohibition on cost-shifting under Public Utilities Code § 366.3. Accordingly, we direct SDG&E to apply its CAPBA rate adder only to departing load customers in vintages 2019 and prior, and not to vintage 2020 customers, which did not cause the undercollection.

Page 38: The CCA November Commenters also request that the Commission adopt SDG&E's proposal for a one-time transfer of the CAPBA over-collection due to bundled customers into PABA. ~~However, we determine that the resolution of that issue is more appropriately addressed in the PCIA rulemaking proceeding R.17-06-026, and therefore we decline to address it in this decision.~~ We agree with this proposal and direct SDG&E include its CAPBA refund as a "rate adder" for bundled customers that fall into the 2020 and/or 2021 PCIA vintage.

Findings of Fact

24. SDG&E's proposal to include the CAPBA refund as a "rate adder" for bundled customers that fall into the 2020 and/or 2021 PCIA vintage is a simple, transparent, and timely solution that can be readily implemented through this Application.

Conclusions of Law

23. Because SDG&E is setting PCIA rates for vintage 2020 departed load for the first time in this proceeding, it is both relevant and necessary to address how the CAPBA rate adder will be applied so that rates can be accurately set in January 2021.

24. Because 2020 vintage customers did not cause the under-collection that led to the CAPBA rate adder, it would be inequitable and contrary to Public Utilities Code § 366.3 to apply the rate adder to that class of customers.

25. SDG&E's proposal to include its CAPBA refund as a separate "rate adder" for bundled customers that fall into the 2020 and/or 2021 PCIA vintage is a simple, transparent and timely solution that allows the CAPBA credit to flow back to all deserving customers.

Ordering Paragraphs

13. SDG&E shall apply the CAPBA rate adder only to departing load customers in vintages 2019 and prior, and not to vintage 2020 customers.

14. SDG&E shall apply its CAPBA refund as a credit to vintage 2020 of the PABA balancing account.

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ENERGY & ENVIRONMENTAL LAW

December 2, 2020

Sent Via Email

Ms. Rachel Peterson, Executive Director
California Public Utilities Commission
505 Van Ness Avenue, Room 4004
San Francisco, CA 94102

RE: Request for Extension of San Diego Community Power's December 8, 2020, and January 1, 2021 Financial Security Requirement Posting Due Dates

Dear Ms. Peterson:

Pursuant to Rule 16.6 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), San Diego Community Power ("SDCP") hereby requests (1) a 90-day extension of the December 8, 2020 deadline for posting its financial security requirement ("FSR") pursuant to Resolution E-5059 to March 1, 2021, and (2) a 60-day extension of the January 1, 2021 posting deadline pursuant to Decision ("D.") 18-05-022 to March 1, 2021, in order to provide time for SDCP and San Diego Gas & Electric ("SDG&E") to resolve a dispute over the FSR amount and methodology. The issues giving rise to the dispute are further described in a protest that SDCP ("SDCP Protest")[1] submitted to SDG&E Advice Letter 3646-E, which addresses methodological problems in SDG&E's FSR calculations and seeks clarification on the applicable due dates for the FSR. The request for extension on the December 8, 2020 deadline is being made out of an abundance of caution, as SDCP plans to post the minimum $147,000 FSR amount on that date in compliance with D. 18-05-022 and Resolution E-5059. SDCP is not scheduled to begin enrolling customers or serving load until March 1, 2021, so there is no risk that any departing load customers enrolling in its program will be returned on an involuntary basis to utility service or impose any unanticipated administrative or procurement costs on SDG&E before that time.

Background

D. 18-05-022 requires utilities to recalculate the FSR amount twice each year, in November and May, and implement the updated amounts on the following January 1 or July 1, respectively.[2] In Resolution E-5059, issued on October 8, 2020, the Commission adopted SDG&E's proposed tariff revisions that were specifically directed n D. 18-05-022, and directed

[1] *See Protest of San Diego Community Power to San Diego Gas & Electric Company's Advice Letter 3646-E Updating Community Choice Aggregator Financial Security Requirements for November 2020 Pursuant to Decision 18-05-022* ("SDCP Protest'), November 30, 2020.

[2] D. 18-05-022, *Decision Establishing Reentry Fees and Financial Security Requirements for Community Choice Aggregators*, Rulemaking ("R.") 03-10-003, June 7, 2018 at 10.

CCAs to post new FSR instruments within 60 days, or by December 8, 2020.[3] SDCP's FSR was first established in SDG&E Advice Letter ("AL") 3646-E, submitted on November 10.[4] While the specific amount is confidential, as further described in SDCP's Protest, the amount significantly exceeds the minimum amount established in D. 18-05-022.

Request for Extension

SDCP challenges SDG&E's methodology in calculating the FSR amount and believes that a proper calculation would bring the FSR amount to the $147,000 minimum. Pursuant to Government Order ("GO") 96-B, SDCP filed Protest to the AL on November 30 on the grounds that SDG&E's FSR calculations contain material errors and omissions resulting in an excessive FSR amount that violates statute and Commission orders.[5] To ensure that the parties are able to adequately address the issues raised in the protest and determine the appropriate FSR amount, SDCP asks that Energy Division grant an extension of both the December 8 and January 1 FSR posting deadlines to March 1, 2021.

It is presently unclear whether a December 8 or January 1 posting deadline applies to SDCP given conflicting language in Resolution E-5059 and AL-3646. The Resolution orders CCA programs to post the FSRs within 60 days of its adoption, or no later than December 8, 2020, while the AL states that postings will be due on January 1, which appears to be in accordance with D. 18-05-022. SDCP has requested clarification on this matter in its protest. Nevertheless, SDCP intends to comply with the Resolution by posting the $147,000 minimum by December 8, 2020.

A. SDCP Plans to Comply, but Requests that the Commission Extend the December 8, 2020 FSR Posting deadline to March 1, 2021 out of Caution

Resolution E-5059 directs the IOUs to refile revised tariff sheets within 30 days and directed CCAs "to post new FSR instruments within 60 days [of October 8]."[6] Accordingly, CCA programs must post new FSR instruments no later than December 8, 2020. Because SDG&E did not calculate an FSR amount for SDCP in May 2020, and in any event SDCP will not have any customers until March 1, 2021, it is SDCP's view that the minimum amount is due. SDCP has requested clarification on this matter in its Protest but nevertheless intends to post the

[3] Resolution E-5059, *Approves, with Modifications, Pacific Gas and Electric Company AL 5354-E, Southern California Edison Advice Letter 3840-E, and San Diego Gas & Electric Company AL 3257-E*, October 8, 2020 at 3.

[4] SDG&E AL 3646-E, *Update of Community Choice Aggregator Financial Security Requirements for November 2020 Pursuant to Decision 18-05-022*, November 10, 2020.

[5] SDCP Protest at 3.

[6] *Id.* at 2-3.

$147,000 minimum by the December 8, 2020 deadline.[7] In case the Commission determines that SDCP is instead required to post the FSR amount that SDG&E calculated in November in AL-3646-E by December 8, 2020, SDCP requests out of an abundance of caution that the deadline be extended by 90 days to March 1, 2021.

B. SDCP Requests that the January 1, 2021 FSR Deadline Be Extended to March 1, 2021 to Provide Parties with Additional Time to Resolve Important Issues Related to the FSR Calculation Raised in its Protest

As mentioned above, SDCP timely filed its Protest to AL-3646-E on November 30, 2020 and is currently awaiting SDG&E's Reply to the Protest due December 7, 2020.[8] The protest raises issues around the time period, costs and revenues that SDG&E used to calculate the FSR amount. To ensure that parties have adequate time to resolve the issues raised in its Protest, SDCP requests that the Commission extend the January 1, 2021 deadline by 60 days to March 1, 2021. The proposed extensions would allow for parties to properly consider and resolve the issues surrounding SDG&E's FSR calculations. As SDCP points out in its November 30 protest, the FSR obligation as presently calculated would impose a substantial burden on SDCP at a vulnerable time, i.e., during its early stages of implementation. A corrected FSR calculation would reduce SDCP's FSR amount to the $147,000 minimum and eliminate a significant financial risk.

Conclusion

For the reasons described above, SDCP hereby requests (1) a 90-day extension of the December 8, 2020 deadline for posting its financial security requirement ("FSR") pursuant to Resolution E-5059 to March 1, 2021, and (2) a 60-day extension of the January 1, 2021 posting deadline pursuant to Decision ("D.") 18-05-022 to March 1, 2021, in order to provide time for SDCP and SDG&E to resolve a dispute over the FSR amount and methodology.

Respectfully,

/s/ Ty Tosdal

Ty Tosdal
Tosdal, APC

[7] SDCP Protest at 6.

[8] GO-96B 7.4.3 provides that replies shall be filed within five business days after the end of the protest period.

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

Attorney for San Diego Community Power

Copy (via e-mail):

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Gregory Anderson, SDG&E Regulatory Tariff Manager (ganderson@sdge.com)
aljextensionrequests@cpuc.ca.gov
SDGETariffs@sdge.com
Service List of R. 03-10-003

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

December 8, 2020 File No.: R.03-10-003

Ty Tosdal
Attorney for San Diego Community Power
Tosdal, APC
777 S. Highway 101, Suite 125
Solana Beach, CA 92075

RE: Request for Extension of Time to Comply with Posting Requirement in Resolution E-5059

Dear Mr. Tosdal:

In your letter dated December 2, 2020, San Diego Community Power (SDCP) requested an extension of time to comply with Ordering Paragraph (OP) 11 of Resolution E-5059. OP 11 of Resolution E-5059 states that Community Choice Aggregators (CCAs) must "post a financial security instrument within sixty days of this resolution." SDCP requested a 90-day extension to the December 8, 2020 deadline to post its financial security requirements (FSR) instrument, as ordered in Resolution E-5059.

As you stated in your letter, there is a dispute between SDCP and San Diego Gas & Electric Company (SDG&E) over the FSR amount and calculation methodology. This issue is the basis of a protest that SDCP submitted to SDG&E Advice Letter 3646-E, which Energy Division is currently reviewing. Your letter stated that SDCP seeks appropriate time for parties to resolve the pending FSR issues raised by its protest. It also states that SDCP is not scheduled to begin enrolling customers until May 1, 2021, so the requested extension will not result in any unanticipated administrative or procurement costs for SDG&E.

Pending resolution of issues regarding the FSR calculation methodology being reviewed by Energy Division in SDG&E's Advice Letter and SDCP's protest, and to ensure CCAs have sufficient time to seek the appropriate procedural instrument to comply with Commission directives, this letter grants an extension of time for SDCP to post its FSR instrument to 30 days after the Commission approves a FSR calculation submitted by SDG&E.

Pursuant to Rule 16.6 of the Commission's Rules of Practice and Procedure, SDCP must promptly inform parties to Rulemaking 03-10-003 that the Commission's Acting Executive Director has

granted this extension of time to comply with OP 11 of Resolution E-5059 requiring the CCAs to post an FSR instrument.

Sincerely,

Rachel Peterson

Rachel Peterson
Acting Executive Director

T • SDAL
ENERGY & ENVIRONMENTAL LAW

November 30, 2020

Sent Via Email

Mr. Ed Randolph
Director, Energy Division
California Public Utilities Commission
505 Van Ness Avenue, Room 4004
San Francisco, CA 94102

RE: [PUBLIC] Protest of San Diego Community Power to San Diego Gas & Electric Company's Advice Letter 3646-E Updating Community Choice Aggregator Financial Security Requirements For November 2020 Pursuant to Decision 18-05-022

Dear Mr. Randolph:

Pursuant to General Order ("GO") 96-B, San Diego Community Power ("SDCP") files this protest to San Diego Gas & Electric Company's ("SDG&E") Advice Letter ("AL") 3646-E titled *Update of Community Choice Aggregator Financial Security Requirements For November 2020 Pursuant to Decision 18-05-022*.[1] The Advice Letter establishes the updated Financial Security Requirements ("FSR") for community choice aggregation ("CCA") programs in the SDG&E service area, including a [redacted] FSR amount for SDCP. As established in Decision ("D.") 18-05-022, which implemented Public Utilities Code Section 394.25(e), the FSR is intended to cover the reentry fees associated with a mass involuntary return of CCA customers to utility service.[2] SDG&E's proposed FSR, however, goes far beyond such costs, in large part because its calculation fails to properly reflect SDCP's phased implementation over the course of 2021. This unexpected high financial requirement is a significant burden on SDCP in its early stages of implementation, and AL 3646-E should not be approved without modification, as further described below.

SDG&E erred in its calculations by relying on its own CCA load forecast that fails to reflect mutually agreed upon adjustments meant to accommodate SDG&E, and by incorporating costs for months that SDCP will not serve any customers in its calculation of potential costs to serve returning CCA customers. These errors result in an FSR amount that significantly exceeds potential reentry fees in violation of D. 18-05-022. If SDG&E were to properly incorporate the mutually agreed upon load forecast and schedule, and only include

[1] AL-3646-E was submitted on November 10, 2020.
[2] Decision ("D.") 18-05-022, *Decision Establishing Reentry Fees and Financial Security Requirements for Community Choice Aggregators*, Rulemaking ("R.") 03-10-003, June 7, 2018 at Ordering Paragraph ("OP") 6

costs for months that customers could potentially return, the FSR for SDCP would be set at the $147,000 minimum requirement.

BACKGROUND

Public Utilities Code Section 394.25(e) requires that CCAs post a bond or demonstrate insurance sufficient to cover all reentry fees and other costs arising from the involuntary return of CCA customers to bundled service.[3] In accordance with the statute, the Commission issued D. 18-05-022 which established the reentry fees and financial security requirements applicable to CCAs. The reentry fee covers two separate categories of potential costs: 1) the administrative costs incurred by the utility for returning CCA customers to utility service, and 2) the incremental procurement costs incurred by the utility for procuring electricity for the returned customers, based upon six months of procurement.[4] The FSR amount is required to cover the full amount of these two categories of reentry fees, but not exceed them, and is recalculated twice a year, once in November and once in May.[5] Accordingly, SDG&E submitted AL-3646-E on November 10, 2020, reflecting calculations of the updated FSR amount for Solana Energy Alliance ("SEA"), and the first-time FSR amounts for SDCP and another CCA program forming in San Diego County next year, Clean Energy Alliance ("CEA").

The FSR's incremental procurement costs are based upon six-months of procurement and represent all potential energy, RA, and, RPS costs above those costs recovered in bundled service rates at the time of the involuntary return.[6] In November and May, the utility generally calculates procurement costs based on CCA program size and forecast usage over the next 6 months and reduces those costs by the total forecast revenues collected from returned CCA customers.[7] To the extent that the resulting cost is negative, the utility can offset up to 100% of the applicable administrative costs, however D. 18-05-022 establishes $147,000 minimum FSR amount.[8] For the most part, forecast revenues should offset a majority of forecast costs, resulting in most CCA programs having to post the minimum FSR amount.

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[3] Cal Pub Util Code § 394.25.
[4] D. 18-05-022 at OP 5, 6.
[5] D. 18-05-022 at Conclusion of Law 4
[6] *The Joint Utilities' Direct Testimony Proposing a Methodology for Calculating and Implementing the CCA Financial Security Requirement,* R. 03-10-003, July 28, 2017 at 14-15. (hereinafter "Joint Testimony").
[7] AL-3646-E at Attachment A – CCA Financial Security Requirement: Clean Energy Alliance, Line 32 ("Attachment A"); Joint Testimony at 28 ("Forecast Revenues = CCA Annual Usage Forecast (MWh) x IOU System Average Bundled Service Generation Rate ($/MWh)")
[8] D. 18-05-022 at OP 9.

PROTEST

SDCP files this protest on the grounds that SDG&E's FSR calculations contain material errors and omissions resulting in an excessive FSR amount that violates statute and Commission orders.[9] SDG&E's FSR amount for SDCP violates D. 18-05-022 because it significantly exceeds the potential reentry fees associated with mass involuntary return of SDCP customers over the next six months.[10] SDG&E's calculation error results from a failure to properly account for SDCP's launch dates and anticipated load in its incremental RA procurement cost calculations. As a result, the FSR calculation overstates procurement costs and minimizes offsetting revenue that would otherwise bring the FSR below the $147,000 minimum amount.

[redacted] far exceeds the potential costs necessary to serve involuntarily returned SDCP customers over the next six months and poses a substantial burden to SDCP in its first year of implementation. SDCP requests that the Commission reject the FSR amounts included in AL-3646-E and require SDG&E to temporarily revise its incremental RA cost calculation formula by multiplying the sum of Local RA and System RA costs by the number of months that SDCP will be in service during the 6-month window.[11] Specifically, SDG&E should change the "6" multiplier to "2," reflecting the fact that SDCP will not begin operation until March 2021, and make additional changes necessary to reflect the fact that SDCP will only serve a relatively small group of customers for 2 months within the 6-month window. This temporary revision would result in an FSR amount that more accurately reflects the potential costs of an involuntary return of CCA customers to bundled service and thus achieve the purpose of the FSR.[12] This issue is unique to SDCP's initial phase, and will not likely arise with subsequent FSR calculations when there will be a full 6 months of customer revenue.

1. SDG&E's RA Cost Forecast Calculation Fails to Align Potential RA Costs with Potential Revenue by Including Costs for Months that SDCP will Serve No Customers

As reflected in the unredacted calculations shown in Attachment A, [redacted] Since D. 18-05-022 requires that incremental

[9] *See* GO 96-B at 7.4.2(2) and (3).
[10] *See* D. 18-05-022 at Conclusion of Law 4.
[11] *See* AL-3646-E at Attachment A -CCA Financial Security Requirement, Line 30.
[12] *See* D. 18-05-022 at Conclusion of Law 4 ("The FSR should cover all reentry fees but should not exceed them.")
[13] AL-3646-E at Attachment A, columns 6, 7, 8.

procurement costs be based upon six months of procurement, SDG&E's calculation utilizes a 6-month forecast period from November 2020 to April 2021.[14] [redacted] These calculations only incorporate months that SDCP will be serving customers and thus properly align forecast costs and revenues to more accurately estimate the potential costs of reentry.

The RA cost calculation differs from the other cost calculation formulas in that it incorporates the CCA Monthly Peak demand for 12 months to estimate monthly local RA requirements, and multiplies the CCA's monthly RA requirement by 6.[17] Generally, this is not an issue because a fully operational CCA serves customers in each month of the 6-month forecast period so each month of costs is matched by each month of offsetting revenues. In this case, however, multiplying the RA requirement by 6 effectively produces RA costs for months in which there is no forecast usage and, consequently, in which there is no offsetting revenue. This results in minimal revenue to offset the $[redacted] cost forecast for SDCP.

The FSR amount for SDCP violates D. 18-05-022 because it exceeds any potential reentry costs that could accrue from involuntary return in the next six months. The purpose of the FSR is to, essentially, preserve indifference by ensuring that the CCA, rather than the bundled customer, pays the reentry fees of an involuntarily returned CCA customer. By definition, a customer needs to depart from bundled service before it has the chance to reenter. By multiplying RA costs by 6, SDG&E's formula allocates "potential" monthly RA costs to months where there would be no SDCP customers to return. Further, since there are no returning customers to serve, there is no corresponding revenue to offset those costs. This significantly overstates the incremental RA procurement costs and results in FSR amounts that unnecessarily exceed the minimum.

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[14] AL-3646-E at Attachment A, column 3.

[15] See Attachment A at line 28 (Energy Cost Forecast calculated as: [Sum products of columns 4, 5, 6, 7] x IOU-specific Line Loss Factor. Columns 4, 5, 6, and 7 only incorporate load forecasts and forward prices for the next 6 months); Joint Testimony at 24 ("RPS Cost Forecast = REC Value ($/MWh) x Annual RPS Target (%) x CCA [6-month] Usage Forecast (MWh) x IOU-Specific Line Loss Factor").

[redacted]

[17] AL-3646-E at Attachment A, line 30; Joint Testimony at 28 ("RA Cost Forecast = [(CCA's local RA requirement (MW) x Local RA VWAP ($/kW-mo)) + (CCA's net system RA requirement x System RA VWAP ($/kW-mo))] x [6] x 1000)").

Thus, SDG&E's calculation formula should be revised so that the FSR amount reflects the actual potential costs of serving involuntarily returned customers. If SDG&E instead multiplied the monthly RA costs by 2, the RA cost calculation formula would afford equal weight to procurement costs and revenues and bring the FSR amount down to the $147,000 minimum. This one-time revision to the RA cost-calculation formula would properly align SDCP's FSR amount with the Commission's intent in D. 18-05-022 and the statutory purpose of the FSR established in Section 394.25(e).

2. SDG&E's FSR Calculation Appears to Utilize Improper Load and Customer Service Account Forecasts

SDG&E should be required to utilize the load forecast established through collaborative efforts with SDCP rather than historical data. When recalculating the FSR to incorporate newly phased-in load, the utility is authorized to base the load forecast on the most recent year of historical data for the newly phased-in customers *unless* a collaborative load forecast has been established.[18] Note 2 at the bottom of Attachment A to AL 3646-E containing calculations of SDCP's FSR obligation states "The CCA Load Forecast uses actual metered usage for SDCP area non-DA customers." However, at SDG&E's request, SDCP has chosen to delay its planned launch and customer phase-in schedule to accommodate the forthcoming launch of SDG&E's updated billing system, Envision. Since SDCP revised its load forecast at the request of, and in collaboration with, SDG&E, the FSR calculation should incorporate that forecast rather than historical data from the previous year.

Further, SDG&E should clarify how it determined the forecast number of CCA service accounts utilized in the FSR calculation. Note 4 at the bottom of Attachment A states: "Forecast CCA Number of Service Accounts (SA) item 9 March 2020 accounts."[19] This suggests that SDG&E utilized historical data from May 2020 to forecast the number of SDCP customers anticipated to begin service in March 2021, when SDCP plans to launch. As discussed above, the forecast accounts should be determined by using the load forecast developed in collaboration with SDCP, and not on historical data.

3. SDG&E's Calculations for SDCP's FSR Refer to the Enrollment Schedule and Load Forecast of an Unrelated CCA Program and May Need to be Corrected

Note 3 at the bottom of Attachment A to AL 3646-E, which contains SDG&E's proposed calculations of SDCP's FSR obligation, makes reference to "CEA" presumably in reference to

[18] Joint Testimony at 23.
[19] AL-3646-E at Attachment A, note 4.

Clean Energy Alliance, another CCA program that is forming in SDG&E territory and enrolling customers next year. The note reads as follows:

> *3. CEA customer enrollment begins March 2021, therefore items 6, 7, 8, & 9 are zero prior to March 2021.*

The "items" in question refer to CCA load forecasts both on-peak and off-peak, CCA monthly peak demand and the forecast of CCA service accounts, respectively. While CEA is forming in SDG&E territory, just like SDCP, its enrollment schedule and load forecasts are distinct and unrelated to SDCP's enrollment schedule and load forecasts. Obviously, one CCA program cannot be substituted for another in the calculation of a program's FSR obligation; the calculation depends on data that is specific to the individual program. To the extent that SDG&E has erroneously used CEA's enrollment schedule and load forecasts to calculate SDCP's FSR, the calculation should be corrected.

4. The Posting Due Date Should Be Clarified

Given the adoption of Draft Resolution E-5059, which orders CCA programs to post FSRs within 60 days of its adoption, or no later than December 8, 2020, the posting due date for FSR calculations, as provided in D. 18-05-022, should also be clarified. SDG&E's AL 3646-E states:[20]

> *As directed in D.18-05-022, SDG&E will update CCA FSR amounts on May 10 and November 10 of each year. Updated CCA FSRs will be submitted via Tier 2 advice letter, and postings will be due on January 1 and July 1, respectively*

This statement accurately captures the applicable language from D.18-05-022.[21] In the normal course, at least as SDCP understands it, SDG&E would calculate the FSR on May 10 each year and postings would be due a little over a month later, on July 1. The process would be repeated later in the year, with a subsequent calculation being issued on November 10, and postings due a little over a month later, on January 1 of the following year.

Draft Resolution E-5059 ordered CCA programs to comply with its terms and post FSRs within 60 days of its adoption, or no later than December 8, 2020.[22] The applicable FSR calculation in this period is the amount calculated on May 10, 2020, rather than the amount

[20] AL 3646-E at 2.
[21] D.18-05-022 at 11.
[22] Resolution E-5059 at Ordering Paragraph 11.

that was calculated on November 10, 2020, which is due later in time. To avoid confusion or misunderstanding, the due date for the FSR posting should also be clarified.

CONCLUSION

SDCP understands that the FSR obligation serves an important purpose, but objects to the egregiously high FSR and additional errors contained in SDG&E's AL-3646. As proposed, SDG&E's FSR for SDCP cannot be approved because it goes against the intent of 394.25(e) and violates D. 18-05-022 since it exceeds the potential reentry fees necessary to cover the involuntary return of SDCP customers. Further, this multimillion-dollar obligation will, in all likelihood, drop to the $147,000 minimum following the May 2021 FSR recalculation, since SDCP will be serving customers for each of the 6-month period and forecast monthly costs will appropriately reflect the cost of potentially serving actual customers. To avoid the unnecessary and unlawful imposition of the proposed FSR obligation on a newly formed SDCP, the Commission should require SDG&E to adopt the proposed revisions described above.

Respectfully,

/s/ Ty Tosdal

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

Attorney for San Diego Community Power

Copy (via e-mail): CPUC Energy Division (EDTariffUnit@cpuc.ca.gov)
Gregory Anderson, SDG&E Regulatory Tariff Manager (ganderson@sdge.com)
SDGETariffs@sdge.com

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

DECLARATION OF TY TOSDAL
REGARDING CONFIDENTIALITY OF CERTAIN DATA/DOCUMENTS
PURSUANT TO DECISION 17-09-023

I, Ty Tosdal, declare as follows:

1. I am regulatory counsel for San Diego Community Power ("SDCP"). In this capacity, I have knowledge of the information provided in this declaration and am authorized to make this declaration on SDCP's behalf.

2. I have reviewed the confidential information contained within SDCP's Protest ("Protest") to San Diego Gas & Electric Company's ("SDG&E") Advice Letter ("AL") 3646-E titled *Update of Community Choice Aggregator Financial Security Requirements For November 2020 Pursuant to Decision 18-05-022*. I am personally familiar with the facts in this Declaration and, if called upon to testify, I could and would testify to the following based upon my personal knowledge and/or information.

3. I hereby provide this Declaration in accordance with Decision ("D.") 17-09-023 and General Order ("GO") 66-D to demonstrate that the confidential information ("Protected Information") provided in this Protest is within the scope of data protected as confidential under applicable law.

4. In accordance with the narrative justification provided in the attached "Table of Protected Information," the Protected Information should be protected from public disclosure.

5. The following person is designated as the person for the Commission to contact regarding potential release of this information by the Commission:

Ty Tosdal
Tosdal APC
777 S. Highway 101, Suite 215
Solana Beach, CA 92075
ty@tosdalapc.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed November 30, 2020, at Solana Beach, California.

/s/ Ty Tosdal

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

TABLE OF PROTECTED INFORMATION SDCP Protest to SDG&E Advice Letter 3646-E		
Location of Protected Information	**Confidentiality Category from D.06-06-066 Matrix or Other Authority**	**Justification for Confidential Treatment**
Yellow highlighted information in Protest.	Gov't Code § 6254(k) Civil Code 1798.80 *et seq.* Pub. Util. Code §8380(d)	The Protected Information is entitled to confidential treatment under applicable law, but not limited to, the legal authority cited herein. The confidential information identified in the Protest includes CCA energy usage information, number of CCA service accounts, and final calculations.

California Public Utilities Commission

ADVICE LETTER SUMMARY

ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No.: San Diego Community Power

Utility type:
☑ ELC ☐ GAS ☐ WATER
☐ PLC ☐ HEAT

Contact Person:
Phone #: Ty Tosdal
E-mail: Ty@Tosdalapc.com
E-mail Disposition Notice to: Ty@Tosdalapc.com

EXPLANATION OF UTILITY TYPE
ELC = Electric GAS = Gas WATER = Water
PLC = Pipeline HEAT = Heat

(Date Submitted / Received Stamp by CPUC)

Advice Letter (AL) #: 20-1

Tier Designation: 1

Subject of AL: SUBMITTAL OF COMMUNITY CHOICE AGGREGATOR (CCA) FINANCIAL SECURITY REQUIREMENT INSTRUMENT IN COMPLIANCE WITH RESOLUTION E-5059

Keywords (choose from CPUC listing):

AL Type: ☐ Monthly ☐ Quarterly ☐ Annual ☑ One-Time ☐ Other:

If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #:
Resolution E-5950

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL:

Summarize differences between the AL and the prior withdrawn or rejected AL:

Confidential treatment requested? ☐ Yes ☑ No

If yes, specification of confidential information:
Confidential information will be made available to appropriate parties who execute a nondisclosure agreement. Name and contact information to request nondisclosure agreement/ access to confidential information:

Resolution required? ☐ Yes ☑ No

Requested effective date: 12/8/20

No. of tariff sheets: N/A

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed[1]: See advice letter

Pending advice letters that revise the same tariff sheets: N/A

[1]Discuss in AL if more space is needed.

Clear Form

Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this submittal, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102
Email: EDTariffUnit@cpuc.ca.gov

Name: Bill Carnahan
Title: Chief Executive Officer
Utility Name: San Diego Community Power
Address: 1200 Third Street, 18th Floor
City: San Diego
State: California Zip: 92101
Telephone (xxx) xxx-xxxx:
Facsimile (xxx) xxx-xxxx:
Email: bcarnahan@sdcommunitypower.org

Name: Ty Tosdal
Title:
Utility Name:
Address: 777 S. Highway 101, Suite 215
City: Solana Beach
State: California Zip: 92075
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Facsimile (xxx) xxx-xxxx:
Email: ty@tosdalapc.com

Clear Form

ENERGY Advice Letter Keywords

Affiliate	Direct Access	Preliminary Statement
Agreements	Disconnect Service	Procurement
Agriculture	ECAC / Energy Cost Adjustment	Qualifying Facility
Avoided Cost	EOR / Enhanced Oil Recovery	Rebates
Balancing Account	Energy Charge	Refunds
Baseline	Energy Efficiency	Reliability
Bilingual	Establish Service	Re-MAT/Bio-MAT
Billings	Expand Service Area	Revenue Allocation
Bioenergy	Forms	Rule 21
Brokerage Fees	Franchise Fee / User Tax	Rules
CARE	G.O. 131-D	Section 851
CPUC Reimbursement Fee	GRC / General Rate Case	Self Generation
Capacity	Hazardous Waste	Service Area Map
Cogeneration	Increase Rates	Service Outage
Compliance	Interruptible Service	Solar
Conditions of Service	Interutility Transportation	Standby Service
Connection	LIEE / Low-Income Energy Efficiency	Storage
Conservation	LIRA / Low-Income Ratepayer Assistance	Street Lights
Consolidate Tariffs	Late Payment Charge	Surcharges
Contracts	Line Extensions	Tariffs
Core	Memorandum Account	Taxes
Credit	Metered Energy Efficiency	Text Changes
Curtailable Service	Metering	Transformer
Customer Charge	Mobile Home Parks	Transition Cost
Customer Owned Generation	Name Change	Transmission Lines
Decrease Rates	Non-Core	Transportation Electrification
Demand Charge	Non-firm Service Contracts	Transportation Rates
Demand Side Fund	Nuclear	Undergrounding
Demand Side Management	Oil Pipelines	Voltage Discount
Demand Side Response	PBR / Performance Based Ratemaking	Wind Power
Deposits	Portfolio	Withdrawal of Service
Depreciation	Power Lines	

Clear Form

SAN DIEGO COMMUNITY POWER

SAN DIEGO
1200 Third Street, 18th Floor
San Diego, CA 92101-4195
sdcommunitypower.org

December 8, 2020

California Public Utilities Commission
Energy Division, Attention: Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102-3298

SDCP Advice Letter 20-2

RE: SUBMITTAL OF COMMUNITY CHOICE AGGREGATOR (CCA) FINANCIAL SECURITY REQUIREMENT INSTRUMENT IN COMPLIANCE WITH RESOLUTION E-5059

PURPOSE

San Diego Community Power ("SDCP") hereby submits its Community Choice Aggregator ("CCA") Financial Security Requirement ("FSR") Instrument pursuant to Resolution E-5059. SDCP is a new CCA program that is forming in San Diego Gas & Electric ("SDG&E") territory and will begin serving customers in March 2021.

BACKGROUND

Assembly Bill ("AB") 117 enacted requirements designed to ensure that bundled service customers of investor-owned utilities ("IOUs") are indifferent to the costs of electricity customers migrating to and from CCA programs. Public Utilities Code Section 394.25(e) established consumer protections that require CCAs to post financial security to cover the reentry fees that would be imposed on CCA customers in the event these customers are involuntarily returned en masse to IOU service. The Commission issued Decision ("D.") 18-05-022 on June 7, 2018, which found that Public Utilities Code Section 394.25(e) requires the implementation of both a reentry fee and a corresponding financial security requirement ("FSR") to address the costs of a potential mass involuntary return of CCA customers to utility service.[1] The FSR represents the estimated amount that would be required to cover IOU administrative and procurement costs resulting from a mass involuntary return.[2] D.18-05-022 established the methods for calculating re-entry fees and financial security amounts and established a minimum CCA financial security amount of $147,000.[3]

D.18-05-022 ordered each CCA to submit a compliance advice letter to Energy

[1] D.18-05-022 at 14; Conclusions of Law 1.

[2] *Id.*; Conclusions of Law 2.

[3] *Id.* at 16; Ordering Paragraph 9.

Division, providing notice of compliance with the FSR and requesting the return of any interim financial security posted with the Commission.[4] D.18-05-022 determined that letter of credit, surety bonds, or cash held by a third-party are among the acceptable instruments to satisfy the FSR.[5] D.18-05-022 further ordered the amount of the FSR to be updated twice per year to reflect the change to forecasted procurement and administrative costs if the change in the amount of the reentry fees is greater than 10 percent.[6]

On August 15, 2018, Pacific Gas & Electric ("PG&E") filed AL 5354-E, Southern California Edison ("SCE") filed AL 3840-E, and San Diego Gas & Electric ("SDG&E") filed AL 3257-E (collectively "IOU Advice Letters") seeking CPUC approval of proposed revisions to the three IOUs tariffs to define and calculate the CCA financial security requirements and reentry fees pursuant to D.18-05-022. On September 4, 2018, the California Community Choice Association ("CalCCA") protested the IOU Advice Letters arguing that the IOU Advice Letters were overly broad and went beyond the scope of D.18-05-022.[7]

On October 9, 2020 the Commission issued Resolution E-5059, partially approving the IOU Advice Letters and directing the CCAs to post new financial security instruments within 60 days of the Resolution. The Resolution adopted the proposed tariff revisions that were specifically directed in D.18-05-022 but rejected those proposed revisions that did not comply with the decision.[8] The Resolution determined that the FSR instrument will govern the rights and obligations of the parties and shall be based on commercially reasonable and accepted terms and conditions.[9] The Resolution further states that the CCA FSR instrument may only be drawn upon in the event of an involuntary return, or as mutually agreed upon in, or pursuant to, the terms of the FSR instrument.[10] Finally, the Resolution found that a utility may not terminate CCA service for failure to post its FSR instrument without an order of the CPUC.[11]

The Resolution further rejected PG&E and SDG&E's revisions to language defining an involuntary return and ordered PG&E and SDG&E to refile tariff sheets with language that is consistent with SDG&E Electric Rule 27 and PG&E Electric Rule

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[4] *Id*.; Ordering Paragraph 10.

[5] *Id*.; Ordering Paragraph 7.

[6] *Id*. at 10.

[7] *See* California Community Choice Association's Protest of PG&E Advice Letter 5354-E, SDG&E Advice Letter 3257-E, and SCE's Advice Letter 3840-E as Related to Tariff Revisions to Implement Decision 18-05-022.

[8] Resolution E-5059 at 2.

[9] *Id*. at 26.

[10] *Id*. at 27.

[11] *Id*. at 16.

22.[12] The Resolution also ordered the IOUs to refile their tariff sheets to clarify: (i) the terms of the FSR are subject to mutual agreement by the IOU, the CCA, and the third-party issuer of the FSR instrument, (ii) failure of the CCA to post the FSR instrument within the sixty-days may be grounds for the CCA's involuntary service suspension by the CPUC, (iii) the IOU may not terminate CCA service without approval from the CPUC, and (iv) the Involuntary Return Process as provided for in the Resolution.[13] SDG&E filed its revised tariff sheets via Tier 1 advice letter on November 9, 2020, to conform with Resolution E-5059.[14]

Subsequently, on November 10, 2020, SDG&E issued Advice Letter 3646-E, updating CCA FSR requirements pursuant to D. 18-05-022 and calculating an FSR amount for SDCP for the first time. Upon review of Advice Letter 3646-E, SDCP discovered certain deficiencies and lack of clarity related to SDG&E's application of the methodology prescribed in D. 18-05-022 as well as the due date for the FSR posting. SDCP filed a protest describing the issues and proposed how to resolve them.[15] While SDG&E's Advice Letter 3646-E should have no bearing on the FSR posting due at the present time, out of an abundance of caution SDCP has requested an extension of the compliance deadline in the event that the Commission determines otherwise.[16] The extension was granted.[17] Nevertheless, SDCP has taken all the steps necessary to meet the FSR requirements and make the required posting by today's due date as set forth in this advice letter.

FINANCIAL SECURITY REQUIREMENT INSTRUMENT

Under Resolution E-5059, a CCA has complied with the FSR posting requirements when the CCA has demonstrated that the financial instrument has been formed, and the IOU made its oblige, recipient, or equivalent.[18] Appendix A to this advice letter contains a copy of the FSR instrument in the form of a pro forma letter of credit that SDCP has executed, thereby satisfying the posting requirement. The executed copy contains confidential information and is not being included with this advice letter. In the event that an involuntary return occurs, the utility shall file a Tier 1 advice letter within 30 days of the involuntary return to notify the Commission that the return has

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[12] *Id*. at 26; Ordering Paragraph 3.

[13] *Id*. at 26-27; Ordering Paragraph 4.

[14] *See* SDG&E Advice Letter 3257-E-A, November 09, 2020.

[15] *See* Protest of San Diego Community Power to San Diego Gas & Electric Company's Advice Letter 3646-E Updating Community Choice Aggregator Financial Security Requirements For November 2020 Pursuant to Decision 18-05-022, November 30, 2020.

[16] Request for an Extension of San Diego Community Power's December 8, 2020, and January 1, 2021 Financial Security Requirement Posting Due Dates, December 2, 2020.

[17] Letter from California Public Utilities Commission Acting Executive Director Rachel Peterson to Ty Tosdal, Attorney for San Diego Community Power, December 8, 2020 (granting extension of compliance deadline).

[18] *Id*. at 26; Findings of Fact 17.

occurred and to set forth the reentry fee calculation.[19] The form and terms of the attached FSR instrument, including the specific conditions under which the FSR is activated, have been mutually agreed upon between SDCP and SDG&E.

SDCP previously posted an interim FSR of $100,000 with the Commission in compliance with Resolution E-4133. Per Resolution E-5950 and D.18-05-002, any interim financial security bond posted with the CPUC should be returned to the posting CCA when the CCA complies with the financial security requirements as described in Resolution E-5059.[20] Through this advice letter, SDCP is requesting the return of the interim FSR amount of $100,000.

EFFECTIVE DATE

SDCP requests that this Tier 1 Advice Letter become effective on December 8, 2020, which is the date of this submission.

APPENDICES

Appendix A: Pro Forma Letter of Credit

PROTESTS

Anyone wishing to protest this advice filing may do so by letter via U.S. Mail, facsimile, or electronically, any of which must be received no later than 20 days after the date of this advice filing. Protests should be mailed to:

CPUC, Energy
Division Attention:
Tariff Unit 505 Van
Ness Avenue
San Francisco, California 94102
E-mail: EDTariffUnit@cpuc.ca.gov

Copies should also be mailed to the attention of the Director, Energy Division, Room 4004 (same address above). In addition, protests and all other correspondence regarding this Advice Letter should also be sent by letter or electronically to the attention of the following individuals:

Bill Carnahan, CEO
San Diego Community Power
1200 Third Street, 18th Floor
San Diego, CA 92101-4195
bcarnahan@sdcommunitypower.org

[19] *Id*. at 27; Ordering Paragraph 7.

[20] *Id*. at 5; *See also* D.18-05-022 at 11.

and;

Ty Tosdal
Tosdal APC
777 S. Highway 101, Suite 215
Solana Beach, CA 92075
ty@tosdalapc.com

There are no restrictions on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously.

Respectfully,

/s/ Bill Carnahan

Bill Carnahan, CEO
San Diego Community Power
1200 Third Street, 18th Floor
San Diego, CA 92101-4195
bcarnahan@sdcommunitypower.org

Appendix A

Pro Forma Letter of Credit

U.S. Bank National Association
Global Documentary Services
555 S.W. Oak Street, Suite 400-P
Portland, Oregon U.S.A. 97204
Fax: (503) 464-4125
Phone: (503) 464-3700

Issue Date: (Issue date)

IRREVOCABLE STANDBY LETTER OF CREDIT NO. XXXX

BENEFICIARY:
San Diego Gas & Electric Company
Quantitative Risk and Major Markets Credit
8326 Century Park Court CP21C
San Diego, CA 92123

APPLICANT:
San Diego Community Power
9601 Ridgehaven Ct.
San Diego, CA 92123

AMOUNT:
[amount]

EXPIRATION DATE:
[one year from issuance] at our counters

Ladies and Gentlemen:

We have been informed that this Letter of Credit is issued as financial security pursuant to California Public Utilities Code section 394.25(e), California Public Utilities Commission Decision (D.) 18-05-022 and Resolution E-5059 by which the Commission established reentry fees, and financial security requirements ("FSR") applicable to Community Choice Aggregation (CCA) programs, and SDG&E Rule 27, which implements Reentry fees and Financial Security Requirements for CCA programs. Reentry fees include investor-owned utility (IOU) administrative costs and procurement costs resulting from a mass involuntary return of CCA customers to IOU service, and the financial security requirements must cover those potential costs.

We hereby establish our irrevocable standby Letter of Credit Number XXXX in favor of San Diego Gas & Electric Company ("Beneficiary"), by order and for account of San Diego Community Power ("Applicant"), available at sight upon demand at our counters, at 555 SW Oak Street, Suite 400-P, Portland, Oregon 97204, Attn: Global Documentary Services, for an amount of US $_____ (_____), effective immediately.

Funds under this Letter of Credit are available to Beneficiary by presentation on or before 5:00 p.m. Oregon time, on or before the Expiration Date of the following documents:

1. Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "Under terms of the SDG&E Rule 27, Beneficiary is entitled to draw under Letter of Credit No. XXXX the sum of U.S.$_____ (_____) owed by San Diego Community Power for the payment of Reentry Fees."

or

2. Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "As of the close of business on _____ [insert date, which is less than 90 days prior to the expiration date of the Letter of Credit] you have provided written notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Beneficiary, whether or not a triggering event under SDG&E Rule 27 has occurred, is U.S. $_____ (_____)."

Special Conditions:

All costs and banking charges pertaining to this Letter of Credit are for the account of Applicant.

Partial and multiple drawings are permitted.

Fax of Document 1 or 2 above acceptable.

This Letter of Credit expires on December 7, 2021 at our counters.

Such payment documents, notices and communications must be sent either (but not both) by: (a) Courier mail to U.S. Bank National Association, 555 SW Oak Street, Suite 400-P, Portland, Oregon 97204, Attn: Global Documentary Services, or (b) Facsimile to facsimile number (503) 464-4125, Attn: Global Documentary Services; provided, however, that such address and facsimile number may be amended by us upon the provision of written notice of such amendment to you. Beneficiary shall use best efforts to give telephonic notification of a demand for payment at either (866) 359-2503 (extension 3620) or (503) 464-3620.

We hereby engage with Beneficiary that upon presentation of a document as specified under and in compliance with the terms and conditions of this Letter of Credit, this Letter of Credit will be duly honored in the amount stated in Document 1 or 2 above. If a complying document is so presented by 10:00 am Pacific Time on Oregon banking day, we will honor the same in full in immediately available funds on the next succeeding Oregon banking day and, if so presented after 10:00 am Pacific Time on Oregon banking day, we will honor the same in full in immediately available funds by noon on the second succeeding Oregon banking day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended

period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Publication No. 600 ("UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of California.

U.S. Bank National Association

_____
Authorized Signature

L/C format approved by:

X _____
Authorized Signature, River City Bank
as authorization to issue in this form

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Expedited Application of San Diego Gas & Electric Company (U 902 E) Under the Power Charge Indifference Adjustment Account Trigger Mechanism.	Application 20-07-009 (Filed on July 10, 2020)

JOINT COMMENTS OF SAN DIEGO COMMUNITY POWER, CLEAN ENERGY ALLIANCE, SOLANA ENERGY ALLIANCE, AND THE CALIFORNIA COMMUNITY CHOICE ASSOCIATION ON THE PROPOSED DECISION

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December 3, 2020

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Expedited Application of San Diego Gas & Electric Company (U 902 E) Under the Power Charge Indifference Adjustment Account Trigger Mechanism.	Application 20-07-009 (Filed on July 10, 2020)

JOINT COMMENTS OF SAN DIEGO COMMUNITY POWER, CLEAN ENERGY ALLIANCE, SOLANA ENERGY ALLIANCE, AND THE CALIFORNIA COMMUNITY CHOICE ASSOCIATION ON THE PROPOSED DECISION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), San Diego Community Power ("SDCP"), Clean Energy Alliance ("CEA"), Solana Energy Alliance ("SEA"), (collectively, the "San Diego CCA Programs"), and the California Community Choice Association ("CalCCA"), hereby submit these Joint Comments on the (Proposed) *Decision Regarding Power Charge Indifference Adjustment Trigger Application of San Diego Gas & Electric Company* ("PD") issued on November 13, 2020 in the above-captioned proceeding.

I. INTRODUCTION AND SUBJECT MATTER INDEX

The PD authorizes San Diego Gas & Electric Company ("SDG&E") to increase the Power Charge Indifference Adjustment ("PCIA") to recover the $8.92 million balance in its PCIA undercollection balancing account ("CAPBA") from departing load customers over 12 months beginning on January 1, 2021. The San Diego CCA Programs and CalCCA appreciate the opportunity to provide these comments requesting clarification and suggesting revisions to the PD that will ensure SDG&E's CAPBA recovery is conducted in a just and reasonable manner. Specifically, the San Diego CCA Programs and CalCCA recommend the following modifications:

- The Commission should require SDG&E to clarify in its implementing advice letter that vintage 2020 customers are excluded from the allocation of the 2020 CAPBA undercollection because these customers were not departing load customers when the balance accrued;
- The PD should adopt a 36-month amortization period for the CAPBA undercollection;
- The PD should adopt SDG&E's proposal to transfer the CAPBA overcollection due to bundled customers into the 2020 vintage of the PABA.

Proposed changes to findings of fact, conclusions of law, and ordering paragraphs are provided in Appendix A. In addition, CalCCA, the San Diego CCA Programs and SDG&E have worked together regarding the general approach to the cap and trigger and entered into the Joint Stipulation of SDG&E and CCA Parties ("Stipulation") attached as Appendix B, as further discussed below.

II. COMMENTS

A. The PD Should Require SDG&E to Clarify in Its Implementing Advice Letter that the CAPBA Undercollection Will Not Be Allocated to PCIA Vintages 2020 and 2021 Departing Load Customers Because these Customers Did Not Cause the Undercollection

The PD should be revised to specify that the CAPBA undercollection will be allocated only to departing load customers who contributed to the undercollection in 2020. Ordering Paragraph 1 of the PD authorizes SDG&E "to collect $8.92 million in Power Charge Indifference Adjustment from departing load customers, amortized over twelve months, beginning January 1, 2021."[1] Implicit in this paragraph is the directive to recover the undercollection from those who *caused*

[1] *[Proposed] Decision Regarding Power Charge Indifference Adjustment Trigger Application Of San Diego Gas & Electric Company* ("PD"), Application 20-07-009, November 13, 2020 at Ordering Paragraph 1.

the undercollection to arise. The San Diego CCA Programs and CalCCA request that the Commission modify the PD to make clear that the undercollection will be recovered solely from the customers who were departing load customers when the CAPBA balance accrued. Both existing law prohibiting costs shifts among bundled and departing load customers and foundational principles of cost causation dictate this result.

Fundamental principles of cost causation applied by the Commission in virtually every ratemaking decision require exclusion of vintage 2020 departing load customers from the CAPBA undercollection recovery. As an initial matter, customers in the 2020 vintage include bundled customers who depart bundled service from July 1, 2020 to June 30, 2021 according to the Commission's framework for segregating vintages.[2] Importantly, there have been no load departures in 2020 that will be assigned to the 2020 vintage. However, it is currently anticipated that the first phase of customer migration from SDG&E to SDCP service will occur in May 2021, placing those customers, by definition, into the 2020 vintage for departing load. Because these customers received bundled service during 2020, they did not contribute to the accumulation of the current CAPBA balance that has accrued. Rather, these customers were part of the group of bundled customers that financed the PCIA undercollection through higher bundled generation rates in 2020.

The CAPBA balance accrued due to the capping of PCIA rates pursuant to D.18-10-019 and thus reflects the difference between capped PCIA rates and uncapped PCIA charged to these customers during 2020. The undercollection of PCIA revenue from departing customers during 2020 can be attributed to customers that had departed bundled service prior to 2020. Customers who were bundled customers during 2020 did not have capped rates and, indeed, financed the

[2] D. 08-09-012 at Ordering Paragraph 10.

undercollection on behalf of departing load customers.[3] For this reason, long-standing Commission cost-causation principles require that any customer who was a bundled customer in 2020 should not be responsible for these charges, whether they remain bundled customers or depart bundled service in 2021.[4]

In addition, allocating the 2020 CAPBA balance to 2020 vintage customers would violate the prohibition on cost shifting articulated in Public Utilities Code section 365.2. The statute requires the Commission "to ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load."[5] Because the CAPBA undercollection was *not* incurred on behalf of 2020 vintage customers who depart in 2021, recovering this cost from them would violate this enshrined prohibition.

Finally, SDG&E's testimony confirms that the PCIA undercollection from departing load customers is attributed to capped PCIA rates for vintages 2019 and prior.[6] As explained by Witness Fuhrer, the rate cap did not apply to PCIA vintage 2020.[7] However, at the same time, the rate tables provided in Appendices A and B to Ms. Fuhrer's testimony show that SDG&E intends to employ a CAPBA rate adder to vintage 2020 departing load.[8] Doing so will assuredly result in SDG&E collecting more than the requested $8.92 million in the CAPBA balance.

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[3] Prepared Direct Testimony of Stacy Fuhrer on Behalf of SDG&E, A. 20-07-009, July 10, 2020 at SF-7.

[4] D. 18-10-019, *Decision Modifying the Power Charge Indifference Adjustment Methodology,* R. 17-06-026, October 19, 2018 at Conclusions of Law 10, 11.

[5] Cal. Pub. Util. Code § 365.

[6] Prepared Direct Testimony of Stacy Fuhrer on Behalf of SDG&E, A. 20-07-009, July 10, 2020 at SF-15 through SF-16, Table 4.

[7] *Id.*

[8] Prepared Direct Testimony of Stacy Fuhrer on Behalf of SDG&E, A. 20-07-009, July 10, 2020 at SF-A-1 through SF-A-2 and SF-B-1 through SF-B-2.

Governing law, fundamental ratemaking principles, and SDG&E's own testimony support modification of the PD to exclude vintage 2020 PCIA customers from the allocation of the 2020 CAPBA undercollection.

B. A 36-Month Amortization Period Would Better Serve to Alleviate Rate Shock

The Commission may authorize a CAPBA undercollection recovery period required to "minimize rate shock for departing load customers, providing fair returns to bundled customers, and avoiding the need for another PCIA trigger application early in 2021."[9] It is not limited to adopting the amortization period proposed by SDG&E "without modification"[10] and may adopt a CAPBA undercollection recovery period "over multiple years."[11] Despite this authority, the PD adopts a one-year amortization period on the grounds that, though the resulting monthly increase will be "noticeable" to departing load customers, it provides a "preferable outcome" over the proposed alternatives.[12]

The San Diego CCA Programs and CalCCA propose a more balanced alternative, particularly when viewed as a part of the general approach to the cap and trigger reflected in the Joint Stipulation of SDG&E and CCA Parties ("Stipulation") attached as Appendix B. As discussed below, a 36-month amortization period adequately reduces rate shock for departing load customers without imposing hardship on bundled customers. Moreover, the approach contemplated by the Stipulation, if ultimately adopted by the Commission, could also eliminate the risk of overlapping triggers that would be difficult to incorporate into existing rates and could compound rate shock.

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[9] Proposed Decision at Conclusion of Law 3.
[10] *Id.* at 8.
[11] *Id.* at Conclusion of Law 3.
[12] *Id.* at 9.

A 12-month amortization period does not provide adequate relief to departing load customers. The rate shocks posed by both of SDG&E's proposals are beyond excessive and neither just nor reasonable.[13] Under SDG&E's proposed 6-month amortization period, residential SEA customers would have seen their PCIA rates spike by 120 percent.[14] However, the 12-month amortization period in the PD is also excessive and will pose an undue and avoidable burden on departing load customers, many of whom are currently facing significant financial hardship given current economic conditions. Under the 12-month amortization period contemplated in the PD, SEA customers will still experience a 60 percent PCIA rate increase in 2021, causing a typical residential customer using 400 kWh per month to pay roughly **$7.50** more per month.[15] In contrast, a 36-month amortization period would limit the monthly rate increase to 20 percent resulting in customers paying only **$2.54** more per month. [16]

In support of a 12-month amortization period, the PD relies, in part, on the reduced amount of time that "bundled load customer rates are subsidizing departing load customer service" [17] To be certain, and as discussed in more detail below, the San Diego CCA Programs and CalCCA fully support that bundled customers must receive their full CAPBA refund. However, the Stipulation presents a more holistic approach to meeting the Commission's objectives, including addressing the impact on bundled customers in this proceeding and going forward.

A 36-month amortization period would not change the amount that either type of customer owes, but instead reduce both the monthly refund and PCIA rate increase by

[13] Proposed Decision at 8.
[14] San Diego CCA Program Reply Brief at 2.
[15] Proposed Decision at 9.
[16] San Diego CCA Reply Brief at 4.
[17] Proposed Decision at 9.

approximately one-third. Extending the amortization period from 12 to 36 months would reduce departed load customers monthly bill increase from **$7.50** more per month to roughly **$2.54** more per month, and at the same time reduce bundled customers monthly refunds from **$0.26** per month to approximately **$0.08** per month. Clearly the impact of reducing an already low monthly bundled customer refund is significantly outweighed by the substantial financial relief that a 36-month amortization period would provide to departed load customers. As such, the Commission should utilize its authority to revise the PD to adopt a 36-month amortization period.

A 12-month amortization period poses a significant burden on departing load customers in exchange for a nominal benefit to bundled customers With a 12-month amortization period, a typical residential bundled customer will receive a refund of roughly **$0.26** per month, which amounts to a total annual payment of **$3.06**.[18] In contrast, by the end of the PD's 12-month amortization period a typical departed load customer will have paid roughly $90 in higher PCIA rates.[19] Surely, an additional $90 payment will be more "noticeable" to departing load customers than would a one-time $3.06 annual bundled customer refund.

The Stipulation, if the Commission adopts the proposals going forward in 2021, provides a balanced and reasonable solution. The Stipulation contemplates a Petition for Modification of D.18-10-019 that would eliminate the cap and trigger mechanism and thus any financing burden for bundled customers going forward.[20] It also lays out a proposal to address recovery of any 2021 CAPBA balance upon SDG&E's filing of a trigger application in 2021 including a 12-month

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[18] Joint Opening Brief at 9 (Estimated monthly refund amount was estimated as follows: 0.255 cents/kWh * 400 kWh * 3 months / 12 months = 25.5 cents.)

[19] Total annual refund calculated as follows: 25.5 cents per month * 12 months; Total additional PCIA payment calculated as follows: $7.50 per month * 12 months.

[20] Stipulation ¶ 6.

amortization period for the 2021 CAPBA balance that would begin January 1, 2022. Finally, and critically, the 36-month amortization provides a reasonable glide path for departing load customers as they transition to PCIA ratemaking without the security of a cap on increases going forward.

For these reasons, the San Diego CCA Programs and CalCCA request that the Commission adopt the proposed 36-month amortization of the 2020 CAPBA balance. The remainder of the steps in the Stipulation's holistic approach can be proposed and implemented in 2021.

C. The Commission Should Adopt SDG&E's PABA Transfer Proposal to Ensure CAPBA Refunds are Credited to All Customers Who Were Bundled Customers in 2020

The PD declines to address SDG&E's CAPBA refund proposals, overlooking the opportunity to resolve an undisputed issue.[21] In this proceeding, SDG&E initially proposed that any customer who departs for CCA or DA service during an amortization period in 2021 must forfeit their share of the CAPBA refund they earned when they were bundled customers in 2020 (the "refund forfeiture proposal"). The San Diego CCA Programs and CalCCA opposed the refund forfeiture proposal, requesting that SDG&E adopt an alternative means of ensuring that all eligible customers receive their due CAPBA refund, regardless of whether they depart for CCA service during an extended amortization period. SDG&E's Reply Brief included a solution, proposing to transfer the CAPBA overcollection due to bundled customers into the 2020 vintage of the PABA (the "PABA transfer proposal"), which would effectively credit all bundled customers with their share of the bundled refund.[22] The San Diego CCA Programs and CalCCA support this proposal.

Despite the undisputed PABA transfer proposal, the PD concludes that this issue is not in the scope of this proceeding, and instead better suited for SDG&E's ERRA forecast proceeding.

[21] Proposed Decision at 9.

[22] SDG&E Reply Brief at 22.

Unfortunately, the proposed decision in the ERRA forecast proceeding (A.20-04-014), issued on December 1, punts the issue once again. It concludes as follows:

> The CCA November Commenters also request that the Commission adopt SDG&E's proposal for a one-time transfer of the CAPBA over-collection due to bundled customers into PABA. However, we determine that the resolution of that issue is more appropriately addressed in the PCIA rulemaking proceeding R.17-06-026, and therefore we decline to address it in this decision.[23]

It is unclear why, with a solution readily available, the Commission should not simply resolve the issue now, in this proceeding. Indeed, the issue falls squarely within Issue No. 4 in this proceeding's Scoping Memo, which asks: "Should the Commission authorize SDG&E to obtain $8.92 million in funding from Departing Load customers and refund this amount to bundled customers?"[24] If bundled customers forego their share of the refund upon departure, the total CAPBA balance—which is indisputably within the scope of this proceeding—will necessarily shrink. Given the close relationship between refunds and recovery, purported limitations in issuing refunds and proposed methods of working around the limitations should be considered within the scope of the proceeding.

Given the articulation of Issue No. 4, crediting departing load customers for their share of ERRA refund of the CAPBA has already been thoroughly addressed and litigated throughout the course of the proceeding. SDG&E first introduced the CAPBA refund issue during the August 27, 2020 prehearing conference ("PHC").[25] SDG&E further described purported accounting and billing limitations and introduced its refund forfeiture proposal in the October 1, 2020 CAPBA

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[23] [Proposed] *Decision Adopting 2021 Electric Procurement Revenue Requirement Forecasts and Greenhouse Gas-Related Forecasts for San Diego Gas & Electric Company*, A.20-04-014, December 1, 2020 at 38.

[24] Scoping Memo at 4.

[25] PHC Transcript at 19-21.

Update Report and in its Opening Brief.[26] The San Diego CCA Programs and CalCCA disputed SDG&E's purported limitations in the *Joint Statement Regarding Disputed Material Facts and Evidentiary Hearings* and proposed that SDG&E adopt the PABA transfer proposal in its Joint Opening Brief.[27] No parties disputed the proposal raised in the San Diego CCA Programs and CalCCA's Joint Opening Brief, and SDG&E's Reply Brief proposed to adopt the PABA transfer proposal.[28] Since the CAPBA refund issue was properly raised and discussed throughout this proceeding, it is proper for the PD to address the CAPBA refund issue and adopt the PAPBA transfer proposal.

For all of these reasons, the San Diego CCA Programs and CalCCA respectfully disagree and request the Commission revise the PD to (1) deny SDG&E's refund forfeiture proposal, and (2) adopt SDG&E's alternative PABA transfer proposal. Since the CAPBA recovery and refunds are inextricably tied, SDG&E's purported inability to fully implement refunds and its alternative proposals are properly considered within the scope of this proceeding. In fact, these issues have already been raised and litigated in this proceeding, and no parties dispute SDG&E's PABA transfer proposal.

III. CONCLUSION

The San Diego CCA Programs and CalCCA appreciate the opportunity to provide comments on the PD and, for the reasons stated above, request the Commission adopt the recommended revisions provided.

Respectfully submitted,

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[26] *San Diego Gas & Electric Company Update on CAPBA Balance and Report Re Accounting and Billing System Pursuant to ALJ's September 18, 2020 Ruling*, A. 20-07-009, October 1, 2020 at 3-6.

[27] SD CCA Opening Brief at 14.

[28] SDG&E Reply Brief at 20.

/s/ Ty Tosdal

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December 3, 2020

APPENDIX A
Proposed Modifications to PD's Findings of Fact, Conclusions of Law and Ordering Paragraph

Proposed text deletions are in bold and strikethrough (**~~abc~~**).

Proposed text additions are underlined (abc).

Findings of Fact

The following Findings of Fact ("FoF") should be revised and added as follows:

3. A **~~twelve~~** thirty-six-month amortization period for SDG&E's CAPBA undercollection will reduce rate shock.

NEW FoF: The only customers in the 2020 vintage will be bundled customers that depart in 2021. The CAPBA undercollection was not caused by these customers but by customers who were already departing load customers during 2020.

Conclusions of Law

The following Conclusions of Law ("CoL") should be added:

NEW CoL: Recovery of the CAPBA balance from vintage 2020 customers who depart in 2021 would violate Pub. Util. Code Section 365.2 and the fundamental ratemaking principle of cost causation.

NEW CoL: Issues pertaining to SDG&E's ability to implement bundled customer refunds are properly within the scope of this proceeding.

Ordering Paragraphs

The following Ordering Paragraphs ("OP") should be revised and added as follows:

1. San Diego Gas & Electric Company is authorized to collect $8.92 million in Power Charge Indifference Adjustment from departing load customers subject to vintage 2019 and prior, amortized over ~~**twelve**~~ thirty-six months, beginning January 1, 2021, to account for an estimated undercollection of $8.92 million.

NEW OP: SDG&E's proposal to transfer the CAPBA overcollection due to bundled customers into the 2020 vintage of the PABA is adopted.

APPENDIX B
JOINT STIPULATION OF SDG&E AND CCA PARTIES

Joint Stipulation of SDG&E and CCA Parties

California Community Choice Association, San Diego Community Power, Clean Energy Alliance, and Solana Energy Alliance (collectively, the "CCA Parties"), and San Diego Gas & Electric Company ("SDG&E") have reached a joint stipulation in the *Expedited Application of San Diego Gas & Electric Company (U902E) Under the Power Charge Indifference Adjustment Account Trigger Mechanism*, Application 20-07-009 ("Application"). This joint stipulation resolves a central issue in the Application, reducing the burden on the Commission's and parties' resources in this proceeding. Specifically, the CCA Parties and SDG&E stipulate as follows:

1. The stipulating parties each acknowledge the importance of implementing rates on January 1, 2021, to mitigate rate volatility and rate design complexity. The CCA Parties agree to support timely adoption of a final decision in Application 20-07-009.

2. The CCA Parties and SDG&E acknowledge the applicability of the Power Charge Indifference Adjustment ("PCIA") rate cap adopted by the Commission in Decision ("D.") 18-10-019 to the PCIA rates proposed in SDG&E's 2021 ERRA Forecast Application 20-04-014.

3. The CCA Parties and SDG&E agree to propose in comments on the proposed decision ("PD") in this Application that the 2020 PCIA undercollection balancing account ("CAPBA") undercollection will be recovered from customers over a three-year period commencing January 1, 2021, subject to the following:
   a. If 2021 PCIA rates are not implemented by January 1, 2021, the amortization period for the 2020 CAPBA undercollection shall be reduced commensurately to ensure that the amortization is completed by December 31, 2023.
   b. Should the Commission reject the proposed three-year 2020 CAPBA undercollection amortization in this Application, the remainder of the stipulating parties' obligations specified in this joint stipulation will continue unchanged.

4. SDG&E agrees to clarify in its advice letter implementing the Commission's final decision in this Application that it will collect the 2020 CAPBA undercollection through vintage 2009-2019 PCIA rate adders and will recover no portion of this balance from vintage 2020 departing load customers because these customers did not cause accrual of the 2020 CAPBA undercollection.

5. If the 2021 CAPBA undercollection reaches the seven percentage trigger level established in Ordering Paragraph 9 of D.18-10-019, and SDG&E is required to file an expedited application to increase rates to recover the undercollection, SDG&E will recommend adoption of a one-year amortization of the 2021 CAPBA in 2022 rates, and the CCA Parties will not propose a longer term amortization.

6. The CCA Parties agree to affirmatively support the termination of the PCIA cap-and-trigger framework adopted in Ordering Paragraphs 9 and 10 of D.18-10-019 by filing, together with the investor-owned utilities, a joint petition for modification ("PFM") of D.18-10-019 in early 2021.

7. SDG&E and the CCA Parties agree that if the CCA Parties fail to support the PFM as required by this stipulation, or if the Commission fails to approve or rejects the PFM before implementation of 2022 PCIA rates, the stipulating parties will propose in the relevant PCIA trigger or Energy Resource Recovery Account proceeding that the unamortized portion of the CAPBA balance will be amortized over 12 months beginning on January 1, 2022.

8. SDG&E and the CCAs agree to work in good faith to support this stipulation in this proceeding and future related proceedings in all their communications with Commission staff and Commissioners and their advisors.

November 30, 2020

CALIFORNIA COMMUNITY CHOICE ASSOCIATION  Evelyn Kahl General Counsel Dated: December 1, 2020	**SAN DIEGO COMMUNITY POWER** _____ Name: _____ Title: _____ Dated: _____
CLEAN ENERGY ALLIANCE _____ Name: _____ Title: _____ Dated: _____	**SOLANA ENERGY ALLIANCE** _____ Name: _____ Title: _____ Dated: _____
SAN DIEGO GAS & ELECTRIC COMPANY _____ Name: _____ Title: _____ Dated: _____	

7. SDG&E and the CCA Parties agree that if the CCA Parties fail to support the PFM as required by this stipulation, or if the Commission fails to approve or rejects the PFM before implementation of 2022 PCIA rates, the stipulating parties will propose in the relevant PCIA trigger or Energy Resource Recovery Account proceeding that the unamortized portion of the CAPBA balance will be amortized over 12 months beginning on January 1, 2022.

8. SDG&E and the CCAs agree to work in good faith to support this stipulation in this proceeding and future related proceedings in all their communications with Commission staff and Commissioners and their advisors.

November 30, 2020

CALIFORNIA COMMUNITY CHOICE ASSOCIATION _____ Evelyn Kahl General Counsel Dated: _____	**SAN DIEGO COMMUNITY POWER** _____ Name: Bill Carnahan Title: Interim CEO Dated: 12/2/20
CLEAN ENERGY ALLIANCE _____ Name: _____ Title: _____ Dated: _____	**SOLANA ENERGY ALLIANCE** _____ Name: _____ Title: _____ Dated: _____
SAN DIEGO GAS & ELECTRIC COMPANY _____ Name: _____ Title: _____ Dated: _____	

7. SDG&E and the CCA Parties agree that if the CCA Parties fail to support the PFM as required by this stipulation, or if the Commission fails to approve or rejects the PFM before implementation of 2022 PCIA rates, the stipulating parties will propose in the relevant PCIA trigger or Energy Resource Recovery Account proceeding that the unamortized portion of the CAPBA balance will be amortized over 12 months beginning on January 1, 2022.

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November 30, 2020

CALIFORNIA COMMUNITY CHOICE ASSOCIATION _____ Evelyn Kahl General Counsel Dated: _____	**SAN DIEGO COMMUNITY POWER** _____ Name: _____ Title: _____ Dated: _____
CLEAN ENERGY ALLIANCE DocuSigned by: Barbara Boswell 824C6E81F1564B1... Name: Barbara Boswell Title: Interim Chief Executive Officer Dated: 12/2/2020	**SOLANA ENERGY ALLIANCE** _____ Name: _____ Title: _____ Dated: _____
SAN DIEGO GAS & ELECTRIC COMPANY _____ Name: _____ Title: _____ Dated: _____	

7. SDG&E and the CCA Parties agree that if the CCA Parties fail to support the PFM as required by this stipulation, or if the Commission fails to approve or rejects the PFM before implementation of 2022 PCIA rates, the stipulating parties will propose in the relevant PCIA trigger or Energy Resource Recovery Account proceeding that the unamortized portion of the CAPBA balance will be amortized over 12 months beginning on January 1, 2022.

8. SDG&E and the CCAs agree to work in good faith to support this stipulation in this proceeding and future related proceedings in all their communications with Commission staff and Commissioners and their advisors.

November 30, 2020

CALIFORNIA COMMUNITY CHOICE ASSOCIATION _____ Evelyn Kahl General Counsel Dated: _____	**SAN DIEGO COMMUNITY POWER** _____ Name: _____ Title: _____ Dated: _____
CLEAN ENERGY ALLIANCE _____ Name: _____ Title: _____ Dated: _____	**SOLANA ENERGY ALLIANCE** _____ Name: Gregory Wade Title: City Manager Dated: 12-2-2020
SAN DIEGO GAS & ELECTRIC COMPANY _____ Name: _____ Title: _____ Dated: _____	

7. SDG&E and the CCA Parties agree that if the CCA Parties fail to support the PFM as required by this stipulation, or if the Commission fails to approve or rejects the PFM before implementation of 2022 PCIA rates, the stipulating parties will propose in the relevant PCIA trigger or Energy Resource Recovery Account proceeding that the unamortized portion of the CAPBA balance will be amortized over 12 months beginning on January 1, 2022.

8. SDG&E and the CCAs agree to work in good faith to support this stipulation in this proceeding and future related proceedings in all their communications with Commission staff and Commissioners and their advisors.

November 30, 2020

CALIFORNIA COMMUNITY CHOICE ASSOCIATION _____ Evelyn Kahl General Counsel Dated: _____	**SAN DIEGO COMMUNITY POWER** _____ Name: _____ Title: _____ Dated: _____
CLEAN ENERGY ALLIANCE _____ Name: _____ Title: _____ Dated: _____	**SOLANA ENERGY ALLIANCE** _____ Name: _____ Title: _____ Dated: _____
SAN DIEGO GAS & ELECTRIC COMPANY */s/ Miguel Romero* Name: Miguel Romero Title: Vice President, Energy Supply Dated: December 2, 2020	

SAN DIEGO COMMUNITY POWER
Staff Report – Item 8

To: San Diego Community Power Board of Directors

From: Michael Maher, Maher Accountancy

Subject: Treasurer's Report - Presentation of First Quarter FY20/21 Financial Results

Date: December 17, 2020

RECOMMENDATION
Receive and file financial update.

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

SDCP has prepared quarterly financial statements for the period ended September 30, 2020 (Q1) as well as a budgetary comparison statement for the same period.

ANALYSIS AND DIRECTION
Financial Comments:

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

Budget Comments:

- Through Q1, total spending of $478k remains under budget expectations of $646k
- SDCP management intends to propose a budget amendment at a future date to 1) incorporate new information pertaining to rates and energy costs that are not known at this time and 2) to reformat the budget report to a condensed and easier-to-read version as supported by the Finance and Risk Management Committee.

FISCAL IMPACT
Not applicable

ATTACHMENTS

Attachment A: 2020/21 Q1 Financial Statements
Attachment B: 2020/21 Q1 Budgetary Comparison Statement

MAHER
ACCOUNTANCY

ACCOUNTANTS' COMPILATION REPORT

Management
San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of September 30, 2020, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

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

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

Maher Accountancy

San Rafael, CA
November 4, 2020

SAN DIEGO COMMUNITY POWER
STATEMENT OF NET POSITION
As of September 30, 2020

ASSETS	
Current assets	
Cash and cash equivalents	$ 1,016,760
Noncurrent assets	
Restricted cash	5,500,000
Deposits	100,000
Total noncurrent assets	5,600,000
Total assets	6,616,760
LIABILITIES	
Current liabilities	
Accounts payable	427,842
Other accrued liabilities	542,176
Security deposits	1,131,000
Interest payable	37,949
Total current liabilities	2,138,967
Noncurrent liabilities	
Other noncurrent liabilities	100,000
Note payable	940,000
Loans payable	5,000,000
Total noncurrent liabilities	6,040,000
Total liabilities	8,178,967
NET POSITION	
Unrestricted (deficit)	(1,562,207)
Total net position	$ (1,562,207)

SAN DIEGO COMMUNITY POWER
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
July 1, 2020 through September 30, 2020

OPERATING EXPENSES	
Contract services	$ 401,261
General and administration	111,111
Total operating expenses	512,372
Operating income (loss)	(512,372)
NONOPERATING EXPENSES	
Interest expense	30,683
CHANGE IN NET POSITION	(543,055)
Net position at beginning of period	(1,019,152)
Net position at end of period	$ (1,562,207)

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS
July 1, 2020 through September 30, 2020

CASH FLOWS FROM OPERATING ACTIVITIES	
Receipts of supplier collateral	$ 1,131,000
Payments for goods and services	(447,705)
Net cash provided (used) by operating activities	683,295
CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES	
Interest and related expense payments	(5,517)
Net change in cash and cash equivalents	677,778
Cash and cash equivalents at beginning of period	5,838,982
Cash and cash equivalents at end of period	$ 6,516,760
Reconciliation to the Statement of Net Position	
Cash and cash equivalents (unrestricted)	1,016,760
Restricted cash	5,500,000
Cash and cash equivalents	$ 6,516,760

SAN DIEGO COMMUNITY POWER
BUDGETARY COMPARISON SCHEDULE
July 1, 2020 through September 30, 2020

	2020/21 YTD Budget	2020/21 YTD Actual	2020/21 YTD Budget Variance (Under) Over	2020/21 YTD Actual/ Budget %	2020/21 Annual Budget	2020/21 Budget Remaining
REVENUES AND OTHER SOURCES						
Working capital from River City Bank	$ -	-	$ -	0%	$ 24,600,000	$ 24,600,000
Ratepayer revenues	-	-	-	0%	22,688,892	22,688,892
Less uncollectibles	-	-	-	0%	(56,722)	(56,722)
Total Revenues and Other Sources	-	-	-		47,232,170	47,232,170
OPERATING EXPENSES						
Operations and Administration						
Professional fees	*87,500*	*38,979*	*(48,521)*	*45%*	*350,000*	*311,021*
Board and Committee Expenses	*3,750*	-	*(3,750)*	*0%*	*15,000*	*15,000*
Staffing	-	-	-	*0%*	*1,500,000*	*1,500,000*
General and Administrative	*87,500*	*28,425*	*(59,075)*	*32%*	*350,000*	*321,575*
Debt Service and Bank Fees	*60,000*	*30,683*	*(29,317)*	*51%*	*1,048,000*	*1,017,317*
Total Operations and Administration	238,750	98,087	(140,663)		3,263,000	3,164,913
CAISO/Utility Fees						
CAISO deposit	-	-	-	*0%*	*500,000*	*500,000*
Financial Security Bond (CPUC)	-	-	-	*0%*	*50,000*	*50,000*
SDG&E billing service fees	-	-	-	*0%*	*5,768*	*5,768*
Total CAISO/Utility Fees	-	-	-		555,768	555,768
Technical and Energy Services						
Power contracting, portfolio and rate design	*57,750*	*57,750*	-	*100%*	*273,000*	*215,250*
Scheduling Fees	-	-	-	*0%*	*8,000*	*8,000*
Cost of Power	-	-	-	*0%*	*32,511,279*	*32,511,279*
Collateral/Lockbox reserves	-	-	-	*0%*	*5,000,000*	*5,000,000*
Total Technical and Energy Services	57,750	57,750	-		37,792,279	37,734,529
Communications & Customer Enrollment						
Marketing strategy and branding	*65,000*	*80,175*	*15,175*	*123%*	*65,000*	*(15,175)*
Permanent Website + Maintenance	*45,000*	-	*(45,000)*	*0%*	*45,000*	*45,000*
Collateral Design/Video	*7,500*	-	*(7,500)*	*0%*	*60,000*	*60,000*
PR/Advertising Campaign	*18,750*	-	*(18,750)*	*0%*	*150,000*	*150,000*
Community Engagement	*15,625*	-	*(15,625)*	*0%*	*125,000*	*125,000*
Materials for tabling and events (design/print)	*3,750*	-	*(3,750)*	*0%*	*30,000*	*30,000*
Customer Notifications (@ $0.80 each)	*6,125*	-	*(6,125)*	*0%*	*49,000*	*49,000*
Community Sponsorships, etc.	*25,000*	-	*(25,000)*	*0%*	*25,000*	*25,000*
Total Communications & Customer Enrollment	186,750	80,175	(106,575)		549,000	468,825
Legal						
General Counsel Services	30,000	76,483	*46,483*	255%	*120,000*	*43,517*
Legal review of power supply & other contracts	30,000	-	*(30,000)*	0%	*120,000*	*120,000*
Total Legal	60,000	76,483	16,483		240,000	163,517
Regulatory Legislative						
Cal-CCA Membership	12,500	17,686	*5,186*	141%	*50,000*	*32,314*
Regulatory Monitoring and Reporting	50,000	147,876	*97,876*	296%	*200,000*	*52,124*
Participation in Regulatory /Compliance Matters	25,000	-	*(25,000)*	0%	*100,000*	*100,000*
Lobbyist	15,000	-	*(15,000)*	0%	*60,000*	*60,000*
Total Regulatory Legislative	102,500	165,562	63,062		410,000	244,438
Total Operating Expenses	645,750	478,057	(167,693)		42,810,047	42,331,990
NET SURPLUS (DEFICIT)	$ (645,750)	$ (478,057)	$ 167,693		$ 4,422,123	$ 4,900,180

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

SAN DIEGO COMMUNITY POWER
Staff Report – Item 9

To: San Diego Community Power Board of Directors

From: Sebastian Sarria, Programs and Policy Coordinator, LEAN Energy US

CC: Paul Soco, Calpine

Subject: Approval of a Net Energy Metering Program

Date: December 17, 2020

RECOMMENDATION

Adopt a Net Energy Metering (NEM) Program pending subsequent approval of Net Surplus Compensation.

BACKGROUND

Staff and Calpine Energy Solutions have developed a prospective NEM Program in preparation for SDCP's launch. Utilizing Calpine's expertise having developed NEM programs for various other CCAs in the state, staff then solicited feedback from our Community Advisory Committee and Finance and Risk Management Committee (FRMC).

Staff received direction from the FRMC to look at future opportunities in improving the program and how to best ensure that the benefits of rooftop solar are brought to our Communities of Concern.

ANALYSIS AND DISCUSSION

To allow the most seamless transition, SDCP NEM customers that are transferred over from SDG&E service will be mass enrolled commencing in Phase 3. At that point, customers are enrolled monthly when their SDG&E relevant period ends.

In the meantime, the policy presented to the Board is to ensure SDCP has a program in place in case there are new NEM customers that were not enrolled in NEM before and will be part of our Phase 1 and Phase 2 rollouts.

Moreover, the value at which SDCP's NEM customers will be paid for their net-generation, also known as the Net Surplus Compensation (NSC), will be brought to the Board for approval at the early January Board meeting where rates will also be set.

FISCAL IMPACT
None

ATTACHMENTS
Attachment A: Net Energy Metering Program Policy

Net Energy Metering Program Policy

A. PURPOSE

The Purpose of this Net Energy Metering (NEM) Program Policy (Policy) is to provide a process for how Net Energy Metering (commonly referred to as rooftop solar) customers are enrolled with San Diego Community Power (SDCP).

B. APPLICABILITY

Customers enrolled in San Diego Gas & Electric's (SDG&E) Net Energy Metering Program (SDG&E NEM) will be automatically enrolled in SDCP's NEM Program. Phase-in will occur as stated in Section D below. The Program is applicable for all NEM customers who have Renewable Generation Facilities such as rooftop solar. The facility must be eligible under SDG&E's Schedule NEM – Net Energy Metering or similar tariff option(s) focused on NEM, which may be amended or replaced by SDG&E from time to time. Each customer's eligible Renewable Generating Facility must fall within the capacity limits described in SDG&E's Schedule NEM and must be located on the customer's owned, leased, or rented premises, must be interconnected and operated in parallel with SDG&E's transmission and distribution systems, and must be intended primarily to offset part or all of the customer's own electrical requirements.

This rate schedule will be available on a first-come, first-served basis to customers that provide SDG&E with a completed SDG&E NEM Application and comply with all SDG&E NEM requirements as described in SDG&E's Schedule NEM. This includes, but is not limited to, customers served by NEM-V (Virtual Net Energy Metering), VNM-A (Virtual Net Energy Metering for Multifamily Affordable Housing), VNEM-SOMAH (Virtual Net Energy Metering - Solar on Multifamily Affordable Housing) and Multiple Tariff facilities as described by SDG&E's Schedule NEM.

C. TERRITORY

SDCP service area.

D. INITIAL PHASE-IN

SDCP will phase its NEM customers into service on a monthly basis starting in Phase 3 of Customer Launch. The transition will occur at the conclusion of a NEM customer's relevant period with SDG&E. This approach is to minimize any impacts from when the SDG&E NEM customers' true-ups occur and when SDCP's service begins.

E. RATES

All rates charged under this schedule will be in accordance with the customer's otherwise applicable SDCP rate schedule (OAS). A customer served under this schedule is responsible for all charges from its OAS including monthly minimum charges, customer charges, meter charges, facilities charges, demand charges and surcharges, and all other charges owed to SDCP or SDG&E. Charges for energy (kWh) supplied by SDCP will be based on the net metered usage in accordance with this tariff.

F. BILLING

1. For a customer with Non-Time of Use (TOU) Rates: If the customer is a "Net Consumer," having overall positive usage during a specific billing cycle, the customer will be billed in accordance with the customer's OAS. If the customer is a "Net Generator," having overall negative usage during a specific billing cycle, any net energy production shall be valued in consideration of the customer's OAS. The calculated value of any net

energy production shall be credited to the customer according to the OAS.

2. For a customer with TOU Rates: If the customer is a Net Consumer during any discrete TOU period reflected within a specific billing cycle, the net kWh consumed during such TOU period shall be billed in accordance with applicable TOU period-specific rates / charges, as described in the customer's OAS. If the customer is a Net Generator during any discrete TOU period reflected within a specific billing cycle, any net energy production shall be valued in consideration of the customer's OAS. The calculated value of such net energy production shall be credited to the customer according to the OAS.

3. Commercial Customers: Each commercial customer, as determined by their OAS, will receive a statement in its monthly SDG&E bill indicating any accrued charges for electric energy usage during the current billing cycle. These charges are due and payable on a monthly basis, in accordance with the OAS. A customer who has accrued credits during previous billing cycles will see such credits applied against currently applicable charges, reducing otherwise applicable charges by an equivalent amount to such credits. Any remaining balance reflected on each customer's billing statement shall be carried forward to subsequent billing cycle(s) until either excess credit is sufficient to satisfy the charges or an account true-up is performed. When a customer's net energy production results in an accrued credit balance in excess of currently applicable charges, the value of any net energy production during the billing cycle (in excess of currently applicable charges) shall be valued at the OAS and noted on the customer's bill, including the quantity of any surplus NEM production (measured in kWh), and carried over as a bill credit for use in a subsequent billing cycle(s).

4. Residential Customers: Each residential customer, as determined by their OAS, will receive a statement in its monthly SDG&E bill indicating any accrued SDCP charges or credits for electric energy usage or generation during the current billing cycle. Charges are not due and payable; rather, the charges or credits are calculated in accordance with the OAS and tracked over the course of the relevant period. At the end of the relevant period, any accrued charges in excess of generation credits are due and payable on the next bill. If at the end of the relevant period a customer has excess generation credits, they will be paid out in accordance with the SDCP True-up & Cash-Out Process.

5. SDCP True-Up & Cash-Out Processes.

    a. *True-Up*: At the end of each NEM customer's relevant period, SDCP will determine whether or not each customer has produced net surplus energy, as measured in kWh, over the most recent 12 billing cycles, or the period of time extending from the customer's commencement of participation in SDCP's NEM program through the end of their relevant period, whichever is shorter (the "True-Up Period"). If the customer has not produced net surplus NEM energy, as measured in kWh, during the True-Up Period, all NEM credits, if any, generated through participation in SDCP's NEM program in excess of currently applicable SDCP charges shall be set to zero and any remaining balance will be due and payable. However, if a customer has produced net surplus NEM energy, as measured in kWh, resulting in a credit balance in excess of currently applicable SDCP charges, then SDCP shall credit such customer a Net Surplus Compensation (NSC) amount equal to the SDCP NSC Rate per kWh, as defined in the SDCP Rate Schedule, multiplied by the quantity of net surplus NEM energy produced by the customer during the True-Up Period, consistent with SDCP's

Cash-Out practice.

b. *Cash-Out*: At the end of each customer's relevant period, any current customer with a credit balance equal to or greater than $100, as determined during the applicable True-Up process, will be sent a direct payment by check. Credit balances less than $100 will be rolled over into the next relevant period and used to offset future charges. In either scenario, customers will have an equivalent credit removed from their NEM account balance at the time of check issuance or roll-over. All NEM accounts will be reset to zero kWh upon True-up.

c. *Aggregated NEM:* Pursuant to California Public Utilities Commission Section 2827(h)(4)(B), aggregated NEM customers are "permanently ineligible to receive net surplus electricity compensation." Therefore, any excess accrued credits over the course of a year under an aggregated NEM account are ineligible for SDCP's Cash-Out as described in Section 5. All other NEM rules apply to aggregated NEM accounts.

G. ACCOUNT CLOSURES

Customers who close their electric account through SDG&E or move outside of the SDCP service area prior to the end of their relevant period and have produced net surplus NEM energy, as measured in kWh, resulting in a credit balance in excess of currently applicable SDCP charges, shall receive a direct payment equal to the rate per kWh, as defined in the SDCP Rate Schedule, multiplied by the net surplus NEM energy.

SDCP reserves the right to work with customers on a case-by-case basis to transfer NEM credits.

H. SDG&E NEM SERVICES

Customers are subject to the conditions and billing procedures of SDG&E for their non-generation services, as described in SDG&E's applicable NEM tariffs and options addressing NEM service. Customers should be advised that while SDCP may settle out balances for generation on a monthly basis, SDG&E will continue to assess charges for delivery, transmission and other services. Customers are encouraged to review SDG&E's most up-to-date NEM tariffs, which are available at www.sdge.com.

I. RETURN TO SDG&E BUNDLED SERVICE

Customers with NEM service may opt-out and return to SDG&E bundled service at any time. SDCP will perform a true-up of their account, in consideration of Section 5, at the time of return to SDG&E bundled service, and customers will be subject to SDG&E's then current rates, terms and conditions of service. For details, please visit www.sdge.com.

SAN DIEGO COMMUNITY POWER
Staff Report – Item 11

To: San Diego Community Power Board of Directors

From: Ryan Baron, Best Best & Krieger

CC: Bill Carnahan, Interim CEO

Subject: Approval of Power Purchase Agreement with Southern California Edison; Approval of Master Purchase and Sale Agreements and Lockbox Agreements

Date: December 17, 2020

RECOMMENDATION

1. Adopt Resolution No. 2020-10, a Resolution of the Board of Directors of San Diego Community Power Approving a Master Power Purchase and Sales Agreement with Southern California Edison and Authorizing the Interim CEO to Execute the Agreement, Confirmation and Related Documents.
2. Adopt Resolution No. 2020-11, a Resolution of the Board of Directors of San Diego Community Power Approving the Edison Electric Institute ("EEI") and Western Systems Power Pool ("WSPP") Master Purchase and Sale Agreements ("Master Agreements"), Approving a Deposit Account Control Agreement, Security Agreement, and Intercreditor and Agency Collateral Agreement ("Lockbox Agreements") and Delegating Authority to the Chief Executive Officer to execute Master Agreements and Lockbox Agreements in Substantially Similar Form as Approved by General Counsel.

BACKGROUND

SCE Agreements

SDCP is in the process of negotiating an a Master Purchase and Sale Agreement and REC Sales Confirmation with Southern California Edison ("SCE") for the purchase of renewable energy. Although the Interim CEO has the authority to execute the REC Sales Confirmation under delegated authority per SDCP's Energy Risk Management Policy, the CEO does not have the authority to execute the Master Agreement. The Master Agreement is an "evergreen" agreement with SCE that would allow SDCP to enter into future transactions with SCE should SDCP submit competitive offers into SCE solicitations. More information about the Master Agreement/Confirmation process is discussed below. Staff recommends the Board of Directors adopt the resolution

approving the SCE Master Agreement and authorizing the Interim CEO authority to execute the agreements.

EEI and WSPP Master Agreements

San Diego Community Power (SDCP) is in the process of negotiating procurement agreements with energy service providers for the energy resources needed for SDCP's launch. Contracts will be awarded to short-listed energy service providers after completion of a Request for Offers, or in some cases bilaterally, if necessary. Prior to entering into any purchases, SDCP needs to be enabled with various energy service providers. The enabling process includes a signed non-disclosure agreement, exchanging financial information, credit approval, and negotiating and executing a master purchase and sale agreement. The master purchase and sale agreement will govern individual transactions between the parties, including buyer and seller obligations, defaults, collateral requirements, indemnities and other legal provisions. The are two industry standard master agreement templates – Edison Electric Institute (EEI) and Western Systems Power Pool (WSPP). Actual purchases by SDCP will be executed through a confirmation agreement that will contain the price, resource, quantity, term and other commercial terms of the transaction. Confirmation agreements are typically shorter one to two page contracts governed by the master agreement.

Certain information contained in the master agreement and confirmation is confidential market sensitive information, such as price, resource type, term and collateral requirements. Such information is considered confidential by the CPUC for up to three years and is not subject to disclosure under the Public Records Act. Any contract brought to the Board for approval that contains confidential market sensitive information will be redacted.

In accordance with the below delegation authority in the Energy Risk Management Policy, the CEO has the authority to approve an energy purchase agreement based on contract limits for term, volume and notional amount. The delegated authority is shown below and apply to wholesale power procurement outside of the CAISO market:

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
Risk Oversight Committee*				
SDCP Board	All Products	Any	Unlimited	Unlimited

Transactions falling outside these limits require approval of the Board.

Staff is bringing a form Master Agreement and Confirmation forward for Board approval since SDCP needs to begin the enabling process and procure energy. Staff is asking the Board to approve the agreements and delegate authority to the CEO to execute in substantially similar form, subject to legal counsel approval of final terms and conditions.

This delegation is necessary because agreements may be subject to certain timing requirements where the parties need to execute an agreement prior to a regular meeting of the Board. In some cases with RFOs, a winning offer is subject to a 1- to 2-hour window for acceptance and finalization of all documents, such as to accept a counter-party's pricing by 1 p.m. CST when trading markets close, and to execute all agreements, which cannot be done in the time-frame of a SDCP Board meeting.

Lockbox Agreements

Staff and legal counsel have also been negotiating lockbox agreements with River City Bank and with potential counter-parties, which consist of a Deposit Control Agreement, Security Agreement, and Intercreditor & Agency Collateral Agreement. The lockbox agreements will govern the deposit of SDCP revenues, collected and remitted by SDG&E, and the priorities in which funds are disbursed to the selected counter-party, SDCP's lender and SDCP. Staff seeks Board approval of the agreements and delegation of authority for execution in a substantially similar form.

FISCAL IMPACT

Not applicable

ATTACHMENTS

Attachment A: Resolution Approving SCE Master Purchase and Sales Agreement
Attachment B: SCE Master Agreement (Base Agreement)
Attachment C: Resolution Approving EEI and WSPP Master Agreements and Lockbox Agreements
Attachment D: EEI Master Agreement
Attachment E: WSPP Master Agreement
Attachment F: Deposit Control Agreement
Attachment G: Security Agreement
Attachment H: Intercreditor & Agency Collateral Agreement

RESOLUTION NO. 2020-10

A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER APPROVING MASTER SALE AND PURCHASE AGREEMENT WITH SOUTHERN CALIFORNIA EDISON

A. San Diego Community Power ("SDCP") is interested in participating in Request for Offers with Southern California Edison ("SCE") for energy, renewable energy, carbon free energy, and/or related products and services ("Product").

B. SDCP intends to be enabled with SCE in order to expedite contracting between the parties.

C. SDCP has negotiated a Edison Electric Institute Master Purchase and Sale Agreement ("Master Agreement") with SCE.

D. The Master Agreement is an industry standard agreement that governs the purchase and sale of energy and requires a separate written Confirmation Agreement to execute a specific binding transaction.

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

Section 1. The Board of Directors has determined that the recitals herein are true and correct.

Section 2. The Board of Directors approves the Master Agreement with SCE.

Section 3. The Board of Directors authorizes the Interim Chief Executive Officer, or designee, to execute the Master Agreement in substantially similar form as approved by General Counsel.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power held on December 17, 2020.

_____	_____
Joe Mosca, Chair San Diego Community Power	Megan Wiegelman, Interim Secretary San Diego Community Power

Approved as to form:

_____
General Counsel

AYES: _____ NAYS: _____ ABSENT: _____ ABSTAIN: _____

Master Power Purchase & Sale Agreement

Version 2.1 (modified 4/25/00)

MASTER POWER PURCHASE AND SALES AGREEMENT

TABLE OF CONTENTS

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("*Master Agreement*") is made as of the following date: _____ ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name ("_____" or "Party A")

All Notices:

Street: _____

City: _____Zip: _____

Attn: Contract Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:
Attn: _____
Phone: _____
Facsimile: _____

Scheduling:
Attn: _____
Phone: _____
Facsimile: _____

Payments:
Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:
BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:
Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: _____
Phone: _____
Facsimile: _____

Name ("Counterparty" or "Party B")

All Notices:

Street: _____

City: _____Zip: _____

Attn: Contract Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:
Attn: _____
Phone: _____
Facsimile: _____

Scheduling:
Attn: _____
Phone: _____
Facsimile: _____

Payments:
Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:
BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:
Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: _____
Phone: _____
Facsimile: _____

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions

[] Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive

[] Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

[] Cross Default for Party A:

[] Party A:_____ Cross Default Amount $_____

[] Other Entity:_____ Cross Default Amount $_____

[] Cross Default for Party B:

[] Party B:_____ Cross Default Amount $_____

[] Other Entity:_____ Cross Default Amount $_____

5.6 Closeout Setoff

[] Option A (Applicable if no other selection is made.)

[] Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:_____

_____

[] Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify: _____
[] Option C Specify: _____

(b) Credit Assurances:

[] Not Applicable
[] Applicable

(c) Collateral Threshold:

[] Not Applicable
[] Applicable

If applicable, complete the following:

Party B Collateral Threshold: $ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: $_____

Party B Rounding Amount: $_____

(d) Downgrade Event:

[] Not Applicable
[] Applicable

If applicable, complete the following:

[] It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

[] Other:
Specify:_____

(e) Guarantor for Party B:_____

Guarantee Amount:_____

8.2 Party B Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify: _____
[] Option C Specify: _____

(b) Credit Assurances:

[] Not Applicable
[] Applicable

(c) Collateral Threshold:

[] Not Applicable
[] Applicable

If applicable, complete the following:

Party A Collateral Threshold: $ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: $_____

Party A Rounding Amount: $_____

(d) Downgrade Event:

[] Not Applicable
[] Applicable

If applicable, complete the following:

[] It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

[] Other:
Specify:_____

(e) Guarantor for Party A:_____

Guarantee Amount:_____

Article 10

Confidentiality [] Confidentiality Applicable If not checked, inapplicable.

Schedule M

[] Party A is a Governmental Entity or Public Power System
[] Party B is a Governmental Entity or Public Power System
[] Add Section 3.6. If not checked, inapplicable
[] Add Section 8.6. If not checked, inapplicable

Other Changes Specify, if any: _____

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name	Party B Name
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 "Agreement" has the meaning set forth in the Cover Sheet.

1.3 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 "Buyer" means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 "Call Option" means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 "Claiming Party" has the meaning set forth in Section 3.3.

1.8 "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 "Confirmation" has the meaning set forth in Section 2.3.

1.10 "Contract Price" means the price in $U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

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

1.12 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 "Defaulting Party" has the meaning set forth in Section 5.1.

1.15 "Delivery Period" means the period of delivery for a Transaction, as specified in the Transaction.

1.16 "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 "Downgrade Event" has the meaning set forth on the Cover Sheet.

1.18 "Early Termination Date" has the meaning set forth in Section 5.2.

1.19 "Effective Date" has the meaning set forth on the Cover Sheet.

1.20 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 "Event of Default" has the meaning set forth in Section 5.1.

1.22 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.23 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.33 "Offsetting Transactions" mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 "Option" means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 "Option Buyer" means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 "Option Seller" means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.

1.37 "Party A Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 "Party B Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 "Party A Independent Amount" means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 "Party B Independent Amount" means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 "Party A Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 "Party B Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 "Party A Tariff" means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 "Party B Tariff" means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 "Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 "Product" means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 "Put Option" means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 "Quantity" means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 "Recording" has the meaning set forth in Section 2.4.

1.51 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer's option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 "Seller" means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 "Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.59 "Termination Payment" has the meaning set forth in Section 5.3.

1.60 "Transaction" means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;

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

(g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);

(h) with respect to such Party's Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

(a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and

(b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.l(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

(x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;

(xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and

(xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

"Act" means _____.[1]

"Governmental Entity or Public Power System" means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

"Special Fund" means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System's obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System's obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of "Force Majeure" in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System's ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

[1] Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

> NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____[2] SHALL APPLY.

[2] Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

"Ancillary Services" means any of the services identified by a Transmission Provider in its transmission tariff as "ancillary services" including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

"Capacity" has the meaning specified in the Transaction.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

"Firm (LD)" means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

"Firm Transmission Contingent - Contract Path" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary.

"Firm Transmission Contingent - Delivery Point" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

"Firm (No Force Majeure)" means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

"Into _____ (the "Receiving Transmission Provider"), Seller's Daily Choice" means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface ("Interface") either (a) on the Receiving Transmission Provider's transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An "Into" Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer ("Seller's Notification") of Seller's immediate upstream counterparty and the Interface (the "Designated Interface") where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer's immediate downstream counterparty.

2. Availability of "Firm Transmission" to Buyer at Designated Interface; "Timely Request for Transmission," "ADI" and "Available Transmission." In determining availability to Buyer of next-day firm transmission ("Firm Transmission") from the Designated Interface, a "Timely Request for Transmission" shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller's Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller's Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an "ADI") either (a) on the Receiving Transmission Provider's transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as "Available Transmission") within the Receiving Transmission Provider's transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

"Native Load" means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

"Transmission Contingent" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller's proposed generating source to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

EXHIBIT A

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on _____, ___ between _____ ("Party A") and _____ ("Party B") regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

[] Into _____, Seller's Daily Choice

[] Firm (LD)

[] Firm (No Force Majeure)

[] System Firm

(Specify System: _____)

[] Unit Firm

(Specify Unit(s): _____)

[] Other _____

[] Transmission Contingency (If not marked, no transmission contingency)

[]	FT-Contract Path Contingency	[]	Seller	[]	Buyer
[]	FT-Delivery Point Contingency	[]	Seller	[]	Buyer
[]	Transmission Contingent	[]	Seller	[]	Buyer

[] Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price:

Energy Price: _____

Other Charges: _____

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]	[Party B]
Name: _____	Name: _____
Title: _____	Title: _____
Phone No: _____	Phone No: _____
Fax: _____	Fax: _____

RESOLUTION NO. 2020-11

A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER APPROVING MASTER SALE AND PURCHASE AGREEMENTS AND LOCKBOX AGREEMENTS

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

B. SDCP intends to launch the service of its community choice aggregation program in 2021 consistent with Public Utilities Code § 366.2 and its Implementation Plan and Statement of Intent certified by the California Public Utilities Commission.

C. SDCP will administer competitive solicitations (Request for Offers) to select certain energy service providers capable of providing energy, renewable energy, carbon free energy, and/or related products and services at competitive prices;

D. In anticipation of administering competitive solicitations, SDCP desires to negotiate an Edison Electric Institute ("EEI") Master Purchase and Sale Agreement and/or a Western Systems Power Pool ("WSPP") Master Purchase and Sale Agreement template with prospective counter-parties so that SDCP can become enabled to procure energy (collectively, "Master Agreements").

E. The Master Agreements are industry standard contracts that govern the purchase and sale of electricity and other products, and require a separate written confirmation agreement to execute a specific binding transaction.

F. There are minor differences in each form of Master Agreement and confirmation agreement based upon changes requested by each energy service provider, which are immaterial in the overall context of the proposed transaction.

G. Through the competitive solicitation process, SDCP intends to accept the offer of one or more energy service providers and execute a Master Agreement and confirmation agreement(s) based on acceptable pricing, collateral and credit terms.

H. SDCP will agree to provide a "lockbox," administered by River City Bank as collateral agent, into which SDCP customer payments will be deposited as security for the power purchase obligations of SDCP under a Master Agreement and confirmation agreement, which the selected energy service provider will agree to participate in.

I. An Intercreditor and Collateral Agency Agreement, a Security Agreement and a Deposit Account Control Agreement (collectively, "Lockbox Agreements") will be negotiated with River City Bank and each energy service provider and are intended to be entered into no later than the time that SDCP enters into the Master Agreement and confirmation.

J. Due to the timing of transactions, the SDCP Board of Directors desires to delegate to the Chief Executive Officer, or designee, the authority to execute Master Agreements and the Lockbox Agreements in substantially similar form as approved by General Counsel. Either the SDCP Board Of Directors or the Chief Executive Officer will approve confirmation agreements under a Master Agreement subject to the limitations in the Energy and Risk Management Policy.

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

Section 1. The Board of Directors has determined that the recitals herein are true and correct.

Section 2. The Board of Directors hereby approves the Master Agreements and delegates authority to the Chief Executive Officer, or designee, to execute the Master Agreements with energy service providers in substantially similar form as approved by General Counsel.

Section 3. The Board of Directors hereby approves the Lockbox Agreements and delegates authority to the Chief Executive Officer, or designee, to execute the Lockbox Agreements in substantially similar form as approved by General Counsel.

Section 4. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power held on December 17, 2020.

_____	_____
Joe Mosca, Chair	Megan Wiegelman, Interim Secretary
San Diego Community Power	San Diego Community Power

Approved as to form:

_____
General Counsel

AYES: _____ NAYS: _____ ABSENT: _____ ABSTAIN: _____

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("*Master Agreement*") is made as of the following date: _____ ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name ("_____" or "Party A")	**San Diego Community Power, a California joint powers authority** ("Counterparty" or "Party B")
All Notices:	All Notices:
Street: _____	Street: 1200 3rd Ave, Suite 1800
City: _____ Zip: _____	City: San Diego, CA Zip: 92101
Attn: Contract Administration Phone: _____ Facsimile: _____ Duns: _____ Federal Tax ID Number: _____	Attn: Interim CEO Phone: (626) 487-5356 Email: bcarnahan@sdcommunitypower.org Duns: Federal Tax ID Number:
Invoices: Attn: _____ Phone: _____ Facsimile: _____	**Invoices:** Attn: Phone: Email:
Scheduling: Attn: _____ Phone: _____ Facsimile: _____	**Scheduling:** Attn: Phone: Email:
Payments: Attn: _____ Phone: _____ Facsimile: _____	**Payments:** Attn: Phone: Email:
Wire Transfer: BNK: _____ ABA: _____ ACCT: _____	**Wire Transfer:** BNK: ABA: ACCT:
Credit and Collections: Attn: _____ Phone: _____ Facsimile: _____	**Credit and Collections:** Attn: Phone: Email:
With additional Notices of an Event of Default to: Attn: _____ Phone: _____ Facsimile: _____	With additional Notices of an Event of Default to: Attn: Ryan Baron, Best Best & Krieger LLP Address: 18101 Von Karman Ave., Suite 1000 Irvine CA 92612 Phone: (949) 263-6568 Email: ryan.baron@bbklaw.com

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff Not Applicable Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions

[X] Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive

[] Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

[X] Cross Default for Party A:

[] Party A:_____ Cross Default Amount $_____

[] Other Entity:_____ Cross Default Amount $_____

[X] Cross Default for Party B:

[] Party B:_____ Cross Default Amount $_____

[] Other Entity:_____ Cross Default Amount $_____

5.6 Closeout Setoff

[X] Option A (Applicable if no other selection is made.)

[] Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:_____

_____

[] Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify: _____
[X] Option C Specify: (1) The annual report containing audited consolidated financial statements for such fiscal year of Party B as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at http://sdcommunitypower.org, and (2) quarterly unaudited financial statements for Party B as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely

basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30.

(b) Credit Assurances:

[X] Not Applicable
[] Applicable

(c) Collateral Threshold:

[X] Not Applicable
[] Applicable

If applicable, complete the following:

Party B Collateral Threshold: $ _____; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: $_____

Party B Rounding Amount: $_____

(d) Downgrade Event:

[] Not Applicable
[] Applicable

If applicable, complete the following:

[] It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

[] Other:
Specify:_____

(e) Guarantor for Party B:_____

Guarantee Amount:_____

8.2 Party B Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify: _____
[X] Option C Specify: The annual report containing audited consolidated financial statements for such fiscal year of Party A's Guarantor as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A's Guarantor and unaudited semi-annual

financials within 90 days after the end of each semiannual period of Party A's Guarantor, and such request will be deemed to have been filled if such financial statements are available at [INSERT]. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances:

[] Not Applicable
[] Applicable

(c) Collateral Threshold:

[] Not Applicable
[] Applicable

If applicable, complete the following:

Party A Collateral Threshold: $ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: $_____

Party A Rounding Amount: $_____

(d) Downgrade Event:

[] Not Applicable
[X] Applicable

If applicable, complete the following:

[] It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's

[] Other:
Specify:_____

(e) Guarantor for Party A:_____

Guarantee Amount:_____

Article 10		
Confidentiality	[X] Confidentiality Applicable	If not checked, inapplicable.
Schedule M		
	[] Party A is a Governmental Entity or Public Power System [X] Party B is a Governmental Entity or Public Power System [] Add Section 3.6. If not checked, inapplicable [] Add Section 8.6. If not checked, inapplicable	
Other Changes	Specify, if any: This Master Power Purchase and Sale Agreement and the associated Collateral Annex incorporate, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.	

1. Section 1.1 is amended by adding the following sentence at the end of the definition of "Affiliate":

   "Notwithstanding the foregoing, the Parties hereby agree and acknowledge that the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an "Affiliate" for the purposes of this Master Agreement or any Confirmation executed in connection therewith."

2. Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: "Business Day" means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday."

3. Section 1.12 is amended by deleting in the fourth line the word "issues" and replacing it with word "issuer".

4. Section 1.23(ii) is amended in the second sentence by inserting the following text after the word "hereunder": "or to obtain the Product at a more advantageous price or under more advantageous terms and conditions."

5. Section 1.23(iv) is amended by inserting the following text after the phrase "Contract Price": "or under more advantageous terms to a third party purchaser."

6. Section 1.23 is amended by inserting in the thirteenth line of this subsection before the phrase "foregoing factors" the word "two."

7. Section 1.27 is amended by deleting the phrase "or a foreign bank with a U.S. branch" and replacing it with the phrase "or a U.S. branch of a foreign bank."

8. Section 1.30 – "Moody's" is amended by deleting "Investor Services" and replacing it with "Investors Service".

9. Section 1.46 is amended by deleting the section in its entirety.

10. Section 1.50 is amended by deleting the reference to section "2.4" and replacing with "2.5".

11. Section 1.51 is amended by inserting "for delivery" in the second line after the text "at the Delivery Point".

12. Section 1.52 is amended by (i) deleting the words "Rating" and "Group" from the first line and replacing with "Financial Services LLC" and (ii) by replacing the words in the parenthetical with "a subsidiary of McGraw-Hill Companies, Inc."

13. Section 1.53 is amended to (i) delete the phrase "at the Delivery Point" from the second line.(ii) delete the phrase “at Seller’s option” from the fifth line and replace it with the phrase “absent a sale”, and (iii) insert after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

14. Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”

15. Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”.

16. Section 1.62: The following shall be added as a new Section 1.62:

    “1.62 “Minimum Transfer Amount” means with respect to a Party, the amount, if any, set forth in the EEI Cover Sheet for such Party.

17. The following definitions are added to Section 1:

    “Member” means the city, county or joint powers authority which is a member of Party B.

18. Section 2.1 is amended by deleting the first sentence in its entirety and replacing it with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

19. Section 2.1 is amended by deleting the last sentence in its entirety and replacing it with the following: “Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

20. The following is added as a separate second paragraph of Section 2.2:

    "Party A and Party B confirm that this Master Agreement shall supersede and replace all prior power purchase and sale agreements between the Parties hereto with respect to the subject matter hereof, including but not limited to the Western Systems Power Pool Agreement (as amended from time to time). Party A and Party B further agree that any Transaction for the purchase or sale of electric energy, capacity or other related products that is in effect as of the Effective Date or that has delivery obligations that start on or after the Effective Date of this Master Agreement shall be governed by this Master Agreement, but only to the extent delivery occurs on or after the Effective Date, and is part of this single integrated agreement between the Parties consistent with the first paragraph of this Section 2.2."

21. Section 2.4 is amended to delete the phrase “either orally or” from the seventh line.

22. Section 2.5 is amended deleting in its entirety and replacing with the following: “Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence and secured from improper access; provided, however, that both Parties acknowledge and agree that any such recording may not be submitted as evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.”

23. Section 3.2 shall be amended by adding the following at the end thereof:

"Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region."

24. Insert the following as new Section 4.3

"Section 4.3 Mitigation. Each Party has a duty to mitigate damages under this Agreement and will use commercially reasonable efforts to minimize any damages it may incur resulting from the other Party's performance or nonperformance hereunder."

25. Section 5.1(a) is amended by changing "three (3) Business Days" to "five (5) Business Days".

26. Section 5.1(b) is amended by deleting the words 'or repeated" at the end of that section.

27. Section 5.1(c) is amended by changing "three (3) Business Days" to "thirty (30) days".

28. Section 5.1(g)(i) is amended on line 6, after "indebtedness for borrowed money", by inserting "(excluding indebtedness for borrowed money where the creditor's recourse on the obligation is limited to assets for which the money was borrowed)", and on line 8, by deleting the phrase "or becoming capable at such time of being declared," on the eighth line of the Section, and adding the following at the end of the Section:

"provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;"

29. Section 5.1(g)(iii) is amended by adding "(iii) Upon an Event of Default by Party A, if Party B elects to terminate this Agreement then all Transactions subject to this Agreement will terminate."

30. Section 5.1(h)(v) is amended by adding "made in connection with this Agreement" after "any guaranty".

31. Section 5.2 is amended by reversing the placement of "(i)" and "to".

32. The following shall be added to the end of Section 5.2:

"If the Non-Defaulting Party's aggregate Gains exceeds its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Settlement Amount shall be zero, notwithstanding any provision in this Section or any provision in this Agreement to the contrary."

33. Section 5.4, delete the phrase "two (2)" and insert the phrase "five (5)".

34. The following shall be added to the end of Section 5.4:

"Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article Five until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party and any of its Affiliates to make any payments to the Non-Defaulting Party or any of its Affiliates under this Agreement or otherwise have been fully and finally performed."

35. Section 5.7 shall be amended by deleting "(a)" and "or (b) a Potential Event of Default" from the second line, and (ii) delete from line 5 "ten (10)" and replacing it with "twenty (20)", and renumbering subparagraph (ii) to (iii) and inserting a new subparagraph (ii) that reads as follows: "(ii) to suspend payment until the Event of Default is cured; and".

36. Section 6.3, in the first, seventh and eighth sentences, delete the words, "twelve (12) months" and insert "two (2) years".

37. Section 6.3, in the fifth sentence, delete the words “two (2)” and insert the words “five (5)”.

38. Section 7.1 is amended by deleting in the fifteenth line the words “UNLESS EXPRESSLY HEREIN PROVIDED,”;

Add “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence;

Add in the nineteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABLILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3.” immediately after the words “ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE”;

Add at the end of the last sentence the words “AND ARE NOT PENALTIES.”

39. Section 10.8 and Section 10.9, delete the words, “twelve (12) months” and insert “two (2) years”.

40. Section 10.11 is amended to add the following at the end of the last sentence:

“Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Cal. Government Code § 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code § 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Cal. Government Code §§ 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “Disclosing Party”), the Party receiving such request (the “Receiving Party”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.”

41. The following provision is added as Section 10.12:

“10.12 UCC Applicable and Utility Disclaimer. Notwithstanding the laws of the State of California to the contrary, the Parties agree that (i) each Product is a “good” as such term is defined in the Uniform Commercial Code of the State of California, and (ii) all of the provisions of the Uniform Commercial Code of the State of California shall apply to this Agreement and all Transactions. Each Party further agrees that the other Party is not a “utility” as such term is used in 11 U.S.C. § 366, and each Party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding involving such Party, and further agrees that the other Party is not a provider of last resort.”

42. The following provision shall be added as Section 10.13:

"10.13 Imaged Documents**.** Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically ("Imaged Documents"). Imaged Documents may be introduced as evidence in any proceeding as if such were original business records."

43. FERC Standard of Review; Certain Covenants and Waivers. The following provision is added as Section 10.14:

"10.14 FERC Standard of Review; Certain Covenants and Waivers

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (c) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 128 S. Ct. 2733 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 130 S. Ct. 693 (2010) ("Mobile-Sierra doctrine").

(c) In addition, and notwithstanding the foregoing subsections (a) and (b), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC or PUC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC or PUC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC or PUC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (c) shall not apply, provided that, consistent with the foregoing subsections (a) and (b), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing subsections (a) and (b).

(d) The Parties agree that in the event that any portion of this Section 10.14 is determined to be invalid, illegal or unenforceable for any reason, the provisions of subsections (a) and (b) shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by applicable law."

44. Section 10.16, Cyber Attack, shall be added to Article Ten as follows:

"10.16 Cyber Attack. In addition to the provisions of Section 3.3, the parties hereby agree that a Cyber Attack (as defined below) that causes (i) the failure to perform a Firm obligation or (ii) a breach of a Party's confidentiality obligations arising under Section 10.11 will constitute an event of Force Majeure. In addition, notwithstanding the provisions of Section 5.1, the parties agree that a failure to pay that is solely the result of a Cyber Attack will not constitute an Event of Default; provided that (a) sufficient funds were available for such party to fulfill its obligations hereunder on the relevant date, and (b) the payment is made as soon as practicable but in no event later than 15 days after the occurrence of the Cyber Attack. "Cyber Attack" means a third-party attack that compromises the integrity or availability of information from an information system or systems required to perform the obligations under this Master Agreement that is outside the Party's control."

45. Section 10.17, Counterparts, shall be added to Article Ten as follows:

"10.17 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument. Without limiting the foregoing, a facsimile copy of this Agreement or copy of this Agreement sent via electronic mail in a portable document format ("PDF") will be considered an original.

46. Section 10.18, No Recourse Against Members of Party B, shall be added to Article Ten as follows:

"10.18 No Recourse Against Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Cal. Government Code § 6500, *et seq.*) and is a public entity separate from its Members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with, and subject to, the terms and conditions of each Transaction. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B's Members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B's Members, in connection with this Agreement. The Parties agree that Party B's obligations to make payments with respect to this Master Agreement and each Transaction, are to be made solely from Party B, and not from the individual Members of Party B."

"Section 10.19 Generally Accepted Accounting Principles. Any reference to "generally accepted accounting principles" shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement. Party A acknowledges that Party B is governed by the Governmental Accounting Standards Board with respect to generally accepted accounting principles."

SCHEDULE M

37) Schedule M is amended, with respect to Party A, as follows:

(a) Paragraph A is amended by deleting the term "Act" and replacing it with the following:

"Act" means the Joint Exercise of Powers Act of California (Government Code § 6500 *et seq.*)."

(b) The text of Section 3.4 within Section D of Schedule M shall be deleted in its entirety and replaced with the following:

"Section 3.4 Reserved."

(c) The following definitions will be added to Schedule M:

"Account Control Agreement" means the Account Control Agreement among the Collateral Agent, Depositary Bank, and Party B, dated [Date].

"Collateral Agent" has the meaning given it in the Security Documents.
"Depositary Bank" has the meaning given it in the Security Documents.
"Intercreditor and Collateral Agency Agreement" means the Intercreditor and Collateral Agency Agreement, dated [Date], among the Collateral agent, Party B and the PPA Providers party thereto from time to time. Party A has joined the Intercreditor and Collateral Agency Agreement as a PPA Provider.
"Minimum Credit Rating" has the meaning given it in Section 3.6.

"PPA Providers" has the meaning given it in the Security Documents.

"Secured Account" means the Lockbox Account (as that term is defined in the Security Agreement).
"Secured Creditors" has the meaning given it in the Security Documents.
"Security Agreement" means the Security Agreement, dated[Date], among Party B and the Collateral Agent.

"Security Documents" means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement and the Account Control Agreement.

(d) The "Special Fund" definition in Schedule M shall be deleted in its entirety and replaced with:

"Special Fund" means the Secured Account.

(e) In paragraph E of Schedule M, the text of Section 3.6 shall be deleted in its entirety and replaced with the following:

"Section 3.6 Party B Security. Party B has created and set aside a Special Fund as required by the Security Documents, and the Parties have entered into the Intercreditor and Collateral Agency Agreement. The Parties agree that Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund; *provided* that upon notice from Party B that Party B has obtained a Credit Rating of at least BBB- with an outlook designation of "stable" from S&P or Fitch, or Baa3 with an outlook designation of "stable" from Moody's (each a "Minimum Credit Rating"), then Party A shall terminate its status as PPA Provider under the Intercreditor and Collateral Agency Agreement, or, upon request from Party B, will cooperate with Party B to terminate the Intercreditor and Collateral Agency Agreement. After Party A's termination as a PPA Provider under the Intercreditor and Collateral Agency Agreement, if Party B fails to maintain a Minimum Credit Rating, then the Parties shall enter into agreements substantially similar to the Security Documents."

(f) In Paragraph F of Schedule M, the text of Section 8.4 shall be deleted in its entirety and replaced with the following:

"Section 8.4 Party B Security. As credit protection to Party A, and as a condition to the effectiveness of the

Confirmation, Party A and Party B have entered into the Security Documents, and such Security Documents have been duly executed and delivered by the Parties and by all third party signatories as contemplated therein and shall be in full force and effect. Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein."

(g) In Paragraph G, the text following the colon shall be deleted in its entirety and replaced with the following:

"NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY."

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

38) The following shall be added at the end of Schedule P:

"If the Parties agree to a service level/product defined by reference to a different agreement (*e.g.,* the MAPP Restated Agreement, the WSPP Agreement, ERCOT Guides) for a particular Transaction, then, unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply, such reference to a service level/product shall be as defined by such other agreement, including if applicable, the regional reliability requirements and guidelines as well as the specific excuses for performance, Force Majeure, Uncontrollable Forces, or other such excuses applicable to such other agreement, to the extent inconsistent with the terms of this Agreement, but all other terms and conditions of this Agreement remain applicable."

39) The following shall be added at the end of Schedule P:

""CAISO Energy" means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the California Independent System Operator ("CAISO") Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the CAISO tariff, as amended from time to time for which the only excuse for failure to deliver or receive is an "Uncontrollable Force" as defined in the CAISO Tariff."

40) The following shall be added at the end of Schedule P:

""West Firm" or "WSPPC-Firm" means with respect to a Transaction, a Product defined by the WSPP Agreement as amended, in Service Schedule C as Firm Capacity/Energy Sale or Exchange Service."

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A Name	**SAN DIEGO COMMUNITY POWER, a California joint powers authority**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

CONFIRMATION

This confirmation agreement ("**Confirmation**") confirms the Transaction between [_____] ("**Seller**") and San Deigo Community Power ("**Purchaser**"), each individually a "**Party**" and together the "**Parties**," dated as of _____, 2020 ("**Effective Date**") regarding the sale and purchase of electric capacity and/or electric energy under the terms and conditions set forth below:

Transaction Number:	
Purchaser:	San Diego Community Power
Seller:	
Trade Date:	
Type of Transaction:	
Term:	
Delivery Period:	
Contract Quantity:	
Contract Price:	
Delivery Point:	
Scheduling Rules:	
Special Terms:	

Governing Terms: This Transaction is governed by the terms and conditions of the WSPP Agreement dated January 25, 2020, along with any schedules and amendments thereto (collectively, the "**Master Agreement**"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "**Agreement**". If there is any conflict between the terms set forth in this Confirmation and the Master Agreement, the terms set forth in this Confirmation shall govern. Capitalized terms not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement.

Governing Law: Section 24 of the Master Agreement is deleted and replaced with the following: "This WSPP Agreement and any Confirmation shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law."

Creditworthiness: Notwithstanding any other provision of the Agreement, Section 27 of the Master Agreement is not applicable to and credit support is not required for either Party under this Confirmation, it being understood that this Confirmation will set forth all credit support and collateral requirements.

Lockbox Account: The Contract Price for Transactions for the purchase of energy will be paid from a Lockbox Account which has been set up to receive all funds collected from utility billings on behalf of Purchaser by San Diego Gas & Electric. The Lockbox Account is held by the Depository Bank and is controlled by the Collateral Agent pursuant to the terms of the Account Control Agreement. The Collateral Agent has been granted authority pursuant to the Security Agreement and the Intercreditor and Collateral Agency Agreement to act on behalf of Secured Creditors and ensure that Secured Creditors receive first priority of payment from the Lockbox

Account for all amounts due and payable to the Secured Creditors. Seller will become a Secured Creditor by executing an addendum making it a party to the Intercreditor and Collateral Agency Agreement. The distribution of payments from the Lockbox Account amongst the Secured Creditors is governed by the terms of the Security Documents. The following defined terms will have the meaning set forth in this Confirmation:

> "Account Control Agreement" means the Account Control Agreement among the Collateral Agent, Depositary Bank, and Purchaser dated [_____].
>
> "Collateral Agent" has the meaning given it in the Security Documents.
>
> "Depositary Bank" has the meaning given it in the Security Documents.
>
> "Intercreditor and Collateral Agency Agreement" means the Intercreditor and Collateral Agency Agreement, dated [____], among the Collateral Agent, Purchaser and the PPA Providers party thereto from time to time. Seller has joined the Intercreditor and Collateral Agency Agreement as a PPA Provider/Secured Creditor.
>
> "PPA Providers" has the meaning given it in the Security Documents.
>
> "Lockbox Account" has the meaning set forth in the Security Documents.
>
> "Secured Creditors" has the meaning given it in the Security Documents.
>
> "Security Agreement" means the Security Agreement, dated [_____], among Purchaser and the Collateral Agent.
>
> "Security Documents" means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement and the Account Control Agreement.

Confidentiality: The Parties acknowledge and agree that the Agreement is subject to the requirements of the California Public Records Act (Cal. Gov. Code § 6250 *et seq.*). Each Party (a "**Receiving Party**") acknowledges that the other Party (a "**Disclosing Party**") may submit information to the Receiving Party that the Disclosing Party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code § 3426 *et seq.*), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Cal. Gov Code §§ 6254 and 6255). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement ("**Requestor**") for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the "**Confidential Information**"), the Receiving Party shall notify the Disclosing Party as soon as practical that such request has been made. The Disclosing Party shall be solely responsible for taking whatever legal steps are

necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

Except as provided herein, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to their respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

Default: The cure period in which to remedy a default in Section 22.1(a) shall be five (5) business days.

Counterparts: This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

Entire Agreement; No Oral Agreements Or Modifications: This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

[signature page follows]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE

SELLER:	**PURCHASER:**
[_____]	**SAN DIEGO COMMUNITY POWER**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

(1) **[_____]**
as Account Bank,

(2) **SAN DIEGO COMMUNITY POWER**,
Account holder,

and

(3) **[_____]**, not in its individual capacity, but solely as collateral agent, as Secured Party.

ACCOUNT CONTROL AGREEMENT

ACCOUNT CONTROL AGREEMENT dated as of [_____], 2020 (this "Agreement")

BETWEEN:

(1) **[_____]**, (the "Account Bank");

(2) **SAN DIEGO COMMUNITY POWER**, a California joint powers authority ("SDCP"); and

(3) **[_____]**, not in its individual capacity, but solely as collateral agent (the "Secured Party").

WHEREAS:

(A) SDCP has pledged to the Secured Party (for the benefit of the PPA Providers, as secured creditors) all of the Collateral (as defined in the Security Agreement), pursuant to that certain Security Agreement between SDCP and Secured Party dated [_____], 2020 (the "Security Agreement");

(B) SDCP has directed San Diego Gas & Electric ("SDG&E") to remit all present and future collections on accounts receivable now or hereafter billed by SDG&E and owed by SDCP's customers to Secured Party, for remittance to a Lockbox Account (as defined in the Security Agreement) maintained by Secured Party;

(C) Secured Party shall have, for the benefit of the PPA Providers, a first priority continuing security interest in and lien on such Collateral pledged to Secured Party for the benefit of the PPA Providers, as provided in the Security Agreement;

(D) SDCP intends that Secured Party shall distribute the Collateral deposited into the Lockbox Account in accordance with the provisions of the Security Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

Unless otherwise defined herein, all capitalized terms used herein and defined in the Security Agreement shall be used herein as therein defined. Reference to singular terms shall include the plural and vice versa.

1. **THE ACCOUNTS.**

SDCP hereby requests that Account Bank open, and Account Bank hereby confirms that it has opened the account described on Exhibit A attached hereto and incorporated herein by this reference (a non-interest-bearing deposit account held in the name of SDCP) which will be subject to, and administered in accordance with, the terms of this Agreement (together, the "Lockbox Account").

The parties hereto agree that the Lockbox Account shall be funded solely by wire transfers of immediately available funds and that Account Bank shall not be required to accept any other items for deposit into the Lockbox Account. All amounts payable for deposit into the Lockbox Account shall be paid to Account Bank at the accounts listed on Exhibit A.

2. **CONTROL OF THE ACCOUNTS / PAYMENT MECHANICS.**

(a) The Lockbox Account shall be maintained by Account Bank in the name of "San Diego Community Power" and shall be under the sole dominion and control of Secured Party. Account Bank agrees that it will comply with written instructions originated by Secured Party directing disposition of the funds in the Lockbox Account without further consent by SDCP or otherwise.

(b) Account Bank (i) shall disburse and/or invest funds held in the Lockbox Account as instructed by Secured Party and (ii) agrees that, except as otherwise expressly provided herein, SDCP will not have access to the funds in the Lockbox Account and that the Account Bank will not agree with SDCP or any other party (other than the Secured Party) to comply with any instructions for the disposition of the funds in the Lockbox Account originated by SDCP or such other party.

3. **STATEMENTS AND OTHER INFORMATION.**

(a) Account Bank shall provide Secured Party with copies of the regular monthly bank statements of the Lockbox Account at such times such statements are provided to SDCP and such other information relating to the Lockbox Account as shall reasonably be requested by Secured Party or SDCP. Account Bank shall also deliver a copy of all notices and statements required to be sent by it to SDCP pursuant to any agreement governing or related to the Lockbox Account to which Account Bank is a party to Secured Party at such times such notices and statements are provided to SDCP. Except as otherwise required by law, Account Bank will use reasonable efforts promptly to notify Secured Party and SDCP if Account Bank receives a notice that any other person claims that it has an interest in the Lockbox Account. As of the date of this Agreement, Account Bank confirms that it has not received notice that any other person has any interest in the Lockbox Account.

(b) Account Bank hereby confirms that (i) the Lockbox Account has been established and is maintained with Account Bank on its books and records, (ii) Account Bank is a bank within the meaning of Section 9-102(a)(8) of the Uniform Commercial Code of California, (iii) the Lockbox Account is a deposit account within the meaning of Section 9-102(a)(29) of the Uniform Commercial Code of California, and (iv) the jurisdiction of Account Bank for the purposes of Article 9 of the Uniform Commercial Code of California is California.

4. **FEES.**

SDCP agrees to pay on demand all usual and customary service charges, transfer fees and account maintenance fees of Account Bank in connection with the Lockbox Account in

accordance with the terms of the separate fee agreement entered into by SDCP and Account Bank.

5. **SET-OFF.**

Account Bank hereby agrees that Account Bank will not exercise or claim any right of set-off or banker's lien against the Lockbox Account. As of the date of this Agreement, Account Bank does not know of any claim to or interest in the Lockbox Account, except for claims and interests of the parties hereto. All of Account Bank's present and future rights against the Lockbox Account are subordinate to Secured Party's security interest therein.

6. **ACCOUNT BANK.**

The acceptance by Account Bank of its duties under this Agreement is subject to the following terms and conditions, which the parties to this Agreement hereby agree shall govern and control with respect to all of Account Bank's rights, duties, liabilities and immunities:

(a) Account Bank shall be protected in acting upon any written notice, certificate, resolution, instruction, request, authorization or other paper or document as to the due execution thereof and the validity and effectiveness of the provisions thereof and as to the truth of any information therein contained, which it in good faith believes to be genuine and to have been signed or presented by the proper party or parties in accordance with the terms of this Agreement.

(b) Account Bank may act relative hereto upon advice of counsel in reference to any matter connected herewith, and shall not be liable for any mistake of fact or error of judgment, or any acts or omissions of any kind unless caused by its willful misconduct or gross negligence. If at any time Account Bank determines that it requires or desires guidance regarding the application of any provision of this Agreement or any other document, regarding compliance with any direction it receives hereunder, Account Bank may deliver a notice to Secured Party (or SDCP after Secured Party has informed Account Bank that SDCP has satisfied all of its obligations under the Power Purchase Agreements) requesting written instructions as to such application or compliance, and such instructions by or on behalf of Secured Party (or SDCP after Secured Party has informed Account Bank that SDCP has satisfied all of its obligations under the Power Purchase Agreements), as applicable, shall constitute full and complete authorization and protection for actions taken and other performance by Account Bank in reliance thereon. Until Account Bank has received such instructions after delivering such notice, it may, but shall be under no duty to, take or refrain from taking any action with respect to the matters described in such notice.

(c) This Agreement sets forth exclusively the duties of Account Bank with respect to any and all matters pertinent hereto, and no implied duties or obligations shall be read into this Agreement against Account Bank.

(d) Any funds held by Account Bank, as such, need not be segregated from other funds except to the extent required by mandatory provisions of law.

7. **REPRESENTATIONS OF ACCOUNT BANK.**

Account Bank represents and warrants as to itself (as set forth below) to Secured Party as follows, such representations are being made on the date of the execution and delivery of this Agreement, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties are correct on and as of such earlier date):

(a) *Organization, Corporate Authority*. Account Bank represents and warrants that it is a national banking association duly organized and validly existing in good standing under the laws of the United States of America and has the corporate power and authority to enter into and perform its obligations under this Agreement, and has full right, power and authority to enter into and perform its obligations under this Agreement.

(b) *Authorization*. Account Bank represents and warrants that this Agreement has been duly executed and delivered by one of its officers who is duly authorized to execute and deliver this Agreement on its own behalf.

(c) *Legal, Valid and Binding*. Account Bank represents and warrants that this Agreement has been duly executed and delivered by it and, assuming that this Agreement is the legal, valid and binding obligation of each other party thereto, is the legal, valid and binding obligation of Account Bank, enforceable against Account Bank in accordance with its terms.

(d) *No Violation*. Account Bank represents and warrants that this Agreement has been duly authorized by all necessary corporate action on its part, and neither the execution and delivery thereof nor its performance of any of the terms and provisions thereof will violate any federal law or regulation relating to its banking or trust powers or contravene or result in any breach of, or constitute any default under its charter or by-laws or the provisions of any indenture, mortgage, contract or other agreement to which it is a party or by which it or its properties may be bound or affected.

8. **EXCULPATION OF ACCOUNT BANK; INDEMNIFICATION BY BORROWER.**

Each of SDCP and Secured Party agrees that Account Bank shall have no liability to any of them for any loss or damage that any or all may claim to have suffered or incurred, either directly or indirectly, by reason of this Agreement or any transaction or service contemplated by the provisions hereof, unless occasioned by the gross negligence, breach of an express term of this Agreement or willful misconduct of Account Bank. In no event shall Account Bank be liable for losses or delays resulting from computer malfunction, interruption of communication facilities, labor difficulties or other causes beyond Account Bank's reasonable control or for the

indirect, special or consequential damages. SDCP agrees to indemnify Account Bank and hold it harmless from and against all claims, other than those ultimately determined to be founded on the gross negligence or willful misconduct of Account Bank, and from and against any damages, penalties, judgments, liabilities, losses or expenses (including reasonable attorney's fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, or otherwise related to, any transaction conducted or service provided by Account Bank through the use of any SDCP Account at Account Bank or pursuant to this Agreement.

9. **TERMINATION.**

This Agreement may be terminated upon delivery to Account Bank of a written notification thereof jointly executed by Secured Party and (provided Secured Party has not notified Account Bank that an Event of Default is then continuing) SDCP. Notwithstanding the foregoing, this Agreement may be terminated by Secured Party in accordance with and subject to the requirements of that certain Intercreditor and Collateral Agency Agreement, dated as of [_____], 2020, between and among Secured Party, the PPA Providers, and SDCP, at any time, with or without cause, upon its delivery of written notice thereof to each of SDCP and Account Bank. For the avoidance of doubt, it is expressly understood and agreed that the Account Bank shall have no duty to monitor or oversee, and shall have no liability whatsoever in connection with, Secured Party's compliance with the Intercreditor Agreement. This Agreement may be terminated by Account Bank at any time on not less than sixty (60) days' prior written notice delivered to each of SDCP and Secured Party provided that such termination shall not take effect until Secured Party confirms that a replacement account and replacement security has been obtained in form and substance satisfactory to Secured Party. Upon any such termination of this Agreement, Account Bank will immediately transmit to such account as Secured Party may direct all funds, if any, then on deposit in, or otherwise standing to the credit of the Lockbox Account. The provisions of paragraphs 2 and 5 shall survive termination of this Agreement unless and until specifically released by Secured Party in writing. All rights of Account Bank under paragraphs 4, 5, 6 and 8 shall survive any termination of this Agreement.

10. **IRREVOCABLE AGREEMENTS.**

SDCP acknowledges that the agreements made by it and the authorizations granted by it in paragraph 2 hereof are irrevocable and that the authorizations granted in paragraph 2 hereof are powers coupled with an interest.

11. **NOTICES.**

All notices, requests or other communications given to Account Bank, SDCP or Secured Party shall be given in writing (including by facsimile) at the address specified below:

Account Bank: _____
_____
_____
_____
Telephone: _____

Email: _____
Facsimile: _____

SDCP: SAN DIEGO COMMUNITY POWER
c/o City of San Diego
Sustainability Department
Attention: Chief Executive Officer
1200 Third Street, 18th Floor
San Diego, CA 92101-4195
Phone: (858) 492-6005
Email: _____
Facsimile: _____

Secured Party: _____
_____
_____
_____
Telephone: _____
Email: _____
Facsimile: _____

Any party may change its address for notices hereunder by notice to each other party hereunder given in accordance with this paragraph 11. Each notice, request or other communication shall be effective (a) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this paragraph 11 and confirmation of receipt is made by the appropriate party, (b) if given by overnight courier, five (5) days after such communication is deposited with the overnight courier for delivery, addressed as aforesaid, or (c) if given by any other means, when delivered at the address specified in this paragraph 11.

12. **MISCELLANEOUS.**

(a) This Agreement may be amended only by a written instrument executed by each of the parties hereto acting by their respective duly authorized representatives.

(b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, but neither SDCP nor Account Bank shall be entitled to assign or delegate any of its rights or duties hereunder without first obtaining the express prior written consent of Secured Party.

(c) This Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

(d) This Agreement and any document contemplated hereby may be delivered by a party hereto by way of facsimile or e-mail transmission and such delivery shall be deemed completed for all purposes upon the completion of such facsimile or e-

mail transmission. A party that so delivers this Agreement or any such document by way of facsimile or e-mail transmission agrees to promptly thereafter deliver to the other party hereto an original signed counterpart. The signature of any party transmitted by facsimile or e-mail shall be considered for these purposes as an original document, and any such document shall be considered to have the same binding legal effect as an originally executed document. In consideration of the mutual covenants herein contained, the parties agree that none of them shall raise the use of a facsimile machine or e-mail as a defense in any suit or controversy related to this Agreement or any of the other documents and forever waive any such defense.

(e) THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS AGREEMENT IS BEING DELIVERED IN THE STATE OF CALIFORNIA. The parties agree that the State of California (i) is and shall remain the "bank's jurisdiction" of the Account Bank for the purposes of the Uniform Commercial Code; and (ii) shall be deemed to be the location of the Lockbox Accounts and of SDCP's rights and interests in and to the Lockbox Accounts. This Agreement may be executed by the parties hereto in separate counterparts (or upon separate signature pages bound together into one or more counterparts), each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

(f) EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING TO WHICH THEY ARE PARTIES INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS AGREEMENT, THE OTHER LOAN OPERATIVE DOCUMENTS OR THE RELATIONSHIP ESTABLISHED HEREUNDER OR THEREUNDER.

(g) SDCP hereby submits to the nonexclusive jurisdiction of the United States District Court for the Southern District of California and of any California state court sitting in San Diego for the purpose of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby and thereby. SDCP irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

(h) SDCP hereby irrevocably appoints the SDCP Clerk from time to time to receive on its behalf service of process issued out of the federal courts of California in any legal action or proceeding arising out of or in connection with this Agreement

or any other document to which it is a party. SDCP undertakes not to revoke the authority of the agent specified above and if, for any reason, any such agent no longer serves or is capable of serving as agent of the relevant party hereto to receive service of process in SDCP, such party shall promptly appoint another such agent and advise Secured Party thereof and, failing such appointment within fourteen (14) days, Secured Party shall be entitled (and is hereby authorized) to appoint an agent on behalf of SDCP. Nothing herein contained shall restrict the right to serve process in any other manner allowed by law.

[Signature page follows]

IN WITNESS WHEREOF, each of the parties has executed and delivered this Account Control Agreement as of the day and year first above set forth.

Account Bank	[_____]
	By: _____ Name: _____ Title: _____
SDCP	SAN DIEGO COMMUNITY POWER, a California joint powers authority
	By: _____ Name: _____ Title: _____
Secured Party	[_____], not in its individual capacity, but solely as Collateral Agent
	By: _____ Name: _____ Title: _____

EXHIBIT A

Lockbox Account No: _____

Payment instructions for deposits to Lockbox:

Bank: _____
ABA#: _____
Credit: _____
A/C #: _____
Attn.: _____

SECURITY AGREEMENT

This **SECURITY AGREEMENT** (this "**Agreement**") dated as of [_____], 2020, is entered into between SAN DIEGO COMMUNITY POWER, a California joint powers authority, as pledgor ("**SDCP**"), and RIVER CITY BANK, a California corporation, not in its individual capacity, but solely as collateral agent (in such capacity, together with its successors and assigns in such capacity, the "**Collateral Agent**"), for the benefit of the PPA Providers (as defined below), as Secured Creditors (as defined below).

RECITALS:

A. SDCP intends to enter into a Power Purchase Agreement (as defined below) with multiple power providers (each, a "**PPA Provider** and collectively, the "**PPA Providers**"), pursuant to which SDCP will agree to purchase the Product (as defined below) from each such PPA Provider;

B. SDCP shall sell the Product purchased from PPA Providers to SDCP's customers at rates established by SDCP from time to time;

C. SDCP's customers are billed by San Diego Gas & Electric ("**SDG&E**") amounts they owe for the Product provided by SDCP;

D. As of the date hereof, SDCP has directed SDG&E to remit all present and future collections on accounts receivable now or hereafter billed by SDG&E on behalf of SDCP to Collateral Agent, for remittance to the Lockbox Account (as defined below) maintained by Collateral Agent, which direction is irrevocable unless both Collateral Agent, at the direction of the Required Secured Creditors (as defined below), and SDCP direct SDG&E otherwise;

E. SDCP desires herein to pledge to Collateral Agent, for the benefit of the PPA Providers as Secured Creditors, a first priority continuing security interest in and to the Collateral (defined below);

F. The PPA Providers and SDCP will enter into the Intercreditor Agreement (as defined below) wherein the PPA Providers will appoint the Collateral Agent to act on their behalf regarding the administration, collection and allocation of the proceeds of the Collateral; and

G. SDCP and Collateral Agent desire to enter into this Agreement to evidence the pledge of the Collateral and to set forth their agreements regarding the Collateral and the application of the Collateral to the Obligations (as defined below).

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:

Section 1. Definitions, Etc.

1.01 Defined Terms. The following terms shall have the meanings assigned to them in this Section 1.01 or in the provisions of this Agreement referred to below:

"**Applicable Law**" means any applicable law, including without limitation any: (a) federal, state, territorial, county, municipal or other governmental or quasi-governmental law, statute, ordinance, rule, regulation, requirement or use or disposal classification or restriction, whether domestic or foreign; (b) judicial, administrative or other governmental or quasi-governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (c) common law or other legal or quasi-legal precedent; (d) arbitrator's, mediator's or referee's decision, finding, award or recommendation; or (e) charter, rule, regulation or other organizational or governance document of any national securities exchange or market or other self-regulatory organization.

"**Bankruptcy Code**" means the Bankruptcy Reform Act of 1978, as codified under Title 11 of the United States Code, and the rules promulgated thereunder, as the same may be in effect from time to time.

"**Business Day**" means any day other than a Saturday, a Sunday or a day on which commercial banks in the United States are required or authorized to close.

"**Collateral**" means the following, whether now existing or hereafter arising: (a) the Receivables; (b) the Lockbox Account; (c) all cash, cash equivalents, securities, Investment Property (as such term is defined in the UCC), Security Entitlements (as such term is defined in the UCC), checks, money orders and other items of value now or hereafter that are required to be, or that are, paid, deposited, credited or held (whether for collection, provisionally or otherwise) in or with respect to the Lockbox Account or otherwise in the possession or under the control of, or in transit to, the Collateral Agent or the Depositary Bank for credit or with respect to the Lockbox Account and all interest accumulated thereon; and (d) all Proceeds (as such term is defined in the UCC) of any or all of the foregoing. The term "Collateral" shall not include any amounts distributed to SDCP pursuant to Section 6.02(v).

"**Collateral Agent**" has the meaning given to such term in the Preamble hereof.

"**Control**" has the meaning given to such term in Section 9-104 of the UCC.

"**Control Agreements**" means the Lockbox Account Control Agreement, and any other agreements entered into among SDCP, Collateral Agent and Depositary Bank which shall designate the Lockbox Account as a blocked account under the Control of Collateral Agent, for the benefit of Secured Creditors, as provided in the UCC, as each such agreement may be amended, supplemented, restated or replaced from time to time.

"**Credit Rating**" means for a Qualified Institution the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating

agency or agencies or, if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its "corporate credit rating" by S&P.

"**Customer**" means any customer of SDCP who purchases the Product from SDCP but is invoiced by SDG&E, and any other obligor(s) responsible for payment of a Receivable.

"**Depositary Bank**" means River City Bank, a California corporation, in its capacity as depositary bank and its successors and assigns.

"**Direction Letter**" means that certain letter, a copy of which has been delivered to the Collateral Agent, from SDCP to SDG&E pursuant to which SDCP has directed SDG&E to remit all of the Proceeds on the Receivables collected by SDG&E from Customers to the Lockbox Account specified therein for application to the Obligations, unless and until both Collateral Agent, at the direction of the Required Secured Creditors, and SDCP jointly instruct SDG&E to terminate or change such direction and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof and any similar letter or written direction provided to SDG&E.

"**Discharge Date**" means that date on which: (a) any and all outstanding Obligations under the Transaction Agreements have been fully satisfied, and (b) there are no continuing obligations by SDCP under any Transaction Agreements (other than for any provisions which are intended to survive the termination of the Transaction Agreements).

"**Distribution Date**" means the twenty-fifth (25) day of each month.

"**Distribution Date Certificate**" means a certificate prepared and submitted by SDCP in accordance with Section 6.03.

"**Event of Default**" has the meaning set forth in the applicable Master Agreement or Power Purchase Agreement.

"**Intercreditor Agreement**" means the Intercreditor and Collateral Agency Agreement, dated as of even date herewith, among Collateral Agent, the Secured Creditors from time to time party thereto and SDCP, as amended, supplemented, restated or replaced from time to time.

"**Lender**" means River City Bank, a California corporation.

"**Letter of Credit**" means one or more irrevocable, transferable standby letters of credit, in a form acceptable to the Secured Creditors and issued by a Qualified Institution.

"**Lien**" means any mortgage, pledge, hypothecation, deposit arrangement, encumbrance, lien (statutory or other), assignment, charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any sale governed by Article 9 of the UCC, any

conditional sale or title retention agreement, or any capital lease having substantially the same economic effect as any of the foregoing).

"**Lockbox Account**" means the deposit account no. [*account number*], which is maintained in the name of SDCP and is under the Control of Collateral Agent, for the benefit of the Secured Creditors, at Depositary Bank, and any replacement account, in each case, pursuant to the Lockbox Account Control Agreement.

"**Lockbox Account Control Agreement**" means the Account Control Agreement, dated as of the date hereof, among Depositary Bank, SDCP and Collateral Agent and any other agreements entered into among Depositary Bank, SDCP and Collateral Agent which shall designate the Lockbox Account as a blocked account under the Control of Collateral Agent, for the benefit of Secured Creditors, as provided in the UCC, as each such agreement may be amended, supplemented, restated or replaced from time to time.

"**Master Agreements**" means the Master Power Purchase Agreements entered into between SDCP and PPA Providers, a current list of which is set forth on **Exhibit "B"**, as the same may be modified from time to time.

"**Moody's**" means Moody's Investor Services, Inc.

"**Obligations**" means all of the obligations and liabilities of SDCP to each PPA Provider, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereinafter arising under or in respect of one or more of the Transaction Agreements, including all payments, fees, purchases, mark-to-market exposure, commitments for reimbursement, indemnifications, interest, damages and Termination Payments, if any. The term "Obligations" also includes all of SDCP's other present and future obligations to each PPA Provider under the Transaction Agreements, including the repayment of (a) any amounts that Collateral Agent (or a PPA Provider) may advance or spend for the maintenance or preservation of the Collateral and (b) any other expenditure that Collateral Agent (or PPA Provider) may make under the provisions of the Transaction Agreements for the benefit of SDCP. For the avoidance of doubt, the term "Obligations" includes any of the foregoing that arises after the filing of a petition by or against SDCP under any bankruptcy or insolvency statute, even if the Obligations do not accrue because of any statutory automatic stay or otherwise.

"**Operating Account**" means the deposit account no. [*account number*], which is maintained in the name of SDCP, at [_____].

"**Person**" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

"**Power Purchase Agreement**" means each agreement, including the Master Agreements, together with the exhibits, schedules, transactions, confirmations (including confirmations entered into after the date hereof), and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof,

pursuant to which a PPA Provider sells the Product to SDCP on behalf of SDCP, as amended, modified, supplemented, restated, extended or replaced from time to time.

"**PPA Provider**" means each seller of Product under a Power Purchase Agreement that is made a party to the Intercreditor Agreement, and its respective successors and assigns.

"**Product**" means one or more of the following: energy, renewable energy attributes, capacity attributes, resource adequacy benefits, or any other similar or related products contemplated in the Master Agreements.

"**Qualified Institution**" means a commercial bank organized under the laws of the United States or a political subdivision thereof having at the applicable time (a) a Credit Rating of (i) A- or better from Standard & Poor's, or (ii) A3 or better from Moody's, or (iii) if such bank has a Credit Rating at such time from both Standard & Poor's and Moody's, A- or better from Standard & Poor's and A3 or better from Moody's and (b) assets of at least Ten Billion Dollars ($10,000,000,000).

"**Receivable**" means an Account evidencing SDCP's rights to payment for Product, billed in an invoice sent to a Customer by SDG&E, together with all late fees and other fees which SDG&E and SDCP agree are to be charged in such invoice to the Customer by SDG&E on behalf of SDCP.

"**Regular Charges**" means, as of any date of determination, amounts then due and owing to such PPA Provider for the Product delivered by such PPA Provider, without giving effect to any Supplemental Payment owing to such PPA Provider.

"**Regular Sharing Percentage**" means, as of any date of determination, with respect to each PPA Provider as calculated by SDCP in a commercially reasonable manner, the percentage equivalent of a fraction, (i) the numerator of which is the amount of the Regular Charges due and owing to such PPA Provider, as of such date, and (ii) the denominator of which is the amount of the Regular Charges due and owing to all PPA Providers, as of such date.

"**Required Secured Creditors**" has the meaning given to such term in the Intercreditor Agreement.

"**Reserve Amount**" means an amount of [_____] Dollars ($_____). If SDCP is not subject to an Event of Default, the total Reserve Amount shall automatically be reduced by Twenty Percent (20%) annually, upon the annual anniversary of the date on which this Agreement was entered into (or next Business Day if the anniversary date is not a Business Day).

"**Secured Creditors**" means each PPA Provider party to the Intercreditor Agreement, SDCP, and their respective successors and assigns.

"**Standard & Poor's**" means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.).

"**Supplemental Payment**" means, as of any date of determination, all Obligations owing by SDCP to each PPA Provider, excluding, however, the Regular Charges owed to such PPA Provider. Supplemental Payments include, but are not limited to, all out-of-pocket losses such as indemnity claims arising under the Transaction Agreements to the extent such losses were incurred by such PPA Provider, all late payment charges due under a Power Purchase Agreement, and all Obligations arising upon a default or Termination Event, such as Termination Payments.

"**Supplemental Sharing Percentage**" means, as of any date of determination, with respect to each PPA Provider, the percentage equivalent of a fraction, (y) the numerator of which is the outstanding amount of the Supplemental Payments due and owing to such PPA Provider, as of such date, and (z) the denominator of which is the sum of the outstanding amount of the Supplemental Payments due and owing to all PPA Providers, as of such date.

"**Termination Event**" means, with respect to any Power Purchase Agreement, the termination and/or acceleration thereof in accordance with the terms of such Power Purchase Agreement.

"**Termination Payment**" has the meaning given to such term in the Intercreditor Agreement.

"**Transaction Agreements**" means the Master Agreements, any other Power Purchase Agreements, the Control Agreements, the Intercreditor Agreement, this Agreement and all other agreements, instruments or documents to which SDCP is a party and which are executed and delivered from time to time in connection with or as security for SDCP's obligations under the Master Agreements, any other Power Purchase Agreements, as the same may be amended, restated, modified, replaced, extended or supplemented from time to time.

"**UCC**" means the Uniform Commercial Code in effect in the State of California from time to time.

1.02 Certain Uniform Commercial Code Terms. As used herein, the terms "**Account**", "**Investment Property**", and "**Proceeds**" have the respective meanings set forth in Article 9 of the UCC. The terms "**Security**" and "**Security Entitlements**" have the respective meanings set forth in Article 8 of the UCC.

1.03 Other Interpretive Provisions. References to "Sections" shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, "including" is not limiting and "or" is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement. References to any Person include the successors and permitted

assigns of such Person. References to any statute, act or regulation shall include its related current version and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

Section 2. Grant of Security Interest.

As collateral security for the payment and performance in full of the Obligations when due, whether at stated maturity, by acceleration or otherwise, SDCP hereby assigns, pledges and grants to Collateral Agent, for the benefit of the Secured Creditors, a first priority continuing security interest in and continuing lien on all of SDCP's right, title and interest in and to the Collateral, including the following:

(a) the prompt and complete payment, when due and payable, of all Obligations;

(b) the timely performance and observance by SDCP of all covenants, obligations and conditions contained in the Transaction Agreements; and

(c) without limiting the generality of the foregoing and to the fullest extent permitted under Applicable Law, the payment of all amounts, including interest which constitute part of the Obligations and would be owed by SDCP to the Secured Creditors under the Transaction Agreements but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving SDCP.

The collateral assignment evidenced by this Agreement is a continuing one and is irrevocable by SDCP so long as any of the Obligations are outstanding.

Section 3. Representations and Warranties.

SDCP represents and warrants to Collateral Agent that:

3.01 Title. It is the sole beneficial owner of the Collateral and such Collateral is free and clear of all liens, except liens in favor of Collateral Agent created hereunder.

3.02 Formation. As of the date hereof, SDCP is a joint powers authority duly formed and validly existing under the laws of the State of California to implement a Community Choice Aggregation Program for its member entities, which are all public agencies and municipalities in the State of California. SDCP's primary office is located at 3390 University Avenue in the City of Riverside, State of California.

3.03 Changes in Circumstances. SDCP has not: (a) within the period of four (4) months prior to the date hereof, changed its location (as defined in Article 9 of the UCC); (b) within the period of five (5) years prior to the date hereof, changed its name; or (c) within the period of four (4) months prior to the date hereof, become a "new debtor" (as defined

in Article 9 of the UCC) with respect to a currently effective security agreement previously entered into with any other Person.

3.04 Security Interests. The Liens granted by this Agreement have attached and constitute a perfected first priority continuing security interest in the Collateral. SDCP owns good and marketable title to the Collateral free and clear of all Liens other than such Liens established under this Agreement, and neither the Collateral nor any interest in the Collateral has been transferred to any other Person. SDCP has full right, power and authority to grant a first-priority security interest in the Collateral to Collateral Agent in the manner provided in this Agreement, free and clear of any other Liens, adverse claims and options and without the consent of any other person or entity or if consent is required, such consent has been obtained. No other Lien, adverse claim or option has been created by SDCP or is known by SDCP to exist with respect to the Collateral. At the time the security interest in favor of Collateral Agent attaches, good and indefeasible title to all after-acquired property included within the Collateral, free and clear of any other Liens, adverse claims or options shall be vested in SDCP. All consents for the assignment of Collateral to Collateral Agent, if any, required to be obtained by SDCP have been obtained.

Section 4. Covenants.

SDCP hereby stipulates and agrees with the Collateral Agent as follows:

4.01 Perfection by Control. SDCP shall not be permitted to withdraw funds from the Lockbox Account until the Discharge Date and this Agreement has been terminated. Collateral Agent shall have the exclusive authority to withdraw, or (other than as set forth herein) direct the withdrawal of, funds from the Lockbox Account. The Control Agreement for the Lockbox Account shall give the Collateral Agent the sole power to direct Depositary Bank regarding the Lockbox Account, and thus Collateral Agent shall Control the Lockbox Account within the meaning of the UCC. Collateral Agent shall make distributions from the Lockbox Account only in accordance with Section 6 of this Agreement.

4.02 Further Assurances. Upon the request of Collateral Agent, SDCP shall promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, documents, agreements or other papers as may be necessary in the judgment of Collateral Agent to create, preserve, perfect, maintain the perfection of or validate the security interest granted pursuant hereto or to enable Collateral Agent to exercise and enforce its rights hereunder with respect to such security interest, and without limiting the foregoing, shall:

(a) take such other action as Collateral Agent may reasonably deem necessary or appropriate to duly record or otherwise perfect the security interest created hereunder in the Collateral;

(b) promptly from time to time enter into such Control Agreements, each in form and substance reasonably acceptable to Collateral Agent, as may be required to perfect the security interest created hereby;

(c) keep full and accurate books and records relating to the Collateral, and stamp or otherwise mark such books and records in such manner as Collateral Agent may reasonably require in order to reflect the security interests granted by this Agreement; and

(d) permit representatives of Collateral Agent, upon reasonable notice, at any time during normal business hours to inspect and make abstracts from its books and records pertaining to the Collateral, and to be present at SDCP's places of business to receive copies of communications and remittances relating to the Collateral, and forward copies of any notices or communications received by SDCP with respect to the Collateral, all in such manner as Collateral Agent may reasonably require.

4.03 No Other Liens. SDCP is and shall be the owner of or have other transferable rights in the Collateral free from any right or claim of any other Person or any other Lien and SDCP shall defend the same against all claims and demands of all Persons at any time claiming the same or any interest therein adverse to Collateral Agent. SDCP shall not (a) grant, or permit to be granted, any Lien with respect to any of the Collateral in which Collateral Agent is not named as the sole secured party, (b) file or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to any of the Collateral in which Collateral Agent is not named as the sole secured party, or (c) cause or permit any Person other than Collateral Agent to have Control of the Lockbox Account.

4.04 Locations; Names, Etc. Without at least thirty (30) days' prior written notice to the Collateral Agent, SDCP shall not: (a) change its location (as defined in Article 9 of the UCC), (b) change its legal name, or (c) agree to or authorize any modification of the terms of any item of the Collateral if the effect thereof would be to result in a loss of perfection of, or diminution of priority for, the security interests created hereunder in such item of Collateral, or the loss of control (within the meaning of Article 9 of the UCC) by Collateral Agent over such item of Collateral.

4.05 Perfection and Recordation. SDCP authorizes Collateral Agent to file Uniform Commercial Code financing statements describing the Collateral (provided that no such description shall be deemed to modify the description of Collateral set forth in Section 2). The Collateral Agent, in accordance with Section 4.02 hereof, hereby requests and instructs SDCP to, and SDCP hereby agrees, at its sole cost and expense to, prepare and file such Uniform Commercial Code financing and continuation statements describing the Collateral as may be necessary to perfect and continue the security interest granted herein. SDCP shall deliver to the Collateral Agent a file stamped copy of all such filings, which the Collateral Agent shall make available to any PPA Provider upon request.

Section 5. Remittance of Collections to Collateral Agent.

5.01 Irrevocable Direction. SDCP has, pursuant to the Direction Letter, irrevocably instructed SDG&E to remit to Collateral Agent all payments due or to become due in respect of the Receivables unless and until both Collateral Agent, at the direction of the Required Secured Creditors, and SDCP direct otherwise in writing. SDCP shall periodically take such additional measures as may be commercially reasonable to cause SDG&E to make all payments due to SDCP into the Lockbox Account. SDCP shall provide Collateral Agent with such proof

of compliance with this Section 5.01 as Collateral Agent may reasonably request from time to time. Without the prior written consent of Collateral Agent (acting at the written direction of the Required Secured Creditors), SDCP shall not (a) terminate, amend, revoke or modify such payment instructions to SDG&E or Customers or (b) direct or cause, directly or indirectly, SDG&E or any Customer to make any payments except in accordance with such payment instructions. The parties agree that if any such payments, or any other Proceeds of Collateral, are received by SDCP, (i) they shall be held in trust by SDCP for the benefit of the Collateral Agent, (ii) SDCP shall as promptly as possible remit or deliver same to Collateral Agent for application as provided herein, (iii) SDCP shall take such commercially reasonable steps as necessary to require SDG&E to make any future remittances into the Lockbox Account and (iv) such activity shall be reported promptly to Collateral Agent following SDCP's receipt of such funds. Collateral Agent thus has the right to all collections on the Collateral remitted to it by SDG&E until the Discharge Date.

5.02 Application of Proceeds. The Proceeds of any collection or realization of all or any part of the Collateral shall be applied by Collateral Agent as provided for in Section 6 below. Collateral Agent waives all rights under the UCC to enforce rights in the Collateral by means of a sale or other foreclosure action; the Collateral shall be collected by Collateral Agent from SDG&E pursuant to the Direction Letter.

5.03 Deficiency. If the Proceeds of the collection of the Collateral are insufficient to pay in full the Obligations, SDCP remains liable to Collateral Agent and Secured Creditors for any deficiency.

5.04 Attorney-in-Fact. Collateral Agent is hereby appointed the attorney-in-fact of SDCP to receive, endorse and collect all checks made payable to the order of SDCP representing any payment or other distribution in respect of the Collateral.

Section 6. Establishment of and Distributions From Lockbox Account.

6.01 Establishment of Lockbox Account. SDCP shall establish the Lockbox Account in SDCP's name at Depositary Bank and shall fund the Reserve Amount into the Lockbox Account. The deposits into the Lockbox Account and all interest accumulated thereon shall be held and disbursed by the Depositary Bank in accordance with the terms and conditions of the Control Agreements. The Lockbox Account is subject to the sole dominion, control and discretion of Collateral Agent until the Discharge Date. Until the Discharge Date, neither SDCP nor any person or entity claiming on behalf of or through SDCP shall have any right or authority, whether express or implied, to make use of, withdraw or transfer any funds or to give instructions with respect to disbursement of the Accounts other than Collateral Agent. Until the Discharge Date, subject to Section 6.02, Collateral Agent shall be entitled to exercise any and all rights in respect of or in connection with the Lockbox Account including (i) the right to specify the amount of payments to be made from the Lockbox Account, (ii) when such payments are to be made out of the Lockbox Account and (iii) the right to withdraw funds for the payment of Obligations which are due and payable from the Lockbox Account. Collateral Agent shall accept all funds remitted to the Lockbox Account under this Agreement, and credit such funds as provided for in Section 6.02 below.

6.02 Priority of Distributions of Collateral. Proceeds of Collateral shall be allocated in accordance with this Section 6.02. On each Distribution Date, Collateral Agent shall distribute all funds in the Lockbox Account or otherwise received on the Collateral in accordance with the following priority:

(i) *first*, to each PPA Provider in payment of any Regular Charges, according to its Regular Sharing Percentage;

(ii) *second*, to each PPA Provider in payment of any Supplemental Payment owing to it according to its Supplemental Sharing Percentage;

(iii) *third,* to the California Independent System Operator for all amounts currently due and payable by SDCP;

(iv) *fourth,* to the Collateral Agent (as such and in its individual capacity) in respect of its reasonable out-of-pocket fees and expenses incurred under this Agreement, the Intercreditor Agreement or the Control Agreements that have been invoiced to SDCP, including, without limitation, payment of expenses incurred by the Collateral Agent which indemnity shall include the reasonable out of pocket attorneys' fees of outside counsel to the Collateral Agent; and

(v) *fifth*, unless an Event of Default shall exist as to SDCP, the balance, if any, after retention in the Lockbox Account of the Reserve Amount, shall be deposited for the benefit of SDCP, free and clear of the lien of this Agreement, to the Operating Account, provided, however, that if the Collateral Agent has been notified of a dispute in accordance with Section 6.06, the portion of the balance, if any, up to such disputed amount shall be retained in the Lockbox Account and SDCP shall only receive the amount of the balance, if any, that is in excess of such disputed amount until such time as the Collateral Agent receives written notice from the relevant PPA Provider and SDCP that the dispute pursuant to Section 6.06 has been resolved. No distribution will be made pursuant to this Section 6.02(v) to any deposit account other than the Operating Account, without the express written consent of Lender.

Collateral Agent shall rely, and shall be fully protected in relying, on a Distribution Date Certificate submitted to it by SDCP in making the above calculations, without any requirement that Collateral Agent verify the accuracy of such Distribution Date Certificate, subject to revision in the event of disputes resolved under Section 6.06.

6.03 Distribution Date Certificate. On or before three (3) Business Days before each Distribution Date, SDCP shall remit to Collateral Agent and each PPA Provider a certificate in substantially the form of Exhibit A hereto (the "**Distribution Date Certificate**") prepared by SDCP itemizing each of the payments to be remitted under Section 6.02 above. The PPA Providers may share such Distribution Date Certificates with their respective accountants, legal counsel and other advisors.

6.04 Replenishing the Reserve Amount; No Waiver. Subject to Section 6.05, if at any time the balance in the Lockbox Account is less than the Reserve Amount, then (a) the Collateral Agent shall within two (2) Business Days after the Collateral Agent has actual

knowledge thereof provide SDCP with written notice thereof, and (b) SDCP shall deposit such shortfall amount into the Lockbox Account not later than ten (10) Business Days after its receipt of such notice from Collateral Agent. The Collateral Agent shall have no duty or obligation to monitor or oversee SDCP's replenishment of the Reserve Amount, and shall have no duty or obligation under this Section 6.04 other than to deliver the written notice required pursuant to 6.04(a). Nothing contained herein shall impair or otherwise limit SDCP's obligations to timely make the payments required pursuant to any of the Transaction Agreements. It is expressly understood and agreed that the Collateral Agent shall have no liability for its failure to deliver any amounts required to be delivered by it pursuant to this Agreement or any other Transaction Agreement to the extent that such amounts are not then available in the Lockbox Account.

6.05 Release of Reserve Amount. Except following and during the continuance of an Event of Default, if SDCP and all Secured Creditors confirm in writing to the Collateral Agent that no such Event of Default exists or is continuing and provides the Collateral Agent with a Letter of Credit for the benefit of the PPA Providers in an amount equal to the Reserve Amount, SDCP may request in writing and, upon receipt of such request, Collateral Agent shall instruct the Depositary Bank to release and distribute the Reserve Amount to SDCP. All of the fees, costs and expenses associated with the Letter of Credit shall be borne by SDCP. SDCP shall thereafter cause the Letter of Credit to be maintained in full force and effect through the Discharge Date. If at any time the issuer of the Letter of Credit is no longer a Qualified Institution, then SDCP shall, within five (5) Business Days of such occurrence, either (a) provide Collateral Agent with a replacement Letter of Credit for the benefit of the PPA Providers issued by a Qualified Institution in an amount equal to the Reserve Amount or (b) fund the applicable Reserve Amount into the Lockbox Account.

6.06 Disputes. If a PPA Provider advises SDCP and Collateral Agent in writing that the calculations in any Distribution Date Certificate are in its opinion materially incorrect, then SDCP and such PPA Provider shall attempt to resolve the discrepancy in good faith. If the parties are able to reach an agreement with respect to such discrepancy in advance of the relevant Distribution Date, SDCP shall remit to Collateral Agent and each PPA Provider a revised Distribution Date Certificate reflecting the agreed upon amounts, and the Collateral Agent shall disburse funds in accordance with such revised Distribution Date Certificate on the applicable Distribution Date, provided, however, that the Collateral Agent shall have no liability whatsoever for any failure to disburse funds in accordance with a revised Distribution Date Certificate to the extent that it has not received such revised Distribution Date Certificate sufficiently in advance of the scheduled distribution. If the parties are unable to agree, they shall resolve such dispute in accordance with the dispute resolution provision of the Power Purchase Agreement between such PPA Provider and SDCP. In the interim, the Distribution Date Certificate originally submitted by SDCP shall be relied upon by Collateral Agent for purposes of making distributions from the Lockbox Account of all undisputed amounts in accordance with Section 6.02, and the Collateral Agent shall make no distribution in respect of any disputed amount until such time as it has received a revised Distribution Date Certificate. Notwithstanding the above, no dispute shall prevent any other PPA Provider from receiving its distributions from the Lockbox Account, even if such distributions would result in a shortfall of the disputed amount. However, SDCP shall not be entitled to receive any funds if such distribution to SDCP would result in a shortfall of the disputed amount.

6.07 Earnings on Lockbox Account. SDCP shall establish the Lockbox Account as a non-interest bearing account.

6.08 Rights and Remedies. If an Event of Default shall have occurred and is continuing, Collateral Agent, without any other notice to or demand upon SDCP, shall, in addition to all other rights and remedies, the rights and remedies of a secured party under the UCC and any additional rights and remedies as may be provided to a secured party in any jurisdiction in which Collateral is located; it being understood and agreed that the Collateral Agent would be exercising any such rights and remedies in its capacity as collateral agent for the benefit of the PPA Providers, as Secured Creditors. In addition, **SDCP HEREBY WAIVES ANY AND ALL RIGHTS THAT IT MAY HAVE TO A JUDICIAL HEARING IN ADVANCE OF THE ENFORCEMENT OF COLLATERAL AGENT'S RIGHTS AND REMEDIES HEREUNDER, INCLUDING ITS RIGHT FOLLOWING AN EVENT OF DEFAULT TO TAKE IMMEDIATE POSSESSION OF THE COLLATERAL AND TO EXERCISE ITS RIGHTS AND REMEDIES WITH RESPECT THERETO**. Collateral Agent shall only act at the written instruction of the Required Secured Creditors in (a) taking any action under this Agreement, the Intercreditor Agreement or any Control Agreement with respect to the Collateral following an Event of Default and (b) asserting any claim under this Agreement, the Intercreditor Agreement or any Control Agreement. Notwithstanding the foregoing, if Collateral Agent deems it prudent to take reasonable actions, without the instruction of a Secured Creditor, to protect the Collateral, it may (but shall be under no obligation to) do so and thereafter provide written notice to all the Secured Creditors of such actions, and no provision of this Agreement shall restrict Collateral Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights. Notwithstanding anything herein or elsewhere, unless and until the Collateral Agent has received written notice from SDCP or a Secured Creditor that an Event of Default has occurred or is continuing, the Collateral Agent shall assume, and shall be fully protected in assuming, that no Event of Default exists or is continuing.

6.09 No Waiver by Collateral Agent. Collateral Agent shall not be deemed to have waived any of its rights and remedies in respect of the Obligations or the Collateral unless such waiver shall be made in writing and signed by Collateral Agent (acting at the written direction of the Required Secured Creditors). No delay or omission on the part of Collateral Agent in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any occasion shall not be construed as a bar to or a waiver of any right or remedy on any future occasion. All rights and remedies of Collateral Agent with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, may be exercised by Collateral Agent (acting at the written direction of the Required Secured Creditors), shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as Collateral Agent (acting at the written direction of the Required Secured Creditors) deems expedient.

6.10 Waivers by SDCP. To the extent permitted by applicable law, SDCP hereby waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description.

6.11 Marshalling. **TO THE EXTENT THAT IT LAWFULLY MAY, SDCP HEREBY AGREES THAT IT WILL NOT INVOKE ANY LAW RELATING TO THE MARSHALLING OF COLLATERAL WHICH MIGHT CAUSE DELAY IN OR IMPEDE THE ENFORCEMENT OF COLLATERAL AGENT'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR UNDER ANY OTHER INSTRUMENT CREATING OR EVIDENCING ANY OF THE OBLIGATIONS OR UNDER WHICH ANY OF THE OBLIGATIONS IS OUTSTANDING OR BY WHICH ANY OF THE OBLIGATIONS IS SECURED OR PAYMENT THEREOF IS OTHERWISE ASSURED, AND, TO THE EXTENT THAT IT LAWFULLY MAY, SDCP HEREBY IRREVOCABLY WAIVES THE BENEFITS OF ALL SUCH LAWS.**

Section 7. Miscellaneous.

7.01 Notices. Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by electronic mail, addressed to the relevant party as provided below their signatures to this Agreement or at such other address for notice as SDCP or Collateral Agent shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) that is sent by electronic mail is effective if when confirmed by the recipient, and (iii) that is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

7.02 No Waiver. No failure on the part of the Collateral Agent to exercise, and no course of dealing with respect to, and no delay in exercising, any right or power hereunder shall operate as a waiver thereof.

7.03 Amendments. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by SDCP and Collateral Agent.

7.04 Expenses. If SDCP fails to do so, Collateral Agent may, upon receipt from the Required Secured Creditors of written direction and such sums as may be necessary in connection therewith, discharge taxes and any other Liens or encumbrance at any time levied or placed on any of the Collateral. SDCP agrees to reimburse Collateral Agent on demand for any such expenditures made by Collateral Agent, and the Collateral Agent promptly upon receipt thereof shall remit such reimbursed sums to the Required Secured Creditors. For the avoidance of doubt, it is expressly understood and agreed that the Collateral Agent shall not use or expend its own funds in connection with such taxes, Liens or encumbrances. Collateral Agent shall have no obligation to make any such expenditure nor shall the making thereof be construed as a waiver or cure of any Event of Default. SDCP agrees to reimburse Collateral Agent (as such and in its individual capacity) for all reasonable costs and expenses incurred by it (including the reasonable fees and expenses of legal counsel) in connection with (i) the performance by Collateral Agent of its duties under this Agreement, the Intercreditor Agreement or the Control Agreements, (x) protecting, defending or asserting rights and claims of the Collateral Agent in respect of the Collateral, (y) litigation relating to the Collateral, and (z) workout, restructuring or other negotiations or proceedings, and (ii) the enforcement of this Section 7.04, and all such

reasonable costs and expenses shall be Obligations entitled to the benefits of the collateral security provided pursuant to Section 2.

7.05 Duty of Care; Earnings. Collateral Agent shall have no duty or obligation with respect to the Collateral except for its contractual obligations under this Agreement, the Intercreditor Agreement or a Control Agreement. The Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against any Person, beyond the safe custody of any Collateral in the Collateral Agent's possession or control. Without limiting the generality of the foregoing, Collateral Agent shall have no duty (a) other than to instruct SDCP as set forth in Section 4.05 hereof, to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer's certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer's certificate or an opinion of counsel.

7.06 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of SDCP, the Secured Creditors, and the Collateral Agent (provided that SDCP shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of Collateral Agent) and Collateral Agent shall only transfer or assign its rights hereunder in connection with a resignation or removal from its capacity as Collateral Agent in accordance with the terms of the Intercreditor Agreement). This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect in accordance with Section 7.12, and be binding upon SDCP, its successors and assigns, and inure, together with the rights of Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns.

7.07 Counterparts. This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto shall be as effective as an original signature.

7.08 GOVERNING LAW; JURISDICTION. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE

BROUGHT IN THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF CALIFORNIA OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE COURTS OF THE STATE OF CALIFORNIA AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

7.09 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

7.10 **CONSENT TO INJUNCTIVE RELIEF. WITHOUT LIMITING ANY OTHER RIGHTS OR REMEDIES THAT COLLATERAL AGENT MAY HAVE, SDCP ACKNOWLEDGES THAT ITS VIOLATION OF SECTION 5.01 WOULD RESULT IN IRREPARABLE INJURY TO COLLATERAL AGENT FOR WHICH NO ADEQUATE REMEDY AT LAW WOULD BE AVAILABLE. ACCORDINGLY, SDCP HEREBY (I) CONSENTS TO THE ENTRY OF AN IMMEDIATE EX-PARTE INJUNCTION, TEMPORARY RESTRAINING ORDER, AND/OR PERMANENT INJUNCTION TO ENFORCE THE PROVISIONS OF SECTION 5.01, IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY AND (II) WAIVES ANY DEFENSE THAT ADEQUATE REMEDIES ARE AVAILABLE AT LAW AND ANY REQUIREMENT THAT A BOND OR ANY OTHER SECURITY BE POSTED IN CONNECTION WITH THE ENTRY OF ANY RESTRAINING ORDER OR INJUNCTION.**

7.11 Captions. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

7.12 Termination. Unless earlier terminated in writing by the parties hereto, this is a continuing security agreement and the grant of a security interest under this Agreement shall remain in full force and effect and all the rights, powers and remedies of Collateral Agent hereunder shall continue to exist until: (a) the Obligations are paid in full as the same becomes due and payable; (b) the PPA Providers have no further obligation to deliver products or render services (including credit support services) to, or on behalf of, SDCP; (c) SDCP has no further obligations to the PPA Providers under any of the Transaction Agreements; and (d) the PPA Providers, upon request of SDCP, have executed and delivered to each of SDCP and the Collateral Agent a written termination statement, and Collateral Agent has reassigned to SDCP, without recourse, the Collateral and all rights conveyed hereby and returned possession of the Collateral to SDCP. Furthermore, it is contemplated by the parties that there may be times when no Obligations are owing; but notwithstanding such occurrences, unless the PPA Providers have

executed a written termination under clause (d) above, this Agreement shall remain valid and shall be in full force and effect as to subsequent Obligations, provided Collateral Agent has not executed a written agreement terminating this Agreement. This Agreement shall continue irrespective of the fact that the liability of any other obligor may have ceased, or irrespective of the validity or enforceability of the Transaction Agreements, to which any other obligor may be a party, and notwithstanding the reorganization or bankruptcy of SDCP, or any other event or proceeding affecting SDCP or any other obligor. At SDCP's request, Collateral Agent shall, at SDCP's reasonable expense, instruct Depositary Bank to release all assets credited to the Lockbox Account to SDCP, and Collateral Agent shall also execute such other documentation as shall be reasonably requested by SDCP to effect the termination and release of the liens on the Collateral, including notice to SDG&E that the Direction Letter is terminated.

7.13 Severability. The provisions of this Agreement are intended to be severable. If for any reason any of the provisions of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions thereof in any jurisdiction.

7.14 Disclosure of Information. SDCP hereby consents to the disclosure by any PPA Provider or Collateral Agent of any information provided by or relating to SDCP as may be required or reasonably necessary for the administration of this Agreement, the Intercreditor Agreement or the Control Agreements, or the enforcement or protection of any of the rights of the Collateral Agent or the PPA Providers hereunder.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representatives as of the date first written above.

SAN DIEGO COMMUNITY POWER,
a California joint powers authority,
as Pledgor

By: _____
Name: _____
Title: _____

Notice Address:

SAN DIEGO COMMUNITY POWER
c/o City of San Diego
Sustainability Department
Attention: Chief Executive Officer
1200 Third Street, 18th Floor
San Diego, CA 92101-4195
Phone: (858) 492-6005
Email: _____
Facsimile: _____

[_____],
not in its individual capacity, but solely as Collateral Agent

By: _____
Name: _____
Title: _____

Notice Address:

_____
_____
_____
_____
Telephone: _____
Email: _____
Facsimile: _____

Exhibit A

Form of Distribution Date Certificate

The undersigned, [INSERT NAME], the [INSERT NAME OF OFFICE HELD] of SAN DIEGO COMMUNITY POWER, a California joint powers authority ("**SDCP**"), hereby certifies, with reference to that certain Security Agreement dated as of [_____], 2020 (capitalized terms used herein shall have the same meaning as set forth in the Security Agreement) between SDCP and RIVER CITY BANK, a California corporation, as collateral agent ("**Collateral Agent**"), to Collateral Agent as follows:

This certificate is being delivered to Collateral Agent on or before the date that is three (3) Business Days before the Distribution Date of [_____ , 20__].

No Event of Default exists as of the date of this certificate and SDCP does not anticipate that an Event of Default will exist as of the Distribution Date set forth in paragraph 1 above.

The funds that are on deposit in the Lockbox Account shall be disbursed on the Distribution Date as follows:

1. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of its Regular Charges, an aggregate amount equal to [_____ Dollars ($_____)]; [*Include this paragraph for each PPA Provider*]

2. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of any Supplemental Payment owing in an aggregate amount equal to [_____ Dollars ($_____)]; [*Include this paragraph for each PPA Provider]*

3. To the California Independent System Operator for payment of amounts due and owing from SDCP in an aggregate amount equal to [_____ Dollars ($_____)];

4. To Collateral Agent, in respect of Collateral Agent's reasonable out-of-pocket fees and expenses incurred under the Security Agreement or the Intercreditor Agreement that have been invoiced to SDCP, an aggregate amount equal to [_____ Dollars ($_____)]; and

5. The remaining funds, if any, that are on deposit, after retention of the Reserve Amount, are to be disbursed to SDCP into the account designated by SDCP.

[Signatures on following page]

I hereby certify, in my capacity as [_____], that this Distribution Date Certificate is true and complete in all material respects.

_____

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

EXHIBIT B

MASTER AGREEMENTS

Power Purchase Agreements in effect as of [_____], 2020:

1. [_____] Agreement dated [_____], 2020, between SDCP and [_____]

INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

This **INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT**, dated as of [_____], 2020 (this "**Agreement**"), is entered into by and among (i) [_____], not in its individual capacity, but solely in its capacity as Collateral Agent ("**Collateral Agent**"), (ii) each of the creditors from time to time signatory hereto that are party to a Power Purchase Agreement (each such creditor defined below as a "**PPA Provider**") and (iii) San Diego Community Power, a California joint powers authority ("**SDCP**").

RECITALS:

A. SDCP has (i) entered into the Master Agreements (as defined in the Security Agreement) and (ii) may in the future enter into a Power Purchase Agreement (as defined below) with a PPA Provider, pursuant to which SDCP has agreed, or will agree, to purchase the Product (as defined below) from such PPA Provider;

B. SDCP shall sell the Product purchased from PPA Providers to SDCP's customers at rates established by SDCP from time to time;

C. Pursuant to the Security Agreement (defined below) SDCP has pledged to Collateral Agent, for the benefit of the PPA Providers, as Secured Creditors, a first priority continuing security interest in and to the Collateral (as defined below);

D. SDCP's customers are billed by San Diego Gas & Electric ("**SDG&E**") amounts they owe for the Product provided by SDCP;

E. As of the date hereof, SDCP has directed SDG&E to remit all present and future collections on accounts receivable now or hereafter billed by SDG&E on behalf of SDCP to Collateral Agent, for remittance to the Lockbox Account (as defined below) maintained by Collateral Agent, which direction is irrevocable unless both Collateral Agent, at the direction of the Required Secured Creditors (as defined below), River City Bank, a California corporation, in its capacity as the Lender pursuant to that certain Credit Agreement dated May 21, 2020 ("**Lender**") and SDCP direct SDG&E otherwise;

F. Collateral Agent shall have, for the benefit of the Secured Creditors, a first priority continuing security interest in and lien on such receivables, deposit accounts and related Collateral pledged to Collateral Agent for the benefit of the Secured Creditors, as provided in the Security Agreement;

G. Distributions from such Collateral shall be made by Collateral Agent as provided in this Agreement and the Security Agreement, with PPA Providers having a senior right to distributions from the Collateral;

H. Secured Creditors desire in this Agreement to appoint Collateral Agent to act on their behalf regarding the administration, collection and enforcement of the Collateral, all as more fully provided herein; and

I. Secured Creditors also desire to enter into this Agreement to define the rights, duties, authority and responsibilities of Collateral Agent.

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:

SECTION 1. DEFINITIONS

Section 1.1. Definitions

Each capitalized term used herein and not defined herein shall have the meaning given to such term in the Security Agreement. The following terms shall have the meanings assigned to them in this Section 1.1 or in the provisions of this Agreement referred to below:

"**Affiliate**" means, at any time, and as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 51% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"**Agreement**" shall have the meaning assigned thereto in the Preamble hereof.

"**Bankruptcy Proceeding**" means, with respect to any Person, the institution by or against such Person of any proceeding seeking relief as a debtor, or seeking to adjudicate such Person as bankrupt or insolvent, or seeking the reorganization, arrangement, adjustment or composition of such Person or its debts, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property, or a general assignment by such Person for the benefit of its creditors.

"**Joinder**" has the meaning given to such term in Section 6.5.

"**Required Secured Creditors**" means, as of any date, the Secured Creditor, or Secured Creditors, that, as of such date, have at least fifty percent (50%) of the total aggregate Sharing Percentage, as calculated on such date.

"**Security Agreement**" means the Security Agreement, dated as of even date herewith, between SDCP and Collateral Agent for the benefit of Secured Creditors, granting a security interest in the Collateral to secure the Obligations, as amended, supplemented, restated or replaced from time to time.

"**Sharing Percentage**" means, as of any date, with respect to each PPA Provider as calculated by SDCP in a commercially reasonable manner, the percentage equivalent of a fraction, (a) the numerator of which is the sum of (i) the outstanding amount of the Obligations of such PPA Provider, as of such date, and (ii) the calculated amount of the Termination Payment, if any, that would be owed to such PPA Provider if a Termination Event occurred on

such date, and (b) the denominator of which is the sum of (i) the outstanding aggregate amount of the Obligations of all PPA Providers as of such date, and (ii) the calculated aggregate amount of the Termination Payments, if any, that would be owed to all PPA Providers if a Termination Event occurred on such date.

Section 1.2. Other Interpretive Provisions

References to "Sections" shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, "including" is not limiting and "or" is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement or the Security Agreement, as applicable. References to any Person include the successors and permitted assigns of such Person. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

SECTION 2. RELATIONSHIPS AMONG SECURED CREDITORS

Section 2.1. Liens in the Collateral

At all times, whether before, after or during the pendency of any Bankruptcy Proceeding and notwithstanding the priorities which would ordinarily result from the order of granting of any Liens, the order of attachment or perfection thereof, or the order of filing or recording of any financing statements or other instrument, or the priorities that would otherwise apply under Applicable Law, Collateral Agent, for the benefit of the Secured Creditors, shall have a first priority lien in the Collateral to secure the Obligations. No Secured Creditor will acquire in its own name a Lien in the assets of SDCP to secure any Obligations arising under a Power Purchase Agreement other than Liens arising by operation of law such as setoff rights. Secured Creditors shall share in the Proceeds of the Collateral as provided for in Section 4.6.

Section 2.2. No Debt Subordination

Nothing in this Agreement shall be construed to be or operate as a subordination of any of the Obligations owed to a Secured Creditor in right of payment to the Obligations owed to any other Secured Creditor.

Section 2.3. Restrictions on Enforcement Action

So long as any Obligation is outstanding and the Security Agreement remains in effect, the provisions of this Agreement and the Security Agreement shall provide the exclusive method by which Collateral Agent or any Secured Creditor may exercise rights in or assert

claims against the Collateral or SDCP pertaining to the Obligations. Notwithstanding the foregoing, nothing in this Agreement shall prohibit or otherwise restrict a Secured Creditor from exercising any right of termination, acceleration or similar right in accordance with its Power Purchase Agreement, or prohibit or otherwise restrict a Secured Creditor from exercising any set-off rights it may have with respect to the Obligations owing to it.

Section 2.4. No Restriction on Terms of Power Purchase Agreements

This Agreement does not impose any restriction on the terms of a Power Purchase Agreement. SDCP and any PPA Provider are free to agree on any and all of the terms for charges that may be provided for under its Power Purchase Agreement, such as the price for the Product, late fees, and early termination fees. Without limiting the foregoing, no PPA Provider shall be restricted as to the amount or output of the Product it sells to SDCP or the length of such Power Purchase Agreement, or any amendment thereof. Upon request by the Collateral Agent, each PPA Provider will disclose to Collateral Agent the Obligations then due and owing to such PPA Provider in an itemized manner, and SDCP consents to such disclosure to such Person or any party hereto. Furthermore, nothing contained in this Section 2 will prevent Secured Creditors from exercising any rights under any letter of credit or other payment security separate and apart from the Collateral that has been provided by SDCP pursuant to a Power Purchase Agreement.

Section 2.5. Representations and Warranties

Each Secured Creditor represents and warrants to the other parties hereto that:

(a) the execution, delivery and performance by such Secured Creditor of this Agreement has been duly authorized by all necessary corporate or similar proceedings and does not and will not contravene any provision of law, its charter or by-laws or any amendment thereof, or of any indenture, agreement, instrument or undertaking binding upon such Secured Creditor;

(b) the execution, delivery and performance by such Secured Creditor of this Agreement will result in a valid and legally binding obligation of such Secured Creditor enforceable against such Secured Creditor in accordance with its terms; and

(c) any Termination Payment calculated by it and provided to the Collateral Agent or the other Secured Creditors shall be calculated in good faith, in accordance with its Power Purchase Agreement, and consistent with such Secured Creditor's historical practices.

Section 2.6. Cooperation; Accountings

Each Secured Creditor will, upon the reasonable request of the Collateral Agent, from time to time execute and deliver or cause to be executed and delivered such further instruments, and do and cause to be done such further acts as may be reasonably necessary or proper to carry out more effectively the provisions of this Agreement. Each Secured Creditor agrees to provide to the Collateral Agent upon reasonable request a statement of all payments received by it in respect of the Obligations pertaining to its Power Purchase Agreement.

SECTION 3. AGENCY PROVISIONS

Section 3.1. Appointment and Authorization of Collateral Agent

(a) Each Secured Creditor hereby designates and appoints River City Bank, as Collateral Agent of such Secured Creditor under this Agreement and River City Bank, hereby accepts such designation and appointment. The Collateral Agent is a non-fiduciary agent of the Secured Creditors and does not act in a fiduciary capacity or as trustee for the Secured Creditors or Collateral.

(b) Notwithstanding any provision to the contrary elsewhere in this Agreement, Collateral Agent shall not have any duties or responsibilities except those expressly set forth herein and in the Security Agreement, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Collateral Agent. The right or power of Collateral Agent to perform any discretionary act hereunder shall not be construed as a duty. Collateral Agent is hereby authorized, empowered and instructed to execute, deliver and perform its obligations under this Agreement, the Security Agreement, the Control Agreements and each other document as may be necessary or convenient in connection with the foregoing; provided, however, that the Collateral Agent shall not amend, modify or terminate any Control Agreement without the prior written consent of the Secured Creditors.

(c) Collateral Agent shall not (i) be subject to any fiduciary or other implied duties, (ii) have any right or duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the Security Agreement, Control Agreements, or other agreement to which the Collateral Agent is a party, and (iii) be required to take action that, in its opinion or the opinion of its counsel, may expose Collateral Agent to liability.

(d) The Collateral Agent, hereby represents and warrants that (i) it has all requisite power and authority to execute, deliver and perform under this Agreement; (ii) the execution, delivery and performance by it of this Agreement has been duly authorized by all requisite corporate or other action; (iii) no consent or approval of any other Person and no consent, license, approval or authorization of any governmental authority is required in connection with the execution, delivery, and performance by it of this Agreement; and (iv) this Agreement constitutes its legal, valid and binding obligation enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws in effect from time to time affecting the rights of creditors generally and general principles of equity regardless of whether such enforcement is considered in a proceeding in equity or at law.

Section 3.2. Collateral

(a) Lockbox Account Subject to Collateral Agent's Control.

Collateral Agent agrees that its security interest and right of setoff in and to the Lockbox Account is held for the benefit of all the Secured Creditors and itself as

Collateral Agent, and that Collateral Agent will comply with this Agreement and the Security Agreement in distributing monies received from such Lockbox Account.

(b) Collateral Held by Secured Creditors.

Each Secured Creditor hereby acknowledges that if any Secured Creditor (individually or through its own custodian) shall hold or control, at any time, any assets comprising Collateral, such possession or control is also held for the benefit of Collateral Agent for the benefit of the Secured Creditors. The foregoing sentence shall not be construed to impose any duty on a Secured Creditor (or any third party acting on its behalf) with respect to such Collateral if it is not perfected by possession or control.

Section 3.3. Delegation of Duties

Collateral Agent may exercise its powers and execute any of its duties under this Agreement by or through employees, agents, and attorneys-in-fact, and shall be entitled to take and to rely on advice of counsel concerning all matters pertaining to such powers and duties. Subject to Section 3.4, Collateral Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact unless Collateral Agent acted in bad faith or gross negligence in the selection of such agents or attorneys-in-fact. Collateral Agent may utilize the services of such Persons as Collateral Agent in its reasonable discretion may determine, and shall be entitled to indemnity hereunder for all reasonable fees and expenses of such Persons.

Section 3.4. Exculpatory Provisions

Neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent's officers, directors, employees, agents, attorneys-in-fact, or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement (except for its or such Person's own bad faith, gross negligence (or ordinary negligence in the handling or disbursement of funds actually received by it pursuant to the terms hereof) or willful misconduct, respectively) or (b) responsible in any manner to SDCP or any of the Secured Creditors for any recitals, statements, representations, warranties or covenants made by SDCP or any Secured Creditor or any officer thereof contained in any certificate, report, statement or other document referred to or provided for in, or received by, Collateral Agent under or in connection with this Agreement or any other document in any way connected therewith, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Lien or the perfection or priority of any such Lien (including any Lien in the Collateral), or for any failure of SDCP to perform its obligations thereunder.

Section 3.5. Reliance by Collateral Agent

Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing (in electronic or physical form), resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order or other document or conversation reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to SDCP), independent accountants and other experts selected by Collateral Agent. Collateral Agent shall be fully justified in failing or

refusing to take action not provided for under this Agreement unless it shall first be indemnified to its reasonable satisfaction by SDCP against any and all liability and expense which may be incurred by it by reason of taking, continuing to take or refraining from taking any such action. Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with the provisions of Section 4 hereof, and any action taken or failure to act pursuant thereto shall be binding upon all the Secured Creditors.

Section 3.6. Knowledge

Collateral Agent shall not be deemed to have knowledge or notice of any facts regarding the Collateral or the Obligations unless Collateral Agent has received written notice from the Secured Creditor or SDCP referring to this Agreement, describing such facts in reasonable detail.

Section 3.7. Non-Reliance on Collateral Agent and Secured Creditors

Each Secured Creditor expressly acknowledges that except as expressly set forth in this Agreement, neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent's officers, directors, employees, agents, attorneys-in-fact, or Affiliates has made any representations or warranties to it (except as expressly provided in Section 3.1(d) herein) and that no act by Collateral Agent hereinafter taken shall be deemed to constitute any representation or warranty by Collateral Agent (as such or in its individual capacity) to any Secured Creditor.

Section 3.8. Reporting

Upon written request of a Secured Creditor therefore, Collateral Agent will provide such Secured Creditor with a copy of the bank statement for the Lockbox Account no later than five (5) Business Days following receipt thereof by the Collateral Agent. Collateral Agent shall have no duty or responsibility to provide the Secured Creditors with, or otherwise monitor or review in any respect, any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of SDCP which may come into the possession of Collateral Agent or any of its officers, directors, employees, agents, attorneys-in-fact, or Affiliates. Collateral Agent shall provide to Secured Creditors copies of all notices received by it regarding the Collateral, the Security Agreement or this Agreement; provided that the failure to provide such copies shall not cause Collateral Agent (as such or in its individual capacity) to incur liability to any Person. Collateral Agent shall promptly (but in no event more than 3 Business Days) after Collateral Agent's receipt of a written request from a Secured Creditor provide a report to all Secured Creditors regarding the status of any payments or distributions of Collateral received by Collateral Agent.

Section 3.9. Indemnification

SDCP shall indemnify Collateral Agent (as such and in its individual capacity) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against Collateral Agent (as such or in its individual capacity) arising out of actions or omissions of Collateral Agent arising out of this Agreement; provided that neither SDCP nor the Secured Creditors shall be liable for the payment of any

portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from Collateral Agent's fraud, willful misconduct, gross negligence or bad faith. The agreements in this Section 3.9 shall survive the repayment of the Obligations and the termination of this Agreement.

Section 3.10. Collateral Agent May Act in its Individual Capacity

River City Bank, and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with SDCP and its Affiliates as though it was not Collateral Agent hereunder.

Section 3.11. Successor Collateral Agent

(a) Collateral Agent may resign at any time upon at least 60 days' prior written notice to the Secured Creditors and SDCP, or may be removed by the demand of the Required Secured Creditors for cause at any time if Collateral Agent has failed to take any action that Collateral Agent is required to take hereunder after request by a Secured Creditor, or Collateral Agent has taken any action hereunder that Collateral Agent is not authorized to take hereunder or that violates the terms hereof and, in either case, has not remedied such failure or violation with reasonable promptness after a written request for corrective action is delivered to Collateral Agent. After any resignation or removal hereunder of Collateral Agent, the provisions of this Section 3 shall continue to be binding upon and inure to its benefit as to any actions taken or omitted to be taken by it in its capacity as Collateral Agent hereunder while it was Collateral Agent under this Agreement.

(b) Upon receiving written notice of any such resignation or removal, a successor Collateral Agent, reasonably acceptable to SDCP, shall be appointed by the Secured Creditors provided, if an Event of Default as to SDCP has occurred no such acceptance of the successor Collateral Agent by SDCP shall be required. If a successor Collateral Agent shall not have been appointed pursuant to this Section 3.11(b) within 60 days after Collateral Agent's notice of resignation or upon removal of Collateral Agent, then any Secured Creditor or Collateral Agent (unless Collateral Agent is being removed) may petition a court of competent jurisdiction for the appointment of a successor Collateral Agent (it being expressly understood and agreed that any such petition by the Collateral Agent shall be at the expense of the Secured Creditors, jointly and severally) and the Collateral Agent shall continue its functions in accordance with subsection (c) below. The appointment of a successor Collateral Agent pursuant to this Section 3.11(b) shall become effective upon the acceptance of the appointment as Collateral Agent hereunder by a successor Collateral Agent. Upon such effective appointment, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent.

(c) The resignation or removal of a Collateral Agent shall take effect on the day specified in the notice described in Section 3.11(a), unless previously a successor Collateral Agent shall have been appointed and shall have accepted such appointment, in which event such resignation or removal shall take effect immediately upon the

acceptance of such appointment by such successor Collateral Agent, and provided, further, that no resignation or removal shall be effective hereunder unless and until a successor Collateral Agent shall have been appointed and shall have accepted such appointment.

(d) Upon the effective appointment of and acceptance by a successor Collateral Agent, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent and the predecessor Collateral Agent hereby appoints the successor Collateral Agent the attorney-in-fact of such predecessor Collateral Agent to accomplish the purposes hereof, which appointment is coupled with an interest. Such appointment and designation shall be full evidence of the right and authority to act as Collateral Agent hereunder and all power, duties, documents, rights and authority of the previous Collateral Agent shall rest in the successor, without any further deed or conveyance. The predecessor Collateral Agent shall, nevertheless, on the written request of the Secured Creditors or successor Collateral Agent, execute and deliver any other such instrument transferring to such successor Collateral Agent all the Collateral, properties, rights, power, duties, authority and title of such predecessor. In connection with the resignation or removal of Collateral Agent, SDCP, to the extent requested by the Secured Creditors or Collateral Agent, shall procure and execute any and all documents, conveyances or instruments requested, including any documentation appropriate to reflect the transfer of the Lien or other rights granted herein to such successor Collateral Agent.

SECTION 4. ACTIONS BY COLLATERAL AGENT

Section 4.1. Duties and Obligations

The duties and obligations of Collateral Agent are only those set forth in this Agreement and the Security Agreement. The Collateral Agent shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Collateral, or to otherwise take or refrain from taking any action hereunder, except as expressly provided by the terms hereof or in written instructions received pursuant hereto, and no implied duties or obligations shall be read into this Agreement against the Collateral Agent. Upon the written instruction at any time and from time to time of the Required Secured Creditors, the Collateral Agent shall take such action or refrain from taking such action, not inconsistent with the provisions of this Agreement, as may be specified in such instruction. Notwithstanding the foregoing, Collateral Agent shall not be required to take, or refrain from taking, any action that, in its opinion or in the opinion of its counsel, may expose Collateral Agent (as such or in its individual capacity) to liability. Collateral Agent (as such or in its individual capacity) shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, however, that such action or omission by Collateral Agent does not constitute willful misconduct, gross negligence or bad faith. The Collateral Agent shall not be obligated to expend its own funds or to incur any obligation in its individual capacity in the performance of any of its obligations under or in connection with this Agreement, the Security Agreement, the Control Agreements or any related document.

Section 4.2. Voting; Amendments to Transaction Agreements

Collateral Agent shall act at the written instruction of the Required Secured Creditors in connection with all material actions, matters or decisions, or any actions, matters or decisions requiring a vote or instruction under this Agreement, under any Control Agreement or the Security Agreement, including with respect to Section 5.01 of the Security Agreement. Notwithstanding the foregoing or anything in any Transaction Agreement to the contrary, without the prior written consent of all of the Secured Creditors, Collateral Agent shall not enter into any amendments, modifications, restatements, extensions or supplements of this Agreement, the Control Agreement or the Security Agreement.

Section 4.3. Actions Pertaining to the Collateral

Collateral Agent has the sole and exclusive standing and right to assert claims relating to the Collateral, and no Secured Creditor may enforce or assert against SDCP, the Lockbox Account, the Depositary Bank, or any other Person, any claims relating to the Collateral. Collateral Agent shall only act at the written instruction of the Required Secured Creditors in (a) taking any action under this Agreement, the Security Agreement or any Control Agreement with respect to the Collateral following an Event of Default and (b) asserting any claim under this Agreement, the Security Agreement or any Control Agreement. Notwithstanding the foregoing, if Collateral Agent deems it prudent to take reasonable actions, without the instruction of a Secured Creditor, to protect the Collateral, it may (but shall be under no obligation to) do so and thereafter provide written notice to all the Secured Creditors of such actions, and no provision of this Agreement shall restrict Collateral Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights.

Section 4.4. Duty of Care

Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of rights pertaining to the Collateral beyond the safe custody of any Collateral in Collateral Agent's actual possession. Without limiting the generality of the foregoing, Collateral Agent shall have no duty or obligation (a) other than to instruct SDCP as set forth in Section 4.05 of the Security Agreement, to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any Lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer's certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer's certificate or an opinion of counsel.

Section 4.5. Further Assurances

SDCP and each Secured Creditor shall take such actions and cooperate with Collateral Agent as may be reasonably requested, and execute such documents as may be reasonably necessary, to carry out or effect the intent of the parties hereto.

Section 4.6. Distribution of Proceeds of Collateral

Collateral Agent shall distribute the Proceeds of the Collateral as provided in Section 6.02 of the Security Agreement. Collateral Agent shall rely on the provisions in Section 6 of the Security Agreement for calculating the Obligations payable from such Proceeds. Collateral Agent has no duty or obligation to make an independent inquiry regarding the foregoing calculations or the facts on which such calculations are based.

Section 4.7. Lockbox Account

Subject to distributions permitted under the Security Agreement or this Agreement, the Proceeds of Collateral shall be maintained in the Lockbox Account, and such account shall not be interest bearing. Notwithstanding the forgoing, Collateral may be invested in Permitted Investments as provided for in the Security Agreement. Collateral Agent shall not be responsible for any loss of funds invested in accordance with this Section.

Section 4.8. Restoration of Obligations

In the event any payment of, or any application of any amount, asset or property to, any of the Obligations owed to any Secured Creditor or any obligations owed to Collateral Agent under the Security Agreement or this Agreement, or any part thereof, made at any time (including, without limitation, made prior to any applicable Bankruptcy Proceeding) is rescinded or are otherwise to be restored or returned by such Secured Creditor or Collateral Agent at any time after such payment or application, whether by order of any court, by settlement, or otherwise, then the respective obligations and the security interests of such Person shall be reinstated, all as though such payment or application had never been made.

Section 4.9. Privileged Materials

With respect to all materials and communications relating to the Collateral with or in the possession of Collateral Agent or its counsel that are subject to any claim of privilege in favor of Collateral Agent, each Secured Creditor agrees that Collateral Agent shall not be required to take any action under this Agreement that compromises the privileged nature of such conversations or materials, and all such privileges shall be preserved.

Section 4.10. Action Upon Instruction

Whenever the Collateral Agent is unable to decide between alternative courses of action permitted or required by the terms of this Agreement or any document, or is unsure as to the application, intent, interpretation or meaning of any provision of this Agreement or any other document, or any such provision may be ambiguous as to its application or in conflict with any other applicable provision, permits any determination by the Collateral Agent, or is silent or

incomplete as to the course of action that the Collateral Agent is required to take with respect to a particular set of facts, then the Collateral Agent may give notice (in such form as shall be appropriate under the circumstances) to the Secured Creditors requesting instruction as to the course of action to be adopted, and, to the extent the Collateral Agent acts or refrains from acting in good faith in accordance with any such written instruction of the Required Secured Creditors received, the Collateral Agent shall not be personally liable on account of such action or inaction to any Person. If the Collateral Agent shall not have received appropriate instruction from the Secured Creditors within ten (10) days of such notice (or within such shorter period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action which is consistent, in its view, with this Agreement, the Security Agreement, and Control Agreements or other documents, and as it shall deem to be in the best interests of the Secured Creditors, and the Collateral Agent shall have no personal liability to any Person for any such action or inaction.

SECTION 5. BANKRUPTCY PROCEEDINGS

The following provisions shall apply during any Bankruptcy Proceeding of SDCP:

(a) Collateral Agent shall represent all Secured Creditors in connection with all matters directly relating solely to the Collateral, use of cash collateral, relief from the automatic stay and adequate protection. In such Bankruptcy Proceeding, Collateral Agent shall act on the instruction of the Required Secured Creditors.

(b) Each Secured Creditor shall be free to act independently on any issue not directly relating solely to the Collateral.

(c) Each Secured Creditor shall file its own proof of claim in respect of the Obligations owing to it. Collateral Agent shall have the right to file (but has no obligation to file) a proof of claim in its capacity as Collateral Agent in respect of any or all of the Obligations.

(d) Each Secured Creditor shall have the sole right to vote the claims pertaining to the Obligations owing to it by SDCP.

(e) Any property received by any Secured Creditor with respect to the Obligations owing to it as a result of, or during, any Bankruptcy Proceeding will be delivered promptly to Collateral Agent for distribution in accordance with Section 4.6.

SECTION 6. MISCELLANEOUS

Section 6.1. Amendments to this Agreement and Assignments

This Agreement may not be modified, altered or amended, except by an agreement in writing signed by Collateral Agent, SDCP and all the Secured Creditors. This Agreement is assignable by a Secured Creditor. Collateral Agent shall only transfer or assign its rights hereunder by operation of law or in connection with a resignation or removal from its capacity as Collateral Agent in accordance with the terms of this Agreement and, if required by the successor Collateral Agent, the parties agree to execute and deliver a restated Agreement in

the event there is a replacement of Collateral Agent. SDCP shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of all the Secured Creditors and Collateral Agent. Any assignee of a PPA Provider under a Power Purchase Agreement shall comply with Section 6.5.

Section 6.2. Marshalling

Collateral Agent shall not be required to marshal any present or future security for (including, without limitation, the Collateral), or guaranties of the Obligations or to resort to such security or guaranties in any particular order; and all of each of such Person's rights in respect of such security and guaranties shall be cumulative and in addition to all other rights, however existing or arising.

Section 6.3. Governing Law; Jurisdiction

THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF CALIFORNIA OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE COURTS OF THE STATE OF CALIFORNIA AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

Section 6.4. Waiver of Jury Trial

EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

Section 6.5. Joinder

Each time SDCP enters into a new Power Purchase Agreement as to which the counterparty thereto is to share in the Collateral, such counterparty shall execute and deliver to Collateral Agent a Joinder to Intercreditor and Collateral Agency Agreement in the form of Exhibit A hereto (a "**Joinder**") at the same time as such counterparty executes the Power Purchase Agreement. Further, no PPA Provider may assign or transfer its rights hereunder or

under a Power Purchase Agreement without such assignees or transferees delivering an executed Joinder to Collateral Agent. By executing a Joinder, such counterparty agrees to be bound by the terms of this Agreement as though named herein and shall share in the Collateral in accordance with the provisions of this Agreement. Each such counterparty that is an assignee shall upon execution and delivery of a Joinder be the PPA Provider and Secured Creditor under this Agreement representing the holder of the assigned Obligations and shall be obligated for all obligations to Collateral Agent of its transferor, and such transferor shall cease forthwith to be a Secured Creditor hereunder.

Section 6.6. Counterparts

This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto or to any Joinder shall be as effective as an original signature.

Section 6.7. Termination

Unless earlier terminated by the parties hereto, upon termination of the Security Agreement in accordance with its terms and upon payment of all Obligations owed to Collateral Agent and Secured Creditors, this Agreement shall terminate, except for those provisions hereof that by their express terms shall survive the termination of this Agreement; provided, however, if all or any part of the Obligations are reinstated pursuant to Section 4.8, then this Agreement shall be renewed as of such date and shall thereafter continue in full force and effect to the extent of the Obligations so invalidated, set aside or repaid, or that remain outstanding.

Section 6.8. Controlling Terms

In the event of any inconsistency between this Agreement and the Security Agreement, the Security Agreement shall control.

Section 6.9. Notices

Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed as provided below their signatures to this Agreement or at such other address for notice as SDCP, Collateral Agent or such Secured Creditor shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representatives as of the date first written above.

[_____], not in its individual capacity, but solely as Collateral Agent

By: _____
Name: _____
Title: _____

Notice Address:

_____
_____
_____
_____
Telephone: _____
Email: _____
Facsimile: _____

Signature Page for Intercreditor and Collateral Agency Agreement

SAN DIEGO COMMUNITY POWER

By:
Name: _____
Title: _____

Notice Address:

SAN DIEGO COMMUNITY POWER
c/o City of San Diego
Sustainability Department
Attention: Chief Executive Officer
1200 Third Street, 18th Floor
San Diego, CA 92101-4195
Phone: (858) 492-6005
Email: _____
Facsimile: _____

Signature Page for Intercreditor and Collateral Agency Agreement:

[_____],
as PPA Provider

By:
Name: _____
Title: _____
Notice Address:

_____
Attn: _____
_____
_____

EXHIBIT A

JOINDER TO INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

[_____], in its capacity as Collateral Agent

_____

_____

Attention: _____

Reference: _____

Reference is made to the Intercreditor and Collateral Agency Agreement, dated as of [_____], 2020 (as amended or restated from time to time, the "**Intercreditor Agreement**"; capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Intercreditor Agreement), among [_____], as Collateral Agent, and the PPA Providers party thereto, relating to the security interests granted by San Diego Community Power ("**SDCP**") in the Lockbox Account.

By executing and delivering this Joinder to Intercreditor and Collateral Agency Agreement (this "**Joinder**"), the undersigned holder of the Obligations arising under that certain Power Purchase Agreement between SDCP and the undersigned, a copy of which is enclosed with this Joinder, (1) agrees to the appointment of [_____], as its Collateral Agent in accordance with Section 3.1 of the Intercreditor Agreement, and (2) agrees to be bound by all of the terms and provisions of the Intercreditor Agreement. The address set forth under the signature of the undersigned constitutes its address for the purposes of Section 6.9 of the Intercreditor Agreement.

Dated as of: _____.

_____,

By: _____

Name: _____

Title: _____

[Insert address for notices]

SAN DIEGO COMMUNITY POWER
Staff Report – Item 12

To: San Diego Community Power Board of Directors

From: Sebastian Sarria, Programs and Policy Coordinator, LEAN Energy US

Subject: Appoint Board Members to the Finance and Risk Management Committee for the 2021 Calendar Year

Date: December 17, 2020

RECOMMENDATION

Appoint two Board Members to serve on the Finance and Risk Management Committee (FRMC) until December 2021.

BACKGROUND

At the January 30th meeting of the Board of Directors, Directors Mark West and Bill Baber were appointed to serve as the primary members of the FRMC until December 2020. Director Baber was appointed with the understanding that his Alternate Director, Greg Humora, would represent La Mesa at the FRMC.

ANALYSIS AND DISCUSSION

The Board of Directors have the option of conducting reappointments or new appointments to the FRMC for the 2021 calendar year. These meetings will continue to be subject to the Brown Act noticing and open meeting requirements. Moreover, the meetings are expected to continue to be held monthly and fulfill its functions as laid out in Section 5.10.2 of the SDCP Joint Powers Authority (JPA) Agreement.

The FRMC will continue to cover energy risk management under its scope. In the near future, the Board may consider forming a separate committee to focus specifically on this function.

The first meeting of the FRMC in 2021 is expected to be on January 5th at 3 pm, the first Tuesday of the month, which continues the regular schedule established in 2020. At that January meeting, the FRMC members may choose to set a new regular meeting sequence that best aligns with their schedules.

FISCAL IMPACT

Cost of this action primarily includes staff time to manage the meetings.

ATTACHMENTS

None