



AGENDA

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

February 22, 2024
5:00 p.m.

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

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

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

1. **Providing Oral Comments During Meeting.** Anyone attending in person desiring to address the Board of Directors is asked to fill out a speaker's slip and present it to the Clerk of the Board or the Secretary. To provide remote comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. On Zoom video conference by computer or mobile phone, use the "Raise Hand" feature. This will notify the moderator that you wish to speak during a specific item on the agenda or during non-agenda Public Comment. Members of the public will not be shown on video but will be able to speak when called upon. If joining the meeting using the Zoom dial-in number, you can raise your hand by pressing *9. Comments will be limited to three (3) minutes.
2. **Written Comments.** Written public comments must be submitted prior to the start of the meeting by using this [Web Comment Form](#). Please indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided to the Board members in writing. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting. Comments read at the meeting will be limited to the first 400 words. Comments received after the start of the meeting will be

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collected, sent to the Board members in writing, and be part of the public record. If you have anything that you wish to be distributed to the Board, please provide it via info@sdcommunitypower.org and it will be distributed to the Members.

The public may participate using the following remote options:

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

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

WELCOME

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

SPECIAL PRESENTATIONS AND INTRODUCTIONS

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

PUBLIC COMMENTS

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

CONSENT CALENDAR

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

- 1. Approve January 18, 2024 Meeting Minutes**
- 2. Receive and File Treasurer's Report for Period Ending December 31, 2023**
- 3. Receive and File Update on Programs**
- 4. Receive and File Update on Power Services**
- 5. Receive and File Update on Human Resources**
- 6. Receive and File Update on Customer Operations**
- 7. Receive and File Update on Marketing, Public Relations, and Government Affairs**
- 8. Receive and File Update on Community Advisory Committee**
- 9. Receive and File Update on Regulatory and Legislative Affairs**
- 10. Approve Professional Services Agreement with Chandler Asset Management, Inc. for up to \$250,000 for Financial and Investment Portfolio Management Services through February 2025**
- 11. Approve 2024 Community Advisory Committee Work Plan**

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- 12. Approve Community Clean Energy Grant Program Policy**
- 13. Approve Ascend Analytics Pilot Extension Agreement for PowerSIMM Pilot Support Services through July 31, 2024**

REGULAR AGENDA

The following items call for discussion or action by the Board of Directors. The Board may discuss and/or take action on any item listed below if the Board is so inclined.

- 14. Appoint Members to the Finance and Risk Management Committee**

Recommendation: Appoint Members to the Finance and Risk Management Committee.

- 15. Approve Fiscal Year 2023-24 Operating Budget Amendment**

Recommendation: Approve Fiscal Year 2023-24 Operating Budget Amendment.

- 16. Presentation on Clean Energy Prepayment Financing**

Recommendation: Receive and file Presentation on Clean Energy Prepayment Financing.

- 17. Quarterly Report on Community Advisory Committee**

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

- 18. Approve Load Management Standards Compliance Plan**

Recommendation: Approve Load Management Standards Compliance Plan.

- 19. Update on Regional Grid Developments**

Recommendation: Receive and file Presentation on Regional Grid Developments.

- 20. Approve Pilot Project Agreement with GRID Alternatives**

Recommendation: Approve Pilot Project Agreement with GRID Alternatives in an amount up to \$550,000 for Roof Replacements/Repairs in Connection with the Disadvantaged Communities – Single-Family Solar Homes Program.

- 21. Approve Nobel Solar, LLC Power Purchase Agreement**

Recommendation: Approve 20-year Power Purchase Agreement with Nobel Solar, LLC for a 400 MW Solar Photovoltaic electric generation facility and a 400 MW (4-hour) Battery Energy Storage System Facility.

REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

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

DIRECTOR COMMENTS

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

ADJOURNMENT

Compliance with the Americans with Disabilities Act

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

Availability of Board Documents

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



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

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

MINUTES
January 18, 2024

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

The Agenda Items were considered in the order presented.

WELCOME

CALL TO ORDER

Chair LaCava (City of San Diego) called the SDCP Board of Directors meeting to order at 5:02 p.m.

ROLL CALL

PRESENT: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego) (arrived at 5:12 p.m.), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)

ABSENT: None

Also Present: Chief Executive Officer (CEO) Burns, Chief Operating Officer (COO) Clark, Chief Financial Officer (CFO)/Treasurer Washington, General Counsel Baron, Interim Board Clerk Wiegelman

PLEDGE OF ALLEGIANCE

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

SPECIAL PRESENTATIONS AND INTRODUCTIONS

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

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

Isabela Krall, Contracts Management Associate
Patrick Welch, Senior Legislative Manager

Chair LaCava (City of San Diego) presented a proclamation recognizing and thanking former Community Advisory Committee Member Carolyn Scofield (Chula Vista). Carolyn Scofield's husband, Jim Scofield, accepted the proclamation on her behalf.

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

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

PUBLIC COMMENTS

There were no public comments.

CONSENT CALENDAR

(Items 1 through 12)

Vice Chair Lawson-Remer (County of San Diego) joined the meeting at 5:12 p.m.

Vice Chair Lawson-Remer (County of San Diego) announced she was attending virtually under the just cause provision of AB 2449 and there were no individuals over the age of 18 present in the room with her.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Yamane (National City) to approve Consent Calendar Items 1 through 12. The motion carried by the following vote:

Vote: 7-0

Yes: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)

No: None

Abstained: None

Absent: None

1. Approval of December 14th, 2023, Meeting Minutes

Approve.

2. Receive and File Treasurer's Report for Period Ending 11/30/23

Receive and file.

3. Receive and File Update on Programs

Receive and file.

4. Receive and File Update on Power Services

Receive and file.

5. Receive and File Update on Human Resources

Receive and file.

6. Receive and File Update on Customer Operations

Receive and file.

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

Receive and file.

8. Receive and File Update on Community Advisory Committee

Receive and file.

9. Receive and File Update on Regulatory and Legislative Affairs

Receive and file.

10. Approve Amendment to BrenTech PSA (4th Amendment) to increase the NTE (Not to Exceed) Value up to \$246,720 for FY 2023-2024

Approve.

11. Approval of the Marketing Community Initiative Partnership Agreement with TEGNA for \$174,044 through December 31, 2024

Approve.

12. Approval of Amendments to the CAC Scope of Work and Policies and Procedures

Approve.

REGULAR AGENDA

13. Election of Officers for SDCP for Calendar Year 2024

Chair LaCava (City of San Diego) explained the nomination process for Chair and Vice Chair.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Yamane (National City) to appoint Director LaCava (City of San Diego) as Chair for Calendar Year 2024. The motion carried by the following vote:

Vote: 7-0

Yes: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)

No: None

Abstained: None

Absent: None

ACTION: Motioned by Director Aguirre (Imperial Beach) and seconded by Director Hinze (Encinitas) to appoint Director Lawson-Remer (County of San Diego) as Vice Chair for Calendar Year 2024. The motion carried by the following vote:

Vote: 7-0

Yes: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)

No: None

Abstained: None

Absent: None

14. Approval of SDCP's 2024 Rates Schedule

CEO Burns, Data Analytics and Account Services Director Utouh, and Director of Public Affairs Lebron provided an overview of the proposed 2024 rates, highlighting the rate development policy objectives, proposed decreases from the 2023 rates, projected cost of energy, the projected resource adequacy (RA) price, California Public Utilities Commission (CPUC) Renewable Portfolio Standard (RPS) Market Price Benchmarks, RPS requirements, scenarios evaluated by staff, the purpose for reserves, reserve strategic goals, and SDCP's historical trend of rate stability.

Board questions and comments ensued.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Hinze (Encinitas) to approve the 2024 Rates Schedule effective February 1, 2024 and an adjustment to the Power100 premium from \$0.0075/kWh to \$0.01/kWh effective July 1, 2024. The motion carried by the following vote:

Vote: 7-0

Yes: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)

No: None

Abstained: None

Absent: None

15. Approval of Acceptance, Appropriation, and Expenditure of Grant Funds from the California Department of Food and Agriculture (“CDFA”) for the Healthy Refrigeration Grant Program

Director of Programs Santulli stated the staff recommendation had been updated to, “adopt Resolution No. 2024-01 authorizing the CEO to: (1) accept, appropriate, and expend CDFA grant funds for the Healthy Refrigeration Grant Program in an amount not to exceed \$710,000; (2) execute a grant agreement with CDFA with respect to such grant funds and to negotiate and execute any amendments, extensions, or renewals of such grant agreement; and (3) take all necessary action to administer, monitor, manage, and ensure compliance with the grant agreement and to negotiate and execute contracts with third parties to implement grant agreement or use of grant funds.”

Director of Programs Santulli and Senior Program Manager Scurlock provided a PowerPoint presentation on the Healthy Refrigeration Grant Program, highlighting the purpose of the grant program, the grant award amount, how the grant funds would be used, program eligibility, and next steps.

Board questions and comments ensued.

ACTION: Motioned by Director Aguirre (Imperial Beach) and seconded by Director Yamane (National City) to adopt Resolution No. 2024-01 authorizing the CEO to: (1) accept, appropriate, and expend CDFA grant funds for the Healthy Refrigeration Grant Program in an amount not to exceed \$710,000; (2) execute a grant agreement with CDFA with respect to such grant funds and to negotiate and execute any amendments, extensions, or renewals of such grant agreement; and (3) take all necessary action to administer, monitor, manage, and ensure compliance with the grant agreement and to negotiate and execute contracts with third parties to implement grant agreement or use of grant funds. The motion carried by the following vote:

Vote: 7-0

Yes: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)

No: None

Abstained: None

Absent: None

16. Update on Flex Load Strategy

Senior Program Manager Treadwell provided a PowerPoint presentation on the Flex Load Strategy, highlighting the goals and objectives, load flexibility, system benefits and goals, flex load as a Community Choice Aggregation (CCA) resource, CCA flex load programs, flexible load and Distributed Energy Resources (DERs), DER asset classes by customer type, program portfolio, integration strategies, Distributed Energy Resource Management System (DERMS), DERMS Architecture - Phase I, II, and III, and the Flex Load Strategy tentative timeline.

Following Board questions and comments, no action was taken.

17. Approve Pelicans Jaw Solar, LLC Power Purchase Agreement (PPA)

Power Services Managing Director Vosburg provided a PowerPoint presentation on the Pelicans Jaw Solar, LLC PPA, highlighting SDCP's long-term procurement, the project type, staff's analysis of the project, and the project's location, product, pricing timeline, deliverability, workforce development, and community benefits.

Board questions and comments ensued.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Hinze (Encinitas) to approve a 15-year PPA with Pelicans Jaw Solar, LLC for a 226 MW solar photovoltaic electric (PV) generation facility and a 118 MW (4-hour) Battery Energy System Storage (BESS) facility. The motion carried by the following vote:

Vote: 7-0

Yes: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)

No: None

Abstained: None

Absent: None

18. Approve SE US Development, LLC Resource Adequacy (RA) Agreement

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

Board questions and comments ensued.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Yamane (National City) to approve an FCDS-contingent 5-year RA Agreement with SE US Development, LLC for up to 402 MW of (4-hour) BESS capacity. The motion carried by the following vote:

Vote: 7-0

Yes: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)

No: None

Abstained: None

Absent: None

19. Approve Energy Storage Service Agreement (ESSA) for the Chula Vista Energy Center 2 Project

Power Services Managing Director Vosburg provided a PowerPoint presentation on the ESSA for the Chula Vista Energy Center 2 Project, highlighting the project type, staff's analysis of the project, and the project's location, product, pricing timeline, deliverability, workforce development, and community benefits.

Board questions and comments ensued.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Aguirre (Imperial Beach) to approve an FCDS-contingent 15-year ESSA with the Chula Vista Energy Center 2 Project for a 49.7 MW (4 hour) BESS facility. The motion carried by the following vote:

Vote: 7-0

Yes: Chair LaCava (City of San Diego), Vice Chair Lawson-Remer (County of San Diego), Director McCann (Chula Vista), Director Hinze (Encinitas), Director Aguirre (Imperial Beach), Director Parent (La Mesa), and Director Yamane (National City)

No: None

Abstained: None

Absent: None

20. Approve Hecate Grid Scafell Storage 1 LLC Resource Adequacy (RA) Agreement

Vice Chair Lawson-Remer (County of San Diego) left the meeting at 6:17 p.m.

Power Services Portfolio Manager Kanu provided a PowerPoint presentation on the Hecate Grid Scafell Storage 1 LLC RA Agreement, highlighting SDGP's RA procurement, the project type, staff's analysis of the project, and the project location, product, pricing timeline, and deliverability.

Board questions and comments ensued.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Yamane (National City) to approve an FCDS-contingent 10-year RA Agreement with Hecate Grid Scafell Storage 1 LLC for 50 MW of BESS capacity. The motion carried by the following vote:

Vote: 6-0

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

21. Approve Duran Mesa LLC Resource Adequacy (RA) Agreement

Power Services Senior Portfolio Manager Torres provided a PowerPoint presentation on the Duran Mesa LLC RA Agreement, highlighting the project type, staff's analysis of the project, and the project location, product, pricing timeline, and deliverability.

Board questions and comments ensued.

ACTION: Motioned by Director McCann (Chula Vista) and seconded by Director Parent (La Mesa) to approve an 11 to 13 – year RA Purchase and Supply Agreement with Duran Mesa LLC for 51 MW of wind capacity. The motion carried by the following vote:

Vote: 6-0

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

REPORTS BY CHIEF EXECUTIVE OFFICER AND GENERAL COUNSEL

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

CEO Burns and Chair LaCava (City of San Diego) thanked General Counsel Baron and Assistant General Counsel Norvell for their support and partnership as SDCP's legal counsel for the past few years.

General Counsel Baron expressed his gratification for his time serving as general counsel of SDCP.

DIRECTOR COMMENTS

There were no Director comments.

ADJOURNMENT

Chair LaCava (City of San Diego) adjourned the meeting at 6:33 p.m.

Megan Wiegelman
Interim Board Clerk



SAN DIEGO COMMUNITY POWER Staff Report – Item 2

To: San Diego Community Power Board of Directors
From: Eric W. Washington, Chief Financial Officer
Via: Karin Burns, Chief Executive Officer
Subject: Review of Treasurer's Report for Period Ending 12/31/23
Date: February 22, 2024

RECOMMENDATION

Receive and File Treasurer's Report for Period Ending 12/31/23.

BACKGROUND

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

SDCP has prepared its year-to-date financial statements for the period ended December 31, 2023, along with budgetary comparisons.

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

ANALYSIS AND DISCUSSION

Actual financial results for the period ended 12/31/23: \$806.22 million in net operating revenues were reported compared to \$852.77 million budgeted for the period. \$598.16 million in total expenses were reported (including \$583.38 million in energy costs) compared to \$546.50 million budgeted for the period (including \$518.88 million budgeted for energy costs). After expenses, SDCP's change in net position of \$208.07 million was reported for Fiscal Year-To-Date 2023-24. The following is a summary of the actual results compared to the Fiscal Year 2023-24 Budget.

Table 1: Budget Comparison Versus Actual Results

Budget Comparison					
	YTD FY24 as of 12/31/23 (6 mos)	FY24 YTD Budget	Budget Variance (\$)	Budget (%)	
Net Operating Revenues	\$ 806,222,352	\$ 852,765,001	\$ (46,542,649)	95%	
Total Expenses	\$ 598,156,221	\$ 546,502,842	\$ 51,653,379	109%	
Change in Net Position	\$ 208,066,131	\$ 306,262,159	\$ (98,196,028)	-32%	

- Net operating revenues finished \$46.54 million (or 5.0 percentage points) under the budget primarily due to lower-than-expected customer load correlated with cooler weather.
- Operating expenses finished \$51.65 million (or 9.0 percentage points) over the budget primarily due to higher-than-expected energy costs related to resource adequacy and renewable energy.

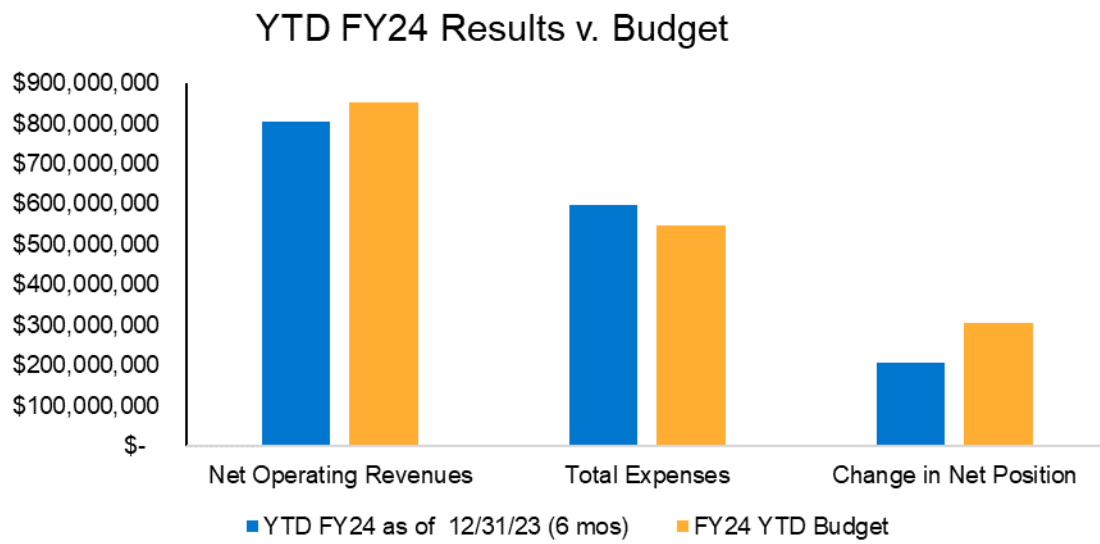
Year-to-date results compared to the projections came in lower than expected and track very closely to the budget results for the period. SDCP's change in net position was 32% under the projection primarily due to actual net revenue and actual energy costs being higher than projected.

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

Table 2: Proforma Comparison Versus Actual Results

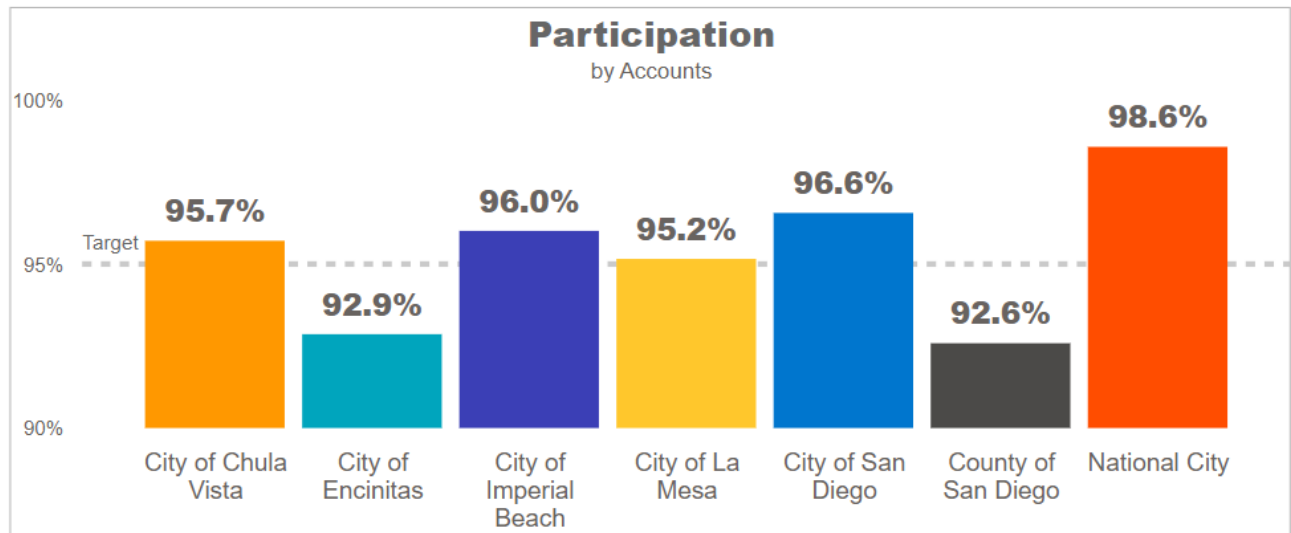
Proforma Comparison					
	YTD FY24 as of 12/31/23 (6 mos)	FY24 YTD ProForma	ProForma Variance (\$)	Proforma (%)	
Net Operating Revenues	\$ 806,222,352	\$ 852,765,001	\$ (46,542,649)	-5%	
Total Expenses	\$ 598,156,221	\$ 545,892,659	\$ 52,263,562	10%	
Change in Net Position	\$ 208,066,131	\$ 306,872,342	\$ (98,806,211)	-32%	

Figure 1: Proforma versus Actual Results



For the period ending 12/31/23, SDCP contributed \$208,066,131 to its reserves but expected to contribute \$306,262,159 per the FY 2023-24 adopted budget. Total SDCP reserves at the end of the period were \$391,804,293 and total available liquidity (including lines of credit) was \$541,804,293. SDCP has a total FY 2023-24 year-end reserve target of \$491,079,452, which is equivalent to 180-days of total operating expenses as set in SDCP's Reserve Policy and Strategic Goals.

Figure 2: Participation Rates



Jurisdiction	Active	Eligible	Opt Outs	Participation
City of Chula Vista	93,479	97,668	4,189	95.7%
City of Encinitas	26,458	28,492	2,034	92.9%
City of Imperial Beach	10,497	10,933	436	96.0%
City of La Mesa	28,002	29,427	1,425	95.2%
City of San Diego	600,474	621,866	21,392	96.6%
County of San Diego	166,292	190,235	14,105	92.6%
National City	18,936	19,444	277	98.6%
Total	944,138	998,065	43,858	95.6%

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

Staff are also presenting State of SDCP Arrearages related to financial risk for FRMC consideration and for regular review. Additional metrics can be added by request. The below arrearage data includes SDCP's Receivables aged 120+ Days as of 2/01/2024.

Figure 3: State of SDCP Arrearages

Balances over 120 days

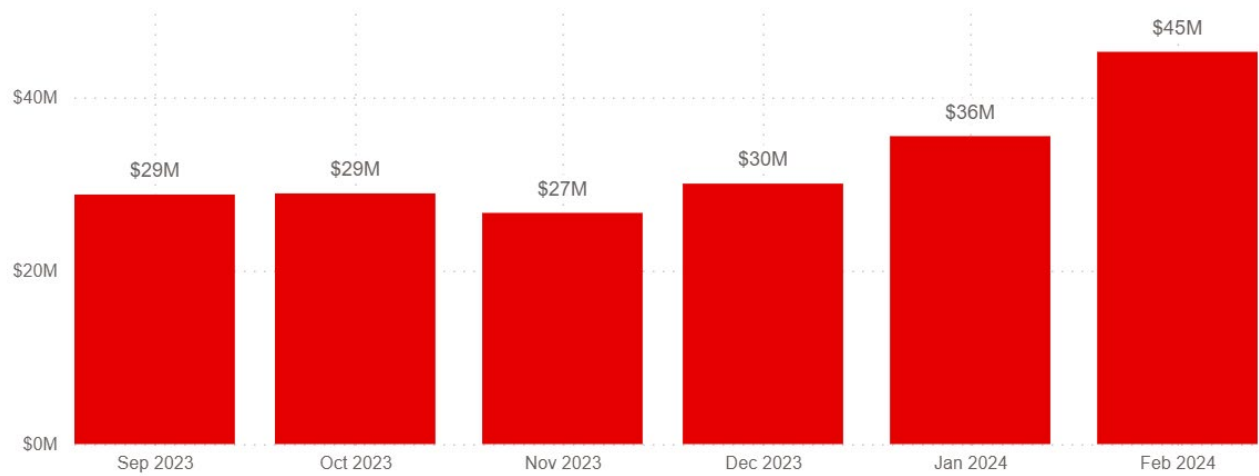
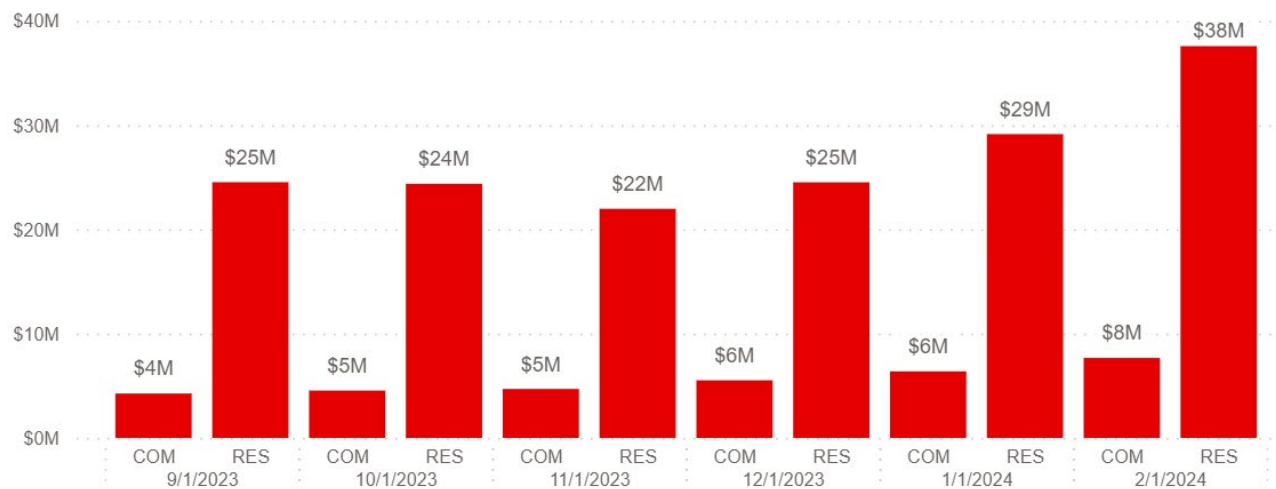


Figure 4: State of SDCP Arrearages Residential vs Commercial

Balances over 120 days - RES vs COM



COMMITTEE REVIEW

The report was reviewed by the Finance and Risk Management Committee (FRMC) on February 15, 2024.

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: 2023 Year-to-Date Period Ended 12/31/23 Financial Statements



ACCOUNTANTS' COMPILATION REPORT

Management
San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of December 31, 2023, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

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

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

Maher Accountancy

San Rafael, CA
February 1, 2024

SAN DIEGO COMMUNITY POWER
STATEMENT OF NET POSITION
As of December 31, 2023

ASSETS

Current assets	
Cash and cash equivalents - unrestricted	\$ 349,769,489
Cash and cash equivalents - restricted	500,000
Accounts receivable, net of allowance	105,054,350
Accrued revenue	52,103,418
Prepaid expenses	1,950,887
Other receivables	634,740
Deposits	3,393,534
Total current assets	<u>513,406,418</u>
Noncurrent assets	
Cash and cash equivalents - restricted	1,647,000
Lease asset, net of amortization	1,560,699
Capital assets, net of depreciation	141,434
Total noncurrent assets	<u>3,349,133</u>
Total assets	<u><u>516,755,551</u></u>

LIABILITIES

Current liabilities	
Accrued cost of electricity	108,578,229
Accounts payable	1,520,359
Other accrued liabilities	5,363,414
State surcharges payable	585,271
Deposits - energy suppliers	4,155,000
Interest and finance costs payable	275,852
Lease liability	750,995
Total current liabilities	<u>121,229,120</u>
Noncurrent liabilities	
Supplier security deposits	624,000
Lease liability	863,667
Total noncurrent liabilities	<u>1,487,667</u>
Total liabilities	<u><u>122,716,787</u></u>

NET POSITION

Net investment in capital assets	87,471
Restricted for collateral	2,147,000
Unrestricted	391,804,293
Total net position	<u><u>\$ 394,038,764</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION
Six Months Ended December 31, 2023

OPERATING REVENUES

Electricity sales, net	\$ 805,591,352
Grant revenue	631,000
Total operating revenues	<u>806,222,352</u>

OPERATING EXPENSES

Cost of electricity	583,382,510
Contract services	9,551,908
Staff compensation	5,053,535
Other operating expenses	1,816,978
Depreciation and amortization	284,278
Total operating expenses	<u>600,089,209</u>
Operating income	<u>206,133,143</u>

NON-OPERATING REVENUES (EXPENSES)

Interest income	2,993,013
Interest and financing expense	(1,099,723)
Nonoperating revenues (expenses), net	<u>1,893,290</u>

CHANGE IN NET POSITION

	208,026,433
Net position at beginning of year	<u>186,012,331</u>
Net position at end of year	<u><u>\$ 394,038,764</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS
Six Months Ended December 31, 2023

CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 838,982,426
Receipts of supplier security deposits	30,572,233
Receipts from wholesale sales	10,008,941
Other operating receipts	631,000
Payments to suppliers for electricity	(543,807,401)
Payments for goods and services	(8,659,648)
Payments of staff compensation and benefits	(4,848,024)
Payments for deposits and collateral	(2,774,693)
Payments of state surcharges	(1,157,645)
Net cash provided by operating activities	<u>318,947,189</u>

CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Principal payments - bank note	(35,730,000)
Interest and related expense payments	(1,352,079)
Net cash provided (used) by non-capital financing activities	<u>(37,082,079)</u>

CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Payments of lease liability	(250,774)
Payments to acquire capital assets	(71,550)
Net cash (used) by capital and related financing activities	<u>(322,324)</u>

CASH FLOWS FROM INVESTING ACTIVITIES

Interest income received	<u>2,542,823</u>
Net change in cash and cash equivalents	284,085,609
Cash and cash equivalents at beginning of year	67,830,880
Cash and cash equivalents at end of year	<u><u>\$ 351,916,489</u></u>

Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	\$ 349,769,489
Restricted cash - current	500,000
Restricted cash - noncurrent	1,647,000
Cash and cash equivalents	<u><u>\$ 351,916,489</u></u>

SAN DIEGO COMMUNITY POWER
STATEMENT OF CASH FLOWS (continued)
Six Months Ended December 31, 2023

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

Operating income	\$ 206,133,143
Adjustments to reconcile operating income to net cash provided by operating activities	
Depreciation and amortization expense	284,278
(Increase) decrease in:	
Accounts receivable, net	5,459,381
Accrued revenue	26,689,366
Prepaid expenses	28,576,611
Other receivables	49,165
Deposits	14,262,816
Increase (decrease) in:	
Accrued cost of electricity	31,232,886
Accounts payable	1,081,093
Other accrued liabilities	1,568,767
State surcharges payable	84,682
Supplier security deposits	3,525,000
Net cash provided by operating activities	<u><u>\$ 318,947,189</u></u>



ACCOUNTANTS' COMPILATION REPORT

Board of Directors
San Diego Community Power

Management is responsible for the accompanying special purpose operating fund budgetary comparison schedule of San Diego Community Power (SDCP), a California Joint Powers Authority, for the period ended December 31, 2023, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

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

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

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

Maher Accountancy

San Rafael, CA
February 1, 2024

**SAN DIEGO COMMUNITY POWER
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
Six Months Ended December 31, 2023**

	2023/24 YTD Budget	2023/24 YTD Actual	2023/24 YTD Budget Variance (Under) Over	2023/24 YTD Actual/ Budget %	2023/24 Annual Budget	2023/24 Budget Remaining
REVENUES AND OTHER SOURCES						
Gross Ratepayer Revenues	888,296,876	\$ 839,157,658	(49,139,218)	94%	\$ 1,346,325,552	\$ 507,167,894
Less: Uncollectible Customer Accounts	(35,531,875)	(33,566,306)	1,965,569	94%	(53,853,022)	(20,286,716)
Grant Revenue	-	631,000	631,000		-	(631,000)
Total Revenues and Other Sources	<u>852,765,001</u>	<u>806,222,352</u>	<u>(46,542,649)</u>		<u>1,292,472,530</u>	<u>486,250,178</u>
OPERATING EXPENSES						
Cost of Energy	518,879,875	583,382,510	64,502,635	112%	948,529,425	365,146,915
Professional Services and Consultants	12,007,530	9,176,636	(2,830,894)	76%	22,939,626	13,762,990
Personnel Costs	6,500,242	5,053,535	(1,446,707)	78%	13,178,031	8,124,496
Marketing and Outreach	1,557,720	1,165,642	(392,078)	75%	2,973,829	1,808,187
General and Administration	4,272,938	1,164,206	(3,108,732)	27%	7,861,973	6,697,767
Programs	145,750	100,000	(45,750)	69%	278,250	178,250
Total Operating Expenses	<u>543,364,055</u>	<u>600,042,529</u>	<u>56,678,474</u>		<u>995,761,134</u>	<u>395,718,605</u>
Operating Income (Loss)	<u>309,400,946</u>	<u>206,179,823</u>	<u>(103,221,123)</u>		<u>296,711,396</u>	<u>90,531,573</u>
NON-OPERATING REVENUES (EXPENSES)						
Investment Income	-	2,993,013	2,993,013		-	(2,993,013)
Interest and Related Expenses	(1,218,787)	(1,106,705)	112,082	91%	(2,437,574)	(1,330,869)
Transfer to Capital Investment Program	<u>(1,920,000)</u>	-	1,920,000	0%	<u>(3,840,002)</u>	<u>(3,840,002)</u>
Total Non-Operating Revenues (Expenses)	<u>(3,138,787)</u>	<u>1,886,308</u>	<u>5,025,095</u>		<u>(6,277,576)</u>	<u>(8,163,884)</u>
NET INCREASE (DECREASE)	<u>\$ 306,262,159</u>	<u>\$ 208,066,131</u>	<u>\$ (98,196,028)</u>		<u>\$ 290,433,820</u>	<u>\$ 82,367,689</u>

See accountants' compilation report.



SAN DIEGO COMMUNITY POWER Staff Report – Item 3

To: San Diego Community Power Board of Directors

From: Colin Santulli, Director of Programs

Via: Jack Clark, Chief Operating Officer

Subject: Update on Programs

Date: February 22, 2024

RECOMMENDATIONS

Receive and file the update on customer energy programs.

BACKGROUND

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

ANALYSIS AND DISCUSSION

Updates on customer energy programs are detailed below.

Building Electrification

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

Status: In December 2023, the CEC released a Request for Information (“RFI”) in which they asked for input on how the federal Home Efficiency Rebates (“HOMES”) program (funded by the Inflation Reduction Act) could be braided with the EBD program. The RFI closed on January 26 and Staff have been reviewing comments. The information gleaned from the RFI is likely to inform any potential Request for Proposals (“RFPs”) from the CEC to select the EBD and HOMES program administrators.

In January 2024, the Governor released his initial State budget proposal in which \$283 million was cut from the EBD program (going from the \$922 million allocated to \$639 million). Since the State budget has not been adopted, additional changes to the EBD budget may be possible. Staff will continue to monitor the budget process to stay informed about the EBD program.

Next Steps: Staff will continue to monitor for a potential RFP and meet with SoCalREN and the coalition to iron out proposal details. Staff anticipate that this program will launch in 2025 given the delays in the release of the RFP.

Energy Education

Energy Education Website

Status: In January 2024, promotional activities of the [marketplace](#) and SDCP's [Power Your Life](#) and [Electrify Your Life](#) webpages kicked off to help educate customers and encourage adoption of these technologies. This was mentioned in SDCP's inaugural newsletter that went out to over 1,500 subscribers and had a 56% open rate and led to 41 unique clicks on the Electrify Your Life webpage. SDCP's social media posts have generated 4,000 impressions with an average engagement rate of 6% across Instagram, Facebook, and LinkedIn.

Next Steps: Implementation of the marketing campaign for the marketplace is underway by SDCP's Public Affairs team. Staff will be collaborating with Electrum to expand the list of eligible local contractors in the Electrum database and promote the marketplace.

Energy Efficiency

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

Status: At the January 2024 Board meeting, the Board adopted a [Resolution](#) that authorizes SDCP to accept, appropriate, and expend the CDFA grant funding. Staff are still waiting to receive the grant agreement and associated scope from CDFA.

Next Steps: Staff expect to negotiate and execute the grant agreement with CDFA in Q1 2024 and to launch the pilot program in Q2/Q3 2024. Following execution of the agreement, Staff will develop program materials, issue solicitations as necessary to contract subconsultants, and start program outreach.

Regional Energy Network ("REN") Formation

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

Flexible Load

Flexible Load Strategy

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

Grant Programs

Community Grant Program

Status: Staff have been developing the FY 2023-24 program guidelines over the last few months with the program administrator, San Diego Foundation ("SDF"), and are now targeting to launch the next grant cycle on February 26, 2024. At the February 2024 Board meeting, Staff are seeking approval of the Community Clean Energy Grant Program Policy.



Next Steps: Pending Board approval of the Community Clean Energy Grant Program Policy, Staff will continue to prepare application and promotional outreach materials for the next grant cycle that incorporates the adjustments to the Previous Policy.

Member Agency Grant Program

Status: At the August 2023 Board meeting, the Board approved the Member Agency Grant Program [Policy](#) and in December 2023, Staff executed an agreement with the San Diego Regional Climate Collaborative (“SDRCC”) to administer the program. Throughout January 2024, Staff worked with SDRCC to finalize the program guidelines. The program officially opened to SDCP’s member agencies on February 5, 2024. The purpose of the program is to support member agency’s climate action goals. Each member agency is eligible to receive a \$50,000 grant to use for initiatives, projects, or programs that advance or promote one or more of the following focus areas: clean energy adoption, carbon emissions reduction, climate equity, local economic development, and energy resilience.

Next Steps: The grant opportunity will be open for 10 weeks, closing on April 12, 2024. During the application period, SDRCC will work with member agency staff to provide project development and application support. Grants are anticipated to be awarded by June 2024.

Solar and Energy Storage

Net Energy Metering (“NEM”) and Net Billing Tariff (“NBT”)

Please refer to [Item 2](#) of the December 2023 Board staff report for the most recent update on this program. Staff anticipate bringing back an item to the Board at the end of Q1 2024 to update the tariff with support for virtual and aggregation versions of NBT.

Residential Solar + Storage Program

Status: Staff have continued to obtain feedback from stakeholders on the design for a solar plus battery storage incentive program. In January 2024, Staff held two virtual industry workshops to ensure maximum industry feedback was received. The 72 attendees at the workshops included installers, aggregators, providers, and battery manufacturers. Staff learned that many in the industry are unfamiliar with SDCP and therefore it is key to continue to engage with the industry to ensure the program can be successful. Overall, the industry responded positively to the program with additional feedback expected from California Solar & Storage Association (“CALSSA”) members.

Based on feedback collected to date and research on other related existing solar and storage incentive programs, Staff have developed an initial program design that includes a one-time, upfront incentive and an annual performance incentive; the performance incentive will be based on SDCP managing a daily dispatch of the participating batteries. Staff are drafting a Program Manual in addition to developing battery and installer requirements to ensure the highest quality for SDCP customers. At the February 2024 CAC meeting, Staff solicited feedback on the initial program design.



Next Steps: Staff anticipate bringing the final program design to the March 2024 Board meeting prior to the anticipated program launch in Q2/Q3 2024.

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

Status: At the February 2024 Board meeting, Staff are seeking approval of a Pilot Project Agreement with Grid Alternatives (“GRID”) to implement the DAC-SASH Readiness Pilot. The pilot will provide roof repairs or replacements for homes that are eligible for the DAC-SASH program but aren’t able to participate due to the condition of their roofs.

Next Steps: Pending Board approval of the Pilot Project Agreement, work with GRID would begin in late February 2024, with GRID starting to identify and enroll homes in Spring 2024.

Solar for Our Communities

Status: Since securing California Public Utilities Commission (“CPUC”) approval for SDCP’s solicitation documents in August 2023, Staff have proactively pursued the implementation of the Disadvantaged Communities Green Tariff (“DAC-GT”) and Community Solar Green Tariff (“CSGT”) programs, with the aim of delivering renewable energy access to disadvantaged communities. Following the issuance of the Request for Offer (“RFO”) on August 25, 2023 to 1,555 pre-qualified vendors, Staff facilitated a Q&A session on November 3, 2023 to address developer inquiries. While formal offer submissions are yet to be received, proactive engagement with potential developers suggests strong interest, particularly in DAC-GT projects.

Staff have implemented a comprehensive outreach strategy to maximize program outreach. This strategy included hosting three well-attended webinars (56 participants), actively engaging in relevant conferences, and launching the dedicated "Solar for Our Communities" [webpage](#), a centralized resource hub for developers featuring program information and essential materials.

Next Steps: The deadline for RFO submissions is February 24, 2024. Staff will follow up with RFO respondents as necessary from February 26 to March 25, 2024 and send supplier notification for SDCP’s short list selection by April 29, 2024. The evaluation team will begin reviewing offers in early May 2024 and anticipate completing the evaluation by June 2024.

In Q1 2024, a comprehensive website designed for Community Sponsors will be launched. This centralized hub will serve as a valuable resource for qualified entities, including nonprofit community-based organizations, schools, and government agencies located in the cities of Chula Vista, National City, and San Diego. The website will list the benefits of becoming a Community Sponsor such as access to 100% renewable energy, reduced electricity costs, and enhanced community engagement opportunities. It will also outline the responsibilities and duties of Community Sponsors by highlighting the crucial role Community Sponsors play in the CSGT program, encompassing site selection,



community outreach and engagement, and collaboration with solar developers. A step-by-step guide will be readily available to clarify the application process and clearly outline eligibility requirements and necessary documentation.

To foster direct connections between Community Sponsors and developers, the website will host a convenient "Community Sponsor Interest Form." This form will allow interested entities to readily share their contact information and preferred communication methods. Solar developers can access submitted interest forms to efficiently identify potential partners located within their target areas. Additionally, Staff will leverage the collected information to reach out to interested Community Sponsors, providing personalized support and guidance throughout the program.

To address potential land availability concerns early on, Staff are proactively collaborating with member agencies to identify suitable project sites on city and county land to proactively address land constraints and minimize delays.

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 4

To: San Diego Community Power Board of Directors
From: Byron Vosburg, Managing Director of Power Services
Via: Karin Burns, Chief Executive Officer
Subject: Update on Power Resources
Date: February 22, 2024

RECOMMENDATION

Recommendation: Receive and file update on Power Resources

BACKGROUND

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

ANALYSIS AND DISCUSSION

Power Services Staffing

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

To help manage the risks associated with its growing power portfolio and financial & budget processes, staff issued an RFP for Professional Services for Energy Trading Risk Management (ETRM) in January 2024. The range of ETRM functions may include deal capture, position tracking and management, valuation, reporting, risk analysis, settlements, and budget integration. Staff expect to review and evaluate vendor submissions throughout Q2 2024, targeting board review of selected vendor in early Q3 for implementation by Q1 2025.

Long-term Renewable Energy RFPs



As SDCP strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) are becoming integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term PPAs lock in renewable energy supply around which SDCP can build its power supply portfolio while also providing power supply cost certainty around which SDCP can develop its pro forma financial model. Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that SDCP provide 65% of its RPS-required renewable energy from contracts of at least ten years in length. Finally, in D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental generation facilities that will achieve commercial operation during 2023 through 2026 for purposes of “Mid Term Reliability” (MTR). These requirements have been augmented and extended into 2026 and 2027 via D.23-02-040.

In pursuit of long-term contracts for renewable energy, staff released two RFPs for eligible Renewable Energy resources and an RFP for Stand Alone Storage projects in the past 18 months. The SDCP Board has approved resulting contracts for over 571 MW of renewable generation and 578 MW of storage capacity. Staff remain in negotiations with several respondents for additional resources that are expected to be online between 2025 and 2028. Staff and the Energy Contracts Working Group (ECWG) evaluate all RFP submissions prior to entering negotiations with selected participants. Assuming that Staff and shortlisted developer(s) are able to agree to mutually agreeable contracts consistent with terms authorized by the ECWG, Staff then review draft agreements with the SDCP Board for approval and authorization to execute the relevant documents.

Local Development

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

As Program Administrators of the CPUC’s Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs, SDCP launched the RFP solicitation for respective program resources on August 26th, proposals for which will be due February 24, 2024. SDCP has hosted three webinars to aid bidders with the solicitation process.



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

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

Short-Term RPS Procurement

SDCP staff continues to actively manage its environmental portfolio and closely monitor the market for renewable and carbon-free energy sources, procuring RPS in the bi-lateral market, and continuing procurement efforts as market opportunities become available. These procurement efforts will serve to help meet SDCP's near-term environmental goals as long-term projects in development come online.

Market Update

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

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A



SAN DIEGO COMMUNITY POWER
Staff Report – Item 5

To: San Diego Community Power Board of Directors

From: Chandra Pugh, Director of People Operations

Via: Karin Burns, Chief Executive Officer

Subject: Update on Human Resources

Date: February 22, 2024

RECOMMENDATION

Receive and File the Update on Human Resources.

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

Hiring

This month, SDCP welcomed Veera Tyagi, General Counsel, to the team.

Current open positions include:

Clerk of the Board
IT Manager

Updates:

HR and the Executive Team have reviewed the 2024 Mercer study, which includes recommended role analysis and salary grades for current and proposed jobs developed at SDCP. Updated salary grades have been discussed with leadership and will be communicated to the staff this month.

Our 2023 Performance Review Cycle has been launched to all staff. This is an exciting time for the organization to reflect on accomplishments this past year and to provide feedback and guidance to our employees as they progress in their roles and careers with SDCP.

SDCP is also planning a series of monthly Lunch and Learns. Our first Lunch and Learn will be conducted in partnership with the County of San Diego. Representatives will be onsite to conduct a free workshop and provide assessments and ergonomic education to employees to prevent injuries, boost productivity, and foster a sense of well-being among staff members.

DISCUSSION AND ANALYSIS

N/A

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS:

N/A

SAN DIEGO COMMUNITY POWER

Staff Report – Item 6

To: San Diego Community Power Board of Directors

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

Via: Karin Burns, Chief Executive Officer

Subject: Update on Customer Operations

Date: February 22, 2024

RECOMMENDATION

Receive and file an update on various customer operations.

BACKGROUND

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

ANALYSIS AND DISCUSSION

A) Mass Enrollment Update

Phase 4:

Mass enrollment for our Non-Net Energy Metering (NEM) customers in National City and Unincorporated County of San Diego is officially complete as of May 3, 2023. As of January 31, 2024, SDCP is serving a cumulative total count of **944,489** active accounts correlating to **1,135,078** meters. There are **166,141** active accounts already enrolled in Unincorporated County of San Diego and **18,834** in National City.

Accounts on Net Energy Metering (NEM) within Phase 4 in National City and County of San Diego began enrollment into SDCP service in April 2023 and will continue for the next twelve months, coinciding with their true up month through March 2024. Enrolled customers will receive 2 post enrollment notices through the mail at their mailing address on file within 60 days of their account switching over to SDCP service.



B) Customer Participation Tracking

Staff and Calpine have worked together to create a reporting summary of customer actions to opt out of SDCP service, opt up to Power100, or opt down from Power100 to PowerOn. The below charts summarize these actions accordingly as of January 30th, 2024:

I. Total Opt Outs - Including Active and Inactive

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

Opt Outs by Jurisdiction	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024-01	Total
City of Chula Vista	266	3,472	244	102	242	160	37	4,523
City of Encinitas	66	1,886	94	31	70	34	12	2,193
City of Imperial Beach	32	345	27	6	38	28	15	491
City of La Mesa	85	1,272	77	30	77	51	11	1,602
City of San Diego	1,077	19,278	1,042	543	945	657	175	23,715
County of San Diego			6,920	2,667	2,119	1,892	583	14,180
National City			137	69	44	34	10	294
Total	1,526	26,253	8,541	3,448	3,535	2,856	843	46,998

Opt Outs by Class Code	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024-01	Total
Residential	36	25,717	7,717	3,091	3,272	2,683	810	43,322
Commercial/Industrial	1,490	536	824	357	263	173	33	3,676
Total	1,526	26,253	8,541	3,448	3,535	2,856	843	46,998

Opt Outs by Reason	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024-01	Total
Concerns about government-run power agency	24	1,496	503	213	151	96	19	2,502
Concerns about lack of equivalent CCA programs		132	53	12	13	11	2	223
Decline to provide	227	3,596	1,397	435	343	353	86	6,437
Dislike being automatically enrolled	203	7,214	2,754	1,056	924	740	216	13,107
Existing relationship with the utility	2	2,394	1,005	393	305	265	91	4,455
Have grid reliability concerns	1	292	169	46	19	18	5	550
Have renewable Energy Reliability Concerns	6							6
Other	818	2,653	706	393	244	204	75	5,093
Rate or additional cost concerns	6	7,754	1,693	792	1,385	1,035	321	12,984
Rate or Cost Concerns	233							233
Service or billing concerns	6	724	262	108	151	134	28	1,413
Total	1,526	26,253	8,541	3,448	3,535	2,856	843	46,998

Opt Outs by Method	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024-01	Total
Customer Service Rep (CSR)	1,098	7,002	1,846	876	966	692	223	12,702
Interactive Voice Response (IVR)	101	4,899	1,493	735	922	642	188	8,980
Web	327	14,353	5,202	1,837	1,647	1,522	432	25,319
Total	1,526	26,253	8,541	3,448	3,535	2,856	843	46,998

**Historical opt outs including inactive accounts as of 1/30/2024.*

III. Opt Downs from Power100 - Including Active and Inactive

Opt Downs by Jurisdiction	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024-01	Total
City of Chula Vista		1	3			1		5
City of Encinitas	35	425	27	17	20	7	6	537
City of Imperial Beach		1						1
City of La Mesa		2						2
City of San Diego		26	5	5	1	2	2	41
County of San Diego			1	1	2	1		5
Total	35	455	36	23	23	11	8	591

Opt Downs by Class Code	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024-01	Total
Residential		433	36	15	22	11	7	524
Commercial/Industrial	35	22		8	1		1	67
Total	35	455	36	23	23	11	8	591

Opt Downs by Method	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024-01	Total
Customer Service Rep (CSR)	31	305	21	19	15	7	4	402
Interactive Voice Response (IVR)	4	26	2		1		1	34
Web		124	13	4	7	4	3	155
Total	35	455	36	23	23	11	8	591

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

Opt Ups by Jurisdiction	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024-01	Total
City of Chula Vista	701	168	18	15	15	7	3	927
City of Encinitas	18	1	1					20
City of Imperial Beach	60	29		1	9	1	1	101
City of La Mesa	148	118	6	5	2	6	1	286
City of San Diego	3,163	2,868	181	114	107	82	20	6,522
County of San Diego			48	91	38	23	10	210
National City			1	9		1		11
Total	4,090	3,184	255	235	171	120	35	8,076

Opt Ups by Class Code	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024-01	Total
Residential	3	2,895	181	136	131	102	30	3,476
Commercial/Industrial	4,087	290	74	99	40	18	5	4,601
Total	4,090	3,184	255	235	171	120	35	8,076

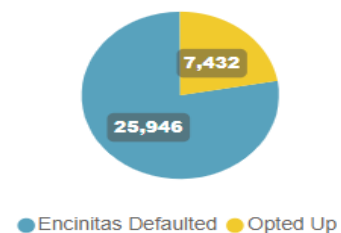
Opt Ups by Method	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024-01	Total
Customer Service Rep (CSR)	4,059	1,369	97	118	54	32	9	5,726
Interactive Voice Response (IVR)	4	81	21	17	16	24	8	171
Web	27	1,738	137	100	101	64	18	2,183
Total	4,090	3,184	255	235	171	120	35	8,076

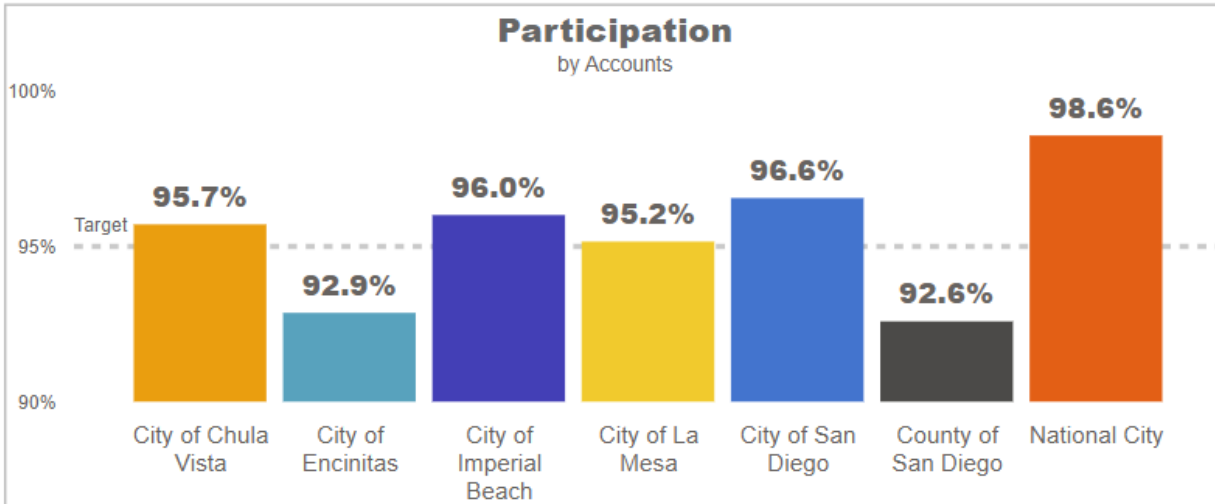
Current Active Power100 Accounts

Active Power100 Accounts

TownOrTerritory	Count
City of Encinitas	25,946
City of San Diego	6,019
City of Chula Vista	873
City of La Mesa	255
County of San Diego	197
City of Imperial Beach	78
City of National City	10
Total	33,378

Active Power100 Opt vs Defaulted





Jurisdiction	Active	Eligible	Opt Outs	Participation
City of Chula Vista	93,479	97,668	4,189	95.7%
City of Encinitas	26,458	28,492	2,034	92.9%
City of Imperial Beach	10,497	10,933	436	96.0%
City of La Mesa	28,002	29,427	1,425	95.2%
City of San Diego	600,474	621,866	21,392	96.6%
County of San Diego	166,292	190,235	14,105	92.6%
National City	18,936	19,444	277	98.6%
Total	944,138	998,065	43,858	95.6%

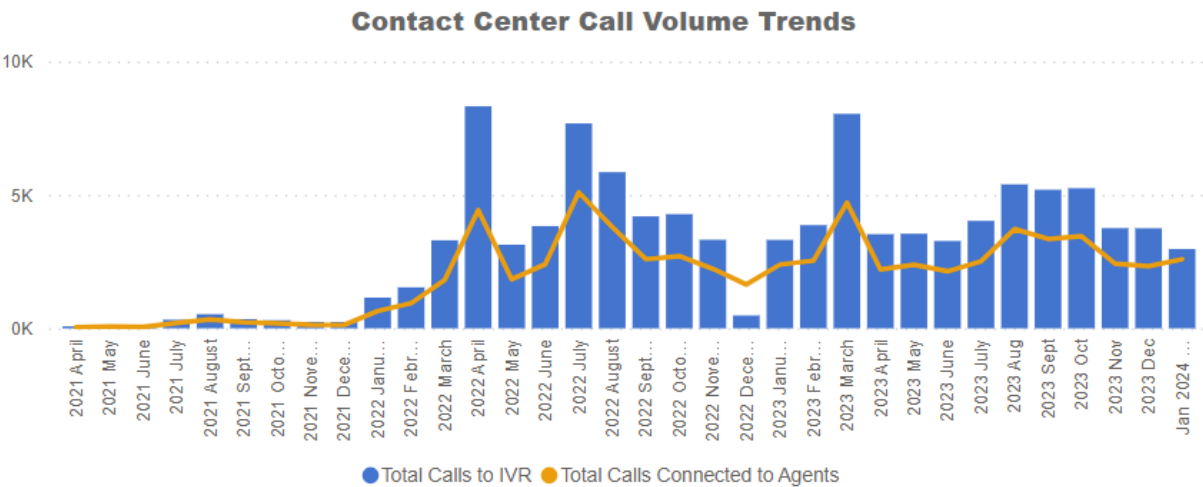
Phase 4 mass enrollment process in National City and Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers is officially completed as of May 2023. The participation rate for this new phase is fluid and will change as we continue with our enrollment of Net Energy Metering (NEM)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

C) Contact Center Metrics

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

The chart below summarizes contact made by customers into our Contact Center broken down by month through January 30, 2024:

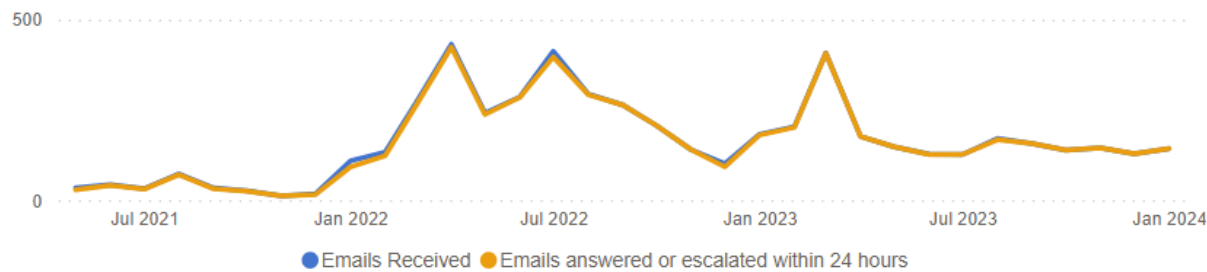
V. Contact Center Metrics



Interactive Voice Response (IVR) and Service Level Agreement (SLA) Metrics								
	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024-01	Total
Total Calls to IVR	2,289	47,118	15,229	10,356	14,628	12,764	2,976	105,360
Total Calls Connected to Agents	1,401	30,174	9,641	6,735	9,589	8,208	2,591	68,339
Avg Seconds to Answer	20	12	8	3	7	9	11	12
Avg Call Duration (Minutes)	8.5	9.8	9.4	9.5	10.3	9.2	9.8	9.4
Calls Answered within 60 Seconds (75% SLA)	96.23%	95.50%	96.80%	99.69%	97.22%	96.59%	95.31%	96.42%
Abandon Rate	0.57%	0.36%	0.26%	0.00%	0.17%	0.31%	0.50%	0.36%

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

D) Customer Service Email Trends



Customer Service Emails								
	2021	2022	2023 Q1	2023 Q2	2023 Q3	2023 Q4	2024-01	Total
Emails Received	272	2,894	795	453	455	413	143	5,425
Emails answered or escalated within 24 hours	257	2,821	790	452	452	413	143	5,328
Completion (%)	94%	96%	99%	100%	99%	100%	100%	97%

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

AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A



SAN DIEGO COMMUNITY POWER

Staff Report – Item 7

To: San Diego Community Power Community Advisory Committee

From: Jen Lebron, Director of Public Affairs

Via: Karin Burns, Chief Executive Officer

Subject: Marketing, Public Relations, and Local Government Affairs

Date: February 22, 2024

RECOMMENDATION

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

BACKGROUND

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

ANALYSIS AND DISCUSSION

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

Recent and Upcoming Public Engagement Events

Chula Vista Chamber of Commerce First Friday Breakfast
Ocean Beach Cleanup
National City Library
North San Diego Business Chamber of Commerce Regional Connect
Jackie Robinson Family YMCA Dr. Martin Luther King Jr. Human Dignity Award Breakfast
Martin Luther King, Jr. Parade and Festival
San Diego Business Summit
Spring Valley Library
Imperial Beach Collaborative
Sun Coast Farmers Market
Cleantech Forum North America
University Heights Library
City Heights Library

Imperial Beach Chamber of Commerce
La Mesa Chamber of Commerce
National City Chamber of Commerce
Spring Valley Sustainability Resource Fair
Cardiff Farmers Market
Malcolm X Library
La Mesa Branch Library
NAIOP San Diego
San Diego Regional Chamber of Commerce Anniversary Celebration
Collier Park Reopening
Encinitas Chamber of Commerce Health and Wellness Expo
Logan Heights Library
Imperial Beach Neighborhood Food Pantry
Pacific Beach Library
San Ysidro Library
Balboa Library
Mira Mesa Library

Marketing, Communications and Outreach

SDCP provided local media with information about its 2024 rate setting process and received fair, balanced coverage. Stories that detailed the rates that went into effect on February 1 were featured in the San Diego Union-Tribune and the Voice of San Diego. There were follow-up stories about SDCP's power procurement and how those efforts will positively impact the affordability and reliability of electricity for customers in the long run.

The Public Affairs team has been working diligently behind the scenes to support programmatic efforts including the launch of "Solar for Our Communities" green tariff programs, a recently launched electrification education hub, webinars for developers to learn more about solar and battery storage opportunities, and soon-to-be launched programs including one that helps customers repair their roofs to be ready for solar installations and another that will distribute grants to small businesses that would benefit from more efficient refrigerators. The Public Affairs team is working closely with internal and external stakeholders to encourage participation in these programs and leveraging relationships with community partners to amplify our marketing and outreach efforts.

SDCP has ramped up its efforts to connect with local leaders. SDCP sent a representative to Sacramento alongside a delegation of local labor leaders. Staff have also been enhancing coordination with member agency staff and meeting with the leadership of sovereign tribal nations.

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



AD-HOC COMMITTEE AND/OR SUBCOMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 8

To: San Diego Community Power Board of Directors
From: Xiomalys Crespo, Community Engagement Manager
Via: Karin Burns, Chief Executive Officer
Subject: Receive and File Community Advisory Committee Monthly Report
Date: February 22, 2024

RECOMMENDATION

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

BACKGROUND

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

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

At the direction of the Chief Executive Officer, the CAC provides quarterly presentations to the Board of Directors in the regular agenda, and monthly reports in the consent agenda. The next quarterly presentation will take place during the February 22, 2024 Board of Directors meeting.

ANALYSIS AND DISCUSSION

During the February 8, 2024 regular CAC meeting:

- Chair Vasilakis (City of San Diego) welcomed new staff members to SDCP, including Michelle Porras, Senior Executive Assistant, and Veera Tyagi, General Counsel, who will directly support the CAC moving forward.
- The CAC approved the consent agenda, which included the January meeting minutes; updates on Marketing, Public Relations, and Local Government Affairs, Customer Operations, and Programs; and the 2024 CAC Work Plan. Members received staff reports and briefings for all items.

- The CAC heard a presentation on the Mid-Year Budget Amendment, and the Account Services and Regulatory and Legislative teams provided an update on SDPC's Load Management Standards Compliance Plan. Members asked about staffing impacts of proposed amendments to the budget and strategies for educating customers about dynamic rates, respectively.
- The CAC also heard the end of committee report for its Community Grant Program Ad-Hoc Committee, in which Members Castañeda (National City), Harris (La Mesa), and Sclafani (Chula Vista) met to provide feedback on the criteria proposed for SDCP's next round of community grants.
- The Programs team provided a presentation on the Community Grant Program, where members learned about the process and application that will be available at the end of the month, and recommended outreach to applicants of the previous rounds as well as considering all member agencies when allocating awards.
- Staff also provided a presentation on SDCP's proposed Residential + Storage Program, in which members engaged in discussion around the benefits of making the incentives available to renters and multi-family housing.
- Committee members had no recommendations on potential agenda items for the Board of Directors.

As of February 9, 2024, the CAC has two vacancies representing the County of San Diego (unincorporated). Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically. The vacancies have been advertised at meetings, community events, and through SDCP's social media.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

There is no fiscal impact associated with this item.

ATTACHMENTS

Attachment A: Community Advisory Committee February 8, 2024 Regular Meeting Agenda





AGENDA

Regular Meeting of Community Advisory Committee San Diego Community Power (SDCP)

February 8, 2024
5:30 p.m.

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

Alternate Location:
7354 Eads Avenue, San Diego, CA 92037

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

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

1. **Providing Oral Comments During Meeting.** Anyone attending in person desiring to address the CAC is asked to fill out a speaker's slip and present it to the CAC Chair or the Secretary. To provide remote comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. On Zoom video conference by computer or mobile phone, use the "Raise Hand" feature. This will notify the moderator that you wish to speak during a specific item on the agenda or during non-agenda Public Comment. Members of the public will not be shown on video but will be able to speak when called upon. If joining the meeting using the Zoom dial-in number, you can raise your hand by pressing *9. Comments will be limited to three (3) minutes.
2. **Written Comments.** Written public comments must be submitted prior to the start of the meeting by using this ([web comment form](#)). Please indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided to the CAC members in writing. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting. Comments read at the meeting will be limited to the first 400 words. Comments received after the start of the

meeting will be collected, sent to the CAC members in writing, and be part of the public record.

If you have anything that you wish to be distributed to the CAC, please provide it via xcrespo@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/93647500600>

Telephone (Audio Only)

(669) 900-6833 or (253) 215-8782 | Webinar ID: 936 4750 0600

WELCOME

ROLL CALL

PLEDGE OF ALLEGIANCE

LAND ACKNOWLEDGMENT

SPECIAL PRESENTATIONS AND INTRODUCTIONS

ITEMS TO BE WITHDRAWN OR REORDERED ON THE AGENDA

PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

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

CONSENT CALENDAR

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

- 1. Approval of January 11, 2024 CAC Meeting Minutes**
- 2. Update on Marketing, Public Relations, and Local Government Affairs**
- 3. Update on Customer Operations**
- 4. Update on Programs**

5. Approval of the 2024 CAC Work Plan

REGULAR AGENDA

The following items call for discussion or action by the CAC.

6. Presentation on Mid-Year Budget Amendment

Recommendation: Receive and File the Mid-Year Budget Amendment Presentation

7. Update on Load Management Standards Compliance Plan

Recommendation: Receive and File the Load Management Standards Compliance Plan

8. Community Grant Program Ad-Hoc End of Committee Report

Recommendation: Receive and File the Community Grant Program Ad-Hoc End of Committee Report

9. Update on Community Grant Program

Recommendation: Receive and File the Community Grant Program Update

10. Update on Residential Solar + Storage Program

Recommendation: Receive and File the Residential Solar + Storage Program Update

DISCUSSION OF POTENTIAL AGENDA ITEMS FOR BOARD OF DIRECTORS MEETINGS

There are two ways that the CAC may bring items to the attention of the Board at a Board meeting:

1. Standing CAC Report. The CAC report may be a standing item on the Board agenda, in which the CAC Chair, CEO, or designated staff reports on updates related to a recent CAC meeting. Consistent with the Brown Act, items raised during the CAC report may not result in extended discussion or action by the Board unless agendaized for a future meeting.

2. Suggesting Board Agenda Items. The CAC may suggest agenda items for a Board of Directors meeting agenda by communicating with the CAC Chair and the designated SDCP staff, before and/or after a regular CAC meeting. If suggested during a regular meeting, there shall be no discussion or action by the CAC unless the item has been included on the CAC agenda. To be added to a Board agenda, items must have the approval of the SDCP Chief Executive Officer and the Chair of the Board of Directors. If approval is provided, staff must be given at least 5 business days before the date of the Board meeting to work with the CAC to draft any memos and materials necessary.

COMMITTEE MEMBER ANNOUNCEMENTS

Committee Members may briefly provide information to other members and the public. There is to be no discussion or action taken on comments made by Committee Members unless authorized by law.

ADJOURNMENT

Availability of Committee Documents

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



SAN DIEGO COMMUNITY POWER Staff Report – Item 9

To: San Diego Community Power Board of Directors

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

Via: Karin Burns, Chief Executive Officer

Subject: Update on Regulatory and Legislative Affairs

Date: February 22, 2024

RECOMMENDATIONS

Receive and file updates on regulatory and legislative affairs.

BACKGROUND

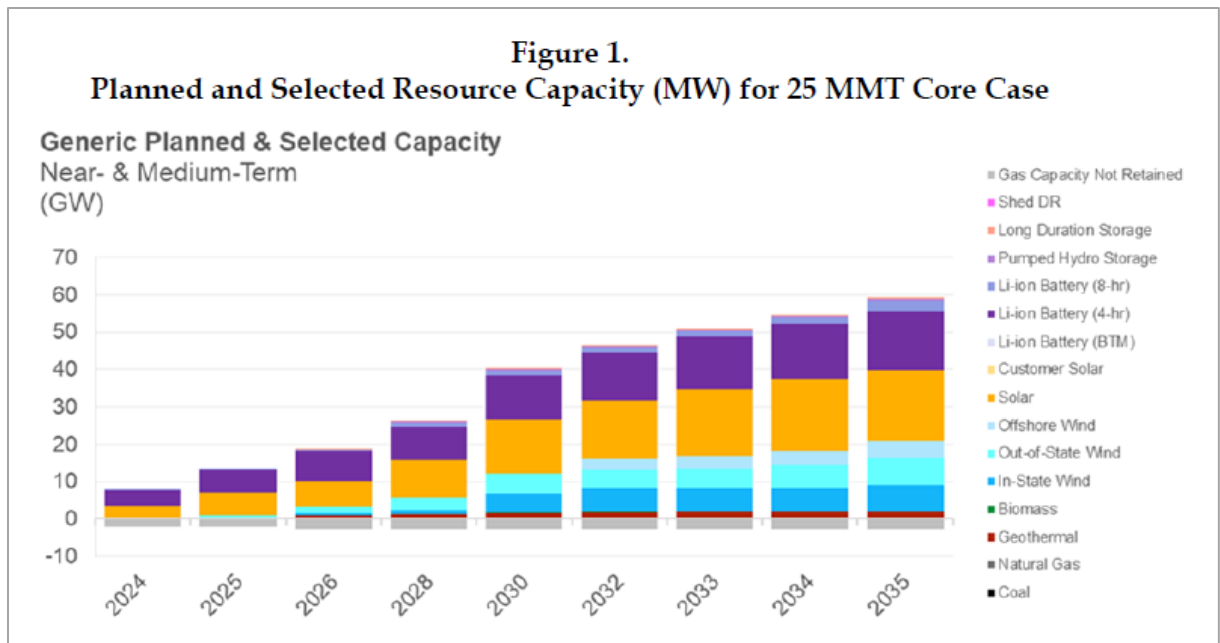
Staff will provide regular updates to the Board of Directors regarding SDCP's regulatory and legislative engagement.

ANALYSIS AND DISCUSSION

A) Regulatory Updates

Integrated Resource Planning

On January 10, 2024, the California Public Utilities Commission (CPUC) issued a [Proposed Decision](#) within the Integrated Resource Planning (IRP) proceeding. The Proposed Decision evaluates the 2022 IRPs submitted by load serving entities, and of note, certified [SDCP's 2022 IRP](#), which was filed in November, 2022. In addition, the Proposed Decision adopts the 2023 preferred system plan and greenhouse gas (GHG) emissions target for 2025, choosing the more ambitious 25 million metric ton (MMT) core portfolio.



Source: *Propose Decision*, page 65

The Proposed Decision also addressed two petitions for modification (PFM), which requested extensions on various resource procurement obligations. The Proposed Decision denies the PFM seeking a two-year extension on the energy required to be procured in D.21-06-035 to partially replace the attributes of the Diablo Canyon Power Plant, however, it partially grants the PFM seeking modifications to D.23-02-040 and D.21-06-035, to allow extension of deadlines for procurement of long lead-time resources when certain conditions are met.

CalCCA filed [opening comments](#) on January 30, 2024, and reply comments on February 5, 2024. In general, CalCCA supported the Proposed Decision and encouraged the Commission to adopt the plans and processes as currently outlined.

Resource Adequacy

As noted in the regulatory and legislative staff report for the December 2023 meeting of the Board of Directors ([see page 339](#)), in October 2023, the CPUC opened a new order instituting rulemaking to continue to oversee the resource adequacy (RA) program.

The RA proceeding has been divided into two Tracks:

- Track 1 addresses time-sensitive issues that must be resolved for the 2025 RA compliance year, including modifications to the RA compliance and penalty structure and refinements to the existing central procurement entity (CPE) structure.

- Track 2 addresses issues that can be addressed on a longer time horizon, including structural modifications to the CPE framework, among other things.

Proposals from Parties for Track 1 of the RA Proceeding were due January 19, 2024. SDCP staff worked with CalCCA to develop a series of recommendations, including:

- Request that the Federal Energy Regulatory Commission (FERC) investigate the RA market for capacity market power to determine whether it exists and if it does exist, whether it is being exercised, and to ensure just and reasonable wholesale market rates;
- Modify the timing of penalty assessments to extend the year-ahead and month-ahead RA cure periods;
- Adopt a temporary waiver process for system and flexible RA to ensure a smooth transition through the first Slice of Day compliance year;
- Increase transparency into IOU effective Planning Reserve Margin procurement;
- Revise the maximum non-resource specific RA import bid price to ensure out-of-state resources have the right incentives to provide RA capacity to California;
- Create a hydro resource counting methodology that requires mid-year updates to account for above-normal hydro conditions; and
- Evaluate test year showings data to quantify the benefits of hourly transactability and commit to adopting hourly load obligation trading for slice-of-day.

On February 14, 2024, the CPUC hosted a workshop on party proposals, in which CalCCA presented on the select elements from the recommendations outlined above. Comments on party proposals are due February 23, 2024, and reply comments are due March 8, 2024.

Renewables Portfolio Standard

On February 1, the CPUC issued the [Order Instituting Rulemaking \(OIR\) for the new Renewables Portfolio Standard \(RPS\) proceeding](#), R.24-01-017. The preliminary scope of this rulemaking is divided into three principal tasks addressing the following issues:

- 1) Resolving Remaining Issues from R.18-07-003
 - Establishing a cost containment mechanism for utility RPS procurement, including revisions mandated by SB 2 (1X) (Simitian, Stats. 2011, ch.1) and SB 350.
 - Coordinating with the integrated resource planning proceeding, or its successor proceeding, as mandated by SB 350.



2) Continuing, Monitoring, Reviewing, and Improving the RPS Program

- Reviewing and approving RPS procurement plans
- Ongoing monitoring, reviewing, and revising, as needed, all RPS procurement methods and tariffs, such as IOU solicitations, renewable auction mechanism, the Renewable Market Adjusting Tariff (ReMAT), and the Bioenergy Market Adjusting Tariff (BioMAT).
- Monitoring, reviewing, and improving RPS compliance reporting formats developed by Energy Division staff in consultation with parties.
- Reviewing compliance progress of retail sellers and taking enforcement action if required.
- Reviewing and revising, if needed, penalty rules applying to the RPS program.
- Reviewing and revising, as needed, analytical tools such as the RPS Database to improve the RPS program and streamline its administration.
- Using the authority provided by § 399.15(b)(3) to explore increasing the RPS procurement percentage for later compliance periods.
- Considering the integration of greenhouse gas emissions (GHG) reduction goals and metrics into RPS procurement methods; and
- Coordinating with the resource adequacy proceeding, or its successor proceeding.

3) Implementing New Statutory Requirement

Comments and reply comments on the OIR are due March 4 and March 14, 2024, respectively, with a prehearing conference expected in quarter 1 of 2024.

Energy Efficiency/San Diego Regional Energy Network (SDREN)

As mentioned in Item 3 of the January 18, 2024, Board staff report, the *Motion of San Diego Community Power on Behalf of the San Diego Regional Energy Network for Approval of Energy Efficiency Portfolio Application* (“SDREN Motion”) was submitted on January 5, 2024.

Stakeholder responses to the SDREN Motion were due February 5, 2024. Four parties submitted responses: the Joint RENs (Inland Regional Energy Network, Southern California Regional Energy Network, and the Tri-County Regional Energy Network), Public Advocates Office (PAO), SDG&E, and the Small Business Utility Advocates (SBUA).

The Joint RENs, SDG&E, and SBUA expressed support for the SDREN Motion. PAO requested that the CPUC eliminate certain SDREN programs and make reductions to its proposed budget. In addition to expressing support for the SDREN



Motion in its response, SDG&E also indicated its intent to withdraw from energy efficiency program administration.

As of the time this report was drafted, staff are reviewing and analyzing Motion responses. SDREN's reply comments to the SDREN Motion responses are due February 15, 2024. The anticipated next steps in the CPUC's REN approval process – subject to change at the CPUC's discretion - include:

1. Ruling Seeking [Additional] Comment on the SDREN Business Plan
2. Opening Comments on Ruling
3. Reply Comments
4. Proposed Decision
5. Opening Comments on Proposed Decision
6. Reply Comments on Proposed Decision
7. CPUC Votes on Decision [to Authorize SDREN]

Assuming the SDREN Motion deliberation timeline mirrors that of similar Motions deliberated previously, the CPUC should have a final decision issued by the end of the year 2024. Staff will continue to provide Board updates as the SDREN moves through the CPUC regulatory process.

B) Federal Activities Report

On February 2, San Diego Community Power endorsed the Building Integrated Grids with Inter-Regional Energy Supply (BIG WIRES) Act. In fall 2023, U.S. Representative Scott Peters (one of several U.S. federal legislators in SDCP's territory) and Senator John Hickenlooper introduced BIG WIRES, which would increase grid reliability and resilience by requiring each of the FERC transmission planning regions to better coordinate construction of an interregional transmission system.

Specifically, BIG WIRES would require each region to be able to transfer 30% of their peak electrical loads to neighboring regions. Effectively, this would enable greater power flows across the larger transmission grid to enable greater grid resilience during extreme weather events such as Winter Storms Uri and Elliot.

C) State Legislative Activities Update

Senator Toni Atkins Steps Down as Senate President pro Tem

On February 5, the State Senate officially elected Senator Mike McGuire from Sonoma County to replace Senator Toni Atkins (San Diego) as the leader of the State Senate. The change in State Senate leadership did not result in any material membership changes to the Senate Committee on Energy, Utilities &



Communications, which hears bills on energy matters. Senator Catherine Blakespear was added as a member to the Senate Budget Subcommittee #2 on Resources, Environmental Protection and Energy, which approves the budgets of the California Energy Commission and the California Public Utilities Commission.

California Community Choice Association (CalCCA) Annual Lobby Day

SDCP's CEO, Managing Director of Power Services, Director of Regulatory & Legislative Affairs, Senior Legislative Manager, and lobbying firm Full Moon Strategies, will be participating in CalCCA's annual legislative lobby day on February 21 in Sacramento. It is an opportunity for SDCP to connect with legislators from the San Diego region and to discuss SDCP's successes and challenges, and to hear about their 2024 legislative priorities. We will be highlighting SDCP's recent procurement efforts, market challenges on resource adequacy, challenges with customer arrearages, and discussing prospective SDCP customer programs that may help control costs. In addition to meeting with SDCP's legislative delegation, CalCCA is arranging meetings with representatives from the Governor's office, legislative leadership, and the California Energy Commission.

Legislation Introduced to Repeal a Fixed Grid Charge Based on Income

[AB 1999 \(Irwin\)](#) was introduced by a group of 20 legislators on January 31 to repeal the statute that authorizes an income graduated fixed charge (IGFC) on residential electric customers by July 1, 2024. The law was created by [AB 205 \(Committee on Budget\)](#), which was part of the 2022 State Budget. SDG&E submitted a joint proposal with the two other large IOUs to the CPUC regarding IGFC implementation. Their proposal includes an income-based fixed charge that ranges from \$24-\$128, with an average of \$74 per month per customer.

AB 1999 (Irwin) would eliminate the ability of the CPUC to adopt an IGFC. Instead, the CPUC would have the authority to maintain the current \$10 fixed charge for non-CARE customers and \$5 fixed charge for CARE-customers (i.e. low-income customers). In response to the introduction of AB 1999, Governor Newsom released a statement saying he looks forward to seeing a CPUC "proposal that is consistent with AB 205 when it is released," signaling his preference that the current statute remain untouched.

Generally, an IGFC is intended to recover costs associated with physical grid assets like poles and wires and therefore, the fixed charges are on the SDG&E delivery side of the bill. However, at least one proposal at the CPUC includes some generation in the fixed charges. SDCP staff are reviewing AB 1999 (Irwin) to determine its impact on SDCP and SDCP customers.



AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 10

To: San Diego Community Power Board of Directors

From: Eric W. Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Approve the Professional Services Agreement with Chandler Asset Management, Inc. for up to \$250,000 for Financial and Investment Portfolio Management services

Date: February 15, 2024

RECOMMENDATION

Recommend Board approval of Professional Services Agreement with Chandler Asset Management Inc. for a not-to exceed contract value of up to \$250,000 through February 2025 for Financial and Investment Portfolio Management services and authorize Staff to execute the agreement.

BACKGROUND

This is a request to enter into a new Agreement with the selected vendor, Chandler Asset Management, Inc. ("Chandler") to provide professional services for financial and investment management services that align with SDCP's Investment Policy.

On May 25, 2023, the SDCP Board of Directors ("Board") approved the SDCP Investment Policy. SDCP's Investment Policy states that SDCP may engage with external investment advisors to assist in the management of SDCP's investment portfolio in a manner consistent with the SDCP's Policy.

On December 1, 2023, SDCP issued a Request for Proposal ("RFP") for Financial and Investment Portfolio Management Services with Submittals due on December 19, 2023. After conducting a formal evaluation and interview process Chandler Asset Management was selected to advance in contract negotiations on January 26, 2024.

The external investment advisers may be granted discretion to purchase and sell investment securities in accordance investment objective set forth in this Policy. SDCP may engage the services of one or more external investment advisers to assist in the management of SDCP's investment portfolio in a manner consistent with the Investment Policy.

Staff therefore recommends for Board approval of the Financial and Investment Portfolio Management Services Request for Proposal Contract.

ANALYSIS AND DISCUSSION

As SDCP continues to build towards a 180-days cash on hand goal, it requires Financial and Investment Portfolio Management Services from a reliable and proven firm working with public institution funds. Those services must adhere to the strict requirements of the California Government Code and SDCP's Investment Policy.

Chandler is a locally founded firm and is currently headquartered in nearby San Diego. Chandler has over 35 years of experience working with public institutions giving them insights with the specific codes, constraints, and objectives SDCP would need to navigate. Chandler Asset Management currently serves some of SDCP's Member Agencies such as the County of San Diego, Cities of Chula Vista, and Imperial Beach. In addition, Chandler currently serves two other California Community Choice Aggregators. As of September 30, 2023, Chandler has more than \$33.5 billion under management for clients in regions across the United States, with more than \$23.3 billion under management for 156 public agencies in our home state alone. 100% of Chandler's assets are in separately managed accounts, like SDCP's current portfolio.

The Chandler Agreement outlines a 4-week transition process for SDCP, beginning with notification of award. This process will involve strategy development, investment preparation, and culminating in the final investment of funds. The agreement will have a 1-year term with two options for 1-year extensions. Chandler will provide all services throughout the length of the contract including:

- Annual review of the Investment Policy (All changes will require Board approval.)
- Cash Flow Analysis
- Active and Conservative Investment Management
- Monthly, Quarterly and Annual Reporting Cadences

Chandler Asset Management stands out as an ideal investment management partner for San Diego Community Power. Their deep public sector expertise, tailored approach, risk-conscious philosophy, and strong history demonstrate their ability to meet SDCP's specific requirements. As SDCP seeks a reliable and trustworthy partner to navigate the complexities of public investment, Chandler presents a compelling choice to achieve investment success while upholding the highest standard of care.

Pursuant to the SDCP Procurement Policy, Contracts greater than \$125,000 must be presented to the Board for approval. Staff is requesting approval of the Professional Services Agreement with Chandler Asset Management, Inc. for a not-to-exceed contract value of up to \$250,000.



COMMITTEE REVIEW

The report was reviewed by the Finance and Risk Management Committee (FRMC) on February 15, 2024.

FISCAL IMPACT

SDCP will enter a contract that could cost up to \$250,000.

ATTACHMENTS

Attachment A: Professional Services Agreement with Chandler Asset Management



SAN DIEGO COMMUNITY POWER PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“**Agreement**”) is made and entered into this 22nd day of February 2024, by and between SAN DIEGO COMMUNITY POWER, a California joint powers agency (“**SDCP**”) and Chandler Asset Management, Inc., (“**Consultant**”). SDCP and Consultant are sometimes individually referred to as “**Party**” and collectively as “**Parties.**”

RECITALS

A. Consultant desires to perform and assume responsibility for the provision of certain professional services required by SDCP on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing Financial and Investment Portfolio Management Services, is licensed in the State of California, and is familiar with the plans of SDCP.

B. SDCP desires to engage Consultant to assist in fulfilling SDCP’s fiduciary duty to their constituents by providing high quality fixed income portfolios in a careful investment framework (“**Project**”) as set forth in this Agreement.

AGREEMENT

1. Scope of Services and Term.

1.1 General Scope of Services. Consultant promises and agrees to furnish to SDCP all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the financial and investment portfolio management services necessary for the Project (“**Services**”). The Services are more particularly described in Exhibit A attached hereto, and which are stated in the proposal to SDCP. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

1.1.1 Additional Terms Specific to the Investment Management Relationship. SDCP and Consultant agree to the additional terms specific to the investment management relationship and are more particularly described in Exhibit B, were stated in the proposal to SDCP, and which are incorporated into the Agreement by reference.

1.2 Term. The term of this Agreement shall be from February 22, 2024 to February 28, 2025, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines. SDCP reserves the option to amend the Agreement for up to two additional 12-month terms.

2. Responsibilities of Consultant.

2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means,

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

2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, SDCP shall respond to Consultant's submittals in a timely manner. Upon request of SDCP, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

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

2.4 Substitution of Key Personnel. Consultant has represented to SDCP that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of SDCP. In the event that SDCP and Consultant cannot agree as to the substitution of key personnel, SDCP shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to SDCP, or who are determined by the SDCP to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the SDCP. The key personnel for performance of this Agreement are as follows:

Investment Management

[Placeholder]

Client Service

[Placeholder]

Compliance

[Placeholder]

2.5 SDCP's Representative. In its capacity as investment manager, Consultant shall receive all instructions, directions and other communications on SDCP's behalf respecting SDCP's account from Eric Washington, SDCP Chief Financial Officer & Treasurer ("SDCP Representative"). Consultant is hereby authorized to rely and act upon all such instructions, directions and communications from such Representative or any agent of such Representative.

2.6 Consultant's Representative. Consultant hereby designates Nicole Dragoo, or her designee, to act as its Representative for the performance of this Agreement (“**Consultant's Representative**”). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

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

2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and sub- contractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from SDCP, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its subcontractors who is determined by SDCP to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to SDCP, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to SDCP, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold SDCP, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

2.10 Insurance.

2.10.1 Time for Compliance. Consultant shall not commence the Services under

this Agreement until it has provided evidence satisfactory to SDCP that it has secured all insurance required under this section, in a form and with insurance companies acceptable to SDCP. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to SDCP that the subcontractor has secured all insurance required under this section.

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

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

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

2.10.3 Professional Liability. Consultant shall procure and maintain, and require its subcontractors to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by SDCP to add the following provisions to the insurance policies:

(A) General Liability.

(i) Commercial General Liability Insurance must include coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

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

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

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

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

(C) Workers’ Compensation and Employers Liability Coverage.

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

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

(D) All Coverages. Defense costs shall be payable in addition to the limits set forth hereunder. Requirements of specific coverage or limits contained in this section are

not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to SDCP, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

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

(ii) Consultant shall provide SDCP at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to SDCP at least ten (10) days prior to the effective date of cancellation or expiration.

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

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

(v) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, SDCP has the right but not the duty to obtain the insurance it deems necessary and any premium paid by SDCP will be promptly reimbursed by Consultant or SDCP will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, SDCP may cancel this Agreement. SDCP may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

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

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

2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by SDCP. Consultant shall guarantee that, at the option of SDCP, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SDCP, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

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

2.10.8 Verification of Coverage. Consultant shall furnish SDCP with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to SDCP. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf and shall be on forms provided by SDCP if requested. All certificates and endorsements must be received and approved by SDCP before work commences. SDCP reserves the right to require complete, certified copies of all required insurance policies, at any time.

2.10.9 Subcontractor Insurance Requirements. Consultant shall not allow any subcontractors to commence work on any subcontract until they have provided evidence satisfactory to SDCP that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors shall be endorsed to name SDCP as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, SDCP may approve different scopes or minimum limits of insurance for particular subcontractors.

2.10.10 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life-saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are

necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3. **Fees and Payments.**

3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit C, attached hereto. The total compensation shall not exceed **Two Hundred and Fifty Thousand Dollars (\$250,000)** without written approval of SDCP's CEO. Extra Work may be authorized, as described below, and, if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.2 Payment of Compensation. Consultant shall submit to SDCP a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. SDCP shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by SDCP.

3.4 Extra Work. At any time during the term of this Agreement, SDCP may request that Consultant perform Extra Work. As used herein, "**Extra Work**" means any work which is determined by SDCP to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from SDCP's Representative.

4. **Accounting Records.** Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of SDCP during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

5. **General Provisions.**

5.1 Termination of Agreement.

5.1.1 Grounds for Termination. SDCP may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to SDCP, and

Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, SDCP may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

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

5.2 Delivery of Notices. All reports and other communications required hereunder to be in writing shall be delivered in person, or sent by first-class mail postage prepaid, by overnight courier, by confirmed facsimile with original to follow or by confirmed electronic mail with proof of receipt to the addresses set forth below. Either party to this Agreement may, by written notice given at any time, designate a different address for the receipt of reports and other communications due hereunder:

Consultant: Chandler Asset Management
9255 Towne Centre Drive
Suite 600
San Diego, CA 92121

SDCP: San Diego Community Power
815 E Street, Suite 12716
San Diego, CA 92112

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

5.2.1 Electronic Delivery. From time to time, Consultant may be required to deliver certain documents to SDCP such as account information, notices and required disclosures. SDCP hereby consents to Consultant's use of electronic means, such as email, to make such delivery. This delivery may include notification of the availability of such document(s) on a website, and SDCP agrees that such notification will constitute "delivery". SDCP further agrees to provide Consultant with SDCP's email address(s) and to keep this information current at all times by promptly notifying Consultant of any change in email address(s). SDCP email addresses: EWashington@sdcommunitypower.org;
TManglicmot@sdcommunitypower.org;
CDo@sdcommunitypower.org

5.3 Ownership of Materials and Confidentiality.

5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for SDCP to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“**Documents & Data**”). Consultant shall require all subcontractors to agree in writing that SDCP is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by SDCP. SDCP shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at SDCP’s sole risk.

5.3.2 Intellectual Property. In addition, SDCP shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“**Intellectual Property**”) prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

SDCP shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by SDCP, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of SDCP.

Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the SDCP.

All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

SDCP further is granted by Consultant a non-exclusive and perpetual

license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

5.3.3 Confidential Relationship. The terms and conditions of this Agreement, and all information and advice furnished by either party to the other shall be treated as confidential and shall not be disclosed to third parties except (i) as required by law, rule, or regulation, (ii) as requested by a regulatory authority, (iii) for disclosures by either party of information that has become public by means other than wrongful conduct by such party or its officers, employees, or other personnel, (iv) for disclosures by either party to its legal counsel, accountants, or other professional advisers, (v) as necessary for Consultant to carry out its responsibilities hereunder, or (vi) as otherwise expressly agreed by the parties.

5.3.4 Infringement Indemnification. Consultant shall defend, indemnify and hold SDCP, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by SDCP of the Documents & Data, including any method, process, product, or concept specified or depicted.

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

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

5.6 Indemnification.

5.6.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of SDCP's choosing), indemnify and hold the SDCP, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against SDCP, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against SDCP or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse SDCP and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and

all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the SDCP, its officials, officers, employees, agents, or volunteers. This section shall survive any expiration or termination of this Agreement.

5.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code § 2782.8), then, and only to the extent required by Civil Code § 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

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

5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Diego County.

5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

5.10 SDCP's Right to Employ Other Consultants. SDCP reserves right to employ other consultants in connection with this Project.

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

5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of SDCP. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to SDCP include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this

Agreement.

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

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

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

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

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

5.19 Equal Opportunity Employment and Subcontracting. Consultant represents that it is an equal opportunity employer and it shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of applicants, employees, subcontractors, vendors, or suppliers. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Further, Consultant shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make

this Agreement and bind each respective Party.

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

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

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE TO
SAN DIEGO COMMUNITY POWER
PROFESSIONAL SERVICES AGREEMENT**

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

SAN DIEGO COMMUNITY POWER

CHANDLER ASSET MANAGEMENT

By: _____

By: _____

Name: Karin Burns

Name: Nicole Dragoo

Title: CEO

Title: Chief Executive Officer

ATTEST:

Secretary, SDCP Board of Directors

APPROVED AS TO FORM:

SDCP General Counsel

EXHIBIT A

SCOPE OF SERVICES

Chandler Asset Management, Inc. (“Chandler”) has both the expertise and bandwidth to perform each of the required duties specified in this Agreement as well as additional special services as requested.

- 1. Client Onboarding and implementation**
- 2. Develop and implement an investment strategy that is aligned with SDCP's Investment Policy.**

Chandler will provide full-time discretionary investment management services for SDCP and will develop objectives and constraints for each portfolio through a collaborative process with your staff, including:

A. Reviewing SDCP's Investment Policy

At the inception of the Agreement, Chandler's investment team will review SDCP's current investment policy and provide guidance on strategies and relevant compliance considerations, including:

- Scope of the policy that defines which funds are covered;
- Investment objectives that clearly define how to attain safety, liquidity, and return;
- Standard of care;
- Delegation of authority;
- Ethics and conflicts of interest;
- Authorized investments;
- Management of market and credit risk;
- Safekeeping and custody of securities;
- Reporting requirements; and
- Performance standards

Chandler conducted an initial review of SDCP's Investment Policy and made the following recommendations:

- Update the acceptable investment types to align with California Government Code.
 - SDCP could expand their portfolio to include medium-term notes, pass-through securities, municipal securities and/or supranationals.
- Enhance risk management by adding a limitation to callable bonds, updating language on qualified institutional buyers (QIBs), and detailing the maximum allocation for each acceptable investment in the portfolio.
- Update language of prohibited investments to incorporate a September 2022

change to California Government Code, which limits the purchase of a security with a settlement date greater than 45 days (SB 1489).

- Provide a market benchmark for performance evaluation to be included in the annual report.

B. Chandler will assist SDCP's staff prepare to share findings and recommendations with stakeholders.

This review would be conducted annually and include suggestions to reflect the latest changes to California Government Code, as well as incorporate your objectives and cash flow needs that may change over time.

C. Developing an Approach to Socially Responsible Investing (SRI) and Environmental, Social and Governance (ESG) Practices

Chandler will work with SDCP staff to integrate sustainable investment guidelines into SDCP's portfolio as needed. This service includes:

- Advising on SRI language designed to exclude specific sectors of the market, such as gas & oil, tobacco/alcohol, and/or firearms;
- Ongoing consideration / analysis of ESG characteristics within Chandler's overall issuer selection process prior to purchasing a security for inclusion within your portfolio;
- Identifying and taking action when investments deviate from the organization's SRI and/ or ESG objectives;
- Monitoring and testing SRI compliance pre and post trade using Chandler's extensive multi-level compliance system; and
- Reporting on SRI compliance in monthly and quarterly reports

D. Conducting a Cash Flow Analysis.

Chandler will conduct a statistical analysis of SDCP's use of cash and incorporate any known budgetary events to project future balances and quantify liquidity needs, as well as identify any opportunities to optimize its investments through an investment program allocation to longer duration strategies.

As SDCP continues to grow, it may have even more funds to optimize between its liquid and core portfolios, and we would revisit our cash flow analysis and forecasts frequently to confirm that the portfolio is structured to enhance returns.

E. Establishing an Appropriate Performance Benchmark.

In line with an overarching investment strategy Chandler will identify an appropriate benchmark to measure portfolio outcomes. The benchmark will reflect the actual securities being purchased and the risks undertaken and should have a similar weighted average maturity and credit profile as the portfolio.

3. Ensure preservation of principal.

Chandler will manage SDCP's investment portfolio comprised of asset classes in the U.S. fixed income universe that align with SDCP's objectives of safety, liquidity, and return and as permitted by California Government Code 53601 and 53635.

Chandler will reduce exposure to market risk by diversifying the portfolio by issuer and security type, and by establishing and maintaining a target portfolio duration that is consistent with SDCP's risk profile and investment objectives. Additionally, Chandler will employ an in-house, proprietary credit research process with the objective of identifying stable and improving credits to include in client portfolios.

4. Manage funds in accordance with "Prudent Investor Standard" pursuant to California Government Code Section 53600.3

5. Attain a market rate of return throughout the economic cycle while considering investment risk and liquidity constraints.

6. Monitor and manage the risks in conformance with the internal controls associated with SDCP's investment portfolio.

7. Provide SDCP with regular reports on the performance of the investment portfolio & Access to the Chandler Client Portal, Clearwater Analytics.

Monthly Statement – Chandler will provide monthly portfolio accounting and performance statements. Each monthly report begins with a one-page management summary of portfolio characteristics that provides an excellent overview of the portfolio, including performance relative to your selected benchmark(s), followed by a statement of compliance. A detailed asset listing, including cost, book, and market values, a transaction ledger, an earned interest report, and a cash flow report follow the summary page. The delivery of these reports will be provided on the 3rd business day of the month following month end.

Quarterly Reports – Chandler will provide quarterly investment reports in a format designed to facilitate discussion between our investment professionals and SDCP. The reports present portfolio characteristics, return, and compliance using graphs, charts, and illustrations in a format that is effective for your financial staff, Board of Directors, and additional stakeholders.

Annual Reports – Chandler will provide a GASB 40 report which provides the information needed to prepare the required fiscal year-end portfolio risk assessment, and will assist SDCP in drafting the narratives for GASB notes and financial notes included in SDCP's Comprehensive Annual Financial Report. A GASB 72 report will be made available by fiscal year-end.

8. Meet with SDCP Regularly to Discuss Investment Performance and Strategy

Chandler will facilitate regular Quarterly or Monthly meetings, determined jointly by Chandler and SDCP, to address your governing body per your requirements.

9. Provide Special Financial Services as Requested by SDCP

Key tasks are as follows; other special financial services can be accommodated at SDCP's request:

Task	Frequency
Conduct kick-off meeting	At inception
Investment Policy review	At inception; annually thereafter
Bond Indenture review	At inception/as needed
Cash flow analysis	At inception/ongoing
Establish benchmarks/strategies	At inception
Invest initial funds	At inception
Conduct investment research	Ongoing (weekly)
Reinvest funds	Ongoing (as needed)
Review compliance	Daily
Provide monthly reports	Monthly (aim to provide by 3 rd business day)
Provide quarterly reports	Quarterly (aim to provide by 20 th business day)
In-person presentations	Quarterly/as needed
Review cash flow forecasts	Ongoing
Maintain proactive communication	Daily

EXHIBIT B

ADDITIONAL TERMS SPECIFIC TO INVESTMENT MANAGEMENT RELATIONSHIP

1. Investment Policy. In investing and reinvesting SDCP's assets, Consultant shall comply with SDCP's Investment Policy, which is located on SDCP's website at the following hyperlink: <https://sdcommunitypower.org/key-documents/>.
2. Authority of Consultant. Consultant is hereby granted full discretion to invest and reinvest all assets under its management in any type of security it deems appropriate, subject to the instructions given or guidelines set by Representative.
3. Proxy Voting. Consultant will vote proxies on behalf of SDCP unless otherwise instructed. Consultant has adopted and implemented written policies and procedures and will provide SDCP with a description of the proxy voting procedures upon request. Consultant will provide information regarding how SDCP proxies were voted upon request. To request proxy policies or other information, please contact us by mail at the address provided, by calling 800-317-4747 or by emailing your request to info@chandlerasset.com.
4. Custody of Securities and Funds. Consultant shall not have custody or possession of the funds or securities that SDCP has placed under its management. SDCP shall appoint a custodian to take and have possession of its assets. SDCP recognizes the importance of comparing statements received from the appointed custodian to statements received from Consultant. SDCP recognizes that the fees expressed above do not include fees SDCP will incur for custodial services.
5. Valuation. Consultant will value securities held in portfolios managed by Consultant no less than monthly. Securities or investments in the portfolio will be valued in a manner determined in good faith by Consultant to reflect fair market value.
6. Investment Advice. SDCP recognizes that the opinions, recommendations and actions of Consultant will be based on information deemed by it to be reliable, but not guaranteed to or by it. Provided that Consultant acts in good faith, SDCP agrees that Consultant will not in any way be liable for any error in judgment or for any act or omission, except as may otherwise be provided for under the Federal Securities laws or other applicable laws.
7. Payment of Commissions. Consultant may place buy and sell orders with or through such brokers or dealers as it may select. It is the policy and practice of Consultant to strive for the best price and execution and for commission and discounts which are competitive in relation to the value of the transaction and which comply with Section 28(e) of the Securities and Exchange Act. Nevertheless, it is understood that Consultant may pay a commission on transactions in excess of the amount another broker or dealer may charge, and that Consultant makes no warranty or representation regarding commissions paid on transactions hereunder.

8. Other Clients. It is further understood that Consultant may be acting in a similar capacity for other institutional and individual clients, and that investments and reinvestments for SDCP's portfolio may differ from those made or recommended with respect to other accounts and clients even though the investment objectives may be the same or similar. Accordingly, it is agreed that Consultant will have no obligation to purchase or sell for SDCP's account any securities which it may purchase or sell for other clients.

9. Receipt of Brochure and Privacy Policy. SDCP hereby acknowledges receipt of the disclosure statement or "brochure" and "brochure supplement" also known as Part 2A and Part 2B of Form ADV, required to be delivered pursuant to Rule 204-3 of the Investment Advisers Act of 1940 (Brochure). SDCP further acknowledges receipt of Consultant's Privacy Policy, as required by Regulation S-P.

EXHIBIT C

Fee Schedule for Advisory Services

Chandler will provide investment advisory services in accordance with the following fee schedule:

Assets Under Management	Annual Asset Management Fee
First \$125 million	0.07 of 1% (7 basis points)
Next \$75 million	0.04 of 1% (4 basis points)
Over \$200 million	0.03 of 1% (3 basis points)

Fees will be charged monthly in arrears and can be debited directly from your third-party custody account. The proposed fee schedule is all-inclusive for the services that Chandler provides, including technological resources, onboarding and implementation, online access to the Chandler Client Portal, comprehensive reporting, and meetings, as well as the investment management and treasury management support services described herein.

This fee schedule does not include charges that SDCP would incur for third party custodial services.

SAN DIEGO COMMUNITY POWER

Staff Report – Item 11

To: San Diego Community Board of Directors

From: Xiomalys Crespo, Community Engagement Manager

Via: Karin Burns, Chief Executive Officer

Subject: Approval of 2024 Community Advisory Committee (CAC) Work Plan

Date: February 22, 2024

RECOMMENDATION

Approve the 2024 Community Advisory Committee (CAC) Work Plan.

BACKGROUND

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

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

As part of the CAC Scope of Work that was amended by the Board of Directors at the August 2021 regular meeting: “the Community Advisory Committee will, under the direction of the SDCP Board of Directors and authorized SDCP staff... [a]dopt a work plan at the start of every fiscal year that aligns with the CAC Scope provided by the Board.”

In anticipating the process, and concurrent with revisions to the CAC Fiscal Year 2022-2023 Work Plan, staff worked with members to revise the CAC Scope of Work, which was approved by the Board during its January 18, 2024 meeting, to change the time frame of the CAC Work Plan from fiscal years to calendar years. Staff leveraged the formation of the Community & Equity Ad-Hoc Committee to discuss the upcoming work plan.

ANALYSIS AND DISCUSSION



Proposed changes to the current workplan include: clarifying strategies under each focus to better track progress and outcomes; specifying proposed educational presentations; defining information-sharing protocols to activate member advocacy; deleting redundant areas of focus; updating areas of focus to reflect status of implementation; and adding Civic Engagement and Participation as an area of focus to explore and develop ways to increase participation at CAC meetings, leverage CAC members' networks, and foster CAC member turnover resiliency.

COMITTEE REVIEW

The CAC approved the adoption of the 2024 CAC Work Plan as drafted during its February 8, 2024 regular meeting.

FISCAL IMPACT

There is no fiscal impact associated with this update.

ATTACHMENTS

Attachment A: Draft 2024 Community Advisory Committee (CAC) Work Plan





**Community Advisory Committee
2024 Work Plan (DRAFT)**

Focus	Description	Outcomes
Equity Overview	Prioritize justice, equity, diversity, and inclusion by working with the SDCP Board and Staff.	Ensure that the CAC provides input from an equity perspective on the tasks brought before them by revising CAC key documents and SDCP policies and procedures brought before the CAC to ensure they promote equity.
CAC Educational Presentations	CAC members may invite and hold educational presentations to the wider CAC to assist in ongoing support to SDCP staff and the Board to achieve the mission, vision, core values, and goals of the agency.	<p>Ensure CAC is knowledgeable of SDCP operations as well as external issues which may affect the organization, which may include:</p> <ul style="list-style-type: none"> • SDCP Orientation Training • Battery Storage: Why is it important? • Distributed Energy Resources • Advancements in Geothermal Energy • California Community Choice Association • Finance & Rate Setting Process
Legislative / Public Policy / Regulatory	Bring forth news and advise the Board of legislative, public policy and regulatory issues that are brought forward by SDCP and/or identified by the SDCP Board as a priority. Make public comments at public meetings supporting SDCP positions on these issues.	<ul style="list-style-type: none"> • Anticipate issues that may come up to SDCP by utilizing the CAC's connections to the community; • Clarify strategies and information-sharing protocols to activate advocacy, with the CAC Secretary and SDCP Staff determining and sharing time-sensitive developments to organize support from CAC members and their networks. • Make possible public comments and/or letters of support on issues if provided with talking points by SDCP staff. • Receive Legislative Session 101 Training and Quarterly Presentations on Legislative and Regulatory Activity.

Focus	Description	Outcomes
Energy Bid Evaluation Criteria	Support and monitor the implementation of the revised Energy Bid Evaluation Criteria.	Support staff in monitoring the Energy Bid Evaluation Criteria and overall Power Procurement Efforts by receiving quarterly reports on its implementation and functioning.
Marketing and Communications Efforts	Support strategic outreach efforts to the community, including events, marketing, communication, and other activities.	Support SDCP staff in the strategic marketing and communication of agency activities to dispel inaccurate information by: <ul style="list-style-type: none"> • Receiving Community-Member Communications Guide & Tool Kit Training • Volunteering at SDCP outreach events and workshops • Promoting SDCP Programs
Community Power Plan Implementation	Assist staff in the implementation of the Community Power Plan, which informs what SDCP's long-term programmatic and local procurement outlook will be.	Ensure community input continues to be key in the development and implementation of CPP programs by: <ul style="list-style-type: none"> • Approving the creation of a Programs-specific body of the CAC • Receive quarterly updates and/or staff reports on pilot projects/CPP implementation at large • Supporting workshops with member agencies to increase community engagement on CPP programmatic adoption including: <ul style="list-style-type: none"> ○ Solar for Our Communities ○ Regional Energy Network ○ Solar and Battery Storage Incentives
Civic Engagement & Participation	Explore and develop ways to increase participation at CAC meetings, leverage CAC members' networks, and create an SDCP CAC member and volunteer recruitment pipeline.	Increase interest and awareness of SDCP programming; community involvement in the organization's mission, vision, and goals; CAC turnover resiliency by: <ul style="list-style-type: none"> • Assisting in the development of social media content explaining the importance of the CAC; • Facilitating a CAC Member Network and Affiliations Workshop; • Connecting SDCP staff to volunteering and fellowship programs to expand outreach capacity; and • Introducing members of the community to SDCP publicly noticed meetings and staff and member agency programming/elected staff.

The CAC shall cover these tasks year-round, and other tasks not mentioned above with prior approval of SDCP staff but within the purview of the Scope of Work. All tasks shall be presented and acted upon in a manner that complies with the Ralph M. Brown Act.



SAN DIEGO COMMUNITY POWER

Staff Report – Item 12

To: San Diego Community Power Board of Directors

From: Alyson Scurlock, Senior Program Associate
Colin Santulli, Director of Programs

Via: Karin Burns, Chief Executive Officer

Subject: Approve the Community Clean Energy Grant Program Policy

Date: February 22, 2024

RECOMMENDATION

Approve the Community Clean Energy Grant Program Policy to supersede the Community Grant Program Policy previously approved in December 2022.

BACKGROUND

SDCP's [Community Clean Energy Grant Program](#) Policy ("Policy") aims to support local clean energy projects and programs that provide economic, environmental, and health benefits to SDCP's communities. At the December 2022 Board of Directors ("Board") meeting, SDCP's Board approved the Community Grant Program Policy ("Previous Policy"), and in March 2023, SDCP launched the inaugural Fiscal Year ("FY") 2022-23 program. Grant awards were provided to [10 organizations](#) in June 2023 and grant reporting for the first round of awardees is anticipated to conclude in June 2024.

With the inaugural FY 2022-23 program underway, Staff began planning for the FY 2023-24 program. In August 2023, SDCP ran a competitive bidding process to establish ongoing program administration support. San Diego Foundation ("SDF") was selected to serve as the program administrator for SDCP's Community Grant Program until FY 2025-26 based on their demonstrated expertise supporting similar grant programs locally, established relationships with community-based organizations/nonprofits, and experience securing additional funding to support program budgets. SDF's mission is to inspire enduring philanthropy and enable community solutions to improve the quality of life in the San Diego region.

ANALYSIS AND DISCUSSION

Over the last few months, Staff have worked with SDF to develop the FY 2023-24 program guidelines in preparation for the anticipated program launch in late February 2024. Based

on learnings from the FY 2022-23 program, Staff made the below adjustments to the Previous Policy.

Grant Focus Areas

To ensure that grant funds meet the needs, goals, and priorities of SDCP's communities, the initial grant focus areas were informed by the community needs assessment conducted as part of SDCP's [Community Power Plan](#). SDF and SDCP Staff evaluated the FY 2022-23 grant focus areas and found that some of them had overlapping similarities (i.e., "energy behaviors and/or education that reduce energy consumption and/or costs" was similar to "increased overall energy literacy of SDCP customers" and projects/programs that "increase access to the benefits of clean energy technologies" could fall within all the focus areas). To distinguish the focus areas further, SDF and SDCP Staff merged these categories and added a new category to specifically emphasize energy focused educational programming for youth. The addition of this category aligns with another goal identified in the Community Power Plan—energy awareness and educational programming for youth—and could expand the Community Grant Program's reach to include organizations that do educational programming but not necessarily in the clean energy space.

Evaluation Committee

SDCP's Conflict of Interest and Ethical Conduct [Policy](#) was approved at the December 2023 Board meeting. Since many of SDCP's Community Advisory Committee ("CAC") members are affiliated/connected with community-based organizations, some of which may apply to the Community Grant Program, Staff revised the Previous Policy to not include CAC members as part of the evaluation committee. Instead, Staff solicited feedback on the FY 2023-24 program at the November 2023 and February 2024 CAC meetings and during a Community Grants Ad Hoc meeting in January 2024.

Evaluation Criteria

SDF and SDCP Staff analyzed how the initial evaluation criteria was applied to the FY 2022-23 program applications and sought areas where the criteria could be refined to improve the application review process. Adjustments to the evaluation criteria include generalizing the criterion titles, providing more detailed descriptions for each criterion, updating the grant focus areas, changing the "Innovation" criteria to "Impact and Growth", and incorporating the "Scalability and Replicability" criteria into the new "Impact and Growth" criteria.

Grant Timeline

Grant sizes for the FY 2023-24 program will increase due to the program budget being larger than the FY 2022-23 program. In the Policy, Staff propose to extend the grant timeline to 24 months (previously 12 months) to account for the larger grant sizes. This more equitable approach will allow organizations additional time to ramp up their projects

and for SDCP to make a deeper impact with the communities in which grantees are working.

Program Name

The Policy proposes a more simplified program name of “Community Clean Energy Grant Program”. This adjustment will reflect the intent of the program which is to fund new and existing projects/programs (not only innovative ones).

NEXT STEPS

Pending Board approval of the Policy, Staff will continue to prepare application and promotional outreach materials for the next grant cycle that incorporates the adjustments to the Previous Policy. Staff are targeting to launch the FY 2023-24 grant cycle on February 26, 2024. The FY 2023-24 program currently has an approved budget of \$500,000, however, upwards of \$1,000,000 is anticipated to be awarded thanks to Calpine Energy Solutions (SDCP’s back-office provider) contributing funding as part of their Professional Services Agreement with SDCP. SDF is also seeking additional funding sources as part of their program administration contract. Grant awards are anticipated to be provided to organizations in June 2024, with grant sizes ranging from \$25,000 to \$100,000.

FISCAL IMPACT

SDCP’s Board-approved FY 2023-24 budget includes \$500,000 for the FY 2023-24 Community Grant Program. The Policy will not impose any additional fiscal impacts.

ATTACHMENTS

Community Clean Energy Grant Program Policy





Policy Title	Community Clean Energy Grant Program Policy
Effective Date	2/22/2024

Community Clean Energy Grant Program Policy

A. PURPOSE

The purpose of this Community Clean Energy Grant Program Policy (“Policy”) is to provide authority to the San Diego Community Power (“SDCP”) Chief Executive Officer (“CEO”), or designee, to design and approve the Community Clean Energy Grant Program (“Program”) guidelines, implement the Program, develop and execute required contracts and grant agreements, and make minor modifications to the guidelines, where necessary.

B. PROGRAM GOALS

The Program aims to support local clean energy projects and programs that provide economic, environmental, and health benefits to SDCP’s communities. Program funded activities are expected to advance one or more of the following focus areas:

- Increasing overall energy literacy of SDCP customers.
- Energy focused educational programming that encourages clean energy use, particularly for youth.
- Improvements in indoor and/or outdoor air quality related to electrification.
- Workforce development opportunities that support careers in the clean energy industry.
- Improved energy resilience to ensure communities can avoid, prepare for, minimize, adapt to, and recover from energy disruptions.

C. PROGRAM STRUCTURE AND PROCESS

The following sections outline the overall Program structure and process. SDCP staff will inform the SDCP Board of Directors (“Board”) upon finalization of the detailed structure and process in a final Program guidelines document.

Eligibility

Applicants must be a nonprofit with 501(c)(3) public charity status serving SDCP customers. A 501(c)(3) public charity may serve as a fiscal sponsor for another applicant to administer the grant and provide required grant reporting.

Evaluation Committee

The CEO, or designee, will establish a committee to review and score grant applications based on the evaluation criteria outlined below. The committee will include SDCP staff

and may include staff from a program administrator, should one be hired to support SDCP staff in the administration of the Program, and Program partners.

Evaluation Criteria

The application evaluation criteria will be structured based on the categories outlined below. Application of the criteria will be articulated in the final Program guidelines. In the circumstance where applications have an equal evaluation score, the evaluation committee will prioritize selection of projects across a diversity of the program focus areas.

Criteria	Description
Funding Priority Alignment and Project Design	<p>Project/program is designed to meet community needs while advancing one or more of the following focus areas:</p> <ul style="list-style-type: none"> • Increasing overall energy literacy of SDCP customers. • Energy focused educational programming that encourages clean energy use, particularly for youth. • Improvements in indoor and/or outdoor air quality related to electrification. • Workforce development opportunities that support careers in the clean energy industry. • Improved energy resilience to ensure communities can avoid, prepare for, minimize, adapt to, and recover from energy disruptions.
Feasibility	Application demonstrates having the staffing capability, timing, partnerships, and applicable skills to successfully implement the project/program. Budget is within the allowable grant range and is reasonable for the project/program's scope.
Communities Served	Project/program demonstrates a comprehensive understanding of the population to be served and focuses on Communities of Concern in SDCP's service territory.
Impact and Growth	Project/program is impactful with the potential to be replicated and/or expanded to other communities in SDCP's service territory.

Reporting Requirements

Contractors and grantees will provide final reports to SDCP summarizing project outcomes and other project metrics as defined in an executed contract or grant agreement with SDCP or the program administrator.

Timeline



Awarded funds will be expended by contractors and grantees no later than 24 months from award date, unless written authorization is provided by the CEO or designee to extend the deadline.

Compliance with Applicable Laws

Contractors and grantees will be required to comply with all applicable federal, state, and local laws, rules, and regulations, which may include provisions of the California Labor Code relating to the payment of prevailing wages and the performance of other requirements on certain public works and maintenance projects.

D. GRANT FUNDING

This Policy does not explicitly authorize procurement by SDCP as the related Program does not purchase a good or service, with the exception of a potential program administrator to support the distribution of grant funds. All Program-related expenditures will comply with the SDCP Board-approved procurement policy.

Individual grant or contract amounts shall not exceed 15% of total annual approved Program budget. Staff will inform the Board of any disbursements related to the Program.

E. TERRITORY

SDCP's service area.

F. AUTHORITY DELEGATION

This Policy authorizes the CEO, or designee, to design and approve the Program guidelines, implement the Program, develop and execute required contracts and grant agreements (in consultation with General Counsel), and make minor modifications to the guidelines, where necessary.

POLICY HISTORY

12/15/2022 (Original Approval of Community Grant Program Policy)



SAN DIEGO COMMUNITY POWER Staff Report – Item 13

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services; and
Andrea Torres, Sr. Portfolio Manager, Power Services

Via: Karin Burns, Chief Executive Officer

Subject: Approval of Ascend Analytics Pilot Extension Agreement for PowerSIMM
Pilot Support Services through July 31, 2024

Date: February 22, 2024

RECOMMENDATION

Approve the Ascend Analytics Pilot Extension Agreement to extend San Diego Community Power's (SDCP) utilization of Ascend Analytics' PowerSimm portfolio management platform and ad-hoc analysis services.

BACKGROUND

In preparation for SDGP's 2023 Standalone Storage RFO issued in April 2023, SDGP reached out to five vendors to receive quotes for bid analysis services. After confirming which vendors offered the scope SDGP was interested in, three vendors provided bids including Ascend Analytics, cQuant, and ZGlobal. SDGP evaluated each provider and selected Ascend Analytics based on competitive pricing and their scope of services. The scope included pilot access to Ascend's PowerSimm portfolio management platform. SDGP contracted with Ascend Analytics (Ascend) on the RFO evaluation and PowerSimm pilot on April 5, 2023. An amendment to extend the initial pilot was executed on October 31, 2023 as approved by the Board of Directors on October 26, 2023, which included an option to extend on a month-for-month basis at a rate of \$10,000/month. Now that SDGP has issued an RFP for energy trading and risk management (ETRM) services as well as other portfolio management platform services and SDGP has set a schedule for contracting for such services, SDGP requests utilization of the \$10,000/month extension through July 31, 2024, which is the approximate timeframe SDGP expects to have selected a vendor for a longer-term contract for a similar scope of services.

ANALYSIS AND DISCUSSION

Staff recommends executing this additional Ascend Analytics Pilot Extension Agreement to allow SDGP to continue to use and Ascend Analytics's PowerSimm's portfolio management capability until similar services can be contracted under a longer-term agreement sourced through SDGP's RFP, which is currently underway. The pilot

extension services include modeling of SDCP's load, hedging and generation contracts, as well as ad-hoc analysis to assist with Power Services' negotiations for future contracts.

FISCAL IMPACT

The cost of this Pilot Extension Agreement through July 31, 2024 is \$70,000.

ATTACHMENTS

- A. Ascend Analytics Pilot Extension Agreement through July 31, 2024

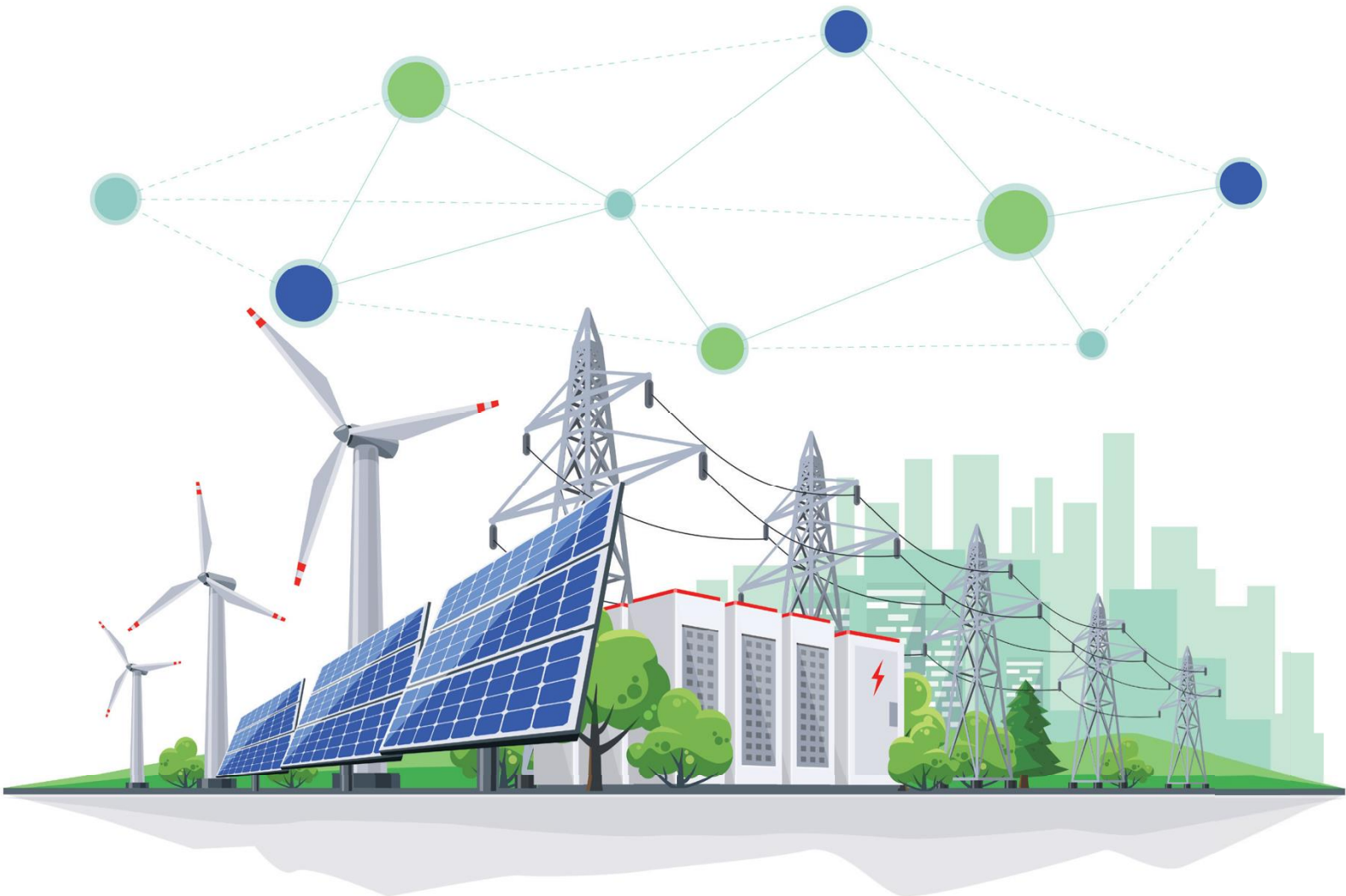


San Diego Community Power

PowerSIMM Pilot

7 Month Extension Agreement (July 31, 2024)

January 23, 2024



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1. Project Description

1.1 PILOT EXTENSION THROUGH JULY 31, 2024

Ascend is pleased to permit San Diego Community Power to enjoy PowerSIMM and relevant works developed through the initial Pilot Period as per the terms of this agreement.

Duration:	7 months (July 31, 2024)
Users:	4 active PowerSIMM users
Benefits/Scope:	Portfolio analysis of future cash flows and optimization of hedge contracts to mitigate the uncertainty in these cash flows across a 5-year horizon of SDCP’s portfolio in Ascend’s PowerSIMM framework involving: <ul style="list-style-type: none">• Set-up and configuration for CAISO modeling• SDCP’s portfolio and prospective transactions• Portfolio Management reporting• What-if scenario analysis with RFO projects
Intro Period Cost:	\$70,000 ¹ (Pilot Extension)
Support Includes:	100 hours of support credit (unused hours may be added to a full license term)
Markets Covered:	CAISO; including update to Ascend Market Intelligence CAISO 4.2 Release
Resource Types:	Load, Renewable PPAs & Transactions
Transaction Types:	Hedge instruments and spot market purchases/sales
Study Durations:	2023-2044, 100 iteration stochastic studies
Reporting:	PowerCube via Excel, PowerSIMM PowerBI Embedded Reports

¹ Pilot Extension invoiced in full upon execution of agreement and inclusive of 100 hours of Ascend staff support. Ascend may request SDCP’s pre-approval for purchase of additional support in the event SDCP requires support in excess of 100 hours.

1.2 ITEM 2: FINAL DELIVERY OF CONSULTATIVE RISK ASSESSMENT FOR FORWARD PERIODS 2023 THROUGH 2028

Ascend will complete the originally scoped risk assessment pending SDCP provision of outstanding document Q&A for formation of observations and recommendations.

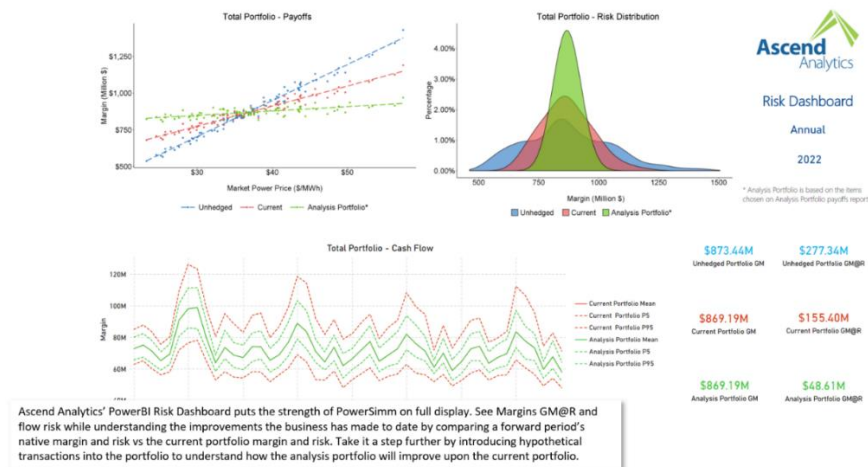


Figure 1. Example Stochastic Retail Portfolio Analysis Identification of an Optimal Portfolio

1.3 ITEM 3: POWERSIMM SAAS SOLUTION (WITH ASCEND MARKET INTELLIGENCE)

Ascend will use the pilot efforts in Item 2 to provide SDCP a full PowerSIMM SaaS production environment solution for (a) portfolio management and (b) resource planning (see Figure 3). Ascend will extend three user accounts for PowerSIMM with the ability to change portfolios, run ad hoc studies, perform retail price structuring, and hedge analysis, monitor market price impacts, and measure the portfolio changes. PowerSIMM will provide SDCP with the ability to extend its risk management operations to include robust stochastic analysis. Ascend will include (c) Ascend Market Intelligence fundamentals for changing market dynamics and long-term CAISO fundamentals as part of the SaaS Solution and accompanied by semi-annual CAISO Market Intelligence written reports (see Appendix A).

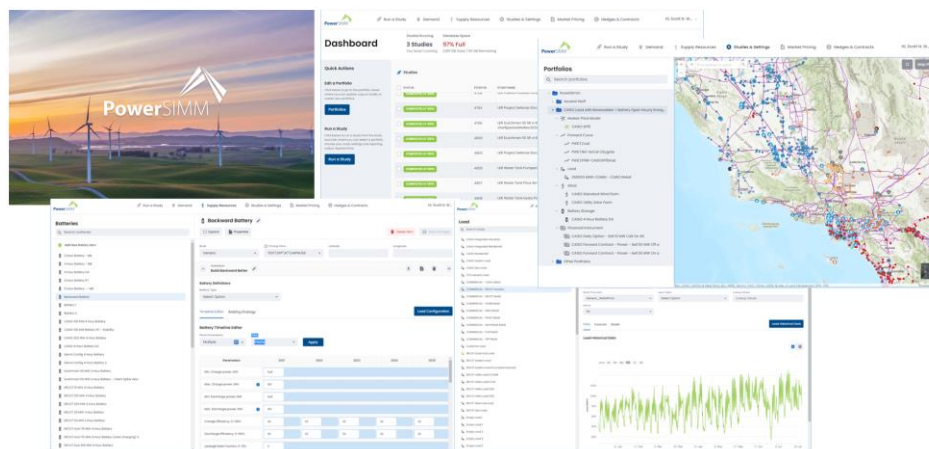


Figure 2. PowerSIMM V New User Interface

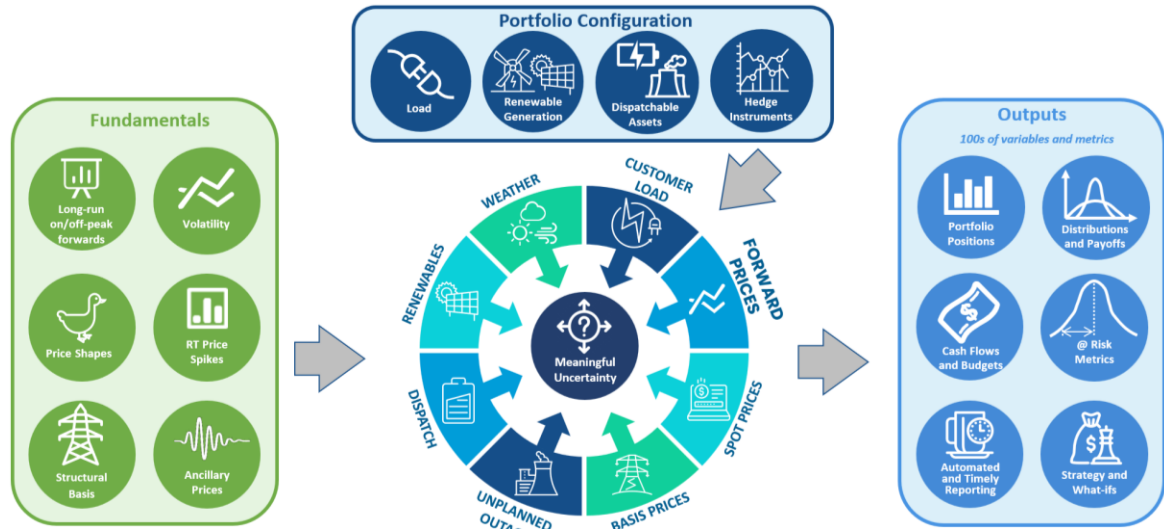


Figure 3. **PowerSIMM Modeling Framework**

1.4 ITEM 4: ‘+SERVICE’ ONGOING COLLABORATIVE AND CONSULTATIVE SUPPORT

A full PowerSIMM license will include 500 to 1,500+ hours per year (subject to scoping) of subject matter expert and analyst time for assistance with model runs, weekly reporting, risk consulting, IRPs, and/or other related activity each year. This ‘+Service’ level arrangement allows SDCP to draw on Ascend to augment its team with extra support in the portfolio risk management and resource planning disciplines. Ascend views this level of service as a distinct way to collaboratively partner with SDCP.

1.5 REPORTING OUTPUT: VALUE, POSITIONS & AT-RISK METRICS

Ascend will deliver standard PowerCube output in .xls format with summarized portfolio performance, financial risk metrics and positions across the stochastic simulation set. These metrics will contemplate the value of the supply power at hourly LMP energy prices from each price location. The expected portfolio value will be the mean of the simulation result by month. Further statistical at-risk metrics will provide the uncertainty as the mean result less the 5th percentile, also known as Gross Margin @ Risk, an industry best practice flow metric. Ascend will produce flexible output in a similar fashion to Figures 5 and 6 below. This sort of model output analysis tool will allow for portfolio alterations and hypothetical hedges for what-if analysis.

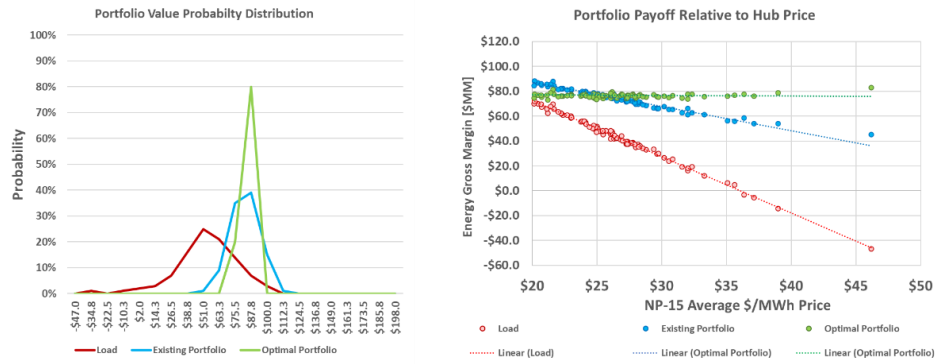


Figure 4. Example Portfolio Risk Metric Reporting from PowerSIMM Output

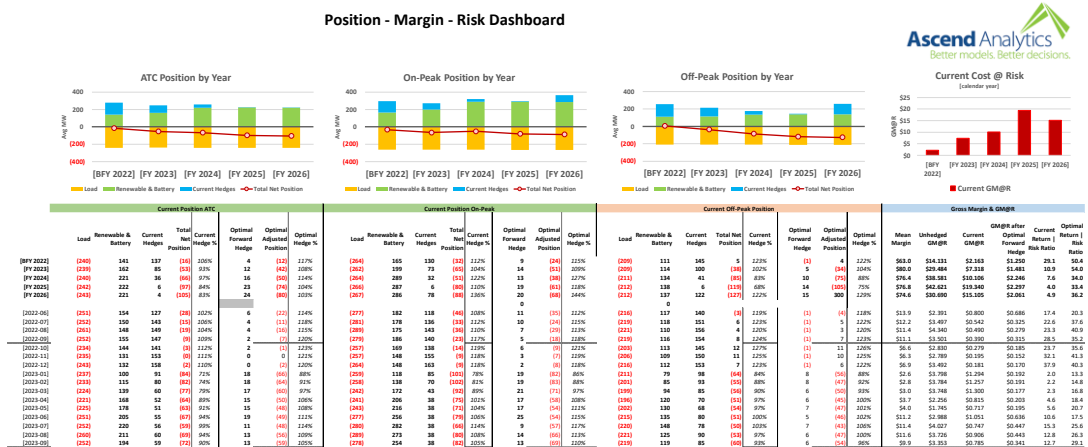


Figure 5. Example Position Reports & Cost at Risk

1.6 ASCEND PLATFORM SERVICE PRICE

Please see the pricing details below and a general description of the offer. **The signature section of this proposal is for the Pilot Extension engagement only.**

After the Pilot Extension period, SDCP may upgrade to a 3-Year SaaS+Service solution. This structure is similar to an approach agreed upon about a year ago between Ascend and Central Coast Community Energy and has long been the arrangement between Ascend and Silicon Valley Clean Energy. For this **indicative** pricing, we have listed two options (Silver and Gold) which vary in nature only in the number of activity units³ provided for each. Please note that the chart shows the cost of all four items as standalone for comparison purposes.

Service Offering	Example	Total Cost	
	Stand-Alone Cost	For 4 Month Pilot Extension	
Item 1: Seven Month PowerSIMM Pilot Extension	\$70,000	\$70,000	
Item 2: 100 Support Hours for ongoing analytic support of resource valuation and portfolio assessment, along with weekly risk reporting. Any unused hours will be added to the PowerSIMM License full implementation.	Included		
Item 3a: PowerSIMM Portfolio Manager	\$140,000	Indicative Bundled PowerSIMM SaaS + Service 3-Year Subscription Example – SILVER²	Indicative Bundled PowerSIMM SaaS + Service 3-Year Subscription Example - GOLD³

² Indicative and subject to scoping with SDCP. Costs for years 2 and 3 escalated per CPI.

³ Indicative and subject to scoping with SDCP. Costs for years 2 and 3 escalated per CPI.

Item 3b: PowerSIMM Planner	\$ 50,000	Annual Activity Units: 700 Year 1 Cost: \$290,000	Annual Activity Units: 1,200 Year 1 Cost: \$390,000
Item 3c: Market Intelligence	\$25,000		
Item 4: '+Service' Ongoing Collaborative and Consultative Support (cost per year) ⁴	\$250,000		
Ascend Valuation Platform Total	\$475,000		

1.7 DELIVERY SCHEDULE ON PORTFOLIO VALUATION

Ascend will provide continued access to the pilot environment for this extension. Additionally, Ascend will provide weekly reporting support and consultation or any other support as requested by SDCP.

Please do not hesitate to contact me or Scott Wrigglesworth at any time with any comments and/or suggestions to our proposal. My direct contact information is gdorris@ascendanalytics.com or (303) 415-0311, and Scott Wrigglesworth can be reached at swrigglesworth@ascendanalytics.com or (937) 701-7205. We look forward to collaborating with you to provide this package of portfolio risk management modeling and services.

Best regards,



Gary W. Dorris, PhD

CEO

⁴ Subject to scoping of SDCP requirements for various service including but not limited to portfolio management, risk management, resource planning, RFO valuation, RFO administration.

By signing below, San Diego Community Power enters into an Agreement with Ascend Analytics to proceed with the scope of work and respective compensation outlined in this proposal, as mutually agreed upon between Ascend and San Diego Community Power. The only terms and conditions applicable to this Agreement are those contained herein. Any other terms and conditions applied to this Agreement shall be mutually agreed upon between San Diego Community Power and Ascend Analytics and shall be expressly made in writing and duly signed by both parties. The party signing below warrants that they are duly authorized to sign on behalf of their respective organization:

San Diego Community Power (SDCP)
(Signing for 7-Month PowerSIMM Pilot Extension Only)

By: _____

Name: Karin Burns

Title: Chief Executive Officer

2. Appendix A: Ascend Approach & Market Intelligence

Price and Revenue Forecast Methodology

Ascend Analytics provides sub-hourly price level forecasts driven by the modeling of market fundamentals of supply and demand through our PowerSIMM modeling framework. PowerSIMM is an industry leading production cost and market simulation model used by leading utilities all over the US to make critical resource and portfolio management decisions. Unfortunately, traditional models were built to plan for the grid of the past, where renewables were a tiny part of the supply and dispatchable gas and coal dominated. They on load duration curves or at best chronological dispatch according to weather normalized shapes for renewables and prices. Now we are entering an era where renewables are becoming the new baseload with weather as the new fuel. As a result, market dynamics are changing as renewable intermittency drives increased volatility in energy prices and drives down market implied heat rates when zero variable cost renewables increasingly often serve the marginal system megawatt-hour. Energy prices now follow the net-load shape (load minus renewables), causing the so called “duck curve” as solar grows to dominate the grid.

An overview of the Ascend modeling framework is shown in Figure 7. Policy assumptions and macro variables drive fundamental variables to the PowerSIMM production cost model and these in turn determine the simulation parameter inputs the PowerSIMM price simulation engine produces hourly and sub-hourly prices.

Because the PowerSIMM framework includes the new drivers for variability in price at the hourly and sub-hourly level, we provide price projections with both average price and the variability in price evolving forward with changes in the supply stack. Thus, key drivers like renewable penetration rates and the amount of flexible generation are important determinants to the variability in prices.

Market Forecasts are accompanied by 20-year Hub price forecasts inclusive of Day Ahead Energy, Real Time Energy, Ancillary Services, Resource Adequacy/Capacity, in 5-minute and 15-minute intervals.

Changing times call for more advanced modeling to support robust and resilient decisions in an increasingly uncertain world.

stack
relied
load,

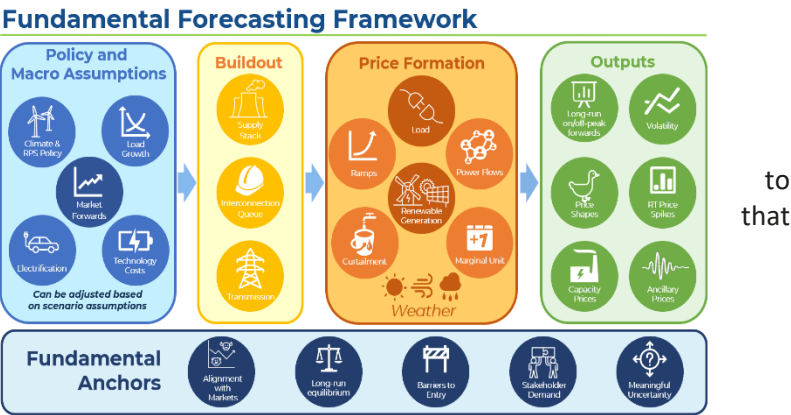


Figure 6. Overview of macro assumptions and market fundamentals used to generate hourly and sub-hourly price

3. Appendix B: Platform Description

Table 1. Ascend Platform Description

Platform Service	Description	Use
Valuation and Risk Analysis Service for CAISO	<p>Ascend’s valuation and risk analysis platform (PowerSIMM) analyzes and manages market and generation risk from approximately 1 month to 10 years out. The Ascend platform determines the future revenue streams and their risks on a project specific basis inclusive of adverse market conditions.</p> <p><u>Simulation Engine</u></p> <ul style="list-style-type: none"> Forecasted Monthly Forward Prices for Energy Weather Load Spot Prices Renewables (Wind & Solar) <p>Simulation of wind and solar production based on weather to align volumetric uncertainty of production with load and market prices.</p> <p><u>Price Forecasts</u></p> <p>Price forecasts for CAISO. Includes:</p> <ul style="list-style-type: none"> Hub DA and RT energy prices up to 20 years Ancillary services prices Capacity prices Basis DA and RT prices <p><u>Portfolio Management</u></p> <p>Output of PowerSIMM portfolio variables for term analytics:</p> <ul style="list-style-type: none"> Generation Modeling (thermal, hydro, pumped hydro, batteries, renewables, etc.) Fuel Modeling Cost of Supply 	<p><u>Analysis</u></p> <ul style="list-style-type: none"> Load with Renewable and Storage Long Term portfolio management (defined as simulations horizon from prompt month to 5 years) Model cost to serve load with market interactions Integrated portfolio modeling for physical assets, power purchase agreements, loads, and contracts <p><u>Commodities Modeled</u></p> <ul style="list-style-type: none"> Power Natural Gas Oil Coal Emissions (CO2, NOx, SO2) RECs Ancillaries Other Asset Related Components <p><u>Instruments Modeled</u></p> <ul style="list-style-type: none"> Swaps Shaped fixed-price swaps Futures Call/Put options Daily call/put options CRRs <p><u>Assets Modeled</u></p> <ul style="list-style-type: none"> Thermal Renewables Hydro Batteries Contracts Transmission <p><u>Spot & Forward/Forecast Prices</u></p> <ul style="list-style-type: none"> Markets for energy and ancillaries Ascend will harvest ISO and market prices, use Ascend CAISO Market Forecasts for 5+ years

	<ul style="list-style-type: none"> Hourly marginal cost of supply Ancillary service modeling Transmission modeling, inclusive of losses and fees. <p>PowerSIMM Portfolio Manager provides insight into the impact to both physical operations and system costs.</p> <p><u>Analytic Framework</u></p> <ul style="list-style-type: none"> Dispatch optimization Validation reporting Job management system 	
Platform Service	Description	Use
Reporting and Detailed Results Drill Down with the PowerCube	<p><u>Portfolio Planning Output</u></p> <ul style="list-style-type: none"> OLAP cube reporting to Excel OLAP cube export to the PowerBI Dashboard <p>Complete relational data cube which is seamlessly integrated into Microsoft Excel and Microsoft PowerBI.</p>	<p><u>Analysis</u></p> <ul style="list-style-type: none"> Output reporting for distribution of standard reports, generation of ad-hoc reports, summarized at monthly volumes and values, with ability to drill down to examine individual portfolio components to hourly level. Ascend can support the development of custom risk metric variables & custom reporting. Ability to extract hourly and sub-hourly model results for individual cases/scenarios.
Subscription Service	Description	Use
Heat Maps of historical and forecasted nodal prices, basis, and volatility for DA and RT	<ul style="list-style-type: none"> Access to Ascend Heat Maps Overlay areas of high/low solar weighted basis to assess project potential, assess market price volatility through congestion persistence. 	<ul style="list-style-type: none"> Identify nodes that are more/less promising for Battery valuation as a screening tool. <p>Determine optimal siting for potential future investments</p>

4. Appendix C: Validation Criteria for PowerSIMM Implementation

Ascend will use the following criteria for validating the features included in this proposed license, and SDCP shall use the same criteria during User Acceptance Testing (UAT). The tests will include only the functionality in the approved functional specifications. The tests will be conducted by SDCP business users, who have attended training sessions and participated as members of the project team. Any additional criteria and/or tests not included in this Appendix must be approved by both Ascend and SDCP prior to use in User Acceptance Testing.

Table 2. PowerSIMM Validation Criteria

Module	Attribute	Information Used to Evaluate	Expectation
Load	<i>Loads to be validated will be identified prior to implementation.</i> <ul style="list-style-type: none"> • 		
	Model Fit	Model is not Overfitted/Underfitted	Model fit will be assigned by load class and zone both defined above (i.e., not individual loads). Will use training period of historical data defined above. Model demonstrates minimization of mean absolute error (MAE) and thus demonstrates negligible bias and low variance. To verify this, the testing period prediction should converge to testing period actual within 15% (between 0.85 and 1.15) of testing period for 90% of load items, excluding historical anomalies (i.e. hurricanes, outages, etc.) and the mean monthly value will converge within 1%. Mean model fit: (Actual Total Monthly Load – Simulated Total Monthly Load)/Actual Total Monthly Load <= 1%
	Seasonal load profile	Confidence intervals for daily average load by month	Simulated confidence intervals at percentiles 5 and 95 match historical confidence intervals within 10% on an around the clock basis (ATC).
	Hourly load profile	Confidence intervals for hourly load	Simulated confidence intervals at percentiles 5 and 95 match historical load shapes and are within 10% at the monthly level, ATC.
	Expected load (MWh)	Mean simulated load by month	Simulated mean monthly values match forecasted monthly values for expected energy within 1%.
	Expected Peak Demand	Mean simulated peak demand by month	Simulated mean monthly values match forecasted monthly values for peak demand within 1%.

Forward Price	<i>Forward prices to be validated will be identified prior to implementation.</i>		
	Uncertainty in future prices	Confidence intervals by delivery month	Simulated forward price monthly volatility matches input monthly volatility values.
	Correlation of related commodities	Simulated correlation matrix	Positive semi-definite input matrix matches simulated positive semi-definite output matrix using a PCA-based similarity test with a 0.9 similarity on average (including confidence intervals of estimation).
	Correlation of related commodities	Simulated correlation matrix	If non positive semi-definite input matrix is provided, simulated output matrix will match input matrix with 0.9 similarity on average (including confidence intervals of estimation)
	No arbitrage	Mean simulated forward price by delivery month	Mean simulated monthly price equals current market expectation for each delivery month within 1%.
	Sampling of Forward Simulations	Gross Margin at Risk <i>(or other appropriate metric)</i>	Ascend will simulate xx forward sims to achieve +/- 10% confidence interval for Gross Margin at Risk <i>[or other appropriate metric]</i> at the annual level.
Spot Price	<i>Spot/basis prices to be validated will be identified prior to implementation.</i>		
	Model Fit	Kolmogorov-Smirnov Test	Simulated spot prices achieve a p-value of 5% on average, by month and peak period <i>([client defined peak periods, 7x24, 5x16, etc.])</i> , for 90% of peak period-month combinations.
	Seasonal spot price profile	Expected profile converges to input profile (either historical profile or user-defined) by month	Will use a defined training period of historical data. Model demonstrates no bias and testing period prediction should converge to testing period actual within 2% of profile values at mean by month.
	Seasonal change in correlation of related commodities.	Simulated hourly heat rate confidence intervals by month.	Simulated confidence intervals at percentiles 5 and 95 match historical confidence intervals on average within 10%.
	No arbitrage	Mean simulated spot price by delivery month	Mean monthly simulated spot price equals the mean simulated forward price of the same commodity for all months within 1%.

5. Appendix D: Ascend Staffing

The following table lists Ascend staff for this project. Staff bios with qualifications and experience are available upon request.

Table 3. Select Ascend Staff

Name	Title	Role
Dr. Gary Dorris	President, CEO	Engagement Director
Dr. Allison Weis	VP Battery Storage	Optimization Lead
Dr. Carlos Blanco	Managing Director, Analytic Solutions	Risk Management Lead
Scott Wrigglesworth	Vice President, Operations & Strategy	Portfolio Management Lead
Michael Ballow	Director, Strategy & Analytics	Strategic Advisor / Modeling, Portfolio & Risk Management
Dr. Brent Nelson	Director, Forecasting and Market Fundamentals	Forecasting Lead
Dr. Brandon Mauch	Director, Resource Planning Analytics	Resource Planning Modeling
Devin Gaby	Sr. Manager, Software Services	Implementation Manager & Ongoing Services
Anthony Boukarim	Sr. Manager, Resource Valuation & Valuation	Modeling and analysis support, Planning
Arran Blattel	Manager, Model Support	Technical model support
Valerie Katz	Manager, Client Operations	Modeling and analysis support, Planning
Zach Brode	Manager, Analytics	Modeling and analysis support, Forecasting
Dr. Anand Govindarajan	Technical Product Manager	Modeling and analysis support, Portfolio Management
Logan Riber	Senior Energy Analyst	Modeling and reporting, Portfolio Management
Scott Fiedler	Senior Energy Analyst	Market Information and Data Management
Trevor Rehm	Senior Energy Analyst	Modeling and reporting, Portfolio Management
Ken Knoll	Senior Energy Analyst	Modeling and analysis, Portfolio Management
Scott Nicholson	Senior Energy Analyst	Modeling and analysis support, Planning
Quinn Borders	Energy Analyst II	Modeling and analysis support, QA
Alex Nesnidal	Renewable Energy Analyst	Modeling and reporting, Portfolio Management
Sameera Gudladona	Energy Analyst	Modeling and analysis support, Planning
Rebecca Guilfoyle	Energy Analyst	Modeling and analysis support, Planning

Tamar Moss	Energy Analyst	Modeling and analysis support, Client Services
CJ Coglizer	PowerBI Specialist	Analysis support, Reporting
Sid Matthew	Energy Analyst	Modeling and analysis support, Planning

6. Appendix E: I – ISO Reports and Hub Price Forecasts

Table 4. ISO Reports and Hub Price Forecasts

<i>Hub/Zone Description</i>	ISO-NE	NY ISO	CAISO	ERCOT	MISO	PJM	SPP
Count of Primary Hubs/Zones	1	4 Hubs 10 zones	4	4	6 Hubs	6 Hubs	2 Hub
Combined Hubs/zones (homogenous regions)	1	4	4	4	6	6	2
Assumed Combinations	Mass	Zone A Zone G Zone J Zone K	SP-15 NP-15 MidC Palo Verde	North South Houston West	Illinois Indiana MN MS LA Michigan	Dom East N. IL West New Jersey AEP Dayton	South North
Nodal	✓	✓	✓	✓	✓	✓	✓
Underlying input assumptions	✓	✓	✓	✓	✓	✓	✓
Contemplated Update schedule	✓	✓	✓	✓	✓	✓	✓
Version number	✓	✓	✓	✓	✓	✓	✓
Day Ahead Energy	✓	✓	✓	✓	✓	✓	✓
Real Time Energy	✓	✓	✓	✓	✓	✓	✓
Ancillary Services⁵	✓	✓	✓	✓	✓	✓	✓
Resource Adequacy/Capacity	✓	✓	✓	N/A	✓	✓	✓
5-minute	✓	✓	✓	✓	✓	✓	✓
15-minute	N/A	N/A	✓	✓	N/A	N/A	N/A
Nodal Count	~ 1,300	~ 600	~ 14,000	~ 15,000	~ 2,800	~ 11,000	~ 13,500
Est. Next Forecast Vintage	July 2022	July 2022	Nov 2022	Nov 2022	Oct 2022	Aug 2022	Aug 2022

¹ISO-NE: Reg is ISO-wide, spin and non-spin are zonally priced. All ancillaries are real-time only.

NYISO: Zonal ancillaries with rules supporting sub-hourly repurchases of ancillaries and moves to serve RT energy.

CAISO: ISO-wide plus zonal adders (every location has the same base price, but zones will occasionally receive price adders for higher zonal demand for ancillaries.) Ancillaries are DA and RT, but standard rules preclude sub-hourly flipping to energy. Regulation Up and Down in CAISO.

ERCOT: DA regulation up, regulation down, spin, and non-spin and RT regulation up, regulation down, and spin

MISO: Ancillary prices are nodal with DA and RT.

PJM: ISO-wide ancillaries for RT only.

SPP: Zonal DA and RT prices with Regulation Up and Down.

7. APPENDIX F: PowerSIMM SaaS License Agreement General Terms and Conditions

I. Independent Relationship

In the performance of the work and services hereunder, Ascend Analytics shall act solely as an independent private contractor and nothing contained herein or implied shall construe the relationship as that of an employer/employee, partnership or principal and agent.

II. Conflicts of Interest

Ascend Analytics warrants that there is no conflict of interest or potential conflict of interest between Ascend Analytics' other agreements, if any, and the activities to be performed hereunder, and Ascend Analytics shall notify San Diego Community Power if a conflict of interest arises.

III. Consideration, Invoicing, Payment, and Term

As compensation to Ascend for the performance of all Services described in this Licensing Agreement (the "Agreement"), San Diego Community Power shall pay Ascend the fees outlined in Table 1. of the proposal. Invoices payments shall be due within 30 calendar days after San Diego Community Power's receipt of such invoice. Unpaid invoices shall accrue late fee payments of 1.5%/month commenced upon overdue notification (net-30).

This Agreement shall commence upon the Effective Date (defined as the date of signature as effected by San Diego Community Power) and will have an initial expiration date equal to one year from the commencement date. The

license may be renewed on an annual basis by payment of the annual fee ("Annual Fee") on or before the license expiration date. Annual Fees shall be invoiced prior to license expiration and shall be subject to an increase equal to the percentage increase in the Consumer Price Index (CPI) for all urban consumers (CPI-U) as published 90 days prior to the anniversary date for the preceding 12 month period by the U.S. Department of Labor, Bureau of Labor Statistics. In the event the CPI reflects a negative adjustment, the annual contract rate will remain flat.

IV. Insurance and Taxes

Insurance. Both parties are responsible for maintaining their own insurance coverage, including, but not limited to health and medical, automobile, homeowners/renters (if any), and comprehensive insurance, which may be required by law in the jurisdictions where Ascend Analytics does business or performs services to this Agreement.

1.1. Terms and Provisions of Policies. All policies of insurance that this Agreement requires Ascend to maintain shall:

- 1.1.1. provide that, without thirty (30) days' prior written notice sent to San Diego Community Power, they may not be canceled, or non-renewed;
- 1.1.2. with the exception of worker's compensation/employer liability insurance and any professional liability insurance/errors and omissions insurance that may be required, be primary to and not excess to or on a contributing basis with any insurance or self-insurance maintained by any additional insured(s);
- 1.1.3. with the exception of worker's compensation/employer liability insurance and any professional liability insurance/errors and omissions insurance that may be required, be endorsed to name the following as additional insureds: San Diego Community Power and its subsidiaries and affiliates; the directors, officers, employees, and agents of San Diego Community Power and its subsidiaries and affiliates; and the successors and assigns of all of the foregoing (the "**Additional Insureds**");
- 1.1.4. as to policies required by this Agreement to name additional insureds, provide for severability of interests or cross liability as to all insureds (whether named or otherwise); and
- 1.1.5. be written on an occurrence basis (except that any professional liability insurance that may be required may be written on a claims-made basis) and issued by insurance carriers reasonably acceptable to San Diego Community Power.

1.2. Specific Coverages. Ascend shall maintain the following insurance policies:

- 1.2.1. Commercial General Liability, on an occurrence basis, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence and an annual aggregate limit of Two Million Dollars (\$2,000,000). Such policy shall contain a waiver of subrogation endorsement in favor of the Additional Insureds;

- 1.2.2. Comprehensive Automobile Liability, with a combined single limit of One Million Dollars (\$1,000,000). Such policy shall contain a waiver of subrogation endorsement in favor of the Additional Insureds;
- 1.2.3. Workers' Compensation, in statutorily required amount(s), and employer's liability insurance of not less than One Million Dollars (\$1,000,000) for each instance; provided, that if Ascend is not required by law to, and does not, carry Workers' Compensation Insurance, Ascend shall execute and deliver to San Diego Community Power a Worker's Compensation Insurance waiver provided by San Diego Community Power. Such policies shall contain a waiver of subrogation; and
- 1.2.4. Umbrella Excess Liability, of not less than Two Million Dollars (\$2,000,000). Such coverage shall be on a per "occurrence" basis and shall contain a waiver of subrogation endorsement in favor of the Additional Insureds.
- 1.3. **Insurance Coverage; Miscellaneous.** Notwithstanding anything to the contrary in this Agreement, the liabilities of Ascend under this Agreement shall not be terminated, reduced, or otherwise limited by any expiration or termination of insurance coverages.
- 1.4. **Subrogation Waiver.** Except as otherwise provided in this Article IV, San Diego Community Power and Ascend waive all subrogation rights against (1) each other, and (2) any of the other's subsidiaries, affiliates, subcontractors (of any tier), agents, and employees for damages caused by fire or other causes of loss to the extent covered by property insurance applicable to the Services.

Taxes and Levies. As independent entities, both parties are responsible for their own local, state, federal or other taxes or levies that may be due on the fees paid under this Agreement, including Social Security, value added (VAT) and payroll taxes. Such taxes will not be reimbursed by San Diego Community Power, nor does San Diego Community Power accept any responsibility with respect to non-payment of any such taxes which may be due.

VI. Security, Safety and Health Regulations

Ascend Analytics agrees to comply with all applicable institutional, local, state and national health and safety regulations when performing any work or services hereunder.

VII. Indemnification

To the fullest extent permitted by law, each Party (an "Indemnitor") shall defend, indemnify and hold harmless the other Party, its affiliates, members, partners, contractors, subcontractors and agents, and the directors, shareholders, officers, agents and employees of each of them, from and against all losses, damages, liabilities, and expenses (including court costs and reasonable attorneys' fees) which are caused by or arise out of the fault or negligent acts or omissions, whether active or passive, of the Indemnitor in connection with activities or Services under this Agreement, or result from any breach by the Indemnitor of any provision of this Agreement. Notwithstanding the forgoing, no such indemnification shall be provided by San Diego Community Power to Ascend for fraudulent or illegal acts or acts of willful misconduct of Ascend in connection with activities or Services provided pursuant to this Agreement.

VIII. Limitation of Liability

In no event shall either Party, or an officer, director, member, partner, shareholder, employee, agent or affiliate of either Party, be liable for special, indirect, exemplary, punitive or consequential damages of any nature whatsoever arising out of this Agreement, including damages or claims in the nature of lost revenue, income or profits, loss of use, or cost of capital, irrespective of whether such damages are reasonably foreseeable and irrespective of whether such claims are based upon negligence, strict liability, contract, operation of law or otherwise; provided, that the limitation of liability imposed by this Article VII shall not apply to (a) Ascend's indemnity obligations set forth in this Agreement as they relate to claims by third parties or (b) losses which arise or result from fraud, willful misconduct, or gross negligence of Ascend or any subcontractor or vendor of Ascend.

IX. Confidential Matters and Proprietary Information

Confidential Information. Ascend acknowledges that as a result of Ascend's retention by San Diego Community Power, Ascend will become informed of, and have access to information deemed to be confidential by San Diego Community Power. It is hereby agreed that all information provided to Ascend whether orally or in writing in relation to (i) San Diego Community Power and its business, (ii) specific projects or entities owned (in whole or in part) by San Diego Community Power, and (iii) the business plans and activities of San Diego Community Power and its affiliates shall be "Confidential Information". Notwithstanding the above, information shall not be considered confidential under this Agreement if (a) it is or becomes publicly available through no act or omission of Ascend or its employees or agents, or (b) was already known to Ascend at the time of disclosure, or (c) is required to be disclosed by a court or regulatory agency acting within its authority; provided, however, that Ascend shall first inform San Diego Community Power of the disclosure requirement to allow San Diego Community Power to challenge the disclosure requirement should San Diego Community Power wish to do so.

Use and Disclosure. All Confidential Information provided by or on behalf of San Diego Community Power remains the sole property of San Diego Community Power. Ascend shall hold and maintain such Confidential Information in strictest confidence and in trust and shall use such Confidential Information only for the specific purpose for which it was disclosed or delivered to Ascend. For a period of three (3) years after the date of this Agreement, Ascend shall not disclose such Confidential Information to any person or entity (except as permitted under this Article VIII). Ascend shall, at Ascend's sole cost and expense, take all necessary actions and precautions to protect the confidentiality of such Confidential Information and any documents or other materials containing any Confidential Information, and shall immediately notify San Diego Community Power in writing upon its discovery of any such unauthorized use or disclosure of such Confidential Information.

Disclosure to Employees. Ascend shall restrict access to Confidential Information only to employees of Ascend who clearly need such access in order to participate in Ascend's business relationship with San Diego Community Power and who have been instructed to comply with the terms of this Agreement.

Remedies. Ascend acknowledges that the use or disclosure of Confidential Information in violation of this

Agreement may cause substantial and irreparable injury to San Diego Community Power and that San Diego Community Power may obtain injunctive or other equitable relief to prevent such use or disclosure.

Delivery upon Request. Immediately upon the termination or expiration of Ascend's use of Confidential Information, and upon San Diego Community Power's request, Ascend will delete, destroy or return all records, notes, analyses, memoranda, drawings and other written or tangible materials, documents or media containing any Confidential Information of San Diego Community Power, including all copies and reproductions thereof, except as may be present on computerized backup systems, provided such Confidential Information is deleted from local hard drives and no attempt is made to recover such Confidential Information from servers or back-up sources, and provided any such retained Confidential Information shall remain subject to the disclosure and use restrictions set forth herein, notwithstanding any termination or expiration of this Agreement.

Data Retention within PowerSIMM. San Diego Community Power recognizes that output files, modeling case studies, and case input assumptions informing San Diego Community Power's modeling results will be available for access for no longer than two (2) years from the date upon which the studies were generated within PowerSIMM.

X. Ownership of Deliverables

San Diego Community Power will have exclusive rights to use the analytical deliverables, but will not have rights to resell or redistribute the delivered analytical products.

San Diego Community Power agrees that all rights, title, and interest in and to all models, tools, systems, or processes used or developed by Ascend in the course of providing Services pursuant to this Agreement, including, but not limited to, patent rights, trade secrets, mask works, and copyrights, shall remain exclusively with Ascend without further consideration; provided that {Client} may retain and use a copy of any studies, reports, and analyses for its sole use.

XI. Termination of Agreement

San Diego Community Power shall have the right to terminate this Agreement at any time by providing seven (7) days prior written notice to Ascend Analytics. Ascend Analytics will be reimbursed for documented costs to date, at the agreed rates, plus reasonable costs necessary to terminate the project, and will not be required to refund any prepaid licensing fees. Ascend has the right to withdraw services at any time by providing seven (7) days prior written notice to San Diego Community Power, and refund any additional amounts paid by San Diego Community Power for services due but not rendered by Ascend Analytics under this Agreement.

XII. Notices

Any notice required to be given hereunder shall be deemed to have been sufficiently given either when served personally, sent by first class mail addressed to the Parties at the addresses set forth in this Agreement, or transmitted via email to the other Party at its address indicated below or at such other address as either Party may designate for itself in a written notice to the other Party.

If to Ascend:

If to San Diego Community Power:

Ascend Analytics LLC
1877 Broadway
Suite 706
Boulder, CO 80302

Attention: Gary Dorris

Telephone: 303-415-1400

gdorris@ascendanalytics.com

San Diego Community Power PO BOX 12716 San Diego, CA 92101
Attention: Andrea Torres atorres@sdcommunitypower.org

XIII. Waiver and Governing Law

Failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such rights, or of any other rights hereunder. This Agreement shall be interpreted in accordance with the laws of Colorado without regard to the choice of law rules thereof.

IVX. Intellectual Property Indemnity

During the term of the Agreement, Ascend shall release, defend, indemnify, and hold harmless San Diego Community Power from and against any and all causes of action, claims, damages, liabilities, judgments, settlements, losses, costs, or expenses of any kind, including reasonable attorneys’ fees, arising out of or related to Ascend’s infringement upon or misuse of the intellectual property rights of any third party. In addition, if the use of the Services infringes or is enjoined, or Ascend believes it is likely to infringe or be enjoined, Ascend may, at its sole option: (a) procure for San Diego Community Power the right to continue use of the Services as furnished; or (b) modify the Services to make them non- infringing, provided that they still substantially conform to their original intended use. The intellectual property indemnity provided herein does not apply to the extent (where, but for the following, there would be no infringement) (a) the alleged infringement arises from any use of the Services not in accordance with this Agreement or (b) any unauthorized modification of the Services. This section states Ascend’s sole and exclusive liability and San Diego Community Power’s sole remedies for any threatened or actual infringement of proprietary rights.

XIV. Force Majeure

Neither party shall be liable to the other for failure or delay in the performance of any of its obligations under this Agreement for the time and to the extent such failure or delay is caused by force majeure such as, but not limited to, riots, civil commotions, wars, freight embargo, lock-outs, hostilities between nations, governmental laws, orders or regulations, actions by the government or any agency thereof, storms, fires, sabotages, explosions or any other contingencies beyond the reasonable control of the respective party and of its sub-contractors ("Force Majeure"). If such Force Majeure events affects a party's ability to perform an obligation under the Contract, the affected party shall immediately inform the other party of such circumstances together with documents of proof, no later than ten (10) business days after having knowledge of the Force Majeure. A party will be deemed to have invoked Force Majeure from the date when that party gives written notice of the event of Force Majeure in accordance with this clause. The affected party shall provide to the other Party reports with respect to the Force Majeure at such intervals as the other party may reasonably request while the Force Majeure continues and the performance of obligations hereunder shall be suspended during, but not longer than, the period of existence of such cause and the period reasonably required to perform the obligations in such cases. The affected party shall take commercially reasonable steps to mitigate damages, including sourcing products and services from alternative suppliers or using alternative methods, arising out of the force majeure event. The parties shall have the right to terminate a contract with written notice should the force majeure event last more than 6 months.



SAN DIEGO COMMUNITY POWER Staff Report – Item 14

To: San Diego Community Power Board of Directors

From: Eric W. Washington, Chief Financial Officer

Via: Karin Burns, Chief Executive Officer

Subject: Appointment of Members to the Finance and Risk Management Committee

Date: February 22, 2024

RECOMMENDATION

Staff recommends that the Board of Directors consider the appointment (or reappointment) of Members to the Finance and Risk Management Committee.

BACKGROUND

The Finance and Risk Management Committee (FRMC) is a standing committee of the San Diego Community Power (SDCP) Board of Directors (Board), whose purpose, as stated in section 5.10.2 of SDCP's Joint Power Agreement, is to provide input and oversight on matters related to the agency's funding plan, its fiscal year budgets, financial policies and procedures, risk management policies and procedures, and other responsibilities as may be directed by the Board.

Under Article VIII, section 2 of SDCP's Bylaws, the Board Chair (Chair) nominates members to standing committees, subject to approval by majority vote by the Board. If the Board fails to approve the Chair's nominations to a Standing Committee, the Board may entertain a motion for the appointment of the committee members. The Bylaws also expressly provide that Alternate Directors may serve on and chair committees.

On January 30, 2020, the Board established the FRMC and appointed Directors Mark West and Bill Baber to serve as the primary members until December 2020. Director Baber was appointed with the understanding that his Alternate Director, Greg Humora, would represent La Mesa at the FRMC. The Board also approved the expansion of the scope of the FRMC to include energy risk management. On December 17, 2020, Directors Serge Dedina and Bill Baber were subsequently appointed to serve on the FRMC Committee.

On January 20, 2022, due to the expansion of the SDCP Board to seven directors, SDCP added an additional committee member to the FRMC and appointed Director Joe LaCava.

On November 17, 2022, SDCP Resolution No. 2022-14 honored the service of Director Serge Dedina and SDCP Resolution No. 2022-16 honored the service of Director Bill Baber whose terms on SDCP's Board would end with SDCP.

On January 23, 2023, Mayor John McCann was appointed as the Chair of the FRMC. Mayor Paloma Aguirre and Councilmember Colin Parent were also appointed to the committee as members.

ANALYSIS AND DISCUSSION

There is no term of office for a committee member, so current members can continue to serve in this capacity unless they step down voluntarily or are changed by a vote of the Board. If any changes are to be made to the Committee at this time, Article VIII of the SDCP Bylaws calls for the Chair to nominate the committee member(s) subject to approval by a majority vote of the Board.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 15

To: San Diego Community Power Board of Directors
From: Eric Washington, Chief Financial Officer
Via: Karin Burns, Chief Executive Officer
Subject: Mid-Year Budget Amendment
Date: February 22, 2024

RECOMMENDATION

Recommend Board approval of mid-year budget amendment.

BACKGROUND

On October 1, 2019, the Founding Members of San Diego Community Power (SDCP) adopted the Joint Powers Agreement (JPA) which was amended and restated on December 16, 2021. Section 4.6.2 of the JPA specifies that the SDCP Board of Directors (Board) shall adopt an annual budget with a fiscal year that runs from July 1 to June 30.

Section 7.3.1 of the JPA specifies that the board may revise the budget from time to time as may be necessary to address contingencies and unexpected expenses. On June 23, 2023, the Board approved the FY 2023-24 budget which included net revenue of \$1,292,472,530 and total expenses of \$1,002,038,709, resulting in net position of \$290,433,821.

Since then, the FY 2023-24 budget has had significant changes to its operating revenues and expenses. Specifically, on January 18, 2024, the Board approved a rate change, effective February 1, 2024, which also included increased expense and energy cost projections. Other budget adjustments include reductions in personnel, professional services and consultants, and general and administration costs. These adjustments are primarily due to the timing of acquiring staff, aligning with known costs and contracted services.

Staff therefore recommend approving an amendment to the FY 2023-24 budget to increase total net operating revenues to \$1,304,274,067 and total expenses to \$1,071,601,284, resulting in a net position of \$232,672,783 for FY 2023-24.

ANALYSIS AND DISCUSSION

The FY 2023-24 Amended budget seeks to adjust the budget originally presented to the Board in June 2023. The amended budget includes a minor increase in revenues and large increases in the cost of energy. The rate change approved by the Board in January 2024 is reflected in the budget and aligned with the most recent proforma. The amendment also includes a 7.5% (or \$3.5 million) reduction in non-energy costs.

Table 1 illustrates the proposed FY 2023-24 budget amendment in comparison to SDCP's budgets from prior years.

Table 1. SDCP Operating Budgets

SDCP Budget	Date Adopted	Date Amended	Total Expense	Net Position
FY 2020-21	6/25/2020	5/27/2021	\$34,135,000	(\$7,848,092)
FY 2021-22	6/24/2021	2/24/2022	\$341,934,335	\$36,119,151
FY 2022-23	6/23/2022	2/23/2023	\$772,078,710	\$157,713,219
FY 2023-24	6/23/2023		\$1,002,038,709	\$290,433,821
FY 2023-24	(Proposed)		\$1,071,601,284	\$232,672,783

The FY 2023-24 budget amendment includes the key assumptions outlined below. A more detailed breakdown and explanation of revenues and expenses are presented in Attachment A.

Net Revenue

The rate changes approved by the Board during the January 18, 2024, meeting which became effective on February 1, 2024.

Cost of Energy

Energy costs were adjusted up by 7.6% from \$948,529,425 to \$1,020,844,552. This increase was driven by increased renewable energy and resource adequacy costs.

Operating Expenses

SDCP's non-energy operating expenses fall into five categories: personnel costs, professional services and consultants, marketing, and outreach, general and administration and programs. SDCP has direct control of these costs and actively manages them. Overall, SDCP is proposing a reduction in non-operating expenses of 7.5% from \$47,231,709 to \$43,708,093. Given the small percentage of SDCP's total expenses, operating expenses had minimal impact on the overall total expense. Expense assumptions include the following:

- **Personnel** include salaries, payroll taxes, benefits, and excused absence and paid time off for staff. The recruitment strategy includes increasing staffing levels to 70 (instead of fifty-nine in the adopted budget) by the end of FY 2023-24.



- **Professional Services and Consultants** include SDG&E fees, data management fees from Calpine, technical support (for rate setting, load analysis, energy scheduling, etc.), legal/regulatory services and other general contracts related to IT services, audits, and accounting services.
- **Marketing and Outreach** includes expenses for mandatory enrollment notices, communication consultants, mailers, printing, sponsorships, and partnerships to inform the community of SDCP.
- **General and Administration** budget covers the cost of office space, equipment, membership dues, and other general operational costs.
- **Programs** include funding to support initial pilot programs after the SDCP Community Power Plan is launched and other community-based program efforts.

Net Position

The proposed FY 2023-24 budget results in a net position of \$232,672,783.

The following table illustrates SDCP's proposed FY 2023-24 budget amendment compared to its adopted budget for FY 2023-24.



Table 2. FY 2023-24 Budget Amendment compared to FY 2023-24 Adopted Budget

Item	FY 24 Adopted Budget	FY 24 Amended Budget	Difference
Gross Revenue	\$1,346,325,552	\$1,365,732,007	\$19,406,455
Less Uncollectibles	(\$53,853,022)	(\$61,457,940)	(\$7,604,918)
Net Revenue	\$1,292,472,530	\$1,304,274,067	\$11,801,537
Cost of Energy	\$948,529,425	\$1,020,844,552	\$72,315,127
Non-Energy Costs	\$47,231,709	\$43,708,093	(\$3,523,616)
Subtotal Operating Expense	\$995,761,134	\$1,064,552,645	\$68,791,511
Debt Service	\$2,437,574	\$2,393,639	(\$43,935)
CIP	\$3,840,002	\$4,655,000	\$814,998
Total Expense	\$1,002,038,710	\$1,071,601,284	\$69,562,574
Net Position	\$290,433,820	\$232,672,783	\$57,761,037

Budget Development Timeline

On July 28, 2022, the Board adopted a budget development schedule as part of the SDCP Budget Policy. This development schedule includes a mid-year budget review through the proposed budget amendment.

Table 4. Current Budget Development Schedule

February	March-April	May	June	
Develop Operating Revenue Estimate Develop Operating Expense Estimate Develop financial plan for credit rating	Strategic planning sessions with SDCP Board Staff develop operating budgets Baseline budget is developed	FRMC Preview and Recommend SDCP Board Preview and feedback	SDCP Board Approval	July 1 st Budget Implemented
				 Mid-year budget review (February) Budget amendments as necessary

FISCAL IMPACT

The FY 2023-24 amended budget right sizes the revenues to the rate decrease approved by the board on January 18, 2024, and effective February 1, 2024. The amendment also accounts for increases in energy costs, aligns expenses with known personnel, marketing, communications, professional services, and general and administrative costs, and includes a reduction in non-operating expenses of 7.5% from \$47,231,709 to \$43,708,093.

The resulting FY 2023-24 budget amendment results in a net position of \$232.7 million versus \$290.4 million in the FY 2023-24 adopted budget.

ATTACHMENTS

Attachment A: FY2023-24 Budget Amendment



FISCAL YEAR 2023-24 AMENDED BUDGET

for the period

**July 1, 2023, through June 30,
2024**

**San Diego Community Power
Budget Amendment for FY 2023-24 (Proposed)
Supplemental Details**

	FY 2023-24 Adopted Budget	FY 2023-24 Budget Amended	% of Net Revenues
OPERATING REVENUES			
Gross Ratepayer Revenues	\$ 1,346,325,552	\$ 1,365,732,007	
(Less 4.5% Uncollectible Customer Accounts)	\$ (53,853,022)	\$ (61,457,940)	
Net Operating Revenues	\$ 1,292,472,530	\$ 1,304,274,067	95.5%
COST OF ENERGY			
Cost of Energy	\$ 948,529,425	\$ 1,020,844,552	
Total Cost of Energy	\$ 948,529,425	\$ 1,020,844,552	74.7%
Gross Net Position	\$ 343,943,105	\$ 283,429,515	20.8%
OPERATING EXPENSES			
Professional Services and Consultants			
Data Management	\$ 13,458,692	\$ 13,458,692	
SDG&E Fees	\$ 4,035,591	\$ 4,035,591	
Technical Support	\$ 1,440,000	\$ 1,325,000	
Legal/Regulatory	\$ 2,176,000	\$ 1,511,444	
Other Services	\$ 1,829,343	\$ 1,919,930	
Total Prof. Svcs. Costs	\$ 22,939,626	\$ 22,250,657	1.6%
Personnel Costs			
Salaries	\$ 10,300,938	\$ 9,052,605	
Benefits (retirement/health)	\$ 2,018,456	\$ 1,809,775	
Payroll Taxes	\$ 731,264	\$ 613,641	
Accrued PTO	\$ 127,373	\$ 127,373	
Total Personnel Costs	\$ 13,178,031	\$ 11,603,394	0.8%
Marketing and Outreach			
Printing	\$ 1,369,829	\$ 1,367,178	
Partnerships/Sponsorships/Memberships	\$ 964,000	\$ 914,000	
Marketing and Communications	\$ 640,000	\$ 644,800	
Total Mrktg and Outreach Costs	\$ 2,973,829	\$ 2,925,978	0.2%
General and Administration			
Other G & A	\$ 6,966,205	\$ 5,886,728	
Education and Training	\$ 60,000	\$ -	
Cal CCA Dues	\$ 405,000	\$ 405,000	
Rent	\$ 398,768	\$ 453,245	
Insurance	\$ 32,000	\$ 67,592	
Total G & A Costs	\$ 7,861,973	\$ 6,812,564	0.5%
Programs			
Programs	\$ 278,250	\$ 115,500	
Total Programs Costs	\$ 278,250	\$ 115,500	0.0%
Net Operating Expenses	\$ 47,231,709	\$ 43,708,093	3.2%
Total Operating Expenses	\$ 995,761,133	\$ 1,064,552,645	77.9%
Operating Income (Loss)	\$ 296,711,397	\$ 239,721,422	17.6%
NON-OPERATING REVENUES (EXPENSES)			
Interest and Related Expenses	\$ 2,437,574	\$ 2,393,639	
Total Non-Operating Revenues (Expense)	\$ 2,437,574	\$ 2,393,639	0.2%
CAPITAL INVESTMENT PROGRAM (CIP)			
Transfer to Capital Investment Program	\$ 3,840,002	\$ 4,655,000	
Interfund Transfer Out (Expenses)	\$ 3,840,002	\$ 4,655,000	0.3%
CHANGE IN NET POSITION	\$ 290,433,821	\$ 232,672,783	17.0%

Budget Amendment Overview

Budget-in Brief

The proposed FY 2023-24 Operating Budget Amendment includes the first full fiscal year of full enrollment from Phase 1, 2, 3 and 4 for all potential ratepayers from SDCP's member jurisdiction within the San Diego region. This budget therefore provides the first representation in the agency's history of what full revenues and expenses are expected to be moving forward, all assumptions being equal.

As SDCP scales to full enrollment, the agency is additionally, thoughtfully scaling the agency by adding staff to grow to 70 total staff. By the end of FY 2023-24, SDCP is expected to have similar operating budgets and staffing levels compared to its peer CCAs of similar customer and load size. Additionally, and similarly, by the end of FY 2023-24, SDCP's reserves, and total liquidity are expected to be comparable to its CCA counterparts who have investment-grade credit ratings.

The proposed FY 2023-34 Operating Budget Amendment additionally includes reduced travel expenses, legal and regulatory costs, and personnel costs.

Lastly, this budget includes the addition of a Capital Investment Plan (CIP) that shifts programs and projects over multi-year periods from the operating budget to the CIP.

By the end of FY 2023-24, SDCP will be on track to nearly hitting its 180-days cash on hand Strategic Plan Goal reserve target.

Proposed Budget Amendment

The SDCP FY 2023-24 Proposed Budget Amendment is presented in further detail in the following pages. The table below summarizes the revenue and expense budgets adopted for FY24 in comparison to the proposed FY24 Amended Budget.

	FY24 Proposed	FY24 Amended
Gross Revenue	1,346.3	1,365.7
Less Uncollectible Accounts	(53.9)	(61.5)
Net Operating Revenues	1,292.5	1,304.3
Cost of Energy	948.5	1,020.8
Non-Energy Costs	47.2	43.8
Subtotal Operating Expense	995.8	1,064.7
Debt Service	2.4	2.4
CIP	3.8	4.6
Total Expenses	1,002.3	1,071.7
Net Position	290.4	232.6

Amounts displayed in millions, \$

Operating Revenue

SDCP's main source of revenue currently is from the retail sale of electricity to its customers. Revenue budgeted for FY 2023-24 reflects a full fiscal cycle of retail sales to our commercial and industrial customer base and retail sales to our residential customer base.

Additional assumptions for net operating revenue include:

- Enrollment of customers is complete from member jurisdictions in Phases 1, 2, 3 and 4.
- 95% participation rate across all jurisdictions.
- A 4.5% uncollectible rate which is an increase from the 4% uncollectible rate assumed in the adopted budget.
- Rates remain at the levels adopted by the Board on January 18, 2024, including a year-over-year 23.2% rate reduction in the winter months and a 12.3% rate reduction in the summer months. Further mid-year rate changes are subject to Board approval.

The following table summarizes the revenues for FY24 Amended Budget and the FY24 Adopted Operating Budget. Note that Gross Revenue and Less Uncollectible Accounts are based on projected numbers from rate setting that was approved by the Board back on January 18, 2024.

	FY24 Adopted	FY24 Amended
Gross Ratepayer Revenues	1,346.3	1,365.7
(Less 4.5% Uncollectible Customer Accounts) ¹	(53.9)	(61.5)
Net Operating Revenues	1,292.5	1,304.3

Amounts displayed in millions, \$

¹ Uncollectible accounts were calculated with an assumption at 4% in the adopted budget for FY24.

Operating Expenses

Expenses in the SDCP Operating Budget fall into five budget level 2 categories: cost of energy, personnel costs, professional services and consultants, marketing, and outreach, and general and administration.

- **Cost of Energy** – Cost of Energy includes all the various services purchased from the power market through our suppliers. This includes purchased energy, capacity, CAISO fees and other miscellaneous power market expenses.
- **Personnel** – Personnel costs include salaries, payroll taxes, benefits, and excused absence and paid time off for staff. In addition, costs include assumptions from the Board adopted compensation policy including potential merit and cost-of-living increase.
- **Professional services and consultants**
 - Legal/Regulatory Services – SDCP retains legal counsel to assist with the complex aspects of the regulatory, compliance, power supply contract negotiations and its general legal needs. This line item will also allow for the retention of both a state and federal lobbyist to support SDCP’s legislative and regulatory efforts.
 - Technical Support – SDCP engages consultants to assist with rate setting, policies, joint rate comparisons with the IOU, load analysis, and a scheduling coordinator. After electric power is scheduled for delivery to customers and consumed by those customers, the actual electric consumption must be trued up against the forecasted and scheduled energy. This true-up occurs through the settlement process. Settlements also entail addressing several other market and regulatory requirements. As SDCP grows its internal staff, it will look to in-house portions of this service.
 - Other Services – SDCP contracts or plans to contract for IT Services, Audit services (data and financial), Accounting services, and other services as needed. SDCP continues to examine if these services are more cost effective or efficient to bring in-house and SDCP is growing its IT function in-house and expecting a reduction in its IT Services professional services agreement.
 - SDG&E Service Fees – Service fees paid to SDG&E consist of a charge of a fixed fee per account per month. The rollout of all enrollment phases adds significant costs compared to FY 2023-24. The fees cover SDG&E’s costs associated with meter reading additional data processing and bill coordination as mandated and regulated by the California Public Utilities Commission (CPUC). There are also numerous small fees associated with data requests.
 - Data Management – Broad scope of services that includes all “back office” billing data validation, bill coordination with SDG&E, call center services and billing technical support, customer enrollment database management, move- in/move-out services, customer research for enrollment support, and many support functions related to data reporting. With full enrollment from all phases, the cost for Data Management will be higher compared to prior fiscal years.

- **General and Administration** – General and Administration costs include leasing office space, industry fees or memberships (e.g., CalCCA dues), equipment and software, as well as other general operational costs including Board and Committee expenses, Board stipends, staff travel or professional development, team building, etc.
- **Programs** – Programs includes funding for general and administrative support for all program areas including services such as geographic information systems (GIS) mapping grant-writing support, etc. Moving forward, individual program costs will be moved to SDCP's Capital Investment Program (CIP).

The table below summarizes the expenses for the FY24 Amended Budget and the FY24 Adopted Operating Budget. Note that SDCP reduced expenses in non-energy costs.

	FY24 Adopted	FY24 Amended
Cost of Energy	948.5	1,020.8
Professional Services and Consultants	22.9	22.3
Personnel Costs	13.2	11.7
Marketing and Outreach	3.0	2.9
General and Administration	7.9	6.8
Programs	0.3	0.1
Subtotal Operating Expenses	995.8	1,064.7
Interest and Related Expenses	2.4	2.4
Capital Investment Program (Transfer Out)	3.8	4.6
Total Expenses	1,002.4	1,071.7

Amounts displayed in millions, \$

Non-Operating Revenues (Expenses)

Non-operating revenue represents interest income earned on cash reserves. Non-operating expenses represents interest paid on borrowed funds under the bank credit facility maintained by SDCP used to finance a portion of its operations. Expenses also include other bank related fees (i.e., letter of credit issuance fees, renewal fees, etc.).

Capital Investment Program (CIP)

New for FY 2023-24, SDCP developed its first Capital Investment Program (CIP) which contains all the individual capital projects, equipment purchases, and major programs for the agency that are intended to span multiple years.

The FY 2023-24 budget proposed a one-time portion of net operating revenues be transferred to the CIP as a continuing fund in which any unspent funds are kept within that fund and carried forward to the subsequent fiscal year.

The CIP includes funding for local development feasibility studies, customer program pilot projects, member agency grants, community grants, a customer education platform, and other areas as outlined in the short

Operating Expenses by Department

The table below summarizes the FY24 Proposed Operating Budget expenses by department. Departments were established as part of the FY24 Proposed Operating Budget development and are not shown in the prior year. SDCP reduces the Operating budget for non-energy costs. The Power Services department includes Cost of Energy in their Expenses.

	FY24 Adopted	FY24 Amended
Power Services	950.7	1,022.4
Finance	3.8	3.3
Operations	17.9	16.3
Data Analytics and Account Services	19.1	19.1
Public Affairs	1.6	1.5
Programs	0.3	0.1
Regulatory Affairs	1.5	1.1
Human Resources	0.9	0.7
Total Operating Expenses	995.8	1,064.7

Amounts displayed in millions, \$

Personnel by Department

The table below summarizes the actual personnel at the FY24 Budget Adoption and the full-time equivalent (FTE) personnel in the FY24 Amended Operating Budget. While personnel may be authorized, they must be filled. Detailed information showing filled and proposed FTE transfers by department is included in the following Section. Personnel budget is included within the Operations department.

	FY24 Adopted	FY24 Amended
Power Services	12.0	17.0
Finance	7.0	7.0
Operations	7.0	7.0
Data Analytics and Account Services	10.0	11.0
Public Affairs	9.0	11.0
Programs	7.0	9.0
Regulatory Affairs	4.0	5.0
Human Resources	3.0	3.0
Total FTEs	59.0	70.0

Budget by Department

Operations

Budget Amendment Highlights

- The largest professional services agreement in Operations is with Best Best & Krieger LLP at \$450K for general counsel services which has been reduced to \$170K since the onboarding of in-house General Counsel.
- There is also a \$1.5M reduction in Personnel costs due to slower than expected hiring.

Department Positions

	FY24 Adopted	FY24 Amended
Operations	7.0	7.0

Power Services

Budget Amendment Highlights

- Responsible for SDCP's largest expense (Cost of Energy), the Power Services department is expected to grow its staff from 12 positions to 17 positions by the end of FY24.
- \$68K Reduction in Non-Energy Costs.
- Power Services department also has realized other revenues or cost reductions of \$585K through contract negotiations.

Department Positions

	FY24 Adopted	FY24 Amended
Power Services	12.0	17.0

Finance

Department Highlights

- Finance Department had a \$219K reduction in Budget.
- The Finance team will have a summer Intern, which is not considered an FTE.
- \$2M in interest earned has been realized by the Finance Department through December 2023.

Department Positions

	FY24 Adopted	FY24 Amended
Finance	7.0	7.0

Data Analytics and Account Services (IT)

Budget Amendment Highlights

- IT has been added to the department's responsibilities for SDCP.
- The BrenTech (IT Consultant) budget has increased per an amended contract approved by the Board in January 2024.

Department Positions

	FY24 Adopted	FY24 Amended
Data Analytics and Account Services	10.0	11.0

Public Affairs

Budget Amendment Highlights

- Continued outreach to educate the community of the benefits of community choice and to encourage awareness of our mission.
- Positions added to increase outreach efforts to SDCP member agencies.

Department Positions

	FY24 Adopted	FY24 Amended
Public Affairs	9.0	11.0

Programs

Budget Amendment Highlights

- Programs reallocated \$195K from the operating budget into the CIP, which is a continuing fund outside of SDCP Operating Budget.
- Programs was awarded a California Department of Food and Agriculture (CDFA) grant, which recognized as an expense that will be recovered.

Department Positions

	FY24 Adopted	FY24 Amended
Programs	7.0	9.0

Regulatory and Legislative Affairs

Budget Amendment Highlights

- \$397K Reduction in Department Budget.
- \$100K is included as a loss litigation fund.

Department Positions

	FY24 Adopted	FY24 Amended
Regulatory and Legislative Affairs	4.0	5.0

Human Resources

Budget Amendment Highlights

- \$155K Reallocation to Operations Department Budget

Department Positions

	FY24 Adopted	FY24 Amended
Human Resources	3.0	3.0



SAN DIEGO COMMUNITY POWER Staff Report – Item 16

To: San Diego Community Power Board of Directors
From: Eric Washington, Chief Financial Officer
Via: Karin Burns, Chief Executive Officer
Subject: Presentation on Clean Energy Prepayment Financing
Date: February 22, 2024

RECOMMENDATION

Receive and file presentation on clean energy prepayment financing.

BACKGROUND

On October 1, 2019, the Founding Members of San Diego Community Power (SDCP) adopted the Joint Powers Agreement (JPA) which was amended and restated on December 16, 2021.

Section 3.2.12 of the JPA specifies that the SDCP Board of Directors (Board) may at its discretion adopt rules, regulations, policies, bylaws, and procedures governing the operation of SDCP.

Further, section 3.2.7 of the JPA states that SDCP at the discretion of the Board may incur debts, liabilities, and obligations, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers authorized by law pursuant to Government Code Section 53850 et seq. and authority under the Act.

Finally, section 3.2.8 of the JPA states that SDCP at the discretion of the Board may issue revenue bonds and other forms of indebtedness and per section 3.2.9 may apply for, accept, and receive all licenses, permits, grants, loans, or other aids from any federal, state, or local public agency.

Municipal electric, gas utilities, and tax-exempt entities such as community choice aggregators (CCAs) in the United States (US) can prepay for a supply of electricity or natural gas from a taxable (corporate) entity and fund that prepayment with tax-exempt municipal bonds. These entities must sell that commodity to retail end-users that reside within their traditional service area.

Prepayment transactions are legal and codified in US Tax Law. Since the first prepayments of natural gas were done in the early 1990's, the Internal Revenue Service (IRS) issued rules allowing tax-exempt prepayments and Congress enacted legislation specifically allowing the transactions (National Energy Policy Act of 2005; Section 1327).

Since then, over 90 municipal prepayment transactions totaling over \$50 billion have been completed in the US – over 95% of these were for natural gas since natural gas is easier to “prepay” because the commodity is homogenous and is easy to store.

Prepayments have saved utility ratepayers (natural gas, electricity from gas fired power plants and energy from renewable power projects) billions of dollars in reduced rates and energy charges and are anticipated to continue to do so over the 30-year life of the transactions.

ANALYSIS AND DISCUSSION

SDCP is interested in pursuing a similar prepayment transaction. A potential prepayment transaction offers the opportunity to reduce existing renewable energy Power Purchase Agreement (PPA) costs by 5-10% or \$3 to \$5 MWh (megawatt hour).

Central Coast Community Energy (3CE), for example, secured its first prepayment transaction on October 31, 2023. The \$647.8 million bond issuance is projected to save 3CE customers 11.4% in energy costs, which translates to \$32.9 million in the cost of energy over the initial seven-year period of the bonds.

COMMITTEE REVIEW

The report was reviewed by the Finance and Risk Management Committee (FRMC) on February 15, 2024.

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER Staff Report – Item 17

To: San Diego Community Power Board of Directors
From: Xiomalys Crespo, Community Engagement Manager
Via: Karin Burns, Chief Executive Officer
Subject: Community Advisory Committee Report – Third Quarter
Date: February 22, 2024

RECOMMENDATION

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

BACKGROUND

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

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

At the direction of the Chair of SDCP's Board of Directors, the CAC, via staff, shall provide quarterly updates during the regular meetings of the Board of Directors. The last quarterly update was provided on November 16, 2023.

ANALYSIS AND DISCUSSION

At the November 16, 2023 regular meeting of the Board of Directors, staff presented a summary of CAC activities from July through October. This report summarizes November through January.

November: At the November 9, 2023 regular CAC meeting, Vice-Chair Harris (La Mesa) chaired the meeting and welcomed new staff members Kiran Singh, Director of Data Analytics and IT, and Erin Hudak, Compliance Analyst. The CAC approved all department updates under the consent agenda and the Programs team updated and solicited feedback from members on its grant programs. The CAC also heard updates on the October activity of its Ad-Hoc Committees: the Programs Ad-Hoc Committee did not meet

and the Community & Equity Ad-Hoc Committee set a new recurring date and time to ensure participation from most participants and began discussing the 2024 CAC Work Plan.

December: At the December 7, 2023 regular CAC meeting, members welcomed Board-appointed member Sandoval (City of Imperial Beach) as the newest member of the CAC, as well as SDCP's new Contract Management Associate Isabella Krall. The CAC received department updates, which included a comprehensive report from the Regulatory and Legislative Affairs team on legislative activity over the last year. At the request of the Committee, members also received an update on the Local Distributed Infill Plan. The Programs team provided an update on Energy Education and Online Marketplace, in which staff guided members through currently active website content on electrification and the sustainability advantages of electrifying specific areas of customers' homes.

The CAC also discussed and recommended that the Board of Directors approve SDCP's Conflict of Interest and Ethical Conduct Policy by a unanimous vote. Members heard updates on the October activity of its Ad-Hoc Committees, which included providing feedback on SDCP's Residential Solar & Battery Storage Program; discussing the need for program-specific ad-hoc committees to continue collaborating with staff in the development of offerings for SDCP customers; and discussing the draft 2024 CAC Work Plan as well as proposed changes to the CAC Scope of Work.

Lastly, the CAC voted to approve the 2024 CAC Meeting Calendar, which includes meetings taking place every second Wednesday of the month at the current meeting site, unless otherwise specified. The Committee will take a meeting recess in August 2024.

January: At the January 11, 2024 regular CAC meeting, members recognized and thanked former member Carolyn Scofield (City of Chula Vista) for her service in the CAC since May 2020, as well as staff members Patrick Welch, Senior Legislative Manager, and Elaine Mezta, Key Accounts Manager. The CAC approved all department updates under the consent agenda and heard a presentation on the 2024 Projected Rate Changes and SDPC's Flex Load Strategy. The CAC also heard end of committee reports for its Programs Ad-Hoc Committee and its Community & Equity Ad-Hoc Committee. Following the reports, members formed the following ad-hoc committees:

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

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



As of February 9, 2024, the CAC has two vacancies representing the County of San Diego (unincorporated). Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically. The vacancies have been advertised at meetings, community events, and through SDCP's social media.

Staff will return to the Board of Directors in the spring of 2024 to report on first quarter activities for 2024.

COMMITTEE REVIEW

N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A



SAN DIEGO COMMUNITY POWER Staff Report – Item 18

To: San Diego Community Power Board of Directors

From: Aaron Lu, Senior Rates and Strategy Analyst
Stephen Gunther, Senior Regulatory Analyst

Via: Karin Burns, Chief Executive Officer

Subject: Approve Load Management Standards Compliance Plan

Date: February 22, 2024

RECOMMENDATION

Approve San Diego Community Power (SDCP) Load Management Standards (LMS) Compliance Plan.

BACKGROUND

On April 1, 2023, the California Energy Commission (CEC) adopted amendments to the LMS, which requires all large utilities and community choice aggregators (CCAs) to (1) develop retail electricity rates that change at least hourly and list of cost-effective load flexibility programs to better reflect grid costs and greenhouse gas (GHG) emissions and apply for approval by their governing board, (2) maintain up-to-date rates in CEC's new central repository for rate information, Market Informed Demand Automation Server (MIDAS), and (3) establish public outreach and education to customers about time-dependent rates and automation technologies. For additional background on the development of the LMS amendments and SDCP staff engagement, please refer to the [regulatory and legislative staff report](#) from the July 2022 meeting of the Board of Directors (see page 71).

ANALYSIS AND DISCUSSION

LMS Compliance Plan Requirements

Each large utility and CCA must develop and submit a compliance plan to the CEC describing actions they will take to meet the goals of the LMS amendments. Specifically, publicly owned utilities and large CCAs may delay or modify compliance of each requirement if they can show that despite, good faith efforts, that requirement must be modified to provide a more cost-effective, equitable, technologically feasible, or safe pathway to achieve the LMS goals. The following table is a roadmap identifying each regulatory requirement and its due date.

LMS Section	Regulatory Requirement	Due Date
§1623.1(c)	Within three months of regulation effective date, 4/1/2023, upload existing time-dependent rates to the MIDAS database.	8/1/2023
§1623.1(a)(1)	Within one year of regulation effective date, develop and submit compliance plan addressing how SDCP plans to comply with LMS requirements, and including evaluation of marginal cost-based rates and programs, to SDCP's Board. The plan must be considered for adoption within 60 days after submission.	4/1/2024
§1623.1(a)(3)(A)	Submit compliance plan to the Executive Director of the CEC within 30 days of adoption of the plan. Respond to requests for additional information and/or recommendations within 90 days.	6/1/2024
§1623(c)(4)	Within one year of regulation effective date, provide customers access to their Rate Identification Numbers (RIN) on billing statements and in online accounts using both text and QR.	4/1/2024
§1623(c)(2)	Within 18 months of regulation effective date, develop and submit to the CEC, in conjunction with the other obligated utilities, a single statewide standard tool for authorized rate data access by third parties, and the terms and conditions for using the tool. Upon CEC approval, maintain and implement the tool.	10/1/2024
§1623.1(b)(3)	Within 18 months of regulation effective date, submit to the CEC Executive Director a list of load flexibility programs deemed cost effective by SDCP. The portfolio of programs must provide at least one option to automate response to MIDAS signals for each customer class where SDCP's Board has determined such a program would materially reduce peak demand.	10/1/2024
§1623.1(a)(3)(C)	Submit annual reports to the CEC Executive Director demonstrating implementation of plan, as approved by SDCP's Board.	Every year, starting on 4/1/2025

§1623.1(b)(2)	Within 27 months of the regulation effective date, submit at least one marginal cost-based rate to SDCP's Board for approval for any customer class(es) where such a rate will materially reduce peak load.	7/1/2025
§1623.1(b)(4)	Within 51 months of the regulation effective date, offer customers voluntary participation in either a marginal cost-based rate, if approved by SDCP's Board, or a cost-effective load flexibility program.	7/1/2027
§1623.1(b)(5)	Conduct a public information program to inform and educate affected customers why marginal cost-based rates or load flexibility programs and automation are needed, how they will be used, and how these rates and programs can save customers money.	Ongoing, dependent on offerings
§1623.1(a)(1)(C)	Review the plan at least once every 3 years after the plan is adopted and submit a plan update to the Board if there is a material change.	Every 3 years

Compliance Plan Summary

SDCP's Compliance Plan (Attachment A) addresses each of the LMS update requirements outlined above and evaluates the potential implementation impacts on SDCP's operations and customers based on existing information.

SDCP firmly supports and aligns with the intent and goals of the LMS through its existing Community Clean Energy Grants Program and 100 Percent Renewable Energy by 2035 Policy. The Community Clean Energy Grants Program aims to support scalable, replicable clean energy pilot projects that promote load flexibility and management, energy resilience, and increased access to clean energy technologies. Through the 100 Percent Renewable Energy Policy, SDCP's Board of Directors establishes a firm commitment to achieve 100 percent renewable energy by 2035, thus eliminating GHG emissions from SDCP's power supply. SDCP is actively pursuing pathways to reduce system peak, stress on the grids, GHG emissions, and customer costs through programs and pilots.

SDCP's Compliance Plan includes considerations of the specified marginal cost-based rate structures and programs and evaluates the rate structures and programs with respect to cost-effectiveness, equity, technological feasibility, and benefits to the grid and to customers. Based on SDCP's evaluation, the conclusion is such that implementing complex new rate structures that change at least hourly by July 1, 2027 would not be cost effective nor result in material benefits to our customers or promote grid reliability at this time. The implementation of new and complex rate structures without review of pilot study results, sufficient testing, and refinement of the new rate designs would likely result in low customer adoption and/or confusion. In addition, SDCP's evaluation cannot conclude that

implementing new programs that allow for automated response to MIDAS signals would result in material benefits, to be cost-effective at this time.

Next Steps

SDCP describes the pathway and details of achieving LMS goals that are more cost-effective, customer oriented, and technologically feasible. SDCP staff will bring the Plan to SDCP's Board of Directors for review and approval on February 22, 2024, and upon adoption, submit the compliance plan to the Executive Director of the CEC within 30 days.

SDCP will continue to offer time-variant rates that customers are familiar with and develop and implement load flexibility programs. SDCP will assess results from delayed SDG&E dynamic rate pilots to determine whether to implement dynamic rates. In parallel, SDCP is currently designing and will be implementing one or more demand flexibility program pilots to evaluate marginal cost-based programs. SDCP will also re-evaluate the specified rate and program designs in the next update of the Plan, informed by future pilot study results.

COMITTEE REVIEW

Update presented to Community Advisory Committee on February 8, 2024

FISCAL IMPACT

N/A

ATTACHMENTS

Attachment A: Draft Load Management Standards Compliance Plan

San Diego Community Power Load Management Standard Compliance Plan - **DRAFT**

February 22, 2024

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1. Executive Summary

Since 1974, the California Energy Commission (“CEC”) held the authority to establish and revise the Load Management Standards (“LMS”). On April 1, 2023, the CEC adopted amendments to the LMS, which require all large utilities and community choice aggregators (“CCAs”) to provide dynamic electricity rates in a format that can be shared and communicated with smart devices or service providers. The updated standards aim to assist customers to take better advantage of time-dependent rates, with the goal of decreasing overall costs by shifting energy use from peak to non-peak time periods. In addition, any technological and behavior changes, resulting from the LMS revisions, slow the rise of future energy costs, increase grid reliability, reduce the need for building more conventional power plants, and avoid transmission and distribution congestion.

The updated standards require all large publicly- and investor-owned utilities and Large¹ CCAs to (1) develop retail electricity rates that change at least hourly and list of cost-effective load flexibility programs to better reflect grid costs and greenhouse gas (“GHG”) emissions and apply for approval by their governing board, (2) maintain up-to-date rates in CEC’s new central repository for rate information, Market Informed Demand Automation Server (“MIDAS”), and (3) establish public outreach and education to customers about time-dependent rates and automation technologies.

Each utility and CCA must develop and submit a compliance plan describing actions taken to meet the requirements of the LMS amendments. Specifically, publicly owned utilities and large CCAs may delay or modify compliance of each requirement if they can show that despite, good faith efforts, that requirement must be modified to provide a more cost-effective, equitable, technologically feasible, or safe pathway to achieve the LMS goals.

San Diego Community Power (“SDCP”) firmly supports and aligns with the intent and goals of the LMS through its Community Clean Energy Grants Program² and 100 Percent Renewable Energy by 2035 Policy.³ The Community Clean Energy Grants Program aims to support scalable, replicable clean energy pilot projects that promote load flexibility and management, energy resilience, and increased access to clean energy technologies. Through the 100 Percent Renewable Energy Policy, SDCP’s Board of Directors establishes a firm commitment to achieve 100 percent renewable energy by 2035, thus eliminating GHG emissions from SDCP’s power supply. SDCP is actively pursuing pathways to reduce system peak, stress on the grids, GHG emissions, and customer costs through programs and pilots.

SDCP’s compliance plan (“Plan”) includes considerations of the specified marginal cost-based rate structures and programs, as described in the LMS requirements,⁴ and evaluates the rate structures and

¹ Large CCAs are defined as any CCA that provides in excess 700 GWh of electricity to customers in any calendar year.

² San Diego Community Power Community Clean Energy Grants Policy, December 15, 2022, [2022-13-Community-Grant-Program-Policy.pdf \(sdcommunitypower.org\)](#).

³ San Diego Community Power 100 Percent Renewable Energy by 2035 Policy, March 23, 2023, [Item-12b-SDCP-100-Renewable-Energy-by-2035-Policy-c1.pdf \(sdcommunitypower.org\)](#).

⁴ Barclays Official California Code of Regulations, § 1623.1. Large POU and Large CCA Requirements for Load Management Standards, April 1, 2023, [View Document - California Code of Regulations \(westlaw.com\)](#).

programs with respect to cost-effectiveness, equity, technological feasibility, and benefits to the grid and to customers.

Based on SDCP's evaluation, the conclusion is such that implementing complex new rate structures that change at least hourly by July 1, 2027 would not be cost effective nor result in material benefits to our customers or promote grid reliability at this time. The implementation of new and complex rate structures without review of pilot study results, sufficient testing, and refinement of the new rate designs would likely result in low customer adoption and/or confusion. In addition, SDCP's evaluation cannot conclude that implementing new programs that allow for automated response to MIDAS signals would result in material benefits, to be cost-effective at this time.

SDCP describes the pathway and details of achieving LMS goals that are more cost-effective, customer oriented, and technologically feasible. SDCP will continue to offer time-variant rates that customers are familiar with as well as develop and implement load flexibility programs. SDCP will reevaluate the specified rate and program designs in the next update of the Plan, informed by future pilot study results.

SDCP's Plan was presented and submitted to SDCP's Board of Directors ("Board") within one year of the adoption of LMS amendments on April 1, 2023. The Plan was adopted by the Board in a duly noticed meeting on February 22, 2024, and this decision was made by SDCP's Board acting as its rate-approving body. SDCP will review the Plan every three years following adoption, and material Plan updates will be submitted to the Board for approval. This Plan will be filed with the CEC by April 1, 2024.

2. Introduction

2.1 About SDCP

SDCP is a Joint Powers Authority ("JPA") formed by the communities of Chula Vista, Encinitas, Imperial Beach, La Mesa, and San Diego in October 2019. In November 2021, SDCP's founding member agencies were joined by National City and the unincorporated areas of San Diego County. As a JPA, SDCP is a local government agency and is governed by a seven-member Board of Directors composed of elected representatives of its member local agencies. Through these representatives, SDCP is controlled by and accountable to the communities SDCP serves. SDCP provides retail electric generation services and complementary energy programs to customers within the municipal boundaries of its member local governments.

SDCP was formed to empower its member communities to choose the generation resources that reflect their individual values and needs. SDCP was established to procure and develop electrical energy for customers in participating jurisdictions, address climate change by reducing energy-related greenhouse gas emissions, promote electrical rate price stability and affordability, and foster local economic benefits such as job creation, local energy programs, and local power development while prioritizing equity.

SDCP commenced retail electric service to its first phase of customer enrollments in March 2021. As of April 2024, SDCP will successfully have completed its planned phase-in activities of all its member agencies. SDCP is currently serving approximately 930,000 service accounts, equal to approximately 670 gigawatt hours ("GWh") of energy consumption per month.

At service launch to customers, SDCP's Board approved a minimum 50 percent renewable energy supply portfolio for all participating customers, with a 100 percent renewable retail service option available on a voluntary basis. These retail service offerings have been named "PowerOn" and "Power100,"

respectively. The minimum quantity of renewable energy delivered to SDCP customers is expected to increase over time, moving to 85 percent by 2030.

2.1.1 Community Clean Energy Grants Program

On December 15, 2022, adopted through Board of Directors' approval of Policy Number 2022-13⁵, SDCP established a grants program aimed to support scalable, replicable clean energy pilot projects that provide economic, environmental, and health benefits to local communities and increase overall energy literacy of SDCP customers. Enabling load flexibility is addressed by three of the program's five focus areas, including:

- Energy behaviors that reduce energy consumption and/or costs.
- Energy resilience to ensure communities can avoid, prepare for, minimize, adapt to, and recover from energy disruptions.
- Increased access to the benefits of clean energy technologies with a focus on underserved communities and vulnerable populations.

In June 2023, grants totaling \$390,000 were awarded to ten organizations. SDCP expects to receive progress updates from the organizations periodically.⁶ The program will run annually, and the next submission cycle will open in early 2024.

2.1.2 SDCP's 100 Percent Renewable Energy Policy

On March 23, 2023, adopted through Board of Directors' Resolution 2023-03, SDCP's 100 Percent Renewable Energy by 2035 Policy commits SDCP to achieving 100 percent renewable energy for its generation energy supply by 2035. The policy commits SDCP's Chief Executive Officer to take all operational actions necessary to achieve this target. Annually, SDCP shall review progress towards this target at a Board meeting. As SDCP ramps up its energy supply towards 100 percent renewable energy, the organization is also committed to continue promoting electrical rate price stability and affordability and fostering local economic benefits.

Currently, SDCP is actively negotiating the offtake of renewable power from long-term projects of multiple technologies. Promoting the construction of renewable energy projects, in culmination with battery energy storage systems, will help with grid reliability as well as decreasing green-house-gas emissions that would be otherwise produced via conventional power generation. Current portfolio content is such that after providing 100 percent RPS for Power100 customers, PowerOn is tracking towards serving customers with 75 percent RPS by 2027. SDCP's contracting of long-term renewable projects will allow SDCP to achieve the Board target of 100 percent renewable by 2035, and price negotiating efforts will allow SDCP to forecast portfolio price impacts.

⁵ San Diego Community Power, Community Grants Program Policy, <https://sdcommunitypower.org/wp-content/uploads/2023/02/2022-13-Community-Grant-Program-Policy.pdf>.

⁶ San Diego Community Power Community Clean Energy Grants Award Press Release, July 26, 2023, [23.07.26.SDCP .SDF .PressReleaseFinal.pdf \(sdcommunitypower.org\)](https://sdcommunitypower.org/wp-content/uploads/2023/07/23.07.26.SDCP_SDF_PressReleaseFinal.pdf).

2.2 Load Management Standards

The central focus of CEC’s LMS Rulemaking is to encourage customers to shift electricity use from peak times of day when it is expensive and polluting to cheaper and cleaner off-peak times of the day. According to the Public Resources Code, section 25132, load management is defined as “any utility program or activity that is intended to reshape deliberately a utility’s load duration curve”. Load management reduces the need for new electrical generation and backup generation, thus lowering customer energy costs, and is a key strategy to ensure grid reliability and resilience, distributed energy resources integration, and GHG emissions reduction.

The CEC adopted the LMS amendments through a rulemaking on April 1, 2023, and the amendments require publicly- and investor-owned utilities and Large CCAs to offer customers access to rate-structures and programs that provide the information needed to manage and optimize their energy use. Specifically, the revisions require development of marginal cost-based rates or load flexibility programs.

LMS defines marginal cost as the change in current and future electric system cost that is caused by a change in electricity supply and demand during a specified time interval at a specified location.⁷ Total marginal cost is calculated as the sum of the marginal energy cost, the marginal capacity cost (generation, transmission, and distribution), and any other appropriate time and location dependent marginal costs, including the locational marginal cost of associated greenhouse gas emissions, on a time interval of no more than one hour.

In this Plan, SDCP uses the term dynamic rates to reflect responding to these marginal cost signals on an hourly or sub-hourly basis. Being a CCA, SDCP is authorized and responsible for setting and recovering only the generation cost components for each applicable electric rate. San Diego Gas and Electric (“SDG&E”), the investor-owned utility for the San Diego service area, is responsible for setting distribution, transmission, and any other non-generation cost components for each rate.

2.2.1 SDCP’s Compliance Plan Roadmap

Adopted LMS amendments section 1623.1(c) requires SDCP, along with the other utilities and Large CCAs, to develop and submit a compliance plan in response to meeting the revised LMS requirements. The following table is a roadmap identifying where each regulatory requirement, along with the due date, is addressed within SDCP’s compliance plan.

LMS Section	Regulatory Requirement	Due Date	Plan Section
§1623.1(c)	Within three months of regulation effective date, 4/1/2023, upload existing time-dependent rates to the MIDAS database. ⁸	8/1/2023	3.1
§1623.1(a)(1)	Within one year of regulation effective date, develop and submit compliance plan addressing how SDCP plans to comply with LMS	4/1/2024	2.2.2.1

⁷ Energy cost computations shall reflect locational marginal cost pricing as determined by the associated balancing authority, such as the Los Angeles Department of Water and Power, the Balancing Authority of Northern California, or other balancing authority. Marginal capacity cost computations shall reflect the variations in the probability and value of system reliability of each component (generation, transmission, and distribution).

⁸ On June 1, 2023, the CEC issued Order No. 23-0531-10 in response to a request for extension from the IOUs and Large CCAs. The Order approved an extension for CCAs to upload time-dependent generation rates by August 1, 2023, and remaining time-dependending rates with rate modifiers by October 1, 2023.

	requirements, and including evaluation of marginal cost-based rates and programs, to SDCP's Board. The plan must be considered for adoption within 60 days after submission.		
§1623.1(a)(3)(A)	Submit compliance plan to the Executive Director on the CEC within 30 days of adoption of the plan. Respond to requests for additional information and/or recommendations within 90 days.	6/1/2024	2.2.2.2
§1623(c)(4)	Within one year of regulation effective date, provide customers access to their Rate Identification Numbers ("RIN") on billing statements and in online accounts using both text and QR.	4/1/2024	3.1.2
§1623(c)(2)	Within 18 months of regulation effective date, develop and submit to the CEC, in conjunction with the other obligated utilities, a single statewide standard tool for authorized rate data access by third parties, and the terms and conditions for using the tool. Upon CEC approval, maintain and implement the tool.	10/1/2024	3.1.3
§1623.1(b)(3)	Within 18 months of regulation effective date, submit to the CEC Executive Director a list of load flexibility programs deemed cost effective by SDCP. The portfolio of programs must provide at least one option to automate response to MIDAS signals for each customer class where SDCP's Board has determined such a program would materially reduce peak demand.	10/1/2024	5.2.5.1
§1623.1(a)(3)(C)	Submit annual reports to the CEC Executive Director demonstrating implementation of plan, as approved by SDCP's Board.	Every year, starting on 4/1/2025	2.2.2.4
§1623.1(b)(2)	Within 27 months of the regulation effective date, submit at least one marginal cost-based rate to SDCP's Board for approval for any customer class(es) where such a rate will materially reduce peak load.	7/1/2025	4.3.5
§1623.1(b)(4)	Within 51 months of the regulation effective date, offer customers voluntary participation in either a marginal cost-based rate, if approved by SDCP's Board, or a cost-effective load flexibility program.	7/1/2027	4.3.5 and 5.2.5.2
§1623.1(b)(5)	Conduct a public information program to inform and educate affected customers why marginal cost-based rates or load flexibility programs and automation are needed, how they will be used, and how these rates and programs can save customers money.	Ongoing, dependent on offerings	6.3

§1623.1(a)(1)(C)	Review the plan at least once every 3 years after the plan is adopted and submit a plan update to the Board if there is a material change.	Every 3 years	2.2.2.3
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2.2.2 SDCP's Compliance Plan Administration

2.2.2.1 Plan Development and Board Approval Process

Adopted LMS amendments section 1623.1(a) requires each Large CCA to submit a compliance plan consistent with the applicable requirements of the LMS, as well as actions taken to meet those requirements to its rate-approving body. The compliance plan must be submitted within one year of the regulation effective date, or by April 1, 2024, and must be considered for adoption by the rate-approving body in a duly noticed public meeting within 60 days of submission.

This Plan meets the requirements of section 1623.1(a). The Plan was submitted to the Board prior to April 1, 2024, and presented to SDCP's Board at a duly noticed meeting on February 22, 2024. SDCP's Board approved this Plan. The description of how SDCP complies with each element of the regulatory requirements of the LMS amendments is provided in the subsequent sections of this Plan.

2.2.2.2 CEC Review Process

Adopted LMS amendments section 1623.1(a)(3) specifies that, upon adoption by the Large CCA rate approving-body, the plan must be submitted to the CEC Executive Director within 30 days for review. SDCP's Board is the sole authority to approve rates and in this regulatory proceeding, the CEC's role is limited to determining whether this adopted Plan complies with the regulation.

Following the Plan's presentation and adoption by SDCP's Board on February 22, 2024, the Plan will be submitted to the CEC by April 1, 2024 for review. Any requests for additional information or recommended changes will be addressed, and a written response submitted to the CEC within 90 days as required in the regulation.

2.2.2.3 Triennial Plan Review

Adopted LMS amendments section 1623.1(a)(1)(C) requires each Large CCA to review its compliance plan at least once every three years. The CCA must submit a plan update to its rate-approving body where there is a material change to the factors considered in evaluating marginal cost-based rates and programs. Material revisions to the plan shall follow the same process as the initial plan approval.

This Plan will be reviewed by SDCP every three years following the date of adoption and material updates will be submitted to SDCP's Board for approval. Subsequently, this Plan and any approved material updates will be duly submitted to the CEC.

2.2.2.4 Annual Reporting

Adopted LMS amendments section 1623.1(a)(3)(C) requires each Large CCA to submit to demonstrate implementation of its LMS compliance plan through a submission to the CEC Executive Director. Each Large CCA must submit the initial report one year after adoption of the plan by the CCA's rate-approving body, and annually thereafter.

SDCP will timely submit annual reports to the CEC Executive Director describing the implementation of this Plan.

3. Access to Price Signals

3.1 Publication of Machine-Readable Rates in MIDAS

The CEC developed the MIDAS database, as part of the LMS revisions, so customers and automation service providers can link flexible loads to a machine-readable database of rates and other grid signals to automate demand flexibility. The LMS amendments require the utilities and Large CCAs to populate utility rate information into MIDAS and to facilitate access to MIDAS signals for customers and their authorized third parties. This section of the Plan details SDCP's planned actions to meet this requirement.

3.1.1 Upload of Time-Dependent Rates

Adopted LMS amendments section 1623.1(c) requires each Large CCA to upload existing time-dependent rates to the MIDAS database within three months of the regulation effective date, or by July 1, 2023. On June 1, 2023, the CEC issued Order No. 23-0531-10⁹ in response to a request for extension from the IOUs and Large CCAs. The Order approved an extension for CCAs to upload time-dependent generation rates by August 1, 2023, and remaining time-dependent rates with rate modifiers by October 1, 2023. Each uploaded rate must be assigned a RIN, which is used to uniquely identify each rate. The MIDAS database will provide information about the rate and any associated marginal signals to which the customer may automate response for each associated RIN.

Large CCAs are also required to upload any new time-dependent rates or changes to existing rates, prior to the effective date of that rate. All uploaded time-dependent rates must include all applicable time-dependent cost components.

3.1.1.1 Existing Rates Upload

On August 1, 2023, SDCP successfully uploaded 180 rate permutations of time-dependent rates, including residential and non-residential customer classes. A list of those current time-dependent rates and corresponding RINs can be found in Appendix A.

A message confirming successful upload was returned for each rate file loaded to MIDAS. SDCP also performed random retrieval of rates as a second point of confirmation to the successful rate upload and to validate accuracy of rates recorded in MIDAS. In addition, SDCP sent a confirmation of successful MIDAS upload email to CEC staff on August 1, 2023, and received acknowledgement from the CEC's MIDAS Lead contact on August 2, 2023.

On October 1, 2023, SDCP successfully uploaded the corresponding 180 rate permutations of time-dependent rates for SDCP's 100 percent renewable retail service option, "Power100". SDCP received acknowledgement from CEC's Lead contact on October 5, 2023, of confirmation of successful additional MIDAS upload. SDCP coordinated with its vendor to upload any new time-dependent rates or changes to existing rates, that became effective on February 1, 2024.

3.1.1.2 Future Rates Upload

Going forward, SDCP will upload existing rates as needed, to reflect any rate changes, and any new time-dependent rates or rate components. SDCP will follow a similar process to the successful existing rate

⁹ California Energy Commission, Order No. 23-0531, June 1, 2023, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=250450&DocumentContentId=85205>.

uploads in 2023. SDCP will create rate files in csv format, convert them to XML format and load them to MIDAS through the application programming interface.

3.1.2 Provide RINS to Customers

Adopted LMS amendments section 1623(c)(4) requires each Large CCA to provide customers access to their RIN(s) on customer billing statements and online accounts using both text and quick response (“QR”) or similar machine-readable digital code. This access must be provided within one year of the regulation effective date, or by April 1, 2024.

3.1.2.1 Implementation Plan

SDCP partners with SDG&E, the local investor-owned utility in the service area, to serve electricity charges to customers through either a paper and/or an electronic bill statement. The bill is the standard presentation of electricity billing statements to customers. Customers also have access to billing statements through their protected on-line SDG&E accounts.

SDCP plans to make the RINs available in text and QR formats on billing statements on or before April 1, 2024. This will allow customers to access their RIN on the billing statement received by mail or accessed online. SDG&E has significant control of both paper and electronic billing statement designs, therefore SDCP’s compliance with section 1623(c)(4) is dependent on successful coordination with SDG&E. SDCP, through its contracted back-office vendor, is coordinating with SDG&E to implement the RINs, both in text and QR formats, by April 1, 2024. RINs are standardized to include country, state, distribution, energy, rate, and location information. RINs are also based on customer energy providers, pricing plans, locations, and other account considerations, such as participation in assistance and/or solar programs and pricing plan(s) changes.

SDCP customers will see two RINs, one for the CCA-associated component(s) of their bill pertinent to their generation rates and another for the SDG&E-associated component(s) of their bill related to transmission and distribution rates. There may be multiple RINs for customers with group bills and corrected billing.

3.1.3 Statewide RIN Access Tool

Adopted LMS amendments section 1623(c) requires utilities and Large CCAs to collaboratively develop a single statewide standard tool for authorized rate data access by third parties, along with a single set of terms and conditions for third parties using the tool. The tool must meet all the following requirements:

- Provide the RIN(s) for the rate(s) applicable to a customer’s premise.
- Provide any RIN(s) for the rate(s) to which the customer is eligible to be switched.
- Provide estimated average or annual bill amounts based on the customer’s current rate and any other rate(s) for the customer is eligible to be switched if such calculation tools already exist.
- Enable authorized third parties, upon direction and consent of the customer, modify the customer’s applicable rate, to be reflected in the next billing cycle.

The tool must also incorporate reasonable and applicable cybersecurity measures, minimize enrollment barriers, and be accessible in a digital, machine-readable format according to industry best practices and

standards. The tool must be submitted to the CEC for approval within 18 months of the regulation effective date, or by October 1, 2024. After CEC approval, the utilities and Large CCAs must collaboratively implement and maintain the tool.

3.1.3.1 Statewide Tool Development

SDCP has already started to and will continue to collaborate with the utilities and other Large CCAs to meet the regulatory requirements by October 1, 2024.

At the time of this filing, SDCP had already started internal planning and committed staff to join the working group to collaborate with other parties. SDCP continues to assess its internal infrastructure needs and business requirements in the working group discussions and future work. SDCP participated in a working group meeting held on September 20, 2023, and is currently awaiting input from the other parties about the scope, funding, and coordination for the project. SDCP is coordinating with SDG&E to perform two phases to develop and implement the statewide tool, targeting for customer data access by the end of Phase 1 and for customers and/or authorized third parties to access rate information, eligible rates, estimated bill, and pricing plan enrollment by the end of Phase 2.

3.1.3.2 Statewide Tool Implementation

SDCP's internal infrastructure must be updated to integrate and support the final approved statewide tool.

SDCP is unable to specifically identify the full scope of integration efforts needed until the final tool is designed and approved by the CEC. Concurrent with the development process, however, SDCP is reviewing its internal infrastructure and scheduling budget requests. Implementation projects will be added to SDCP's annual work prioritization queue. While SDCP anticipates complying with this requirement, any delays in development of the tool could result in implementation delays. Similarly, if the costs of integrating the tool result in an undue hardship to SDCP or its customers, SDCP may seek to delay or modify compliance with this requirement.

4. Dynamic Rates

The adopted LMS amendments identify dynamic hourly or sub-hourly rates as a central tool and are critical to encourage shifting peak energy-use, controlling daily and seasonal peak loads, lessening, or delaying the need for new electrical capacity, and reducing fossil fuel consumption and associated GHG emissions.

Adopted LMS amendments section 1623.1(b)(2) directs the Large CCAs to seek approval from their Boards for at least one dynamic rate for each customer class for which its rate-approving body determines such rate will materially reduce peak load. The application must be submitted within 27 months of the regulation effective date, or by July 1, 2025. In accordance with section 1623.1(b)(4), approved rates must be implemented 24 months following any Board rate approvals, or by July 1, 2027.

Adopted LMS amendments section 1623.1(a)(1) requires each Large CCA to evaluate the cost effectiveness, equity, technological feasibility, and benefits to the grid and customers, of dynamic rates for each customer class in its compliance plan. After evaluating such rates, the Large CCA may instead propose and evaluate specified programs and/or delay or modify compliance with the LMS requirements.

The following section of SDCP's Plan provides an overview of SDCP's current time-dependent rates, describes SDCP's rate development process, and addresses the requirement to evaluate the implementation of dynamic rates on the timeframes specified in the LMS.

4.1 Overview of Current Time-Dependent Rates

SDCP's portfolio of time-dependent rates include at least one marginal cost-based time-dependent rate for nearly every customer class. SDCP has five customer classes: residential, small commercial, medium/large commercial, agriculture, and lighting. Apart from lighting and unmetered customers, all customers have access to Time-of-Use ("TOU") rates and 84% of SDCP customers are on TOU rates. Please see the following table for details on SDCP's rates by customer class and percent of customers in that customer class on TOU rates.

Customer Class	Available Rates ¹⁰	% on TOU Rates
Residential	TOU: <ul style="list-style-type: none"> - DR-SES - EV-TOU, EV-TOU-2, EV-TOU-5 - TOU-DR, TOU-DR-1, TOU-DR-2 - TOU-ELEC Non-TOU: <ul style="list-style-type: none"> - DR - DR-LI-MB (CARE/FERA/Medical Baseline) 	83%
Small Commercial	TOU: <ul style="list-style-type: none"> - TOU-A (Primary or Secondary) - TOU-A-2 (Primary or Secondary) - TOU-A-3 (Primary or Secondary) - TOU-M Non-TOU: <ul style="list-style-type: none"> - A-TC (Traffic Control Service) - E-LI-NR (CARE/FERA for TOU-A, TOU-A-2, TOU-A-3, TOU-M) 	96% (100% if excluding A-TC, Traffic Control Service accounts)
Medium/Large Commercial	TOU: <ul style="list-style-type: none"> - A6-TOU (Primary, Secondary or Transmission) - AL-TOU (Primary, Secondary or Transmission) - AL-TOU-2 (Primary, Secondary or Transmission) - EV-HP (Primary or Secondary) - DG-R (Primary, Secondary or Transmission) Non-TOU: <ul style="list-style-type: none"> - E-LI-NR (CARE/FERA for AL-TOU, AL-TOU-2, DG-R) - OL-TOU 	96%
Agriculture	TOU:	100%

¹⁰ SDCP has additional rate variants including legacy grandfathered rates and less than 20kW or 20kW or greater versions of rates.

	<ul style="list-style-type: none"> - PA-T-1 (Primary, Secondary or Transmission) - TOU-PA (Primary or Secondary) - TOU-PA-2 (Primary or Secondary) - TOU-PA-3 (Primary or Secondary) 	
Lighting	TOU: <ul style="list-style-type: none"> - LS-2-AD Non-TOU: <ul style="list-style-type: none"> - LS - OL-2 	0% (96% of lighting accounts are unmetered)

SDCP's is also developing load flexibility programs that incorporate time-varying marginal cost-based signals, some of which test response to different price signals, in addition to time-dependent rates to encourage customer peak load shift. The following section of the Plan provides a summary of SDCP's currently available time-dependent rates.

4.1.1 Residential Rates

SDCP's TOU-DR is the standard rate for residential customers. Residential customers pay different rates depending on the season, day, and hours of energy use, summarized in the table below. These time periods were selected because they best aligned with highest peak loads and marginal electricity prices, while also being simple and easy for customers to understand.

Time-Of-Use Periods	Summer Months (June 1 through October 31)	Winter Months (November 1 through May 31)
On-Peak	4 pm – 9 pm	4 pm – 9 pm
Off-Peak	weekdays 6 am – 4 pm and 9 pm – 12 am, weekends and holidays 2 pm – 4 pm and 9 pm to 12 am	weekdays 4 am – 4 pm (excluding 10 am – 2 pm in March and April) and 9 pm – 12 am, weekends and holidays 2 pm – 4pm and 9 pm to 12 am
Super Off-Peak	weekdays 12 am – 6 am, weekends and holidays 12 am – 2pm	weekdays 12 am – 6 am (excluding 10 am – 2 pm in March and April), weekends and holidays 12 am – 2pm

SDCP's other TOU rates provide options for customers in terms of difference in peak, off-peak, and super off-peak periods to shift energy use. SDCP enrolled residential customers onto its TOU rates in the first half of 2022 during phase 3 of enrollment. The high adoption and retention of residential TOU rates has benefited both SDCP and customers.

SDCP's EVTOU is the standard rate for residential customers that charge their EVs at home. This rate encourages customers to charge their EVs during super off-peak times when energy is abundant and energy prices are low.

4.1.2 Non-Residential Rates

SDCP's TOU-A is the standard rate for small commercial customers. SDCP's AL-TOU is the standard rate for medium/large commercial customers. SDCP's TOU PA is the standard rate for agriculture customers. All these rates are similar in concept to residential TOU rates, except the rate periods differ. Non-

residential customers have been offered TOU rates for a much longer time compared to residential customers.

4.2 SDCP's Rate Development Process

4.2.1 Strategic Direction on Competitive Rates

Adopted by the Board on November 17, 2022, the Rate Development Policy¹¹ guides SDCP's rate development process. The policy provides a framework to ensure SDCP's rate design, development, and implement processes remain transparent, fiscally responsible, and centered on the customer. The policy includes the following objectives:

- **Cost Recovery:** rates must be sufficient to recover all expenses, debt service and other expenditure requirements.
- **Reserves:** rates must be sufficient to build prudent reserves.
- **Rate Competitiveness and Customer Value:** rates must allow SDCP to successfully compete to retain and attract customers while offering superior electricity service offerings with higher renewable content compared to the incumbent investor-owned utility.
- **Rate Stability:** rate changes should be minimized to reduce customer bill impacts with a preference for annual rate adjustments.
- **Equity among customers:** rate difference among customers should be justified by differences in usage characteristics and/or cost of service. Additionally, to the extent possible, rates shall be equalized from a value proposition perspective among customers enrolled during different Power Charge Adjustment Indifference ("PCIA") Vintage Years.
- **Rate Structures:** as new rates are developed; emphasis shall be put on rate-design simplicity and comparability as well as overall customer experience.
- **Transparency:** SDCP's Board will review and approve rates at an open and public meeting held in accordance with the Ralph M. Brown Act. SDCP shall post a copy of the adopted rates in both English and Spanish on its website within 14 calendar days of approval or by the rates' effective date, whichever is sooner. SDCP shall also make any rate design documents promptly available upon request under the California Public Records Act.
- **Cost Shifting:** SDCP shall avoid, to the best of its ability, cost shifting between customer classes.
- **Cost of Service:** SDCP may explore a cost-of-service model for rate design.

When designing rates, SDCP must balance all the above competing objectives, many of which are reflected in the LMS revisions' goals. As a public not-for-profit agency, SDCP designs and implements rates that meet revenue requirements as well as targeted reserves, while maintaining rate competitiveness, stability, and long-term financial viability. While SDCP understands the need to

¹¹ San Diego Community Power Rate Development Policy, https://sdcommunitypower.org/wp-content/uploads/2023/01/Item-12a_Rate-Development-Policy.pdf.

develop and implement dynamic rates, SDCP emphasizes the customer experience, such as ensuring the rate development process is transparent and rates are easy to understand, as well as minimize rate changes.

4.2.2 Rate Design and Implementation

Aligned with objectives of the Rate Development Policy, SDCP takes deliberate measures to ensure that any new rate development and implementation will be successful, effective, and accepted by its customers. These proactive measures may include:

- Conducting pilots to determine the effectiveness of different rate options and reception by customers.
- Developing and implementing iterative outreach and education campaigns.
- Developing and implementing new education tools, such as rate comparison tools and reports.

After rate implementation, SDCP is committed to monitoring the effectiveness of the rate with respect to shifting peak load and customer feedback.

4.3 Evaluation of New Dynamic Rates

Consistent with the adopted LMS amendments, the following section of the Plan evaluates the cost-effectiveness, equity, technological feasibility, and benefits of dynamic rates for each customer class. SDCP assumes that these new dynamic rates would be implemented on the schedule specified in the LMS amendments, which includes applying for Board approval of dynamic rates by July 1, 2025, and offering voluntary participation in those rates to all customers by July 1, 2027, where such a rate is determined to materially reduce peak load cost effectively.

SDCP's does not have sufficient information at this time to conclude that proposing and implementing dynamic rates following the adopted LMS amendments' schedule would be cost effective or provide incremental benefits. Significant uncertainties exist related to a gap in dynamic rate pilot evaluation results and data in SDCP's and SDG&E's service area, the level of incremental load shift potential, customer response to market price risks, and customer acceptance of a complex new rate design. Based on the results of this evaluation, SDCP plans to defer the proposal and adoption of new dynamic rates at this time. SDCP will re-evaluate dynamic rates with the benefit of additional information from dynamic rate pilots in SDCP's and SDG&E's service area and other service areas in the next update of this Plan.

4.3.1 Cost-Effectiveness

Adopted LMS amendments section 1623.1(a)(1)(A) specifies cost effectiveness as the first evaluation factor. SDCP strives to qualitatively estimate the costs and benefits to customers, that are associated with new dynamic rates for each rate class. This approach is necessary because, as of the time of the preparation of this Plan, SDCP does not have data to support a full quantitative analysis.

To assess cost effectiveness, it is necessary to consider the costs associated with designing, implementing, and maintaining new rates for each customer class, as well as the ongoing benefits associated with implementation. To demonstrate cost effectiveness, the expected benefits for each rate must exceed the costs of implementation.

As best practice for assessing the cost effectiveness of a new rate, SDCP would conduct a comprehensive pilot study to test and gather data on different rate options, which would likely require several years and a multi-million-dollar investment. Forming in 2019, SDCP is still a relatively young organization and has been limited in terms of developing rate options and has been prioritizing building a strong foundation as a customer-centric organization. Thus, SDCP has not had the sufficient time nor resources to pilot multiyear and multi-million-dollar rate pilots. SDCP plans to evaluate the effectiveness of dynamic rate options based on information gathered across the state from ongoing and proposed dynamic rate pilots.

SDG&E's proposed dynamic rate pilots would have provided the more accurate estimated costs and benefits compared to pilots in other service territories because weather conditions, local economy, and local energy policies, and other factors that are captured by SDG&E's pilot overlap with SDCP's conditions. However, SDG&E proposed two dynamic rate pilots through Applications 21-12-006 and 12-12-008 to the California Public Utilities Commission ("Commission"), but the import rate pilot was dismissed without prejudice and the other pilot delayed and will be refiled once the Commission issues a final decision in the Demand Flexibility Rulemaking that will provide guidance for dynamic rate applications.¹² As a result of the factors above, SDCP's cost-effectiveness evaluation is based on qualitative assessments and SDCP anticipates exploring opportunities to expand data access and/or refine estimates to inform future updates of the Plan.

4.3.1.1 Estimated Costs

Significant investment in planning, customer education and marketing, and technology development is required to implement new rates for all customer classes, particularly rates that are far more complex than any other currently available. SDCP has identified the following cost categories associated with implementing dynamic rates:

- Rate design costs would include the costs of initial market research, implementing pilots to test rate options, and analyzing the results of those pilots to refine the final design. Once the pilot is complete and evaluation data is analyzed, the final rate recommendation needs to be designed.
- Setup costs include coordinating with external vendors and SDG&E on Information Technology system updates to enable settlement over new intervals, data integration, updating the bill presentment to reflect these intervals, and developing new or updating existing customer tools. Having tools available for customers to self-service and monitor their costs and usage will be important for success with hourly rates.
- Recruitment and retention costs include marketing and enrollment costs. SDCP anticipates spending significant time educating customers through an extensive, phased marketing campaign and targeted outreach in a variety of languages. This effort will only be successful if significant time and funds are invested. Shifting to complex hourly rates while maintaining a positive customer experience – which is key for adoption and longer-term retention of the rate – will require informing and educating customers to, at a minimum, understand and monitor hourly rates, energy market dynamics, pricing, and temperature trends that may significantly impact their bills.

¹² Ordering Paragraphs 1 and 2, Proposed Decision Adopting Dynamic Export Rate Pilot and Dismissing Application for a Real Time Pricing Rate Pilot, September 25, 2023, [520650818.PDF \(ca.gov\)](#).

SDCP anticipates the above costs to make a dynamic rate available are fixed and do not vary by load, electricity usage, or enrollment level. While SDCP does not currently have pilot results to inform implementation costs, SDCP estimates significant resources to develop, implement, and maintain hourly rates for customers will be required. Depending on the scope of the costs, implementing complex new rates may necessitate a rate increase for all customers to bring in additional revenue.

4.3.1.2 Estimated Benefits

This section of the Plan describes the potential benefits associated with implementing new dynamic rates and the estimated realization of incremental benefits based on design effectiveness, adoption levels, and additional load shift capacity available to be captured.

4.3.1.2.1 Potential Benefits

SDCP has identified the primary avoided cost benefits of new dynamic rates as the following:

- Avoided capacity costs, resulting from a reduction for new capacity additions or resource adequacy procurement.
- Avoided energy costs, resulting from shifting demand from higher-cost periods to lower-cost periods.

Secondary benefits can also flow from the realization of avoided capacity and energy procurement needs. For example, to the extent that load shifting reduces the need for new capacity and wholesale energy purchases during peak periods, these reductions can also contribute to the following:

- Avoided transmission and distribution in the form of reduced need for capital investments to deliver energy during peak periods.
- Avoided GHG compliance costs associated with a reduction in generating or purchasing energy from fossil -fueled resources that may otherwise be needed to serve load during peak periods.
- Improved air quality, public health, and environmental outcomes associated with a reduction in operations of fossil-fueled resources. While these benefits do not accrue directly to SDCP, they provide value on a societal basis.

4.3.1.2.2 Realization of Benefits

As a retail electric service provider and a CCA, SDCP anticipates that the greatest potential direct benefits would be derived from avoided capacity and energy procurement costs. However, the realization of any of the above-identified benefits from new dynamic rates is highly dependent on the following several factors:

- The effectiveness of the rate design in shifting customer usage patterns.
- The operational value of the load shift.
- The adoption levels of the new rates.
- The customer experience on the new rate.

In addition, with respect to avoided GHG compliance costs and improved air quality, public health, and environmental outcomes, the realization of benefits also depends on the relative utilization of fossil-fueled resources to serve peak load versus periods of lower demand. A discussion of each factor's expected effect on the benefits attributable to developing new dynamic rates is detailed in the next section of the Plan.

4.3.1.2.2.1 Estimated Design Effectiveness

Effective rate design is necessary to achieve predictable load shift during the most valuable peak hours of the day. The risk of not having sufficient generation, which spurs the need for new capacity additions or resource adequacy procurement, is typically concentrated in a small number of peak hours each year when serving peak load is most challenging. Accordingly, to realize any avoided capacity benefits, it is vitally important that a new rate design can achieve consistent and meaningful load reductions during those peak hours. Reducing capacity and energy procurement during peak periods relies on consistent shift in demand patterns.

Time to develop and test the effectiveness of rate design options will be especially important when shifting to a complex new rate structure that could include several price signal changes within a peak period or even within an hour. If customers do not understand the signals or the time periods during which they are provided, their response may not be predictable, leading to reduced efficacy and potentially adverse bill impacts. SDCP's ideal dynamic rate development process would include market research, testing the effectiveness of different rate options through pilots, analyzing the results, and considering refinements before proposing a rate. Completing these steps helps to ensure that the rate sends the right signals and takes into consideration customers' willingness to respond either directly or via automated technologies/devices while fully recognizing that the process can take significant time and resources.

The LMS requirements direct Large CCAs to propose new dynamic rates for every customer class to the Board by July 1, 2025. That timeline does not provide sufficient time for SDCP to design a pilot, test responses to different rate options, and analyze the results for even one rate class. In addition, SDG&E's dynamic rate pilots have been delayed and results of those studies may not be available before July 1, 2025. Without the results from pilots, SDCP cannot conclude that a complex new rate design would result in any incremental, dependable load shift or ensure a positive customer experience for any of our customers.

4.3.1.2.2.2 Estimated Adoption Level

The estimated adoption level of new hourly dynamic rates directly impacts the value of load shift benefits. Based on available information, SDCP anticipates that dynamic rates rolled out to customers by July 1, 2027, would likely have low adoption and retention levels. SDCP's assumption is based on several key factors, including the uncertainty in bill impacts from complex new rate structures, the time needed to educate customers to promote a positive experience, and the cost and limited accessibility of enabling behind-the-meter automation technology.

- Bill savings are a significant driver for customer rate adoption. The predictability of bill impacts gives customers the assurance of how they can leverage a rate to see bill savings. With dynamic rates, customers take on the full risk of price fluctuations, which may not be sustainable in the long term.

- One method of mitigating the uncertainty of bill impacts from new dynamic rates is to fully educate and inform customers. SDCP is dedicated to a culture of delivering the best possible customer experience when transitioning customers from one rate structure to another or when offering optional rates. Limited time to engage and educate customers on new complex hourly rates, and the potential benefits and risks associated with participation, may lead to confusion about bill impacts and low uptake. Customer experience is a priority for SDCP, so negative experiences may have an unintended negative impact to the brand and act as a deterrence on current and future initiatives.
- Realizing the benefits of dynamic rates is dependent on customers' ability to access and adopt enabling technology. There are challenges and uncertainties associated with utilizing these devices for grid services, as further discussed in Section 4.3.3.2. SDCP expects that limited adoption of the needed technology would translate to limited benefits from dynamic rates, but accessibility of customer-owned automated devices that allow for response to hourly or sub-hourly signals is a near-term constraint.
- Adoption is also impacted by a customer's ability to understand and their capacity to meaningfully respond to dynamic rate signals. As part of its due diligence, SDCP issued an on-going survey to the largest commercial customers in 2022 to gauge interest in a Real-Time Pricing pilot rate and to date, no responses have been received.¹³

4.3.1.2.2.3 Estimated Incremental Load Shift Capability

The primary potential benefits of dynamic rates are based on reducing new capacity additions and associated avoided wholesale energy costs, which may carry additional benefits associated with reduced transmission and distribution costs, reduced GHG compliance costs, and improved air quality, public health, and environmental outcomes. SDCP's existing time-dependent rates and planned new load flexibility programs are likewise designed to capture these same benefits and to create a customer-centric experience, that is simple and easy-to-understand and have been supported with extensive customer outreach and education. Any incremental benefits associated with implementing dynamic rates rely on achieving incremental load shift relative to SDCP's existing rates and planned new programs. The following summarizes the current load shift capability of SDCP's existing rates and planned new programs and potential incremental load shift opportunities.

- SDCP's TOU rate structures mirror SDG&E's rates and were designed to shift peak time periods energy use to off peak periods, thus reducing grid stress and resulting in financial benefits from combined energy and capacity savings.
- SDCP is in the process of designing and planning to offer new load flexibility and demand response programs that allow customers to respond to signals that incorporate day-ahead marginal prices, weather, and grid conditions. These programs complement our existing TOU rate structure and provide additional load shift benefit on a day-ahead basis and, in some cases, on a same-day basis for emergency scenarios. SDCP's new programs and pilots are discussed further in Section 5.

¹³ Real-Time Pricing Pilot Rate Survey, <https://sdcommunitypower.org/real-time-pricing-rtp-pilot-rate-2/>.

- SDCP has not yet conducted pilots to evaluate more complex dynamic rate options in which hourly market price risk is passed directly to the customers. In addition, planned dynamic rate pilots in SDCP's and SDG&E's service area has been delayed. Without the benefit of pilot results and given the inherent complexity of new dynamic rates coupled with the risk of adverse bill impacts, and the existence of more customer-friendly TOU rates and planned new programs, SDCP cannot conclude that such dynamic rates would likely result in incremental load shift benefits. As part of its due diligence, SDCP issued an on-going survey to the largest commercial customers in 2022 to gauge interest in a Real-Time Pricing pilot rate and to date, no responses have been received.¹⁴

4.3.1.3 Discussion

Based on the evaluation of available information, SDCP cannot conclude that implementing dynamic rates for any customer class on the LMS required timeline would be cost-effective. There are significant uncertainties both in the magnitude of value that can be captured and SDCP's ability to realize the value based on design efficacy, how customers would react to hourly market risks, and expected adoption levels. According to the whitepaper, *Time-Varying and Dynamic Rate Design*, authored by the Regulatory Assistance Project ("RAP") and the Brattle Group, real-time/dynamic pricing presents high rewards but also high risks.¹⁵ SDCP anticipates that developing dynamic rates would result in significant costs and may even require a rate increase to all customers to bring additional revenue to support the development and implementation of the said rates. Without pilot results in SDCP's and SDG&E's service area to perform a comprehensive analysis, SDCP cannot readily ascertain rate development costs, the estimated benefits, or whether those benefits would be likely to offset the costs.

A 2004 Lawrence Berkley National Laboratory whitepaper concludes that most dynamic rate programs in the early 2000s, implemented across the country, did not achieve significant level of participation. Another takeaway from the survey is that although many customers on dynamic rates are price responsive, a substantial fraction are not.¹⁶

Significant changes are happening and will occur in the rate landscape in our region and at the state level, including a shift to battery energy storage systems, implementation of net billing tariff, adoption of an income-graduated fixed charge, and exploration of other potential fixed charges. The combination of multiple concurrent rate variables can make evaluating dynamic rate and demand flexibility difficult. Isolating and quantifying the benefits of just dynamic rates becomes a challenge, and these overlapping efforts complicate signaling a customer to change energy use behavior and may increase development costs. For example, introducing fixed charges, such as the income-graduated fix charge, dilutes the hourly variability that dynamic rates are trying to reflect.

SDCP will continue to gather information to inform evaluation of future rate and program designs. As data becomes available from pilots, SDCP anticipates exploring cost-effectiveness analyses and/or quantifying the estimates provided in this section of the Plan.

¹⁴ Real-Time Pricing Pilot Rate Survey, <https://sdcommunitypower.org/real-time-pricing-rtp-pilot-rate-2/>.

¹⁵ *Time-Varying and Dynamic Rate Design*, RAP and the Brattle Group, July 2012, page 17.

¹⁶ *A Survey of Utility Experience with Real Time Pricing*, Lawrence Berkeley National Laboratory and Neenan Associates, December 2004, ES-4 and ES-6.

4.3.2 Equity

The second criterion by which to evaluate dynamic rates is equity, a core principle for SDCP's establishing bylaws and purpose. Without pilot study data to support quantifying load shift and bill impacts for different customer groups, SDCP will qualitatively evaluate the equity impacts of these rates by considering customers' ability to benefit directly and indirectly from the rates.

4.3.2.1 Equitable Access to Direct Benefits

The ability to directly benefit from a dynamic rate depends on several factors, such as access to enabling technology, ability to shift load away from high-cost periods, and ability to benefit from the rate and absorb potential bill shocks.

- The ability to participate on a dynamic rate depends upon customers' access to technology with specific characteristics that enable response to hourly or sub-hourly price signals. Currently, the high upfront cost of this technology may pose a limitation. To help address these barriers, SDCP's Community Clean Energy Grants Program provides opportunities to increase access to the benefits of clean energy technologies with a focus on underserved communities and vulnerable populations. In addition, SDCP is exploring different incentive programs and developing strategies to help further broaden access.
- The ability to quickly shift load away from high-priced peak periods will affect whether participating customers can directly benefit from a dynamic rate. As market signals would be dynamic with potentially very large changes in prices between hours, customers that cannot or do not adopt and/or utilize and embrace enabling technology could see very large bill impacts.
- Participating customers on a dynamic rate run the risk of bill shocks if they are unable to shift load away from high-priced peak hours. Customers who face greater barriers in implementing enabling technology are likely to be most exposed and least able to absorb potential bill shocks.

4.3.2.2 Equitable Access to Indirect Benefits

As previously described in Section 4.3.1.2.1, dynamic rates may offer benefits to SDCP's customers, to the extent such rates reduce overall capacity costs, contribute to reliability, and reduce reliance on fossil-fueled resources. These benefits could serve as a downward pressure on rates and result in improved air quality, public health, and environmental outcomes. However, as discussed in Section 4.3.1.2.2, SDCP is unable to conclude at this time the magnitude of these benefits that would result from the implementation of dynamic rates.

4.3.2.3 Discussion

Based on the evaluation of available information, SDCP cannot conclude that implementing dynamic rates would result in any equity benefits. The availability of such rates is likely to disproportionately benefit higher-income customers, early adopters of technology, and can absorb the risk of bill shocks. It is critical to analyze pilot study results to accurately quantify the magnitude and uncertainty of these benefits, including the level of acceptance and adoption of dynamic, hourly or sub-hourly rates from customers of different income levels. Severin Borenstein, in a 2009 article, states that some customers would be winners and others would be losers with a switch to dynamic rates. He elaborates that those customers who consume disproportionate quantities at the most expensive times are being subsidized

under time-invariant rates and may be worse off if they cannot adjust their consumption substantially under dynamic rates.¹⁷

4.3.3 Technological Feasibility

Technological feasibility is the third evaluation factor for dynamic rates. SDCP's evaluation assesses the technological feasibility of implementing dynamic rates for all customers on the schedule specified in the LMS requirements and considers the feasibility of both the technology systems needed to support implementation of dynamic rates and to the external customer technology that is needed to enable response to hourly or sub-hourly signals. Since SDCP is a CCA that isn't the Meter Data Management Agent ("MDMA"), SDG&E is in control and responsible for a significant portion of the technology systems' updates and rollout required to implement dynamic rates that overlap both organization's service areas.

4.3.3.1 Technology Systems

The primary technology systems needed to support dynamic rates include advanced metering infrastructure ("AMI"), SDCP and SDG&E's Customer Relationship Management software, and SDCP's and SDG&E's billing system software. SDCP also relies on additional applications from external vendors to develop customer educational tools and is working with these providers to provide functionality to communicate with and control enabling technologies, in the future. The following provides a feasibility assessment of each technology component:

- SDG&E's meters can provide hourly interval data for residential customers and sub-hourly interval data for non-residential customers. An assessment of the AMI network communication infrastructure is likely to be required to identify if additional equipment needs to be installed to support the increased volume. SDCP will coordinate with SDG&E to avoid any disruptions to customers.
- SDCP will coordinate with SDG&E regarding any necessary billing system configuration changes. SDCP anticipates it will be necessary to develop enhancements to SDG&E's online tools and services to help customers understand any new rates and rate changes holistically.
- Updating existing customer tools and developing new tools would be key to supporting a positive customer experience when implementing dynamic rates. SDCP will engage not only with external vendors on relevant existing tools but also SDG&E to assess the technological feasibility of and timeframes necessary to develop and/or modify existing tools to support dynamic rates.

In sum, SDCP anticipates that collaboration and coordination with SDG&E and external vendors will be critical to successfully implementing dynamic rates. SDCP will work with parties to assess enhancements, upgrades, and additional functionality that will be needed to ensure the optimal benefits realization of dynamic controls and a positive customer experience.

¹⁷ *Electricity Pricing that Reflects Its Real-Time Cost*, Severine Borenstein, March 2009, <https://www.nber.org/reporter/2009number1/electricity-pricing-reflects-its-real-time-cost>.

4.3.3.2 Enabling Customer Technology

Realizing that the potential incremental benefits of dynamic rates depend on customer participation and the widespread availability of devices and technology that can support real time response to hourly or sub-hourly price signals; SDCP is in the process of assessing technologies with this kind of capability to include in future customer programs. The following is a list of common load flexibility technologies in SDCP's and SDG&E's service area. SDCP anticipates these same technologies would be needed to respond to new dynamic rates.

- Wi-fi enabled smart thermostats is the most widely adopted load flexibility technology. These devices can receive and respond to dispatch signals within 15-30 minutes. Utilities and CCAs rely on day-ahead and/or more real-time marginal costs and system conditions to inform the dispatch of resources in load flexibility programs.
- Battery energy storage systems are being adopted with increasing frequency by both residential and non-residential customers, particularly as an add-on to solar photo-voltaic ("PV") installations. Batteries have much greater ability to be dispatched on short notice, and SDCP is currently designing a program to accelerate this adoption and reduce the payback period for solar plus storage deployments through upfront financial and on-going performance incentives.
- Air conditioning ("AC") switches are one of the oldest distributed resource technologies and have been deployed since the 1970s. These switches are included in various demand flexibility programs across the utilities and CCAs.
- Electric vehicles ("EVs") are an emerging source of load flexibility. There is significant potential for further growth given statewide goals for zero emissions vehicles by 2030. SDCP is assessing potential future charging programs that include sending hourly price signals to participating EVs.

SDCP's future programs, utilities and CCAs' existing programs will inform SDCP's understanding of how to most effectively engage with customers with behind-the-meter devices, considering different technologies, customer needs and preferences, and other factors. SDCP anticipates future programs will help increase the acceptance and adoption levels of enabling technologies as well as testing their response to utility signals and dispatch whereby the results of these programs will also inform future consideration of dynamic rates.

4.3.3.3 Discussion

Based on the evaluation of available information, SDCP believes the technology exists to implement some level of dynamic rates on the LMS timeframe. However, the capabilities of enabling behind-the-meter device technology, along with the impacts on customer experience, are still being tested and developed. SDCP believes that reassessing the technological feasibility of dynamic rates after evaluating pilot study results and future programs would better inform the likelihood of positive customer acceptance and material load shift benefits.

SDCP anticipates coordination with SDG&E and external vendors on implementing any necessary changes to internal systems, with the necessary infrastructure deployments and system configuration implementations. Additional time to enhance the billing experience, develop customer tools, and enhance DER functionality and control would create a better experience, improve the likelihood of

acceptance of the new rates, and support improved realization of both customer and grid benefits in alignment with LMS desired outcomes.

4.3.4 Benefits to the Grid and Customers

The final two criteria for evaluating dynamic rates are benefits to the grid and benefits to customers. SDCP evaluates the two factors simultaneously because many benefits to the grid also have pass-through benefits to customers. SDCP evaluates each benefit by considering the expected effectiveness of the rate design and the expected adoption rate. The following is a summary of anticipated grid and customer benefits associated with implementation of new dynamic rates on the timeframe specified in the LMS requirements.

- An effective rate design that delivers meaningful, dependable load shift in response to hourly or sub-hourly signals is critical to capture benefits of avoided capacity costs, in terms of reduced new generation capacity or procurement. Shifting demand away from peak periods also has the potential to increase grid reliability. As further discussed in this Plan's section 4.3.1.2.2.3, SDCP is unable to conclude that implementing dynamic rates would result in incremental capacity cost savings, given the uncertainty around design effectiveness, adoption levels, and the magnitude of load shift potential.
- An effective rate design that encourages customers to shift from high-cost, high-GHG periods to lower-cost, lower-GHG periods is instrumental to capture the benefits of avoided energy costs. This allows for more efficient use of cheaper renewable energy when it is generated and reduces the higher costs of fossil-fueled energy associated with serving peak load. However, as further discussed in the Plan's section 4.3.1.2.2.3, SDCP cannot conclude that implementing dynamic rates would result in incremental avoided energy costs.
- As distributed energy resources ("DERs") programs are still in pilot stages across the state, how they and rate designs impact the need for various transmission and distribution services is still uncertain. With limited available information, SDCP cannot conclude that dynamic rates will result in any transmission and/or distribution savings.
- To the extent that dynamic rates can shift energy use from peak time periods in which fossil fueled resources serve load to time periods with greater renewable energy generation, there is the potential for reduced compliance costs for GHG emissions. Reducing grid thermal operations and/or limiting market purchases when the grid has a greater carbon intensity can save costs for SDCP's customers.

However, any incremental GHG cost savings depend on the realization of incremental reductions in capacity needs and/or in energy purchases during high-cost/high-GHG periods. GHG cost savings benefits are uncertain because SDCP is unable to conclude that implementing dynamic rates would result in material incremental load shift. In addition, as SDCP gets closer to achieving a 100 percent renewable energy supply, SDCP anticipates increasingly less difference between the GHG emissions profiles of resources serving customers during the peak and in periods of lower demand.

- Potential air quality, public health, and environmental benefits associated with dynamic rates depend on if such rates can successfully reduce capacity needs or energy purchases during time

periods when the grid has a higher carbon intensity. SDCP cannot conclude that a material incremental increase in these benefits will accrue on the timeline specified in the LMS requirements.

- Through dynamic rates, customers have the potential to lower their energy costs by shifting their peak hour usage. However, customers take on the full risk of market price fluctuations, which could have severe impacts on customer bills especially during times of extreme market volatility. If high prices are sustained over a long period of time, customers may not be able to shift energy use to prevent excessively large bills. As an example, during the May 25, 2021 Advanced DER and Demand Flexibility Management Workshop, SDG&E expressed the concern that while wholesale prices are effective at balancing supply and demand, they may cause unintended consequences during extreme scarcity events. SDG&E cited the example of the negative experience of Texas residential customers on wholesale prices.¹⁸
- SDCP strives to maintain a delicate balance between multiple objectives as described in its Rate Development Policy. When designing rates, one priority is to emphasize rate-design simplicity, comparability, and transparency. Dynamic rates could be very complex and difficult for customers to understand. Thus, leading to confusion and potential negative bill impacts, particularly if SDCP does not have sufficient time to fully educate customers on the potential benefits and risks of marginal cost-based rates.

4.3.4.1 Discussion

Based on the evaluation of available information, SDCP is unable to conclude that implementing dynamic rates on the timeframe specified in the adopted LMS amendments would yield material incremental benefits to the grid or to customers. Important takeaways from the Lawrence Berkeley National Laboratory white paper emphasized that sufficient resources must be devoted to developing and implementing a customer education program and customers need help understanding and managing price risk.¹⁹

Another team of Lawrence Berkeley National Laboratory researchers interviewed 29 customers in the Niagara Mohawk Power Corporation service territory with day-ahead dynamic prices in 2004. The study specified that reasons customers gave for why they were not price-responsive included implicit value placed on reliability, pricing structures, lack of flexibility in adjusting production inputs, just-in-time practices, perceived barriers to onsite generation, and insufficient time.²⁰

Therefore, a premature introduction of dynamic rates may cause confusion and shift additional market price risk onto customers, creating a negative customer experience that may hinder adoption of both the new rate and longer-term load flexibility initiatives. A hurried implementation of a complex and untested dynamic rate structure is likely to result in costs, rather than benefits, to the grid and to customers.

¹⁸ *Advanced Strategies for Demand Flexibility Management and Customer DER Compensation*, California Public Utilities Commission, June 22, 2022, page 103.

¹⁹ *A Survey of Utility Experience with Real Time Pricing*, Lawrence Berkeley National Laboratory and Neenan Associates, December 2004, ES-9.

²⁰ *Real Time Pricing and the Real Live Firm*, Lawrence Berkeley National Laboratory, August 2004, page 1.

4.3.5 Compliance Approach

Based on the results of this evaluation, SDCP plans to continue offering the existing portfolio of time-dependent rates. SDCP regularly reviews its rates, including cost-effectiveness. SDCP also plans to implement new load flexibility programs and pilots that will help the organization better understand how best to engage with behind-the-meter customer devices. With additional information and results, SDCP can consider developing a dynamic rate pilot rate for one or more customer classes in the future.

Therefore, SDCP will defer developing and proposing adoption of new dynamic rates beyond July 1, 2025, and offering voluntary participation in any such rates beyond July 1, 2027. Based on available information, SDCP cannot conclude that proposing and implementing dynamic rates, as proposed in the LMS requirements' timeline, would be cost-effective, provide equity benefits, be technologically feasible, and/or or yield any cost savings or emissions-related benefits to the grid and to customers. The risks of premature implementation can adversely impact participating customers' bills, the overall customer experience, and even SDCP's image and reputation.

SDCP plans to reassess the timeline for proposing and implementing dynamic rates no later than the triennial review of the Plan. The Plan review will also include potential updates to qualitative and quantitative evaluations for cost-effectiveness, equity, technological feasibility, and benefits to the grid and to customers.

5. Load Flexibility Programs

The adopted LMS amendments recognizes that load flexibility programs may provide an alternative pathway to achieve the objectives of encouraging off-peak energy usage, controlling peak load to improve reliability and system efficiency, lessening, or delaying the need for new capacity, and reducing fossil-fuel consumption.

Adopted LMS amendments section 1623.1(a)(1)(B) requires each Large CCA to propose and evaluate programs that enable automated responses to marginal cost-based signals for each customer class, if the Large CCA does not propose the development of marginal cost-based rates. The programs must be evaluated based on cost effectiveness, equity, technological feasibility, benefits to the grid and to customers.

Adopted LMS amendments section 1623.1(b)(3) requires each Large CCA to submit a list of cost-effective MIDAS-integrated load flexibility programs to the CEC Executive Director by October 1, 2024. The portfolio of load flexibility programs must provide at least one option to automate response to MIDAS signals (that indicate, for example, hourly marginal cost-based rates, marginal prices, or hourly or sub-hourly GHG emissions) for every customer class where such a program is determined by its rate-approving body to materially reduce peak load.

Finally, each Large CCA is required to offer customers, by July 1, 2027, voluntary participation in a dynamic hourly rate, if approved by its rate-approving body, or a cost-effective MIDAS-integrated load flexibility program identified according to section 1623.1(b)(3).

The following section of SDCP's Plan provides an overview of SDCP's current and in-development future load flexibility programs and addresses the LMS requirement to evaluate and propose specified programs on the timeframes. It also addresses the requirement to submit a list of cost-effective MIDAS-integrated load flexibility programs to the CEC.

5.1 Overview of SDCP Load Flexibility Programs

Load flexibility is a key strategy in helping SDCP achieve its 100 percent renewable energy goal, by enabling customers to be part of the strategy in reducing procurement needs. SDCP is developing several leading-edge and innovative options for customers.

SDCP is focused on establishing and offering new load management programs because they are simple, effective, flexible, and potentially allow for SDCP to make rapid progress in unlocking peak load reduction potential. SDCP is working to innovate with technology and software providers to advance functionalities that will enable broad participation and maximize potential resources, optimized for customer and grid needs. When designing programs, SDCP strives to tailor its offers to specific customer segments and/or needs to maximize responsiveness beyond just price alone. SDCP analyzes data to identify where the need is to design programs that have the greatest potential for mutual benefits to customers and to SDCP. Piloting multiple approaches is a key strategy for SDCP. Pilot study results inform future program designs and the technology needed to scale adoption. SDCP's in development program portfolio includes a portfolio-level Distributed Energy Resource Management ("DERMS") deployment that will, in time, serve as the central point of control and dispatch for a range of load flexibility program offerings, which may include residential, C&I, and agricultural customer classes. In the near term, SDCP is developing specific offerings related to residential load flexibility and electric vehicle managed charging. The following section of the Plan provides a list of planned programs offerings that will test for reliability, load reduction, and customer adoption.

5.1.1 Residential Programs

5.1.1.1 Building Flexible Load Pilot

A major programmatic effort for SDCP in calendar year 2024 is the launch of a Building Flexible Load Pilot focused on major end uses in the residential sector. The pilot plan is to procure a DERMS platform in 2024, then begin enrollment of customers with existing or newly installed grid enabled devices, such as smart thermostats, water heaters, electric vehicle service equipment ("EVSE" or Level II chargers), and pool pumps. The pilot will include upfront incentives for initial device registration and enrollment, as well as ongoing incentives for continued device enrollment and control. Enrolled devices will be dispatched daily based on the host customer's time of use TOU rate schedule. This dispatch strategy will shift loads away from on-peak periods, resulting in lower bills for program participants, as well as lower energy procurement costs and a reduced resource adequacy ("RA") obligation for SDCP. In addition to TOU-based dispatch, SDCP will assess additional optimization pathways, such as day-ahead prices, forecasted weather, and grid conditions. It is SDCP's intent to scale the programmatic and software architecture developed through this pilot to include subsequent activities, including enrollment of flex load devices deployed through the planned Regional Energy Network and Residential Building Electrification Programs.

5.1.1.2 Solar + Storage Program

SDCP is also seeking Board approval to launch a solar and storage program targeting single-family residential homes within SDCP territory that do not already have storage or solar plus storage in early 2024. This program is designed to help with the transition from Net Energy Metering ("NEM") to Net Billing Tariff and support the solar and storage industry. The program will include an upfront incentive

to overcome the initial cost or reduce monthly loan/lease payments and a performance incentive to motivate customers to dispatch their batteries daily during peak periods to align with times when energy costs are high. The program will allow customers to optimize their solar plus storage system according to NBT and to maximize their benefits. Over time, SDCP plans to bring these battery assets under the portfolio wide DERMS deployment and co-optimize battery charge/discharge with Building Flexible Load device dispatch. The DERMS platform can dispatch “active” events, which would override the daily dispatch schedule when the price of power is high based on day-ahead forecasting to further maximize peak load reduction, while ensuring customer bill savings.

5.1.2 Managed Electric Vehicle Charging Programs

Electric vehicle charging is a large and growing load for SDCP’s and, consequently, a major focus of residential flexible load pilot work. SDCP plans to launch a residential managed charging pilot in mid-2024, focused on the use of vehicle telematics to align vehicle charging with host customer time of use rates. As with the Building Flexible Load pilot, customers will be paid an upfront incentive for vehicle enrollment, as well as an ongoing incentive for remaining in the program. Also like the Building Flexible Load, the pilot will include an assessment of additional optimization pathways, such as day-ahead prices, forecasted weather, and grid conditions. In addition, SDCP is considering the inclusion of a small-scale vehicle-to-everything (“V2X”) demonstration under the Managed Charging umbrella. This pilot element will optimize charging around TOU rates, like the core program, and include an assessment of battery discharge strategies ranging from minimizing onsite load to grid export. Additionally, the pilot will explore the economic and technical viability of automated dispatch from the CEC MIDAS database.

5.2 Evaluation of Programs

For a relatively young organization, SDCP is in the process of developing a robust portfolio of programs, including load flexibility, that strikes the right balance between customer needs and grid benefits. As summarized above, this portfolio is focused initially on the residential customer segment and exploring various dispatch signals, including automated response. These signals are based on several factors, including day-ahead marginal prices. The program development process will include collaborating with external vendors to build a technology platform that can optimize and automate dispatch of DERs.

The next section of the Plan evaluates the cost-effectiveness, equity, technological feasibility, and benefits to the grid and to customers of implementing programs that enable automated response to dispatch signals, including MIDAS signals, year-round, that are available to every customer class by July 1, 2027. Without program results at this time, SDCP cannot quantify the magnitude of peak load reduction and/or other benefits can be provided through programs that enable automated dispatch based on MIDAS signals.

5.2.1 Cost-Effectiveness

The first evaluation factor is cost-effectiveness. SDCP will assess cost-effectiveness of new programs by comparing the estimated costs and incremental benefits associated with designing and implementing new load flexibility programs that allow for response to dynamic price signals, including MIDAS signals, year-round. For a program to be cost-effective, the expected benefits must exceed the costs of design and implementation.

5.2.1.1 Estimated Costs

The costs associated with implementing a new load flexibility program include program development, implementation, and administration costs. SDCP anticipates these cost categories would apply, regardless of customer class.

- Program development costs include the costs associated with program design and setup, including integrating new programs with the CEC's MIDAS database and any applicable technology platform to the extent feasible.
- Program administration costs include ongoing costs to administer the program such as marketing, customer recruitment, customer education, development and maintenance of customer tools, and any upfront or ongoing incentive payments that are part of the design.
- Technology and implementation costs include any external software systems that must be procured to communicate with and dispatch devices, as well as internal systems which must be developed and configured to integrate the external software. New load flexibility programs may require significant investments in new technology platforms.

5.2.1.2 Estimated Benefits

The following section describes the potential benefits associated with implementing programs that allow for automated response to dynamic price signals, including MIDAS signals, and the estimated realization of such benefits based on the additional load shift capacity available to be captured.

5.2.1.2.1 Potential Benefits

The potential benefits associated with implementing programs that achieve incremental load shift include avoided capacity and energy costs, improved reliability during peak periods, avoided GHG compliance costs, and avoided air quality, public health, and environmental costs associated with a reduction in fossil-fuel generation, consistent with the benefits discussed in Section 4.3.4.6. These potential benefits are not unique to programs implemented for any one customer class.

5.2.1.2.2 Realization of Benefits

There are several uncertainties and barriers associated with realizing the above-identified incremental load shift potential and its associated benefits. SDCP expects these barriers and uncertainties to apply across residential, C&I, and agricultural customer classes. These uncertainties and barriers are summarized as follows:

- While there has been a rapid increase in the number of devices on the market that are able to automate load reductions, SDCP is not aware of any devices capable of effectively responding to real-time signals without significantly compromising customers' daily activities. Battery storage, EVs and even thermostats all require advance notice to meet customer needs.
- Removing the limits on how many program events can be called may bring additional load flexibility to utilities and CCAs, but frequent device dispatch without first understanding the impacts on customer experience runs the risk of eroding participation and satisfaction in the program.

- SDCP anticipates that directly exposing participants to market prices could result in deeper load reductions, to the extent that increasing prices drive customers to shift more load away from the peak. However, the magnitude of additional load reduction as a function of price is not yet known. In addition, higher customer risk with dynamic prices is likely to reduce participation and benefits.
- SDCP anticipates that new programs would have to tap into load shift on 5- to 10- minute intervals to create incremental benefits relative to our programs and it is not yet known whether the issuance of multiple price signals over a peak period, or higher prices over the same period, would result in material incremental benefits, compared to existing programs.

5.2.1.2.3 Expected Incremental Benefits

Based on the above factors, following is a discussion of expected incremental benefits associated with programs that allow for automated response to dynamic price signals:

- The primary value stream for SDCP's load flexibility programs will be avoided RA procurement. To the extent a given program can generate MWs that meet the resource characteristics needed to avoid RA procurement, these avoided costs can be credited against the costs associated with implementing the program. While programs that expose customers to dynamic price signals may drive incremental load reductions when prices are highest, it is unknown how much and how reliable that incremental reduction would be, and how it would be credited under the current RA framework. Moreover, the magnitude of the load shift depends on significant adoption and acceptance of enabling technology.
- To the extent that new program structures and technology allow for faster load shift in response to short price spikes or drive greater load shift away from peak periods, SDCP could see reductions in energy purchase costs, but this is currently not yet known. Future program design will seek to maximize the energy savings associated with customer load flexibility, balanced against technological capability, customer acceptance, and impact on the overall energy system.
- Given uncertainties around customer response to dynamic price signals and current penetration of enabling technology, SDCP is unable to determine whether there would be secondary benefits (reliability benefits, avoided transmission and distribution costs, avoided GHG compliance costs, avoided public health, air quality, and environmental costs) associated with further reducing demand during peak periods from programs with automated response to hourly price signals versus existing programs.

5.2.1.3 Discussion

Based on the foregoing evaluation, SDCP cannot conclude that the development of new programs that allow for automated responses to dynamic price signals would be cost-effective at this time. SDCP will incur new programs' costs associated with design, implementation, and new technology investments. While these costs could potentially be offset with capacity and/or energy cost savings, the magnitude of those benefits are uncertain.

In addition, SDCP anticipates that any incremental benefits will be limited in the near-term, while new technology is continuing to grow. SDCP will continue to assess the expected incremental costs and

benefits associated with incorporating more dynamic price signals and/or allowing resources to be dispatched by MIDAS signals, as SDCP develops and potentially implements new programs.

5.2.2 Equity

The second criterion for evaluating new programs is equity. SDCP qualitatively evaluates whether programs that enable automated response to dynamic prices, including MIDAS signals, are likely to lead to equitable outcomes.

5.2.2.1 Equitable Access to Direct Benefits

When designing any program, SDCP ensures that all aspects of program design take equity into account. SDCP has committed to equity and the specific strategies for addressing it in SDCP's Community Power Plan ("CPP"). The CPP was created to provide strategic direction for developing customer energy programs that respond to community needs, with a focus on underserved communities and equity.

In accordance with the CPP, SDCP is committed to include equity as a core principle when designing programs that allow for response to dynamic signals, given the current access barriers and risk of price exposure that may disproportionately be experienced by lower income customers and customers from our communities of concern.

5.2.2.2 Equitable Access to Indirect Benefits

Program design also plays a major role in determining whether a program delivers incremental load shift benefits and results in cost savings and improved air quality, public health, and environmental outcomes that accrue to all customers. The realization of any indirect benefits is uncertain because SDCP cannot quantify load shift benefits that dynamic price signals would result.

5.2.2.3 Discussion

Based on the foregoing evaluation, SDCP is unable to conclude that implementing new programs that allow for automated response to dynamic price signals, including MIDAS signals, would materially address equity. Programs can be designed to ensure equitable access to participation and benefits regardless of if the programs incorporate sending dynamic signals directly to customers. Furthermore, the risk of price exposure from dynamic rates could potentially exacerbate inequities in outcomes.

5.2.3 Technological Feasibility

The third evaluation factor for programs is technological feasibility. SDCP's evaluation assesses the technological feasibility of implementing programs that allow for automated response to dynamic price signals on the schedule specified in the LMS requirements. SDCP's evaluation considers the feasibility of both the systems needed to dispatch dynamic price signals, including MIDAS signals, and to the external customer technology that is needed to enable response to hourly or sub-hourly signals.

5.2.3.1 SDCP's Technology Systems

As described previously, SDCP will coordinate and collaborate with external vendors and SDG&E to ensure technological platforms are configured to implement new programs. SDCP has started discussions with multiple parties in assessing whether it is technologically feasible to incorporate programs that enable automatic response to dynamic price signals, including MIDAS signals, into current platforms.

5.2.3.2 Enabling Customer Technology

The incremental benefits derived from implementing new programs that allow for response to dynamic price signals depend on customer participation and the widespread availability and acceptance of devices that can respond to sub-hourly price signals without compromising customer experience. Refer to Section 4.3.3.2 for a detailed description of common load flexibility technologies that are deployed across the state, and their capabilities and challenges.

5.2.3.3 Discussion

SDCP is uncertain whether the technology and platforms needed to enable programs that allow for response to dynamic price signals exist or could be updated on the LMS requirements' timeframe, given close coordination and collaboration with external vendors and SDG&E will be required. However, SDCP has started discussions with those parties on technological feasibility in anticipation of developing and offering programs with enabling device automation technology.

5.2.4 Benefits to the Grid and Customers

The final two criteria for evaluating dynamic rates are benefits to the grid and to customers. SDCP is evaluating these factors separately, in contrast to the previous dynamic rates evaluation.

5.2.4.1 Benefits to the Grid

To the extent that new programs enabling responses to dynamic price signals result in consistent, material incremental load reduction, the following are potential grid benefits:

- Deferred or reduced need for new generation capacity or RA procurement.
- Deferred or reduced need for wholesale energy purchases to meet peak demand.
- Deferred or reduced need to upgrade transmission and/or distribution capacity to deliver energy to meet peak demand.
- Increased reliability is associated with reducing grid strain during periods of peak demand.

These benefits all depend, in significant part, on the magnitude of load shift resulting from new programs. Mutual benefit is necessary for effective, consistent load shift. With limited available information, SDCP is unable to quantify load shift benefits of new MIDAS-integrated programs.

5.2.4.2 Benefits to Customers

The following is a summary of potential customers benefits associated with implementing new programs that allow for automated response to dynamic price signals:

- Pass-through cost savings associated with the realization of a reduced need for generation capacity, transmission and/or distribution upgrades, and higher-price wholesale energy purchases to meet peak load.
- Pass-through cost savings associated with avoided GHG compliance costs, to the extent that the incremental load shift reduces the need to rely on fossil-fuel resources to meet peak demand. SDCP anticipates these savings will become less significant as SDCP's energy supply transitions towards 100 percent renewable.

- Pass-through increased reliability, to the extent this grid benefit is realized.
- Improved public health, air quality, and environmental outcomes, to the extent that the incremental load shift reduces the need to rely on fossil-fuel resources to meet peak demand.
- Cost savings associated with participation, to the extent that devices automatically shift load away from higher price periods.

Based on the uncertainty of the magnitude of load reduction benefits that the new programs can achieve, SDCP is unable to conclude that there would be any incremental pass-through cost savings or reliability benefits to customers. Similarly, SDCP anticipates that any incremental air quality, public health, and environmental benefits would also be uncertain.

5.2.5 Compliance Approach

The following section of the Plan describes how SDCP plans to address the requirements to identify cost-effective programs that allow for automated response to dynamic price signals and offer customers voluntary participation in these programs, based on our evaluation of such programs.

5.2.5.1 Identification of Cost-Effective Load Flexibility Programs

Consistent with the LMS requirements, SDCP will submit to the CEC, no later than October 1, 2024, a list of cost-effective load flexibility programs that enable automated response to MIDAS signals for each customer class, if any, where such a program is determined by SDCP's Board to materially increase peak load reduction. Based on available information, SDCP is unable to determine that adding new programs that allow response to MIDAS signals would materially reduce peak load for any customer class or exceed the costs of implementation. SDCP will continue to evaluate the cost-effectiveness and incremental peak load reduction potential associated with incorporating automated response to MIDAS signals.

5.2.5.2 Voluntary Participation in Cost-Effective Load Flexibility Programs

SDCP is currently developing load flexibility programs that may offer customers voluntary participation. However, SDCP is unable to demonstrate that offering such programs beginning on July 1, 2027 would be cost effective. SDCP will continue to assess the cost-effectiveness and peak load reduction potential of programs that enable automated response to MIDAS signals as more information becomes available.

6. Public Information Program

Adopted LMS amendments section 1623.1(a)(5) requires each large CCA to conduct a public information program to inform and educate impacted customers about dynamic rates and/or load flexibility programs. Specifically, the information program must explain why dynamic rates or load flexibility programs, and their automation, are needed, how they will be used, and how they lower energy costs. This section of the Plan addresses how SDCP will comply with the public information program requirements.

6.1 SDCP's Communication Approach

As a community-driven local electricity provider, SDCP is committed to broad customer outreach and education, communication, and customer service. SDCP provides its customers with the information, education, and tools to best manage their energy use according to their needs.

SDCP communicates through a wide variety of channels, including our website, social media, in-person, and direct mail to help ensure customers are aware of SDCP more broadly and specifically about available time-dependent rates and load flexibility programs, and their benefits.

As part of our commitment to customer access and education, SDCP formally established a Language Access Policy to ensure that customers can access information and materials in their preferred language. SDCP's customer service agents regularly interact with customers over the phone and email to address questions and concerns and resolve issues. We strive to empower our customers with comprehensive information, education, and tools tailored to meet their unique energy needs.

SDCP has developed a comprehensive and customer-centric communication strategy that recognizes the unique customer segments that SDCP serves. This strategic approach is designed not only to disseminate information but to empower our customers, enabling them to make well-informed decisions aligned with their individual needs. Through our website, customers have access to a centralized hub of resources, where they can find detailed information and educational materials tailored to enhance their understanding of SDCP as an organization, energy efficiency, and time-dependent rates. Our active presence on various social media platforms amplifies our engagement, providing a space for interactive communication and real-time updates. In the spirit of transparency, SDCP maintains regular communication with regional media, providing factual and timely information to the broader public.

SDCP's communication and community outreach efforts reflect the diverse communities we serve, so a broad mix of communication channels is used to reach all customers. This includes in-person outreach in the community at public events with information and resources available to the attendees. SDCP regularly participates in events across our member agencies as we aim to increase general awareness and answer questions in a friendly, helpful manner. In addition to community outreach, SDCP consistently sponsors large events throughout the greater San Diego region to increase general brand awareness.

6.2 Current Outreach and Marketing

SDCP recognizes the importance of collaboration and public outreach. SDCP has engaged in a variety of public relations, marketing, community outreach, and local government affairs activities to drive energy awareness and education, spark community engagement, and maintain high customer enrollment. We work closely with internal and external stakeholders to encourage participation in programs and leveraging relationships with community partners to amplify our marketing and outreach efforts.

As noted above, SDCP's commitment to broad, in-person outreach and engagement is critical to our efforts. In 2023 SDCP participated in over 70 in-person events throughout our service territory which created the opportunity for approximately 250,000 interactions.

Having recently completed mass enrollment, SDCP has expanded marketing efforts to continue to educate our customers about SDCP and specifically, on the simple actions they can take to limit energy

use during times of peak use. Energy tips and education around time-dependent rates can be found across our digital communication channels and in printed materials, including the Power Content Label mailer, which serves as an annual touchpoint with customers. This approach has expanded to digital efforts in both organic and paid social media, and into other marketing efforts, including a year-long sponsorship agreement with San Diego Magazine across print and digital channels and other local print and television outlets.

To achieve decarbonization goals, SDCP will continue to educate customers on the benefits of peak load reduction through time-dependent rates and load flexibility programs, how they work and how they can save the customers money. SDCP will continue to develop new strategies, processes and capacity to conduct more community outreach, expand marketing and brand awareness efforts, and provide timely, accurate information across multiple channels.

6.3 Compliance Approach

SDCP will continue with communication best practices to maintain its outreach, education, and marketing of rates, programs, and pilots that support load flexibility and recognize the benefits of reducing peak load. In parallel, SDCP will also update education and marketing materials to incorporate discussion of new rates, programs, and pilots, along with the role of automation.

7. Delay and Modification of Compliance Requirements

Adopted LMS amendments section 1623.1(a)(2) of the LMS regulation specifies that a Large CCA may approve a compliance plan, or material revisions to an approved plan, that delays or modifies compliance with certain LMS requirements. To do so, the compliance plan must demonstrate one of the following factors:

- That despite good faith efforts to comply, requiring timely compliance would result in extreme hardship.
- Requiring timely compliance would result in reduced system reliability, equity, safety, or efficiency.
- Requiring timely compliance would not be technologically feasible or cost-effective to implement.
- Or despite good faith efforts to implement a compliance plan, it must be modified to provide a more technologically feasible, equitable, safe, or cost-effective way to achieve the LMS requirements or the plan's goals.

This section of the Plan addresses how SDCP's Plan delays or modifies compliance with certain elements of the LMS requirements.

7.1 Providing RINs to Customers

Adopted LMS amendments section 1623(c)(4) requires each Large CCA to provide customers access to their RIN(s) on billing statements and in online accounts by April 1, 2024, using both text and QR code. As detailed in section 3.1.2 of this Plan, SDCP plans to make the RINs available to customers in the

required formats within the designated time and SDCP has already begun engaging with appropriate parties, including SDG&E, on the necessary changes.

SDG&E has complete control of both paper and electronic billing statement designs. While SDCP does not anticipate needing to modify the RIN access requirement at this time, based on the scope of work and estimated completion timelines, compliance could be delayed if, for example, SDG&E's current bill design constrains the inclusion of the RIN in text and/or QR code, and the redesign cannot be timely completed, tested, and implemented by the same deadline. In such circumstances, SDCP would need to modify the deadline for providing RINs to customers in both text and QR code because implementing this requirement by April 1, 2024, would not be technologically feasible.

7.2 Statewide RIN Access Tool

7.2.1 Development of Statewide Tool

Adopted LMS amendments section 1623(c) requires the utilities and Large CCAs to develop a single statewide standard tool for authorized rate data access by third parties, along with a single set of terms and conditions for third parties using the tool, for submission to the CEC by October 1, 2024, for approval.

As discussed in section 3.1.3, SDCP plans to collaborate with the parties and has committed staff to participate in the working group. While SDCP anticipates that developing a single statewide tool that can perform the specified requirements and integrate with each load serving entity's system will be a challenging and complex task, at this time SDCP intends to comply with the requirement. Because the tool development requirement is jointly held by the utilities and Large CCAs, SDCP is optimistic that significant progress will be made and does not seek to delay or modify this requirement within this Plan. Should the need for an extension arise, SDCP anticipates that the parties would approach the CEC Executive Director collectively in accordance with section 1623(c)(2)(B) of the LMS, which allows the CEC Executive Director to extend the submission deadline upon a showing of good cause.

7.2.2 Implementation of Statewide Tool

Adopted LMS amendments section 1623(c)(3) also requires the utilities and Large CCAs to implement and maintain the tool, upon its approval by the CEC. SDCP does not anticipate needing to modify compliance with this requirement currently. However, SDCP notes that integration of the approved tool with internal systems could be delayed if the development and/or CEC approval of the tool are delayed, because integrating the tool before it is finalized and approved would not be technologically feasible, or if the cost of integrating the tool would cause extreme hardship for SDCP or SDCP's customers.

7.3 Dynamic Rates

Adopted LMS amendments section 1623.1(b)(2) directs each Large CCA to apply for approval of at least one dynamic rate for the customer class(es) from its Board by July 1, 2025, for which the Board determines such rate will materially reduce peak load. Section 1623.1(b)(4) requires CCAs to offer customers voluntary participation in such a rate or a specified load flexibility program by July 1, 2027.

As discussed in Section 4.3, based on its evaluation of dynamic rates, SDCP cannot currently conclude that developing and implementing such rates on the LMS timeframe for any customer class would result in material reductions in peak load or be cost effective. This is due to the following:

- Delayed SDG&E service area dynamic rate pilots, and corresponding data, to evaluate peak load reduction and cost-effectiveness.
- There is a significant market risk to customers on dynamic rates, even with enabling load-shifting technology.
- Customers understand time-dependent rates and programs better than a dynamic, market-based rate that fluctuates hourly.

While dynamic rates have the potential to provide incremental load shift and related benefits, there are significant uncertainties in the magnitude of such benefits. Without evaluation data from SDG&E service area dynamic rate pilots, it is incredibly difficult to quantify incremental load shift benefits and cost-effectiveness of dynamic rate implementation. In addition, implementation of unfamiliar and complex rate structures without sufficient testing and refinement of new rate designs, as well as thorough education, is likely to cause customer confusion, risking low adoption and limiting any incremental load shift benefits. The realization of incremental load shift benefits is made more uncertain by additional risks customers may bear with dynamic rates, especially if new enabling technology is not widely adopted.

While SDCP is not required to propose dynamic rates where such rates are not determined to materially reduce peak load, SDCP has determined that, for the reasons set forth in this Plan, the LMS requirements must be modified to provide a more cost-effective and technologically feasible way for SDCP to, in good faith, meet the LMS requirements and achieve the LMS goals. Thus, SDCP proposes to modify the dynamic rate requirements of the LMS to defer the development or proposal of new hourly or sub-hourly rate options, and offering new rates to SDCP's customers would be likewise deferred. SDCP believes proposing dynamic rates to our Board by July 1, 2025, to implement them by July 1, 2027, is premature. SDCP will continue offering our suite of time-dependent rates while gathering information for analysis once data is available from dynamic rate pilots in SDG&E's service area. The results of the pilots will help SDCP better understand the effectiveness of the pilot approach, how customers with different technologies respond to different dispatch signals, and to what extent incremental load shift opportunities exist beyond existing time-dependent rates and programs. As SDCP receives and analyzes results from those pilots, SDCP will be better positioned to evaluate the cost-effectiveness and flexibility of dynamic rates. SDCP will review dynamic rates in the next Plan update.

7.4 Dynamic Response Load Flexibility Programs

7.4.1 Identification of Cost-Effective Load Flexibility Programs

Adopted LMS amendments section 1623.1(b)(3) requires each Large CCA to submit a list of cost-effective MIDAS-integrated load flexibility programs to the CEC Executive Director by October 1, 2024. The portfolio of load flexibility programs must provide at least one option to automate response to MIDAS signals (that indicate, for example, hourly marginal cost-based rates, marginal prices, or hourly or sub-hourly GHG emissions) for every customer class where such a program would materially reduce peak load.

As discussed in Section 5.3, adding or modifying programs to allow response to MIDAS signals has not yet been determined to result in material incremental reductions in peak load for any customer class or to be cost effective. This is in part due to the uncertainties in incremental peak load reduction potential

and customer acceptance when introducing hourly or sub-hourly price signals and exposure to market price spikes and volatility.

SDCP is required to identify MIDAS-integrated dynamic load flexibility programs for customer classes where such programs are determined to be cost-effective and materially reduce peak load. SDCP anticipates submitting a list that includes planned load flexibility programs and pilots that achieve LMS goals without automated response to MIDAS signals, by October 1, 2024, because SDCP's evaluation has not concluded that developing and implementing programs or pilots with automated response to MIDAS would be cost-effective or materially reduce peak load. SDCP has determined that modifying this requirement is necessary to provide a more cost-effective and feasible way to meet the LMS requirements and achieve the LMS goals. Thus, SDCP will evaluate the cost-effectiveness and incremental peak load reduction potential associated with incorporating automated response to MIDAS signals into new pilots and include on a future list as appropriate.

7.4.2 Voluntary Participation in Cost-Effective Load Flexibility Programs

Adopted LMS amendments section 1623.1(b)(4) requires each Large CCA to offer customers voluntary participation in either a dynamic rate, if approved by the Board, or cost-effective MIDAS-integrated load flexibility program by July 1, 2027.

SDCP is required to offer voluntary participation in cost-effective load flexibility programs that materially reduce peak load. As discussed in Sections 5 and 7.4.1 above, SDCP's evaluation has been unable to conclude that developing and implementing new load flexibility programs or pilots with automated response to MIDAS signals would be cost effective or materially reduce peak load. SDCP has determined that, for the reasons set forth in this Plan, the LMS program participation requirements must be modified to provide a more cost-effective and technologically feasible way for SDCP to, in good faith, meet the LMS requirements and achieve the LMS goals. Thus, SDCP modifies this requirement to include voluntary participation in any load flexibility program or pilot, not just programs that allow for automated response to MIDAS signals. SDCP will assess the cost-effectiveness and peak load potential of planned and new programs that enable automated response to MIDAS signals as SDCP develops and refines load flexibility programs.

Appendix A

The following are the RINs associated with each of SDCP's rates and rate permutations that were uploaded to MIDAS.

RIN	Rate Permutation
USCA-XXSA-0001-0000	G-A6-TOU-P 2020 Vintage
USCA-XXSA-0002-0000	G-A6-TOU-P 2021 Vintage
USCA-XXSA-0003-0000	G-A6-TOU-P 2022 Vintage
USCA-XXSA-0004-0000	G-A6-TOU-T 2020 Vintage
USCA-XXSA-0005-0000	G-A6-TOU-T 2021 Vintage
USCA-XXSA-0006-0000	G-A6-TOU-T 2022 Vintage
USCA-XXSA-0007-0000	G-AL-TOU-P 2020 Vintage
USCA-XXSA-0008-0000	G-AL-TOU-P 2021 Vintage
USCA-XXSA-0009-0000	G-AL-TOU-P 2022 Vintage
USCA-XXSA-0010-0000	G-AL-TOU-S 2020 Vintage
USCA-XXSA-0011-0000	G-AL-TOU-S 2021 Vintage
USCA-XXSA-0012-0000	G-AL-TOU-S 2022 Vintage
USCA-XXSA-0013-0000	G-AL-TOU-T 2020 Vintage
USCA-XXSA-0014-0000	G-AL-TOU-T 2021 Vintage
USCA-XXSA-0015-0000	G-AL-TOU-T 2022 Vintage
USCA-XXSA-0016-0000	G-DG-R-P 2020 Vintage
USCA-XXSA-0017-0000	G-DG-R-P 2021 Vintage
USCA-XXSA-0018-0000	G-DG-R-P 2022 Vintage
USCA-XXSA-0019-0000	G-DG-R-S 2020 Vintage
USCA-XXSA-0020-0000	G-DG-R-S 2021 Vintage
USCA-XXSA-0021-0000	G-DG-R-S 2022 Vintage
USCA-XXSA-0022-0000	G-DG-R-T 2020 Vintage
USCA-XXSA-0023-0000	G-DG-R-T 2021 Vintage
USCA-XXSA-0024-0000	G-DG-R-T 2022 Vintage
USCA-XXSA-0025-0000	G-OL-TOU 2020 Vintage
USCA-XXSA-0026-0000	G-OL-TOU 2021 Vintage
USCA-XXSA-0027-0000	G-OL-TOU 2022 Vintage
USCA-XXSA-0028-0000	G-PA-T-1-P 2020 Vintage
USCA-XXSA-0029-0000	G-PA-T-1-P 2021 Vintage
USCA-XXSA-0030-0000	G-PA-T-1-P 2022 Vintage
USCA-XXSA-0031-0000	G-PA-T-1-S 2020 Vintage
USCA-XXSA-0032-0000	G-PA-T-1-S 2021 Vintage
USCA-XXSA-0033-0000	G-PA-T-1-S 2022 Vintage
USCA-XXSA-0034-0000	G-PA-T-1-T 2020 Vintage
USCA-XXSA-0035-0000	G-PA-T-1-T 2021 Vintage
USCA-XXSA-0036-0000	G-PA-T-1-T 2022 Vintage
USCA-XXSA-0037-0000	G-TOU-A-P 2020 Vintage

RIN	Rate Permutation
USCA-XXSA-0038-0000	G-TOU-A-P 2021 Vintage
USCA-XXSA-0039-0000	G-TOU-A-P 2022 Vintage
USCA-XXSA-0040-0000	G-TOU-A-S 2020 Vintage
USCA-XXSA-0041-0000	G-TOU-A-S 2021 Vintage
USCA-XXSA-0042-0000	G-TOU-A-S 2022 Vintage
USCA-XXSA-0043-0000	G-TOU-M 2020 Vintage
USCA-XXSA-0044-0000	G-TOU-M 2021 Vintage
USCA-XXSA-0045-0000	G-TOU-M 2022 Vintage
USCA-XXSA-0046-0000	G-TOU-PA-P 2020 Vintage
USCA-XXSA-0047-0000	G-TOU-PA-P 2021 Vintage
USCA-XXSA-0048-0000	G-TOU-PA-P 2022 Vintage
USCA-XXSA-0049-0000	G-TOU-PA-P Over 20kW-2020 Vintage
USCA-XXSA-0050-0000	G-TOU-PA-P Over 20kW-2021 Vintage
USCA-XXSA-0051-0000	G-TOU-PA-P Over 20kW-2022 Vintage
USCA-XXSA-0052-0000	G-TOU-PA-S 2020 Vintage
USCA-XXSA-0053-0000	G-TOU-PA-S 2021 Vintage
USCA-XXSA-0054-0000	G-TOU-PA-S 2022 Vintage
USCA-XXSA-0055-0000	G-TOU-PA-S Over 20kW-2020 Vintage
USCA-XXSA-0056-0000	G-TOU-PA-S Over 20kW-2021 Vintage
USCA-XXSA-0057-0000	G-TOU-PA-S Over 20kW-2022 Vintage
USCA-XXSA-0150-0000	A6-TOU-P 2020 Vintage
USCA-XXSA-0151-0000	A6-TOU-P 2021 Vintage
USCA-XXSA-0152-0000	A6-TOU-P 2022 Vintage
USCA-XXSA-0153-0000	A6-TOU-T 2020 Vintage
USCA-XXSA-0154-0000	A6-TOU-T 2021 Vintage
USCA-XXSA-0155-0000	A6-TOU-T 2022 Vintage
USCA-XXSA-0156-0000	AL-TOU-2-P 2020 Vintage
USCA-XXSA-0157-0000	AL-TOU-2-P 2021 Vintage
USCA-XXSA-0158-0000	AL-TOU-2-P 2022 Vintage
USCA-XXSA-0159-0000	AL-TOU-2-S 2020 Vintage
USCA-XXSA-0160-0000	AL-TOU-2-S 2021 Vintage
USCA-XXSA-0161-0000	AL-TOU-2-S 2022 Vintage
USCA-XXSA-0162-0000	AL-TOU-2-T 2020 Vintage
USCA-XXSA-0163-0000	AL-TOU-2-T 2021 Vintage
USCA-XXSA-0164-0000	AL-TOU-2-T 2022 Vintage
USCA-XXSA-0165-0000	AL-TOU-P 2020 Vintage
USCA-XXSA-0166-0000	AL-TOU-P 2021 Vintage

RIN	Rate Permutation
USCA-XXSA-0167-0000	AL-TOU-P 2022 Vintage
USCA-XXSA-0168-0000	AL-TOU-S 2020 Vintage
USCA-XXSA-0169-0000	AL-TOU-S 2021 Vintage
USCA-XXSA-0170-0000	AL-TOU-S 2022 Vintage
USCA-XXSA-0171-0000	AL-TOU-T 2020 Vintage
USCA-XXSA-0172-0000	AL-TOU-T 2021 Vintage
USCA-XXSA-0173-0000	AL-TOU-T 2022 Vintage
USCA-XXSA-0174-0000	DG-R-P 2020 Vintage
USCA-XXSA-0175-0000	DG-R-P 2021 Vintage
USCA-XXSA-0176-0000	DG-R-P 2022 Vintage
USCA-XXSA-0177-0000	DG-R-S 2020 Vintage
USCA-XXSA-0178-0000	DG-R-S 2021 Vintage
USCA-XXSA-0179-0000	DG-R-S 2022 Vintage
USCA-XXSA-0180-0000	DG-R-T 2020 Vintage
USCA-XXSA-0181-0000	DG-R-T 2021 Vintage
USCA-XXSA-0182-0000	DG-R-T 2022 Vintage
USCA-XXSA-0183-0000	DR-SES 2020 Vintage
USCA-XXSA-0184-0000	DR-SES 2021 Vintage
USCA-XXSA-0185-0000	DR-SES 2022 Vintage
USCA-XXSA-0186-0000	EV-HP-P 2020 Vintage
USCA-XXSA-0187-0000	EV-HP-P 2021 Vintage
USCA-XXSA-0188-0000	EV-HP-P 2022 Vintage
USCA-XXSA-0189-0000	EV-HP-S 2020 Vintage
USCA-XXSA-0190-0000	EV-HP-S 2021 Vintage
USCA-XXSA-0191-0000	EV-HP-S 2022 Vintage
USCA-XXSA-0192-0000	EV-TOU 2020 Vintage
USCA-XXSA-0193-0000	EV-TOU 2021 Vintage
USCA-XXSA-0194-0000	EV-TOU 2022 Vintage
USCA-XXSA-0195-0000	EV-TOU-2 2020 Vintage
USCA-XXSA-0196-0000	EV-TOU-2 2021 Vintage
USCA-XXSA-0197-0000	EV-TOU-2 2022 Vintage
USCA-XXSA-0198-0000	EV-TOU-5 2020 Vintage
USCA-XXSA-0199-0000	EV-TOU-5 2021 Vintage
USCA-XXSA-0200-0000	EV-TOU-5 2022 Vintage
USCA-XXSA-0201-0000	LS-2-AD 2020 Vintage
USCA-XXSA-0202-0000	LS-2-AD 2021 Vintage
USCA-XXSA-0203-0000	LS-2-AD 2022 Vintage
USCA-XXSA-0204-0000	OL-TOU 2020 Vintage
USCA-XXSA-0205-0000	OL-TOU 2021 Vintage
USCA-XXSA-0206-0000	OL-TOU 2022 Vintage
USCA-XXSA-0207-0000	PA-T-1-P 2020 Vintage
USCA-XXSA-0208-0000	PA-T-1-P 2021 Vintage

RIN	Rate Permutation
USCA-XXSA-0209-0000	PA-T-1-P 2022 Vintage
USCA-XXSA-0210-0000	PA-T-1-S 2020 Vintage
USCA-XXSA-0211-0000	PA-T-1-S 2021 Vintage
USCA-XXSA-0212-0000	PA-T-1-S 2022 Vintage
USCA-XXSA-0213-0000	PA-T-1-T 2020 Vintage
USCA-XXSA-0214-0000	PA-T-1-T 2021 Vintage
USCA-XXSA-0215-0000	PA-T-1-T 2022 Vintage
USCA-XXSA-0216-0000	TOU-A-2-P 2020 Vintage
USCA-XXSA-0217-0000	TOU-A-2-P 2021 Vintage
USCA-XXSA-0218-0000	TOU-A-2-P 2022 Vintage
USCA-XXSA-0219-0000	TOU-A-2-S 2020 Vintage
USCA-XXSA-0220-0000	TOU-A-2-S 2021 Vintage
USCA-XXSA-0221-0000	TOU-A-2-S 2022 Vintage
USCA-XXSA-0222-0000	TOU-A-3-P 2020 Vintage
USCA-XXSA-0223-0000	TOU-A-3-P 2021 Vintage
USCA-XXSA-0224-0000	TOU-A-3-P 2022 Vintage
USCA-XXSA-0225-0000	TOU-A-3-S 2020 Vintage
USCA-XXSA-0226-0000	TOU-A-3-S 2021 Vintage
USCA-XXSA-0227-0000	TOU-A-3-S 2022 Vintage
USCA-XXSA-0228-0000	TOU-DR 2020 Vintage
USCA-XXSA-0229-0000	TOU-DR 2021 Vintage
USCA-XXSA-0230-0000	TOU-DR 2022 Vintage
USCA-XXSA-0231-0000	TOU-DR-1 2020 Vintage
USCA-XXSA-0232-0000	TOU-DR-1 2021 Vintage
USCA-XXSA-0233-0000	TOU-DR-1 2022 Vintage
USCA-XXSA-0234-0000	TOU-ELEC 2020 Vintage
USCA-XXSA-0235-0000	TOU-ELEC 2021 Vintage
USCA-XXSA-0236-0000	TOU-ELEC 2022 Vintage
USCA-XXSA-0237-0000	TOU-M 2020 Vintage
USCA-XXSA-0238-0000	TOU-M 2021 Vintage
USCA-XXSA-0239-0000	TOU-M 2022 Vintage
USCA-XXSA-0240-0000	TOU-PA-2-P 2020 Vintage
USCA-XXSA-0241-0000	TOU-PA-2-P 2021 Vintage
USCA-XXSA-0242-0000	TOU-PA-2-P 2022 Vintage
USCA-XXSA-0243-0000	TOU-PA-2-S 2020 Vintage
USCA-XXSA-0244-0000	TOU-PA-2-S 2021 Vintage
USCA-XXSA-0245-0000	TOU-PA-2-S 2022 Vintage
USCA-XXSA-0246-0000	TOU-PA-3-P 2020 Vintage
USCA-XXSA-0247-0000	TOU-PA-3-P 2021 Vintage
USCA-XXSA-0248-0000	TOU-PA-3-P 2022 Vintage
USCA-XXSA-0249-0000	TOU-PA-3-P Over 20kW-2020 Vintage

RIN	Rate Permutation
USCA-XXSA-0250-0000	TOU-PA-3-P Over 20kW-2021 Vintage
USCA-XXSA-0251-0000	TOU-PA-3-P Over 20kW-2022 Vintage
USCA-XXSA-0252-0000	TOU-PA-3-S 2020 Vintage
USCA-XXSA-0253-0000	TOU-PA-3-S 2021 Vintage
USCA-XXSA-0254-0000	TOU-PA-3-S 2022 Vintage
USCA-XXSA-0255-0000	TOU-PA-3-S Over 20kW-2020 Vintage
USCA-XXSA-0256-0000	TOU-PA-3-S Over 20kW-2021 Vintage
USCA-XXSA-0257-0000	TOU-PA-3-S Over 20kW-2022 Vintage
USCA-XXSA-0264-0000	TOU-A-P 2020 Vintage
USCA-XXSA-0265-0000	TOU-A-P 2021 Vintage
USCA-XXSA-0266-0000	TOU-A-P 2022 Vintage
USCA-XXSA-0268-0000	TOU-A-S 2020 Vintage
USCA-XXSA-0269-0000	TOU-A-S 2021 Vintage
USCA-XXSA-0270-0000	TOU-A-S 2022 Vintage
USCA-XXSA-0272-0000	TOU-DR-2 2020 Vintage
USCA-XXSA-0273-0000	TOU-DR-2 2021 Vintage
USCA-XXSA-0274-0000	TOU-PA-P 2020 Vintage
USCA-XXSA-0275-0000	TOU-PA-P 2021 Vintage
USCA-XXSA-0276-0000	TOU-PA-P 2022 Vintage
USCA-XXSA-0277-0000	TOU-DR-2 2022 Vintage
USCA-XXSA-0278-0000	TOU-PA-S 2020 Vintage
USCA-XXSA-0279-0000	TOU-PA-S 2021 Vintage
USCA-XXSA-0280-0000	TOU-PA-S 2022 Vintage



SAN DIEGO COMMUNITY POWER Staff Report – Item 19

To: San Diego Community Power Board of Directors

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

Via: Karin Burns, Chief Executive Officer

Subject: Update on Regional Grid Developments

Date: February 22, 2024

RECOMMENDATIONS

Receive and file the update on regional grid developments.

BACKGROUND

Staff will present on efforts to increase coordination among grid operators throughout the Western U.S.

ANALYSIS AND DISCUSSION

There are 38 [balancing authority areas](#) (BAAs) in the Western United States. These are federally regulated organizations responsible for transmission planning, resource adequacy, power market operations and grid reliability in their respective regions. Each BAA has its own federally approved tariff that lays out the market rules and operations for that BAA. The [California Independent System Operator \(CAISO\)](#) is the main BAA in California. San Diego Community Power (SDCP) operates within the CAISO footprint and is subject to the rules of the CAISO tariff. The CAISO and every other BAA in the West can transfer power amongst each other, but they must do so in accordance with their own tariffs and market rules. This makes sharing power across the 38 balancing authorities challenging.

There has been a policy discussion for the past decade about how to reduce the barriers between BAAs so there is more efficient sharing of power. This discussion is commonly referred to as regionalization. Regionalization is not a single concept, but rather an array of ideas with many different variables. Grid regionalization can take many different forms. It is being discussed and debated because eight out of 11 states in the West, and a major utility in a ninth state, have adopted requirements or goals to replace fossil fuel generation

with renewable and carbon free generation. California is a leader in this regard, having adopted [SB 100 \(De Leon\)](#) in 2018 and [SB 1020 \(Laird\)](#) in 2022, which collectively put the state on track to have a 100% renewable and zero-carbon grid by 2045.

This shared vision across the West is driving fundamental changes in how electricity is delivered and managed, and how reliability of the grid is achieved. According to the [Western Electricity Coordinating Council \(WECC\)](#), which is tasked by the federal government with overseeing the 38 BAAs in the West, nearly 45 gigawatts (GWs) – enough to power 30 million homes – of 24/7 capable, fossil fuel power plants have, or will be retired, between 2013 and 2033. At the same time, at least 95 GWs of new resources, 80% of which are variable resources, such as wind and solar, will be added in the Western U.S. Additionally, due to electrification policies and the growth of data centers, annual energy use and peak demand will increase by 16% over the next 10 years, meaning utilities and grid operators will need more installed capacity to deliver power in the evenings when power is needed most.

The shift from a predominantly 24/7 capable generation fleet to one that is weather dependent and variable, combined with the increase in energy demand growth, means that grid operators – BAAs like CAISO – need new tools to better balance supply and demand to maintain reliability. Regionalization – in whatever form it takes – has emerged as a key tool to better manage a variable based grid because removing barriers between the 38 BAAs can make it easier and more economic to trade power between regions that have ample supply and those that don't.

Under its existing authority, the CAISO has taken some steps to regionalize and break down barriers with other BAAs in the West. Since 2014, the CAISO has operated the [Western Energy Imbalance Market \(WEIM\)](#), which is a program that contains shared market rules and a shared software platform to facilitate real-time trading of energy across the West. So far, nearly 80% of BAAs in the West have elected to join the WEIM. The more efficient trading of power across a wider footprint has helped achieve power cost savings of over \$5 billion, \$862 million of which have been realized by the CAISO. The more efficient trading of power helps renewables displace fossil fuel generation and as a result, WEIM has helped avoid the release of greenhouse gas emissions equivalent to taking over 194,000 cars off the road. WEIM, however, only captures 5% of energy transactions.

The CAISO recently received Federal Energy Regulatory Commission (FERC) approval to offer an [Extended Day Ahead Market \(EDAM\)](#), which would capture a greater share of energy transactions. Both WEIM and EDAM represent a gradient of regionalization. They are both markets-only, meaning they involve the use of software and a shared tariff that governs market rules to facilitate trading. Neither of them involve other aspects that are part of the regionalization discussion, such as shared transmission planning and resource adequacy rules.



Interest from other Western BAAs in EDAM, which could go live as soon as 2026, has been tepid so far. That is largely because of CAISO governance. The CAISO is overseen by a five-member Board of Directors that is appointed by the Governor and confirmed by the State Senate ([Public Utilities Code Section 337](#)). This is a somewhat unique governance set up; many other BAAs are not governed by political appointees, but rather are governed by industry stakeholders. Without more independent governance, it may be difficult for other Western BAAs to elect to join a CAISO led EDAM.

At the same time the CAISO is leading discussions in the West to attract market participants to its' EDAM offering, the Southwest Power Pool (SPP), based in Arkansas, is developing a product called Markets+, which would also be a day-ahead market-based mechanism to buy and sell power. Unlike CAISO, SPP is independently governed by non-political appointees. SPP has approached other Western BAAs about joining their Markets+ initiative and indeed some, like the Bonneville Power Administration, have even agreed to fund Phase 1 studies of Markets+. This is a key dynamic. If other Western BAAs are enticed to join SPP's Markets+ over the CAISO led initiative, it could mean less benefits and efficiencies for California.

Two bills have been considered by the California Legislature to reform CAISO's governance model and assist CAISO's regional grid efforts. [AB 813 \(Holden\)](#) in 2018 and [AB 538 \(Holden\)](#) in 2023 both did not pass largely due to concerns expressed by some labor unions (more on this below). As a result of the failure of the two bills, a new administrative process was created called the [West-Wide Governance Pathways Initiative](#), which is investigating the viability of five different options to make CAISO governance more amenable and facilitate participation in their regional grid efforts. The Pathways Initiative, which has participation by representatives from other Western states, is being co-led by CPUC President Alice Reynolds and CEC Vice Chair Siva Gunda. CalCCA is participating in the Initiative. The outcome of the decision-making process in Pathways could result in state legislation in 2025.

Regionalization has been studied at great length. A summary of the studies is available in a [CAISO paper](#) that was requested by the Legislature. The main benefits of greater regional collaboration include:

- *Energy resource cost savings.* Studies consistently show savings from access to lower-cost resources because the market operates over a wider footprint.
- *Enhanced reliability & grid resilience.* Grids run with predominantly variable resources are more reliable when there is a wider operating footprint.
- *Emission reductions.* The ability to more cost-effectively share resources across a broader footprint means that more renewables can be integrated into the grid, displacing fossil fuel generation.



- *Enhanced coordinated transmission planning.* If transmission is coordinated by a regional entity, it can reduce congestion and costs of operating reserve requirements.

There are also some potential concerns:

- *Transmission costs.* Californians *could* pay for transmission in other states if a regional entity includes transmission development. Cost allocation could be changed in an unknown way. This would be on the SDG&E/delivery side of the bill.
- *Impact to California clean energy policy.* In partnering with other states, California *could* lose some control over the future of grid operations. Much of the West, however, has a shared clean energy vision. Federal intervention is possible, but unlikely.
- *Impacts to in-state jobs.* Greater regional cooperation could result in more renewable/clean energy projects being built in other states. This would happen if CAISO were to regionalize via a Regional Transmission Organization (RTO), the most robust form of regionalization. If CAISO were to join or form an RTO it could impact the state's Renewables Portfolio Standard (RPS), which requires all load-serving entities to procure 60% renewable energy by 2030 from eligible sources. At least 75% of RPS contracts must come from resources either located in a California BAA like CAISO, or that are directly tethered to a California BAA by a powerline. While there are nuances to this requirement, it is largely viewed as an in-state resource build requirement, which was negotiated by labor unions when the RPS law was passed. It was, and continues to be, a priority of labor unions to ensure clean energy jobs are created in California.

If CAISO joins or forms an RTO, then the boundaries of the BAA could expand to include other states, which would then influence where RPS eligible resources may be built. Labor unions are concerned that the formation of an RTO could therefore result in job loss in California. It is not clear at the moment that there is a path forward to create an RTO. The development of an RTO would require state legislation and federal approval, all of which would take considerable time. Any RTO would be unlikely to start operation prior to 2030 when the 60% RPS requirement must be met. Nonetheless, jobs are a very important consideration and efforts should be made to ensure that any regional grid development supports clean energy job development in our state.

SDCP staff plans to bring a Policy Platform amendment to the Board in March for consideration on regional grid efforts, among other updates to the Platform. SDCP staff is interested in participating in regional grid development discussions to help ensure decisions made in the ongoing processes support SDCP's goal of providing 100% renewable energy by 2035 while upholding the development of in-state clean energy jobs.

COMITTEE REVIEW



N/A

FISCAL IMPACT

N/A

ATTACHMENTS

N/A





SAN DIEGO COMMUNITY POWER

Staff Report – Item 20

To: San Diego Community Power Board of Directors

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

Via: Karin Burns, Chief Executive Officer

Subject: Approval of Pilot Project Agreement with GRID Alternatives

Date: February 22, 2024

RECOMMENDATION

Approve Pilot Project Agreement with GRID Alternatives (“GRID”) for Roof Replacements/Repairs in Connection with the Disadvantaged Communities – Single-Family Solar Homes (“DAC-SASH”) Program, in an amount not to exceed \$550,000 & delegate authority to the Chief Executive Officer (“CEO”) to execute the Agreement.

BACKGROUND

At the May 25, 2023 Board of Directors (“Board”) meeting, Staff presented an update on initial pilot program concepts under exploration, including a DAC-SASH Roof Repair pilot. DAC-SASH is a statewide program that was launched in September 2019. The program is funded by the California Public Utilities Commission (“CPUC”) and implemented statewide by GRID. The DAC-SASH program aims to overcome a common barrier of the lack of capital or credit needed to finance a solar installation. The program does this by providing a no-cost solar system installation to single-family low-income homeowners in Disadvantaged Communities (“DACs”) as identified by CalEnviroScreen 4.0.

Under the DAC-SASH program, however, roof repair or replacement work is not allowed, leaving eligible customers with roofs in poor condition behind. In discussions with GRID, Staff learned that a common barrier faced by eligible homeowners was the condition of their roofs. Many homes that would be eligible to receive a solar system were unable to proceed with the program due to the condition of their roof not being suitable to support a system and the lack of capital and funding for roof repairs/replacement.

Concurrently, Staff started engaging with the San Diego Foundation (“SDF”), the Environmental Health Coalition (“EHC”), and a coalition of other agencies on their *Rooted in Comunidad, Cultivating Equity* proposal to the Transformative Climate Communities (“TCC”) program. SDCP submitted a letter of support that committed leverage funding for

their proposal; in the letter, SDCP noted the expectation to launch a pilot that will increase rooftop solar adoption for low-income homeowners in DACs in early 2024. In December 2023, SDF, EHC, and the coalition were notified that they were awarded \$22 million for their TCC proposal.

DISCUSSION

Objective

With the DAC-SASH Readiness Pilot, Staff envisions providing no-cost roof repairs or replacement to homes that are eligible to participate in the DAC-SASH program. As a result, those homes would receive a no-cost solar system. By providing repairs or replacement of roofs, GRID would be able to enroll more homes in the DAC-SASH program and complete more solar system installations within SDCP's service territory. This would result in more statewide funding flowing into SDCP's Communities of Concern and enable more low-income homeowners to access rooftop solar and its associated benefits such as lower electricity bills and clean energy.

The Readiness Pilot will also allow Staff to gather data and insights on the overall repair and/or upgrade costs of low-income homes adopting clean energy technologies. This data will better help SDCP offer holistic programs that address many potential barriers and reduce the barriers to adoption of clean energy technologies.

Incentive Levels

Recognizing that each home is unique and that some homes may require minor repair work while others may require complete roof replacements, Staff is proposing for the pilot to include an average incentive of \$20,000 per home. The proposed incentive amount would allow GRID to spend more than \$20,000 on homes that need more extensive work as long as the average across the entire pilot stays at or below \$20,000 per home.

Budget

Because the Readiness Pilot is intended to gather data and inform future program design, a total of \$500,000 has been allocated to complete roof repairs/re-roofing work. An additional \$50,000 has been allocated to compensate GRID for the administration and implementation of the program. Based on incentive levels, Staff estimates that the budget would enable a maximum of twenty-five (25) homes to participate in the pilot and therefore in the DAC-SASH program.

Eligibility

Since the Readiness Pilot is meant to directly enable the installation of a no-cost solar system paid by the DAC-SASH program, eligibility criteria for the pilot will be the same as the DAC-SASH program with a few changes articulated in bullet point two and three:

- Meet the eligibility requirements for the DAC-SASH program, which include:



- Receive electrical service from an investor-owned utility (CCA customers are allowed).
- Own and occupy a single-family home as the primary residence.
- Be located in a Disadvantaged Community as identified by the CalEnviroScreen 4.0 map with a percentile score of 75% or higher.
- Total household income must not be more than the income limits for the [California Alternate Rates for Energy](#) (“CARE”) or [Family Electric Rate Assistance](#) (“FERA”) programs.
- Have a home within SDCP’s service territory with an active SDCP account.
 - Must not have opted out of SDCP’s service or had their account terminated/pending termination.
 - Customers that previously opted out and are eligible to return may re-enroll in SDCP service and qualify for the Pilot.
- Enroll in the DAC-SASH program and complete the installation of a solar system.

Implementation

Staff will enter into an agreement with GRID to implement the Readiness Pilot. Staff selected GRID to implement the Readiness Pilot for the following reasons:

1. They are the statewide implementer of the DAC-SASH program and were selected by the CPUC through a competitive bid process.
2. They are able to identify and contact eligible households. GRID would be tasked with identifying new and previously eligible homes to participate in the pilot.
3. They are able to ensure homes enroll and participate in the DAC-SASH program.
4. They are able to streamline work processes to ensure roofing work and installation of solar systems are coordinated properly with as minimal of an impact to the homeowner.

In addition, having GRID implement the Readiness Pilot would introduce administrative and outreach efficiency. They would be responsible for contracting with 2-3 licensed contractors to complete the roof repair/replacement work as well as contract with B-class licensed contractors to complete ancillary repairs and/or construction.

Allowable Work

The incentive would pay for the labor by licensed C-39 roofing contractors and materials needed to complete the repair or re-roofing work required to support the installation of a solar system. This can include, but is not limited to roof decking, flashing, underlayment, and/or shingle or tile replacement. The Readiness Pilot, however, would not allow for the payment of any costs covered by the DAC-SASH program such as the cost of the solar



system itself and/or any costs associated with the mounting and electrical connection of solar systems or battery energy storage systems (“BESS”).

Ancillary Work and Battery Energy Storage Systems

While the Pilot does not allow for the incentive to pay for the installation of BESS, it does allow for minor work and/or construction that will enable the installation of a BESS alongside the installation of a solar system. For example, the construction of a minor structure to house the battery modules or other components may be included but the cost to install a BESS would need to be paid by other programs such as the Self-Generation Incentive Program (“SGIP”) or SDCP’s upcoming battery storage program.

Targeted Outreach

As part of SDCP’s support for SDF and EHC’s TCC project (*Rooted in Comunidad, Cultivating Equity*), Staff is proposing that 80% of the pilot’s funds be targeted towards homes that are within the TCC project area, which encompasses San Diego’s central historic barrios (i.e, Logan, Stockton, Grant Hill, Mt. Hope, Sherman, Southcrest, and Shelltown). Participation in the Pilot would not be exclusive to homes in the TCC project area but targeted outreach in these areas would be conducted by GRID.

NEXT STEPS

Pending Board approval of the pilot and contract, work with GRID would begin in late February 2024, with GRID starting to identify and enroll homes in Spring 2024. Roofing work would commence shortly thereafter.

FISCAL IMPACT

The Pilot includes \$500,000 for repairs and re-roofing work from SDCP’s approved Capital Improvement Plan (“CIP”) and \$50,000 for administrative services.

ATTACHMENTS

Pilot Project Agreement Between San Diego Community Power And Grid Alternatives, Inc.



**PILOT PROJECT AGREEMENT
BETWEEN SAN DIEGO COMMUNITY POWER
AND GRID ALTERNATIVES, INC.**

This Pilot Project Agreement (“**Agreement**”), made and entered into this February 22, 2024 by and between the San Diego Community Power, a California joint powers agency (herein referred to as “**SDCP**”), and Grid Alternatives, Inc., a California nonprofit corporation with a principal address at 1171 Ocean Ave, Suite 200, Oakland, CA 94608 and with a local address at 930 Gateway Center Way, San Diego, CA 92102 (herein referred to as “**GRID Alternatives**”).

WHEREAS, Assembly Bill 327 (2013) directed the California Public Utilities Commission (“**CPUC**”) to develop specific programs designed to increase adoption of renewable generation in disadvantaged communities (“**DACs**”); and

WHEREAS, in June 2018, the CPUC created three programs to increase access to solar for residents of disadvantaged communities located within the service areas of investor-owned utilities, including San Diego Gas & Electric Co. (“**SDG&E**”), including the Disadvantaged Communities – Single-Family Solar Homes (“**DAC-SASH**”) program; and

WHEREAS, the DAC-SASH program is intended to increase the adoption of clean, affordable solar by residential customers living in disadvantaged communities by enabling income-qualified homeowners in DACs to receive no-cost rooftop solar installations; and

WHEREAS, GRID Alternatives is the statewide administrator of the DAC-SASH program; and

WHEREAS, SDCP is a joint powers agency formed for the purposes of, among other things:

- a. Prioritizing the use and development of local, cost-effective renewable and distributed energy resources in ways that encourage and support local power development and storage; and
- b. Demonstrating quantifiable economic benefits to the region including prevailing wage jobs, local workforce development, economic development programs, new energy programs, and increased local energy investments; and
- c. Pursuing purposeful and focused investment in communities of concern, prioritization of local renewable power, workforce development, and policies and programs centered on economic, environmental, and social equity; and
- d. Promoting personal and community ownership of renewable generation and energy storage resources, spurring equitable economic development and increased resilience throughout the region; and

WHEREAS, a substantial barrier to the effective and equitable deployment of the DAC-SASH program within the San Diego region is the roof condition of properties otherwise eligible to receive no-cost rooftop solar installations under the DAC-SASH program; and

WHEREAS, SDCP desires to facilitate the deployment of the DAC-SASH program within SDCP's service area by contributing funds for a pilot project to fund roof replacements or repairs at properties eligible to participate in the DAC-SASH program; and

WHEREAS, GRID Alternatives desires to facilitate the pilot project for roof replacements or repairs necessary for properties to be eligible to participate in the DAC-SASH program and is qualified by reason of its experience, organization, preparation, staffing, and facilities to provide such facilitation services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the promises herein contained, SDCP and GRID Alternatives agree as follows:

1. DESCRIPTION OF SERVICES AND FUNDING CONDITIONS

(a) The services to be performed by GRID Alternatives are set forth in Exhibit A, attached hereto and incorporated herein.

(b) GRID Alternatives shall provide financial statements documenting use of the funds for the services outlined in Exhibit A every month and within 30 days of the expiration or early termination of this Agreement.

(c) GRID Alternatives shall provide regular written progress reports, including representative samples of education and outreach materials and activities and documentation of the specific locations and status of both the roofing aspect of the pilot project and the installation of DAC-SASH solar systems no less than every month and a final written evaluation of the pilot project.

(d) GRID Alternatives warrants that funds provided under this Agreement shall be used solely for the purpose described in this Agreement and its Exhibit(s). If any portion of the pilot project that is to be funded under this Agreement is cancelled, incomplete, or fails to comply with the terms and conditions of this Agreement, GRID Alternatives agrees to notify SDCP in writing within five (5) business days and to refund any amounts for cancelled, incomplete, or noncompliant work within 30 days. Within 30 days of the expiration or early termination of this Agreement, GRID Alternatives shall return any funds not used for the pilot project.

(e) GRID Alternatives shall comply with all applicable laws and regulations in performing the services under this Agreement, including, without limitation, CalOSHA requirements. All work performed on the pilot project shall be performed: (1) in strict compliance with any approved plans and specifications, if applicable; (2) in a good and workmanlike manner; and (3) in accordance with current ordinances and standards

applicable within the project's local jurisdiction. GRID Alternatives shall be solely responsible for obtaining and paying for all permits, licenses, and approvals necessary to perform the project work.

(f) GRID Alternatives shall ensure that any publicity and/or materials prepared, sponsored, or promoted by GRID Alternatives regarding the roof repair pilot program under this Agreement within SDCP's service area acknowledges SDCP as partner in the program. GRID Alternatives shall coordinate with and seek SDCP approval of any materials or publicity bearing the SDCP logo.

2. FUND ADMINISTRATION

(a) The total maximum amount authorized to be paid to GRID Alternatives by SDCP for services under this Agreement shall be \$550,000 (of which, \$500,000 shall be used for providing services and \$50,000 may be used for administrative costs).

(b) SDCP shall deposit with GRID Alternatives \$100,000 within 30 days of execution of this Agreement ("**Initial Deposit**"). Upon GRID Alternatives' utilization of sixty percent (60%) of the Initial Deposit or any Additional Deposit (defined below), GRID Alternatives shall provide SDCP with all of the invoicing back-up material verifying the funds expended by GRID Alternatives. Within 30 calendar days of receiving the invoicing back-up material from GRID Alternatives, SDCP will deposit with GRID Alternatives one or more additional deposits ("**Additional Deposits**") until SDCP has deposited \$500,000 GRID Alternatives. GRID Alternatives will separately invoice up to 10% of the Deposits expended for providing services as administrative costs, which amount in total shall not exceed \$50,000.)

(c) GRID Alternatives will perform a final cost accounting within 120 calendar days after the earlier of: (i) the completion of the final roof that is part of the pilot project; (ii) the expiration of this Agreement; or (iii) the early termination of this Agreement. Upon completion of the final cost accounting, GRID Alternatives will provide a cost accounting report to SDCP that verifies the project costs and administrative costs authorized in this Agreement. If the project costs and administrative costs are less than the total deposits made by SDCP, then the excess amount, without interest, will be refunded by GRID Alternatives to SDCP within thirty (30) calendar days of GRID Alternatives final accounting to SDCP.

(d) Grant funds provided by SDCP under this Agreement shall not be used for any purpose other than those described in this Agreement and its Exhibit(s).

3. TERM

The term of this Agreement shall commence on the date first set forth above and continue for 18 months from the date set forth above, unless otherwise extended in writing by the Parties.

4. SDCP PROJECT MANAGER

SDCP's "Project Manager," as that staff person is designated by SDCP from time to time, is Colin Santulli, Director of Programs.

5. PROGRESS AND COMPLETION; EARLY TERMINATION UPON DEFAULT

GRID Alternatives shall commence work on the services to be performed upon receiving written authorization to proceed with the work provided by SDCP's Project Manager and receipt of an executed Agreement. All services shall be completed within the term of this Agreement. If the services shall be incomplete in any way or GRID Alternatives fails to comply with the terms and conditions of this Agreement, the Project Manager may take appropriate action under this Agreement, at law or in equity, including without limitation early termination of this Agreement upon 15 days' prior written notice and opportunity to cure, in which case GRID Alternatives shall be required to repay to SDCP any funds received for cancelled, incomplete, or noncompliant services hereunder.

6. PREVAILING WAGES

(a) GRID Alternatives is aware of the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.* and any implementing regulations ("**Prevailing Wage Laws**"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" projects. If the funds provided under this Agreement are used in the performance of an applicable "public works" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, GRID Alternatives agrees to fully comply with such Prevailing Wage Laws, if applicable. GRID Alternatives shall defend, indemnify and hold SDCP, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon GRID Alternatives and all of its contractors and subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

(b) If the work is being performed as part of an applicable "public works" or "maintenance" project, in addition to the foregoing, then pursuant to Labor Code Sections 1725.5 and 1771.1, GRID Alternatives' contractors and subcontractors must be registered with the Department of Industrial Relations ("**DIR**"). GRID Alternatives' contractors shall maintain registration for the duration of the project and require the same of any subcontractors. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be GRID Alternatives' sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR.

7. OWNERSHIP OF DOCUMENTS

SDCP may request any drawings, designs, data, photographs, reports and other documentation directly related to the project (other than GRID Alternatives' drafts, notes,

proprietary information and products, and internal memoranda), including duplication of same, prepared by GRID Alternatives in the performance of these services.

8. GRID ALTERNATIVES PROJECT MANAGER

GRID Alternatives' Project Manager shall be Paul Cleary, GRID San Diego Executive Director. Such GRID Alternatives Project Manager or other SDCP-approved representative, is deemed to be specially experienced and is a key member of the project team of GRID Alternatives, and shall be directly involved in performing, supervising or assisting in the performance of the services. GRID Alternatives' Project Manager shall communicate with, and periodically report to, SDCP's Project Manager on the progress of the work.

9. HOLD HARMLESS AND INDEMNITY

(a) To the fullest extent permitted by law, GRID Alternatives shall defend (with counsel proposed by GRID Alternatives and subject to reasonable approval of SDCP), indemnify and hold the SDCP, its officials, officers, employees, authorized volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of GRID Alternatives, its officials, officers, employees, contractors, subcontractors, consultants or agents in connection with the performance of GRID Alternatives' services, the pilot project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. GRID Alternatives shall defend, at GRID Alternatives' own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against SDCP, its directors, officials, officers, employees, agents or volunteers. GRID Alternatives shall pay and satisfy any judgment, award or decree that may be rendered against SDCP or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. GRID Alternatives shall reimburse SDCP and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. GRID Alternatives' obligation to indemnify shall not be restricted to insurance proceeds, if any, received by GRID Alternatives, SDCP, its officials, officers, employees, agents, or volunteers.

(b) If GRID Alternatives' obligation to defend, indemnify, and/or hold harmless arises out of GRID Alternatives' performance of "design professional" services (as that term is defined under Civil Code § 2782.8), then, and only to the extent required by Civil Code § 2782.8, which is fully incorporated herein, GRID Alternatives' indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of GRID Alternatives, and, upon GRID Alternatives obtaining a final adjudication by a court of competent jurisdiction, GRID Alternatives' liability for such claim, including the cost to defend, shall not exceed the GRID Alternatives' proportionate percentage of fault.

(c) SDCP shall defend (with counsel proposed by SDCP and subject to reasonable approval of GRID Alternatives), indemnify and hold GRID Alternatives, its officials, officers, employees, authorized volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any sole or gross negligence, or willful misconduct of SDCP, its officials, officers, employees, contractors, subcontractors, consultants or agents in connection with this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. SDCP shall defend, at SDCP's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against GRID Alternatives, its directors, officials, officers, employees, agents or volunteers. SDCP shall pay and satisfy any judgment, award or decree that may be rendered against GRID Alternatives or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. SDCP shall reimburse GRID Alternatives and its directors, officials, officers, consultants, employees, agents and/or volunteers, for any and all legal expenses and costs, including reasonable attorneys' fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. SDCP's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by SDCP, GRID Alternatives, its officials, officers, employees, agents, or volunteers.

(d) Notwithstanding any other provision of this Agreement, obligations arising out of this section shall survive any expiration or termination of this Agreement.

10. INSURANCE

(a) Without limiting GRID Alternatives' indemnification of SDCP, and prior to commencement of services, GRID Alternatives and any subcontractors shall obtain, provide and maintain at their own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to SDCP:

(i) Commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(ii) Automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities arising out of or in connection with services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(iii) Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). GRID Alternatives shall submit to

SDCP, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of SDCP, its officers, agents, employees and volunteers.

(b) Coverage provided by GRID Alternatives shall be primary and any insurance or self-insurance procured or maintained by SDCP shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of SDCP before SDCP's own insurance or self-insurance shall be called upon to protect it as a named insured.

(c) Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. If the GRID Alternatives maintains higher limits than the minimums shown above, SDCP requires and shall be entitled to coverage for the higher limits maintained by the GRID Alternatives. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SDCP.

(d) All insurance policies shall be issued by a financially responsible company or companies authorized to do business in the State of California. SDCP, its officers and employees, shall be named as additional insureds. GRID Alternatives shall provide SDCP with copies of certificates and endorsements for all policies, in a format acceptable to SDCP, with the appropriate named additional insured coverage and an endorsement that they are not subject to cancellation without 30 days prior written notice to SDCP. Insurance certificates must be submitted by GRID Alternatives and approved by SDCP before work commences.

(e) GRID Alternatives shall not allow any subcontractor to commence work on any subcontract for the pilot project until they have provided evidence satisfactory to SDCP that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors shall be endorsed to name SDCP as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage.

11. FORCE MAJEURE

Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that: (1) was not caused by the asserting Party, (2) could not have been reasonably foreseen and avoided by the asserting Party, and (3) is beyond the asserting Party's reasonable control (which causes are hereinafter referred to as "**Force Majeure Event**"). A Force Majeure Event may include, but not be limited to: acts of God, accident, riots, war, terrorist act, epidemic, pandemic (including unforeseeable/unavoidable aspects of the Covid-19 pandemic), quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations,

national strikes, fire, explosion, or generalized lack of availability of raw materials or energy.

If a Force Majeure Event occurs, the asserting Party shall promptly, after it becomes aware of the occurrence of the event, and in any event no more than five (5) days after the asserting Party becomes aware of such occurrence, notify the other Party of the occurrence of that Force Majeure Event, its effect on performance, and how long the asserting Party expects it to last. Thereafter the asserting Party shall update that information as reasonably necessary. During a Force Majeure Event, the asserting Party shall use reasonable efforts to resume its performance under this Agreement.

For the avoidance of doubt, Force Majeure Event shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

12. RELATION OF THE PARTIES

The relationship of the parties to this Agreement shall be that of independent contractors and that in no event shall GRID Alternatives be considered an officer, agent, servant or employee of SDCP. GRID Alternatives shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

13. CORRECTIONS

In addition to the above indemnification obligations, GRID Alternatives shall correct, at its expense, all errors in the work, which may be disclosed during SDCP's review of GRID Alternatives' work activities or reports as described in this Agreement.

14. AUDIT OF RECORDS

At any time during normal business hours and as often as it may deem necessary, GRID Alternatives shall make available to a representative of SDCP for examination of all its records with respect to all matters covered by this Agreement and will permit SDCP to audit, examine and/or reproduce such records. GRID Alternatives will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least four years after expiration, termination or final payment under this Agreement.

15. WAIVER; REMEDIES CUMULATIVE

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or

breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

16. CONSTRUCTION OF LANGUAGE OF AGREEMENT

The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa.

17. SUBCONTRACTING; ASSIGNMENT

GRID Alternatives may subcontract portions of the work as expressly provided in Exhibit A, or as otherwise approved in writing by SDCP. GRID Alternatives shall not be entitled to assign or transfer all or any portion of its rights or obligations contained in this Agreement without obtaining the prior written consent of SDCP, which consent shall not be unreasonably withheld. Any purported assignment without SDCP's prior written consent shall be void.

18. BINDING EFFECT

This Agreement shall inure to the benefit of and be binding upon the parties and their respective purchasers, successors, heirs, and assigns.

19. GOVERNING LAW; VENUE; ATTORNEYS FEE

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of San Diego County. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and all other costs of such action.

20. NONDISCRIMINATION

GRID Alternatives shall comply with the federal Americans with Disability Act, Public Law 101-336, and observe the disability discrimination prohibitions of such laws in the performance of the work required under this Agreement. GRID Alternatives also represents that it is an equal opportunity employer and it shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of applicants, employees, subcontractors, vendors, or suppliers. Such non-discrimination shall include, but not be limited to, all activities related to initial employment,

upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Further, GRID Alternatives shall provide equal opportunity for subcontractors to participate in subcontracting opportunities to the extent approved in accordance with this Agreement.

21. CAPTIONS

The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement.

22. AUTHORIZATION

Each party has expressly authorized the execution of this Agreement on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

23. NO PERSONAL LIABILITY

No director, officer, employee, agent, consultant, engineer, or architect of SDCP shall be personally responsible for any liability arising under or by virtue of this Agreement.

24. ENTIRE AGREEMENT BETWEEN PARTIES; MODIFICATIONS

This Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services, and contains all of the covenants and agreements between the parties with respect to said services. Any modifications of this Agreement will be effective only if it is in writing and signed by the party to be charged.

25. PARTIAL INVALIDITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

26. TIME OF ESSENCE

Time is of the essence for each and every provision of this Agreement.

27. COUNTERPARTS

This Agreement may be signed in counterparts, each of which shall constitute an original and may be signed using electronic signatures acceptable to both Parties.

28. THIRD PARTY RIGHTS

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than SDCP and GRID Alternatives.

29. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO SDCP:

San Diego Community Power
Attn: General Counsel
PO BOX 12716
San Diego, CA 92112-3716

TO GRID ALTERNATIVES:

GRID Alternatives
Attn: Paul Cleary
930 Gateway Center Way
San Diego, CA 92102

SIGNATURES ON FOLLOWING PAGE(S)

IN WITNESS WHEREOF, this Pilot Project Agreement has been executed by the parties effective on the date and year first above written.

SAN DIEGO COMMUNITY POWER

X _____

SDCP Chief Executive Officer

GRID ALTERNATIVES, INC.

X _____

Executive Director, San Diego

APPROVED TO FORM

X _____

SDCP General Counsel

EXHIBIT A

GRID ALTERNATIVES SCOPE OF WORK

1. Identify and conduct outreach to 25-30 homes in census tracts considered Disadvantaged Communities (“DACs”) with CalEnviroScreen 4.0 scores of 75% or above with low-income homeowners that meet all qualifications for the CPUC DAC-SASH program, including total household income that do not exceed the California Alternative Rates for Energy (“CARE”) or Family Electric Rate Assistance (“FERA”) program limits, and located within SDCP’s service area (Cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, National City, San Diego and unincorporated areas of the County of San Diego). GRID Alternatives shall also confirm that the customer of record for the electric meter(s) located at the home is a customer of SDCP.
2. Target outreach to homes within the San Diego Foundation’s *Rooted in Comunidad, Cultivating Equity* Transformative Climate Communities (“TCC”) project area (“TCC Project Area”). Aim to have 80% of homes participating in the pilot are within the TCC Project Area but ensure that participation shall not be exclusive to those homes.
3. Identify homes that would be ideal candidates to support solar systems but are not able due to the need of roof repairs or reroofing.
4. Enroll 25-30 homeowners to participate in the pilot program and install solar systems (and battery energy storage systems [“BESS”] where funding is available) funded by DAC-SASH program and/or Third-Party Ownership revenue as approved by the California Public Utilities Commission on homes that received roof repairs or reroofs through the pilot.
5. Estimate the cost of the roof repairs/reroofing by home.
6. Subcontract with two (2) to three (3) C-39 licensed, fully insured, and bonded roofing companies qualified to repair or reroof and B-class licensed general contractors for ancillary repairs (as specified in section 7.a) in order to support solar (and storage where applicable) systems. The subcontractors shall be hired in a reasonable manner intended to ensure SDCP’s funds are used efficiently and effectively, consistent with current market costs for repair and reroofing work. GRID Alternatives shall ensure hired subcontractors will comply with any applicable provisions of the Agreement, which may include, but not be limited to, the provisions relating to Prevailing Wage Laws, if applicable.
7. Conduct roof repairs or reroofing work for homes in order to support the installation of solar and storage systems. Costs shall not exceed \$20,000 per home on average for the pilot program. Some homes may exceed the \$20,000 threshold as long as the average across the pilot program remains at or below \$20,000. SDCP reserves the right to not pay for pilot program average amounts that exceed \$20,000 per home.

- a. With prior written approval by SDCP, conduct ancillary and/or minor repairs or construction that will enable the installation of BESS (*e.g., construction of an exterior structure to house a BESS*) with a maximum allowable cost of \$5,000 per home. Cost for any and all ancillary repairs or construction costs will be included in the not to exceed \$20,000 per home average costs unless otherwise approved by SDCP.
8. Intake and manage applications from participating homeowners.
9. Record SDG&E account number of all participating homeowners/homes and report to SDCP on a monthly basis.
10. Track, evaluate, and verify roofing and solar system installation work and associated costs of roofing work and value of the solar (and battery if applicable) system(s) installed. Report amount to SDCP on a quarterly basis.
11. Track, measure, and report the multiplying impact of the pilot program in bringing in State funding by ZIP code and census tract.
12. Track and report the number of homes participating in the pilot program that are within and outside the TCC Project Area.
13. Track installed kW and estimated first-year and lifetime kWh production for each home. . Report such amounts to SDCP on a quarterly basis.
14. Meet with SDCP staff monthly to report out on progress on the above tasks and requests for other reasonable information from SDCP.



SAN DIEGO COMMUNITY POWER Staff Report – Item 21

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Managing Director, Power Services; and
Karlee Mink, Portfolio Manager, Power Services; and
Andrea Torres, Senior Portfolio Manager, Power Services;

Via: Karin Burns, Chief Executive Officer

Subject: Renewable Power Purchase Agreement with Noble Solar, LLC

Date: February 22, 2024

RECOMMENDATION

Approve the proposed Renewable Power Purchase Agreement with Noble Solar, LLC and authorize the CEO to execute the agreement.

BACKGROUND

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

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

The proposed PPA is for capacity and renewable energy benefits from a 400 MW solar and 400 MW (1,600 MWh) storage project (“Purple Sage Energy Center”) with Noble Solar, LLC. Primergy Solar, LLC (“Primergy”) is the developer for Noble Solar, LLC. The PPA originated from request for proposals SDCP issued in October 2022. SDCP engaged with Primergy, after short-listing the project and has reached terms mutually agreeable to both parties.

ANALYSIS AND DISCUSSION

Staff negotiated the attached PPA for the purchase of renewable energy and capacity attributes from a 400 MW solar photovoltaic electricity generating facility, along with a 400 MWAC 4-hour (1,600 MWh) battery energy storage facility in Clark County, Nevada.

Renewable energy produced by the facility will provide approximately 1,192,000 MWh annually of long-term renewable energy deliveries for SDCP’s power supply. Further, while SDCP is increasing efforts to target and encourage local project development for SDCP’s generation portfolio, SDCP expects a certain amount of geographic diversity among its power supply to help mitigate risks that might be experienced locally or regionally from weather, project site, or wholesale market conditions.

Below is additional information regarding Primergy Solar, LLC and the proposed Purple Sage Energy Center PPA.

Background on Primergy Solar:

- Primergy was formed in 2020 and has a leadership team with a combined experience of developing, contracting, constructing and operating over 50 GW of clean energy projects in North America.
- Primergy has a 19,500-MW development pipeline consisting of solar and solar+storage projects across the U.S. Primergy owns and directly manages over 2,000 MW of contracted solar and storage projects with near-term delivery timelines.
- Primergy is also developing Gemini Solar + Storage (“Gemini”) and started construction on this project in Clark County, Nevada, in April 2022. Gemini is a 690 MW Solar + 380 MW Battery Storage Project that supports approximately 1,300 construction jobs, covers 5,000 acres of public land, will provide electricity to power approximately 400,000 homes, and provides Primergy with extensive experience permitting and constructing a project of this scale in this location.
- Primergy is a wholly owned subsidiary of Quinbrook Infrastructure Partners (“Quinbrook”), which was founded in 2015 to be an ESG-focused investment manager and has since made substantial investments in the U.S. renewable energy sector.

Contract Overview – Purple Sage Energy Center



- Project: 400 MW solar photovoltaic electricity generating facility, along with a 400 MWAC 4-hour (1,600 MWh) battery energy storage facility
- Project location: Clark County, Nevada
- Guaranteed Commercial Operation date: June 30, 2027
- Contract term: 20 years
- Expected annual energy production: approximately 1,192,000 MWh
- Pricing: Fixed pricing with no escalation
- SDCP would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones as well as seller's failure to meet the guaranteed energy production.

Community Benefits and Workforce Development:

- The project is estimated to create approximately 520 temporary construction jobs, 340 jobs to be local to the project's community, and 8 permanent jobs to support operations and maintenance.
- There will be Labor Agreements in the form of Work Site Agreements with the following -
 - International Brotherhood of Electrical Workers (IBEW)
 - Laborers International Union of North America (LIUNA)
 - International Union of Operating Engineers (IUOE)
- Primergy's COO and Project Director at Purple Sage are former IBEW workers and worked in the craft for many years prior to applying their expertise on the Owner side of construction.
- Primergy developed an apprenticeship scholarship for the Moapa Band of Paiutes (MBOP). Primergy managed coordination between the MBOP and IBEW to develop training programs and provide valuable experience at prevailing wage plus a 10% bonus for MBOP Members. This program has been successful and Primergy will look to replicate it at other projects whenever possible.
- The project is planning to provide \$15,000 annually to the local Nevada community for their use and benefit.
- The project has committed to contribute \$100,000 per contract year over 20 years to a community benefit fund to benefit SDCP customers.

COMMITTEE REVIEW

The ECWG recommended the project for shorting listing at the conclusion of the request for proposals review period. On February 9, 2024, the ECWG reviewed the most recently negotiated PPA terms and recommended that staff move forward with presentation of this PPA to the Board.



FISCAL IMPACT

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

ATTACHMENTS

Attachment A: Renewable Power Purchase Agreement with Noble Solar, LLC



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RPS ENERGY + STORAGE PPA
Buyer 02.21.24

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Noble Solar LLC, a California limited liability company (“**Seller**”)

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

Description of Facility: A 400 MW_{AC} solar photovoltaic electricity generating facility, along with a co-located 400 MW 4-hour battery (1,600 MWh) energy storage facility, all located in Clark County, in the State of Nevada, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	████████
CEC Precertification Obtained	████████
Documentation of Special Use Permit received	████████
████████████████████	████████
Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities	████████
Executed Interconnection Agreement	████████
Financial Close	████████
Guaranteed Construction Start Date	████████
██	████████
██	████████
Expected Commercial Operation Date	████████
Guaranteed Commercial Operation Date	6/30/2027

Delivery Term: Twenty (20) Contract Years

Expected Energy:

Contract Year	Expected Energy (MWh)
1	████████
2	████████

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Guaranteed Capacity: 400 MW_{AC} of Generating Facility capacity

Storage Contract Capacity: 400 MW_{AC} for four (4) hour discharge

Storage Contract Output: 1,600 MWh (based on four (4) hour discharge)

Dedicated Interconnection Capacity: 400 MW_{AC}

Guaranteed Storage Availability: [REDACTED]

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate (%)
1	
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Minimum Efficiency Rate: [REDACTED]

Contract Price

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 20	[REDACTED]

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	[REDACTED]

Product:

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

Scheduling Coordinator: Buyer/Buyer Third Party

Security:

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Development Security: [REDACTED] multiplied by the Contract Capacity [REDACTED]

[REDACTED]

Performance Security: [REDACTED] multiplied by the Contract Capacity [REDACTED]

[REDACTED]

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“Agreement”) is entered into as of [REDACTED] (the “Effective Date”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1
DEFINITIONS

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

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

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

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

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

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

“**Ancillary Services**” means those Ancillary Services, as defined in the CAISO Tariff, that can be produced from the Storage Facility at any relevant time consistent with the terms and conditions of this Agreement, including the Operating Restrictions, as set forth in Exhibit Q. For clarity, “Ancillary Services” as used herein does not include, at any relevant time, any ancillary

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services that the Facility is not actually physically capable of providing consistent with the terms and conditions of this Agreement, including the Operating Restrictions.

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

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

“Approved Maintenance Hours” means up to one hundred five (105) hours of full capacity equivalent hours of Planned Outages each Contract Year provided that such Planned Outages are scheduled in accordance with Section 4.6(a).

“Attestation” has the meaning set forth in Section 4.12.

“Automated Dispatch System” or **“ADS”** has the meaning set forth in the CAISO Tariff.

“Automatic Generation Control” or **“AGC”** has the meaning set forth in the CAISO Tariff.

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

“Availability Backcast Amount” means an amount of energy (in MWh) determined by a backcasting analysis that takes into account both resource conditions and availability of the Generating Facility where availability, in this context, refers to the status of the Generating Facility’s mechanical and electrical systems and equipment (e.g. operational capability of inverters, converters, transformers, etc.), as further described in Exhibit T.

“Availability Standard” means the program set forth in Section 40.9 of the CAISO Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy (as defined in the CAISO Tariff) resources and possible charges and incentive payments for performance thereunder.

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

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

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

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

(iii) submitted a Self-Schedule for less than the full amount of Generating Facility Energy forecasted to be generated by or delivered from the Generating Facility.

“**Buyer Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Generating Facility Energy pursuant to or as a result of (a) Buyer Bid Curtailment, or (b) a Buyer Curtailment Order; *provided*, the duration of

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any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

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

[REDACTED]

[REDACTED]

[REDACTED]

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

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

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

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC, or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

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

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

“CAISO Resource ID” means the number or name assigned by the CAISO to the CAISO Approved Meter.

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

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public

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Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

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

[REDACTED]

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

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

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

“CEQA” means the California Environmental Quality Act.

[REDACTED]

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

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

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

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“Charging Energy” means the Energy delivered to the Storage Facility pursuant to a Charging Notice, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and Station Use. All Charging Energy shall be used solely to charge the Storage Facility. [REDACTED]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“CPM Soft Offer Cap” has the meaning set forth in Section 43A.4.1.1 of the CAISO Tariff.

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

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

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

“CRS” has the meaning set forth in Section 4.12.

“Cure Plan” means a plan developed by Seller and delivered to Buyer within thirty (30) days of Seller’s receipt of notice from Buyer of the occurrence of the Event of Default for which a Cure Plan can be provided, which plan shall specify in reasonable detail the cause of such performance failure and the actions Seller is taking or proposes to take in order to cure such performance failure, together with written confirmation from a Licensed Professional Engineer that such failure is capable of being cured within a reasonable period of time.

“Curtailment Order” means any of the following:

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

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

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

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

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which generation from the Facility is reduced pursuant to a Curtailment Order;

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provided, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Damage Payment” means the dollar amount that equals the amount of [REDACTED]
[REDACTED] Development Security [REDACTED]
[REDACTED].

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

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

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

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

“Deemed Delivered Energy” means the amount of Generating Facility Energy, expressed in MWh, that the Generating Facility would have produced and delivered to the Generating Facility Metering Point (accounting for losses to the Delivery Point), but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be calculated [REDACTED] or using an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Buyer Curtailment Period, less the amount of Generating Facility Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

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

“Delay Damages” means Construction Delay Damages and COD Delay Damages.
[REDACTED]

“Delivery Point” has the meaning set forth in Exhibit A with the location shown on Exhibit R.

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

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

“Development Security” means (i) cash [REDACTED], and/or (ii) a Letter of Credit, in the amount set forth on the Cover Sheet; [REDACTED]

[REDACTED]

“**Discharging Energy**” means all Energy that is delivered from the Storage Facility to the Delivery Point pursuant to a Discharging Notice during any Settlement Interval or Settlement Period, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for Station Use and Electrical Losses to the Delivery Point.

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given by Buyer, Buyer’s SC or the CAISO to the Facility, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to a specified Stored Energy Level; *provided*, (a) any such operating instruction or updates shall be in accordance with the Operating Procedures and the CAISO Tariff [REDACTED]

[REDACTED]

[REDACTED]. Any instruction to discharge the Storage Facility pursuant to a Buyer Dispatched Test shall be considered a Discharging Notice.

[REDACTED]

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

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

“**Efficiency Rate**” means the measured round-trip efficiency rate of the Storage Facility, as measured at the Delivery Point net of Electrical Losses and Station Use, expressed as a percentage, calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

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

[REDACTED]

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“Eligible Intermittent Resource Protocol” has the meaning set forth in the CAISO Tariff or the successor CAISO program for intermittent resources.

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

“Energy” means alternating current electrical energy measured in MWh.

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

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

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

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

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

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

“Excused Event” has the meaning set forth in Exhibit P.

“Exercise Period” has the meaning set forth in Section 14.5(c).

“Expansion Project” has the meaning set forth in Section 14.5(a).

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

“Expected Energy” means the quantity of Generating Facility Energy that Seller expects to be able to deliver to Buyer [REDACTED] which amount shall be adjusted proportionately to the reduction from Guaranteed Capacity to Installed Generating Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

[REDACTED]

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

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“Facility Energy” means the sum of Generating Facility Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use.

[REDACTED]

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

“Financial Close” means Seller or one of its Affiliates has obtained debt, equity financing, and/or sale of Tax Credit commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy the flexible capacity requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

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

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

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

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

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

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

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

“Future Environmental Attributes” shall mean any and all generation attributes [REDACTED] after the Effective Date other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international,

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federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Generating Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include [REDACTED]

[REDACTED] investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

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

“Generating Facility” means the renewable energy electricity generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Generating Facility Energy to the Delivery Point; *provided*, the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Generating Facility Energy” means all Energy that is delivered from the Generating Facility to the Generating Facility Metering Point, as measured at the Generating Facility Metering Point by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for Station Use and Electrical Losses to the Delivery Point. For the avoidance of doubt, the Parties agree that the Generating Facility Energy includes all Energy generated by the Generating Facility, whether such Energy is delivered directly to the Delivery Point or such Energy is used to charge the Storage Facility.

“Generating Facility Meter” means the CAISO Approved Meter, along with a CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Generating Facility Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. The Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

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

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

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green tags are accumulated on a MWh basis and one green tag represents the Green Attributes associated with one (1) MWh of Generating Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, [REDACTED] (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits. [REDACTED]

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

“Guaranteed Capacity” means the amount of generating capacity of the Generating Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet.

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

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

“Guaranteed Efficiency Rate” means the guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

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

“Guaranteed RA Amount” means, at any point in time, the maximum Net Qualifying Capacity (in MWs) for which a co-located solar and storage facility, with a common Interconnection Point, a solar generating capacity equivalent to the Guaranteed Capacity at the Delivery Point and a storage capacity equivalent to the Installed Battery Capacity, having achieved Full Capacity Deliverability Status, and performing with operational characteristics equal to those required by the Guaranteed Storage Availability, Guaranteed Efficiency Rate, and the Operating Restrictions which may be counted in any given Showing Month pursuant to the then applicable Law, including counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff applicable to Resource Adequacy Resources, and the implementation of CPUC decisions and CAISO tariff changes and CAISO business practice manuals where any such changes to counting conventions may be reflected.

“Guaranteed Storage Availability” means the minimum guaranteed [REDACTED] Storage Availability of the Facility, as set forth on the Cover Sheet.

“Imbalance Energy” means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy, Discharging Energy, or Generating Facility Energy, as applicable, deviates from the amount of Scheduled Energy.

[REDACTED]

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

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

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

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

“Installed Battery Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation (up to but not in excess of the Storage Contract Capacity), as measured in MW(ac) at the Delivery Point and adjusted for ambient

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conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“Installed Capacity” means the sum of (i) the Installed Generating Capacity and (ii) the Installed Battery Capacity.

“Installed Generating Capacity” means the actual generating capacity of the Generating Facility, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation (up to but not in excess of the Guaranteed Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“Insurable Force Majeure Event” means any Force Majeure Event which (a) results in direct, physical loss to, [REDACTED] the Facility [REDACTED]
[REDACTED]

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

“Interconnection Agreement” means the interconnection agreement(s) entered into by Seller or a Seller Affiliate pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility [REDACTED] that is no less than the Dedicated Interconnection Capacity, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

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

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

“Joint Powers Agreement” means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit, guidance or directive having the force of law, or any interpretation or implementation thereof, promulgated or issued by a Governmental Authority, all the tariffs (including the CAISO Tariff), and the WREGIS Operating Rules.

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

“Limited Assignee” has the meaning set forth in Section 14.4.

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local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

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

[REDACTED]

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives [REDACTED].

“Lost Output” means the amount of Generating Facility Energy expressed in MWh that the Generating Facility would have produced and delivered to the Delivery Point, as measured at the Generating Facility Metering Point, but that is not produced by the Generating Facility during Force Majeure Events, Curtailment Periods, System Emergencies, [REDACTED] which amount shall be calculated using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Force Majeure Events, Curtailment Periods, System Emergencies, or Buyer Failure, less the amount of Generating Facility Energy delivered to the Delivery Point or the Storage Facility Metering Point during such period of time (or other relevant period); *provided*, if the applicable difference is negative, the Lost Output shall be zero (0).

[REDACTED]

[REDACTED]

“Material Terms” has the meaning set forth in Section 14.5(b).

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

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

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

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

“**Meter Service Agreement**” has the meaning forth in the CAISO Tariff.

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Non-Curable Default**” has the meaning set forth in Section 14.2(c).

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

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

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

“Participating Generator Agreement” has the meaning set forth in the CAISO Tariff.

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

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

“Performance Measurement Period” means each two (2) consecutive Contract Year period during the Delivery Term so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

“Performance Security” means (i) cash [REDACTED] and/or (ii) a Letter of Credit, in the amount set forth on the Cover Sheet; [REDACTED]

“Permitted Transferee” means:

(i) any entity that satisfies, or is controlled by another Person that satisfies the following requirements (a) and (b):

(a) A tangible net worth [REDACTED] of not less than [REDACTED] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least three (3) years of experience in the ownership and operations of power generation facilities [REDACTED] similar to the Facility, or has retained a third-party with such experience to operate the Facility;

[REDACTED]

[REDACTED]

[REDACTED]

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust,

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incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

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

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

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

[REDACTED]

“Prevailing Wage Requirement” has the meaning set forth in Section 13.4.

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

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

“Project PPA” has the meaning set forth in Section 14.5(b).

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

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

“PTC Amount” means the amount, on a dollar per MWh basis, equal to the PTC that Seller would have earned in respect of Generating Facility Energy at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn

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as a result of Buyer Bid Curtailment, or Buyer Curtailment Order, which amount will be calculated by reference to the amount of Deemed Delivered Energy and the portion of the Generating Facility eligible to receive PTCs at the time of determination.

[REDACTED]

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

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

“RA Guarantee Date” means [REDACTED]

[REDACTED] the Commercial Operation Date [REDACTED].

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

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

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

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

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

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

“Receiving Party” shall have the meaning set forth in Section 18.2.

[REDACTED]

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

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

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46, 48, 45Y and 48E of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of benefit or incentive, including any transfers of certain credits pursuant to Section 6418 of the Internal Revenue Code of 1986, as amended, relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

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

“Replacement Energy” means Energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Generating Facility, in addition to Green-e Listing.

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

“Replacement RA” means Resource Adequacy Benefits, if any, (a) equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, including, as applicable, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, and (b) located within the CAISO Balancing Authority Area.

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

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

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

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

[REDACTED]

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

“Right of First Refusal” or **“ROFR”** has the meaning set forth in Section 14.5(a).

“ROFR Offer” has the meaning set forth in Section 14.5(b).

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

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

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

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

[REDACTED]

[REDACTED]

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“Security Interest” has the meaning set forth in Section 8.9.

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

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

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

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

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

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

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

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the Interconnection Point, including the Interconnection Agreement itself, that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller or its Affiliates other than the Facility.

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


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

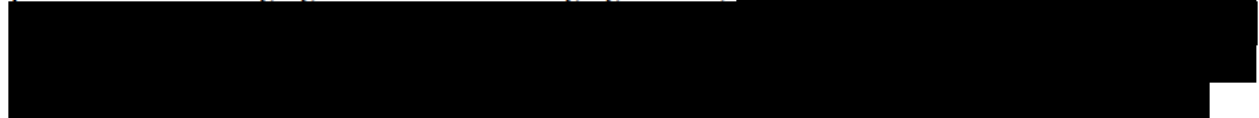
“Site Control” means that, for the Contract Term, Seller (or, prior to the Delivery Term, Seller or its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant,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

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

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

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

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




“**Storage Capacity**” means the maximum dependable operating capability of the Storage Facility to discharge Energy that can be sustained for four (4) consecutive hours.

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

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

“**Storage Contract Capacity**” means the total Storage Capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(b) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

“**Storage Contract Output**” means the product of the Storage Contract Capacity multiplied by four (4) hours, represented in MWh, initially deemed to be equal to the amount set forth on the Cover Sheet.



“**Storage Facility**” means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including the Energy Management System and mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities or the Interconnection Facilities), and as such storage facility may

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be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

“Test Energy” means Generating Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Generating Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

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

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

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

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

[REDACTED]

[REDACTED]

“Ultimate Parent” means Valley of Fire Solar, LLC, a Delaware limited liability company.

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

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

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

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

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

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

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

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

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

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

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

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

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

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes [REDACTED]:

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

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

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

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

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

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(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation;

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

(h) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;

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

(j) Seller has paid Buyer for all undisputed amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages.

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

2.4 **Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event [REDACTED], Seller shall submit to Buyer, within ten (10) Business Days of the end [REDACTED] such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. So long as Seller complies with its obligations under this Section 2.4 with respect to a Milestone, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any such Milestone.

ARTICLE 3
PURCHASE AND SALE

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

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

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Generating Facility Energy, Charging Energy, and/or Discharging Energy delivered from the Generating Facility and/or received or delivered by the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. To the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely allocated to the Party that is acting as Scheduling Coordinator for the Facility.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and Section 3.5(b), in such event, Buyer shall bear all costs and risks incurred in connection with such Future Environmental Attributes, including costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be

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no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller's decision not to take action or incur costs to allow for such Future Environmental Attributes shall not be considered an Event of Default or otherwise give rise to any Seller liability. Seller shall have no obligation to take any action or incur any costs or liabilities or alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such costs, liabilities, or alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with or arising therefrom on terms acceptable to Seller.

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

3.6 **Test Energy**. If and to the extent the Generating Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to one hundred percent (100%) of all CAISO payments, [REDACTED]

[REDACTED] received by Buyer for the Generating Facility Energy (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

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

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

[REDACTED]

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

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3.8 Resource Adequacy Failure.

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

(b) RA Deficiency Amount Calculation. Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to [REDACTED]

[REDACTED] or (y) the product of the difference, expressed in kW, of (i) the Guaranteed RA Amount for such Showing Month, minus (ii) the Net Qualifying Capacity of the Facility for such month shown on Buyer’s monthly or annual RA Plan to the CAISO and CPUC and counted towards Buyer’s resource adequacy compliance obligations (such difference, the “**RA Shortfall**”), multiplied by the sum of (a) the CPM Soft Offer Cap and (b) the CPUC System RA Penalty Price for System RAR applicable to the RA Shortfall for such RA Shortfall Month; [REDACTED]

(c) Seller may, as an alternative to paying RA Deficiency Amounts, deliver Replacement RA in the amount of the RA Shortfall, provided that notice of such Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the RA Compliance Showing deadline for the applicable Showing Month. [REDACTED]

3.9 CEC Certification and Verification. In accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Generating Facility throughout the Delivery Term, including compliance with all requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor) that are applicable to the Generating Facility. Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any material changes to the information included in Seller’s application for CEC Certification and Verification for the Generating Facility.

3.10 [Reserved].

3.11 California Renewables Portfolio Standard.

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(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6].

(b) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

(c) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2].

(d) The term "commercially reasonable efforts" as used in this Section 3.11 means efforts consistent with and subject to Section 3.12.

3.12 Compliance Expenditure Cap.

(a) Subject to other provisions of this Section 3.12, the Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Seller agrees to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with a Change in Law to maximize benefits to Buyer, including: (i) the modification of the description of Green Attributes and/or Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other commercially reasonable actions that may be required to assure that this Agreement or the Facility is eligible as an Eligible Renewable Energy Resource and for other benefits under the California Renewables Portfolio Standard; *provided*, Seller shall have no obligation to modify this Agreement [REDACTED], or take other actions not expressly required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in an adverse effect on, any of Seller's rights, benefits, costs, liabilities, risks and/or obligations under or arising from this Agreement. [REDACTED]

[REDACTED]

(b) If a Change in Law has increased or is reasonably expected to increase Seller's known or reasonably expected costs [REDACTED] to (A) cause the Generating Facility, the Energy generated by the Generating Facility, or the associated Green Attributes to be RPS compliant or to obtain, maintain, convey or effectuate Buyer's use of any Green Attributes, (B) comply with its obligations under Section 4.10, (C) obtain, maintain, convey or effectuate Buyer's use of (as applicable) any Product as required hereunder or affects the Facility's CEC Certification and Verification, or (D) obtain, maintain, convey or effectuate Buyer's use of any Resource Adequacy Benefits (excluding any Change in Law otherwise addressed in the definition of "Guaranteed RA Amount" and Section 3.8(b)), then the Parties agree that the maximum aggregate amount of out-of-pocket costs, expenses and liabilities (any action required to be taken by Seller to comply with this Agreement and such Change in Law, a "**Compliance Action**"), that Seller shall be required to bear during (x) any Contract Year to comply with all such Compliance Actions shall be capped at [REDACTED] per MW of Contract Capacity and (y) the Delivery Term to comply with all such Compliance Actions shall be capped at [REDACTED] per MW of Contract Capacity, in the aggregate over the Delivery Term (the "**Compliance Expenditure Cap**").

[REDACTED]

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

(d) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

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

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

ARTICLE 4

OBLIGATIONS AND DELIVERIES

4.1 Delivery.

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

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

4.2 Title and Risk of Loss.

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(a) Energy. Title to and risk

shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

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

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

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

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

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

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Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer and the SC (if applicable) of any changes from the Day-Ahead Forecast of [REDACTED] MW or more in (i) Available Generating Capacity, (ii) Storage Capacity or (iii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity, Storage Capacity, or hourly expected Energy changes by at least [REDACTED] MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer and the SC (if applicable) as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Storage Capacity, or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer and the SC (if applicable) of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer and the SC (if applicable) of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer, provided that Buyer specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

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

(f) Forecasting Penalties. Subject to a Force Majeure Event, with respect to any given hour, in the event Seller has failed to provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Generating Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.


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

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4.4 Dispatch Down/Curtailment.

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

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



(c) Failure to Comply. Subject to Section 4.4(a), if Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Generating Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.



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

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

4.5 Charging Energy Management.

(a) Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all commercially reasonable action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Storage Facility. Except as otherwise expressly set forth in this Agreement, including Section 4.5(c) and Section 4.9(b), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility. The Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid whether or not such Charging Energy were grid energy, and that as a result the CAISO will have separate financial settlements (i) for deliveries of Generating Facility Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter and Discharging Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

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

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice [REDACTED]

[REDACTED] or in connection with a Buyer Dispatched Test or Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority; [REDACTED]

[REDACTED] If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all Energy costs associated with such charging of the Storage Facility specified in subsections (i) and

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(ii) in this sentence, (y) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Discharging Notices. During the Delivery Term, Buyer will have the right to direct Seller to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Procedures, the CAISO Tariff, and the existing level of charge of the Storage Facility. Seller shall comply with all Discharging Notices, subject to the requirements and limitations set forth in this Agreement. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer, Buyer's SC, or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice in order to maintain compliance with the Operating Restrictions), or in connection with a Buyer Dispatched Test or Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority; *provided*, if Seller receives a Discharging Notice that is not in compliance with the Operating Restrictions, Seller shall notify the SC as soon as reasonably practicable, but in no event later than one (1) hour following receipt of such non-compliant Discharging Notice, and Seller shall comply with the Discharging Notice to the fullest extent possible without violating the Operating Restrictions or suffering an adverse effect to Seller until such time as Seller receives a modified and compliant Discharging Notice. If, during the Contract Term, Seller (i) discharges the Storage Facility other than as provided for in the Discharging Notice or (ii) discharges the Storage Facility in violation of the first sentence of this Section 4.5(e), then (x) Seller shall be responsible for all Energy costs associated with such discharging of the Storage Facility specified in subsections of (i) and (ii) in this sentence, (y) Buyer shall not be required to pay for the discharging of such Energy (i.e., Discharging Energy), and (z) Buyer shall be entitled to all of the benefits (including Storage Product) associated with such discharge.

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

(g) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or

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Discharging Notices, (ii) Seller shall have exclusive rights to test, charge and discharge the Storage Facility, and (iii) all CAISO costs, revenues, charges, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility shall be for Seller's account. Seller is responsible to procure, at its own cost, any energy required for commissioning purposes and to arrange to discharge such energy into the grid. Upon the Commercial Operation Date and throughout the Delivery Term, (i) Buyer and CAISO shall have exclusive rights to issue, or cause to be issued, Charging Notices or Discharging Notices, and (ii) all CAISO costs, revenues, charges, penalties and other amounts owing to or paid by CAISO in respect of the Facility operations shall be for Buyer's account.

[REDACTED]

[REDACTED]

[REDACTED]

4.6 **Reduction in Energy Delivery Obligation.** Without limiting Section 3.1 or Exhibit G, or any rights expressly provided hereunder of Seller in relation to the operation of the Facility:

(a) **Facility Maintenance.** Subject to providing Buyer one-hundred twenty (120) days prior Notice, Seller shall schedule all Planned Outages within the time period determined by the CAISO for the Facility as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff, and Seller shall reimburse Buyer for any cost Buyer incurs in connection therewith (including the

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cost of any replacement Capacity Attributes as required by the CAISO). During the [REDACTED] month period [REDACTED] during the Delivery Term, Seller shall not schedule any non-emergency maintenance that reduces the energy generation capability of the Generating Facility by more than [REDACTED] unless (i) such outage is required to avoid an emergency or damage to the Facility or its Interconnection Facilities, (ii) such maintenance is necessary to maintain equipment warranties or is otherwise required by the equipment manufacturer and cannot be scheduled outside the months of June to October, (iii) such outage is in connection with Force Majeure Events, (iv) such outage is required by Law, or the requirements of CAISO or the interconnecting utility and/or each other applicable Governmental Authority, (v) such outage is required in accordance with Prudent Operating Practices or (vi) the Parties agree otherwise in writing.

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

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

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

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

[REDACTED]

4.7 Guaranteed Energy Production. During each Performance Measurement Period, Seller shall deliver to the Generating Facility Metering Point an amount of Generating Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer all (a) Deemed Delivered Energy and (b) Lost Output for the Performance Measurement Period. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G ("GEP Damages"); [REDACTED]

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4.8 Storage Availability and Efficiency Rate.

(a) During the Delivery Term, the Storage Facility shall maintain [REDACTED] Storage Availability during each month of no less than the Guaranteed Storage Availability, which [REDACTED] Storage Availability shall be calculated in accordance with Exhibit P. If the Annual Storage Availability for any month (calculated in accordance with Exhibit P) is less than the Guaranteed Storage Availability, then Buyer's exclusive remedies for Seller's failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Buyer's payment for the Storage Product which shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit P) [REDACTED].

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate, calculated pursuant to a Storage Capacity Test, of no less than the Guaranteed Efficiency Rate. Buyer's sole remedy for Seller's failure to maintain an Efficiency Rate that is equal to or greater than the Guaranteed Efficiency Rate is the payment of liquidated damages by Seller in accordance with Exhibit C.

4.9 Storage Capacity Tests.

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

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests, subject to applicable NERC requirements and other applicable Laws. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. For any Storage Capacity Tests initiated by Seller ("**Seller Initiated Test**"), including all tests conducted prior to Commercial Operation, any Storage Capacity Test, any Storage Capacity Test conducted if the Storage Contract Capacity immediately prior to such Storage Capacity Test is below [REDACTED] of the Installed Battery Capacity, any test required by CAISO, and other Seller-requested discretionary tests or dispatches, (i) Seller shall not be entitled to the Renewable Rate for any Generating Facility Energy used as Charging Energy, (ii) Seller shall be liable for all CAISO costs and charges for associated Charging Energy only with respect to such Storage Capacity Test, and (iii) Seller shall be entitled to any CAISO revenues associated with Discharging Energy. For any Storage Capacity Tests initiated by Buyer, including all required annual tests pursuant to Exhibit O ("**Buyer Dispatched Test**"), Buyer shall direct only Charging Energy to be used to charge the Storage Facility, and Buyer shall (x) be liable for all CAISO costs and charges for such associated Charging Energy, and (y) be entitled to any CAISO revenues associated with associated Discharging Energy [REDACTED].

[REDACTED] No Charging Notices or Discharging Notices shall be issued, and Buyer shall not dispatch or otherwise schedule the Storage Facility, during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the

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applicable test. The Storage Facility shall be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test. Any Buyer Dispatched Tests shall be deemed an Excused Event for the purposes of calculating the Monthly Storage Availability.

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

4.10 **WREGIS**. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Generating Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Buyer acknowledges that Seller may not be able under WREGIS rules to complete all WREGIS registration requirements prior to the Commercial Operation Date.

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

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

(c) Seller shall, at its sole expense, subject to Section 4.10(b), ensure that the WREGIS Certificates for a given calendar month correspond with the Generating Facility Energy for such calendar month as evidenced by the Facility's metered data.

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

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

(f) Subject to Section 3.12, if (i) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, or (ii) the CEC modifies its *RPS Eligibility Guidebook* to enable the full amount of Generating Facility Energy to generate WREGIS Certificates, without reduction for Storage Facility efficiency losses, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the maximum quantity of WREGIS Certificates that can be transferred to Buyer from the Generating Facility in the same calendar month.

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

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

ARTICLE 5
TAXES

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

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

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and delivery of the Product and comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, and the generation and sale of Product.

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

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or

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

**ARTICLE 7
METERING**

7.1 Metering.

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of Generating Facility Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. If Seller elects to submit a SQMD Plan for the Facility, or only the Storage Facility, as applicable, then all Generating Facility Meters, or all Storage Facility Meters, as applicable, will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility, or only the Storage Facility, as applicable, at Seller's cost (including, for avoidance of doubt, reimbursement to Buyer of reasonable and customary costs owed by Buyer to its Scheduling Coordinator for submitting SQMD Plan meter data to the CAISO), throughout the period to which the SQMD Plan applies. Seller shall provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the Generating Facility Meter and Storage Facility Meter shall be programmed to adjust for all Electrical Losses and Station Use, as applicable, from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall separately meter all Station Use. Metering shall be consistent with the metering diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each Generating Facility Meter and Storage Facility Meter shall be kept under seal, such seals to be broken (i) when the meters are to be tested, adjusted, modified or relocated or (ii) by Seller when required for maintenance purposes per Exhibit R, in which event, Seller will not tamper with the Generating Facility meter. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller

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hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility, or only the Storage Facility, as applicable. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility, or only the Storage Facility, as applicable.



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

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) reflect records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Generating Facility Energy produced by the Generating Facility as read by the Generating Facility Meter, the amount of Charging Energy charged by the Storage Facility, the amount of Discharging Energy delivered from the Storage Facility, in each case, as read by the Storage Facility Meter, the amount of Replacement Green Attributes delivered to Buyer (if any), the amount of Replacement RA delivered to Buyer (if any), the Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy, Lost Output, and Adjusted Energy Production; the LMP prices at the Delivery Point for each Settlement Period; and the Contract Price applicable to such Product in accordance with Exhibit C; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

8.2 **Payment.** Payments due by either Party shall be made by wire transfer or ACH payment to the bank account provided on each monthly invoice. The applicable Party shall pay undisputed invoice amounts within thirty (30) days from the later of such Party's receipt of invoices or the end of the prior monthly delivery period; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

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

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Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars (\$10,000).

8.4 **Payment Adjustments.** Payment adjustments shall be made if (a) Buyer or Seller discovers there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, or (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data, updated allocation or assignment of costs by the CAISO, or (c) there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

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

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date.

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[REDACTED] Seller shall maintain the Development Security in full force and effect and Seller shall within five (5) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment; [REDACTED]

[REDACTED] Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to provide [REDACTED] that meets the requirements set forth in the definition of Development Security. [REDACTED]

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, [REDACTED] and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days [REDACTED]

8.9 **First Priority Security Interest in Cash** [REDACTED]. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby

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

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

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

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 9
NOTICES

9.1 **Notices.**

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

(b) **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) to the email addresses listed on Exhibit N, upon receipt by the receiving Party if received during normal business hours, and if received after normal business hours, the following Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, invoices sent pursuant to Section 8.1 and Notices of outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition.**

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event of the type described in the foregoing clause may include an act of God or the elements,

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such as flooding, lightning, hail, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; epidemics and pandemics, including COVID-19; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy the Product at a lower price, or Seller’s ability to sell Product at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Generating Facility or the Storage Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above [REDACTED]

[REDACTED] (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Generating Facility, except to the extent such inability is caused by a Force Majeure Event; [REDACTED]

[REDACTED] (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Generating Facility, except to the extent expressly permitted as an extension pursuant to the Development Cure Period under Exhibit B.

10.2 Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive [REDACTED] period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, [REDACTED]

[REDACTED] (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2 (subject to Seller’s rights hereunder with respect to Force Majeure Events as part of the Development Cure Period).

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10.3 **Notice for Force Majeure Event.** Within [REDACTED] Business Days of the non-performing Party's awareness of the impact of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the non-performing Party's awareness of the impact of the Force Majeure Event, the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim. Failure to provide timely Notice as described in the preceding sentence constitutes a waiver of a Force Majeure Event claim as to all periods prior to the delivery of a timely Notice solely if Buyer is materially and adversely impacted by such failure. The suspension of performance due to a claim of Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented or delayed from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability or delay with commercially reasonable speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform or delay after said cause has been removed. The obligation to use commercially reasonable speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event.

ARTICLE 11

DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An "**Event of Default**" shall mean,

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for [REDACTED])

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[REDACTED] (2) failure to deliver Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (3) failures related to the Adjusted Energy Production that do not trigger the provisions of Sections 11.1(b)(vi) or (ix), the exclusive remedies for which are set forth in Section 4.7 and Exhibit G; (4) failures related to the Monthly Storage Availability that do not trigger the provisions of Section 11.1(b)(vii), [REDACTED]

[REDACTED] the exclusive remedies for which are set forth in Section 4.8 and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

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

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

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

[REDACTED];

(ii) the failure by Seller to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(c) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) [reserved];

(iv) the failure by Seller to achieve Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller's payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(v) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

[REDACTED]

[REDACTED]

(viii) [reserved];

[REDACTED]

(x) if Seller fails to maintain an average Efficiency Rate equal to or greater than the Minimum Efficiency Rate

[REDACTED]

(xi) if Seller fails to maintain a [REDACTED] Storage Capacity equal to [REDACTED] of the Installed Battery Capacity

[REDACTED]

(xii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within ten (10) Business Days after Notice from Buyer, including the failure to replenish the Development Security in accordance with the requirements of Section 8.7 or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

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

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

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

(C) [reserved];

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

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

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

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than twenty (20) days prior to the expiration of the outstanding Letter of Credit.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

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

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

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or

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Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Termination Payment. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages [REDACTED]. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

11.5 Disputes With Respect to Termination Payment [REDACTED]. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment [REDACTED], in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment [REDACTED].

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[REDACTED], provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable shall be determined in accordance with Article 15.

11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date. If this Agreement is terminated by either Party prior to the Commercial Operation Date for any reason except due to Buyer's Event of Default, neither Seller nor Seller's Affiliates may sell or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years, [REDACTED]

[REDACTED] following the Early Termination Date, unless prior to selling, marketing or delivering such Product (during such applicable time period) or entering into the agreement to sell, market or deliver such Product to a party other than Buyer (during such applicable time period), Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement [REDACTED]

[REDACTED] and Buyer fails to accept such offer within forty-five (45) days. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 Rights And Remedies Are Cumulative. Except where [REDACTED] other express remedy or measure of damages are provided [REDACTED] the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 Mitigation. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

[REDACTED]

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 No Consequential Damages. EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT,

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OR (E) CONSTITUTING LOST OR FOREGONE TAX CREDITS OR RENEWABLE ENERGY INCENTIVES, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE.

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.



TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED OR ANY OTHER EXCLUSIVE REMEDY IS SET FORTH HEREIN, INCLUDING UNDER SECTIONS 3.8, 4.3(f), 4.4(c), 4.5(c), 4.5(e), 4.7, 4.8, 10.2, 11.2, 11.3 AND 11.9, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR

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PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

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

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any permitting documents.

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(g) As of the Effective Date, Seller represents and warrants to Buyer that it has not received written notice from or been advised in writing by any existing supplier or service provider (with which Seller has an expected contract) that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

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

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

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

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

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

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

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

[REDACTED]

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

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

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

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

13.4 Prevailing Wage. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable Nevada law, if any (“**Prevailing Wage Requirement**”). Buyer agrees that Seller’s obligations under this Section 13.4 will be satisfied upon the execution of a community workforce agreement, work site, project labor agreement [REDACTED] related to construction of the Facility.

13.5 Workforce Development and Supplier Diversity. Seller acknowledges that Buyer will, from time to time, request voluntary disclosure of Seller’s certification status, if any, with the CPUC Supplier Clearinghouse, and voluntary disclosure regarding Seller’s efforts to work with diverse business enterprises, including women, minority, disabled veteran, and lesbian, gay, bisexual, transgender and/or persons with disabilities business enterprises in a form similar to Exhibit S.

13.6 Community Benefits. Seller pledges to deliver one hundred thousand dollars (\$100,000.00) per Contract Year to Buyer so that Buyer may direct such amount to community benefits initiatives that directly benefit stakeholders in Buyer’s service area. Buyer shall have sole discretion to determine which initiatives will be funded and will provide Seller Notice describing the initiatives Buyer intends to fund. Seller shall make this payment within sixty (60) days of the commencement of each Contract Year. Notwithstanding anything to the contrary in this Section 13.6, Buyer will not make any public statement about the Facility, this Agreement, Seller, or Seller’s Affiliates in connection with any community benefits initiatives funded with Seller’s community benefits funds paid through this Section 13.6 without the prior written consent of Seller.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided in Sections 14.2, 14.3, and 14.4, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Except as provided below, any Change of Control of Seller (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of Buyer, which consent shall not be unreasonably withheld

Any purported assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Except as provided below, a Party shall have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of such Party's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. Seller shall be responsible for Buyer's reasonable third party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**") and one or more estoppels, opinions, and other related documents. Each Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender and shall include the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; *provided*, such Notice shall be provided to Lender at the time such Notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received written notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

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(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement plus any additional cure periods agreed in the Collateral Assignment Agreement, which shall be [REDACTED] Business Days for payment Events of Default and sixty (60) days for non-payment Events of Default (or one hundred twenty (120) days in the event that any foreclosure or similar proceeding [REDACTED] if required by Lender to cure any Event of Default);

[REDACTED]

(d) Lender will have the right to consent before any termination of [REDACTED] this Agreement which does not arise out of an Event of Default and, if pursuant to an Event of Default, is not cured in accordance with Section 14.2(c);

(e) Lender will receive prior Notice of and the right to approve each amendment or modification to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's remaining obligations arising under this Agreement [REDACTED]; *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date [REDACTED] in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured within the time periods specified in Section 14.2(c), or

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- (ii) Not assume this Agreement.

[REDACTED]

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement [REDACTED] as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee and [REDACTED]

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(c) and (f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith, Lender shall have the right to elect within [REDACTED] days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having the same terms as this Agreement for the remaining term thereof.

14.3 Permitted Assignment by Seller. Without limiting Section 14.2, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to:

(a) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law) if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee; or

(b) an Affiliate of Seller.

Except as provided in the preceding sentence, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 Permitted Assignment by Buyer. Without limiting Section 14.2, Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has creditworthiness that is equal to or better than an Investment Grade Credit Rating ("**Limited Assignee**") of Buyer's right to receive Product and Buyer's obligation to make payments to Seller, subject to (A) execution of a written assignment agreement between and among Seller, Buyer, and Limited Assignee in favor of Seller pursuant to which any such Limited Assignee shall assume all

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the obligations of Buyer under this Agreement, including that the limited assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement

Buyer may make such assignment by delivering Notice upon not less than thirty (30) days prior to such proposed assignment. Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and customary documentation with respect to Seller; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer.

14.5 Right of First Refusal as to Future Phases, Additional Projects, Addition of Storage Capacity.

(a) Seller hereby grants Buyer with the exclusive right (such right, the "**Right of First Refusal**" or "**ROFR**") to the purchase of (i) all of the output of any additional phases of the Facility and (ii) any separate renewable energy or energy storage projects that are currently under development at the Site by, or will be developed by, Seller or Affiliates of Seller, and that will use or share infrastructure, land, equipment (including the ability to jointly procure equipment), or other facilities with Seller or the Facility (each such future phase or separate renewable energy or energy storage project, an "**Expansion Project**"). The requirements of this Section 14.5 shall apply to each Expansion Project.

(b) Prior to offering the output of the Expansion Project for sale to any third party, Seller shall present a binding commercial offer for the output of the Expansion Project (the "**ROFR Offer**"), for Buyer to accept, subject only to finalization and execution of a power purchase agreement for the Expansion Project (the "**Project PPA**") incorporating the Material Terms of such ROFR Offer, and any additional terms the Parties agree to include, including credit requirements, and to the extent not inconsistent with the foregoing, the terms and conditions of this Agreement, as applicable. The ROFR Offer provided by Seller shall specifically identify the material financial and other terms and conditions of such ROFR Offer (the "**Material Terms**").

(c) At any time prior to the expiration of the forty-five (45) day period following Buyer's receipt of the ROFR Offer (the "**Exercise Period**"), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent executed by Buyer. If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 14.5, at any time following the expiration of the Exercise Period, Seller may enter into a Project PPA for the

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Expansion Project with a third party

(d) Notwithstanding any of the above, if the sum of (i) the Facility Energy and (ii) the generating energy and/or storage energy from the Expansion Project for any Settlement Interval would exceed the Dedicated Interconnection Capacity for such Settlement Interval, then the generating energy and/or storage energy from the Expansion Project shall be curtailed first prior to curtailing the Facility Energy.

**ARTICLE 15
DISPUTE RESOLUTION**

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. Subject to Section 15.2, the Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of San Diego, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, the Parties shall work together in good faith to resolve the dispute at the appropriate staff level. If the Parties are unable to resolve a dispute, then either Party will have the right to submit the dispute for informal resolution by executive management of the Parties. Within ten (10) Business Days of a Party giving notice to the other Party of such request, each Party (i) shall independently prepare a written summary of the dispute describing the issues and claims; (ii) shall exchange its summary with the summary of the dispute prepared by the other Party; and (iii) shall submit a copy of both summaries to a senior executive officer of the Party. For a period of ten (10) Business Days after receipt of the dispute summaries, the senior officers for both Parties shall meet and confer electronically or in person, as agreed by the Parties, negotiate and attempt in good faith to resolve the dispute. If the Parties have not resolved the dispute within such period, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

**ARTICLE 16
INDEMNIFICATION**

16.1 **Indemnity.**

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its

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directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's negligence or willful misconduct ("**Indemnifiable Losses**").

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

16.2 **Claims**. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party; *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense for the associated reasonable legal costs and expenses, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17
INSURANCE

17.1 **Insurance**.

(a) **General Liability**. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED] endorsed to provide contractual liability in said amount, specifically covering Seller's insurable obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [REDACTED]. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions. Such coverage may be provided in any combination of primary or excess policies.

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(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name Buyer as additional insured and contain standard cross-liability and severability of interest provisions.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided, however*, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.

(i) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at

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least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; (iv) information that the recipient independently developed without a violation of this Agreement; and (v) information subject to the California Public Records Act.

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

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

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its or its Affiliates' agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)) or actual or potential investors or purchasers (including Tax Credits buyers), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. A Party's consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 19
MISCELLANEOUS

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

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

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

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

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

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

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

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

[REDACTED]

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

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

19.14 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing,

[REDACTED] a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.15 **Service Contract.** The Parties intend for the Agreement to be a service contract as described in Section 7701(e) of the Internal Revenue Code of 1986, as amended.

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[Signatures on following page]

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

NOBLE SOLAR LLC, a California limited liability company

By: _____
Name: _____
Title: _____

SAN DIEGO COMMUNITY POWER, a California joint powers authority

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Purple Sage Energy Center

Site includes all or some of the following APNs:

County: Clark County in the State of Nevada

CEQA Lead Agency: N/A

Zip Code:

Latitude and Longitude: 3 [REDACTED]

Facility Description:

Delivery Point: PNode

Generating Facility Meter and Metering Points: See Exhibit R.

Storage Facility Meter and Metering Points: See Exhibit R.

PNode: If not available at the Effective Date, the PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Test Energy hereunder to reflect the PNode corresponding to the Facility's Interconnection Point with the CAISO Grid.

Interconnection Point: The Facility shall interconnect to Trout Canyon 230 kV substation.

Participating Transmission Owner: GridLiance

Additional Information: Site Plan provided below.

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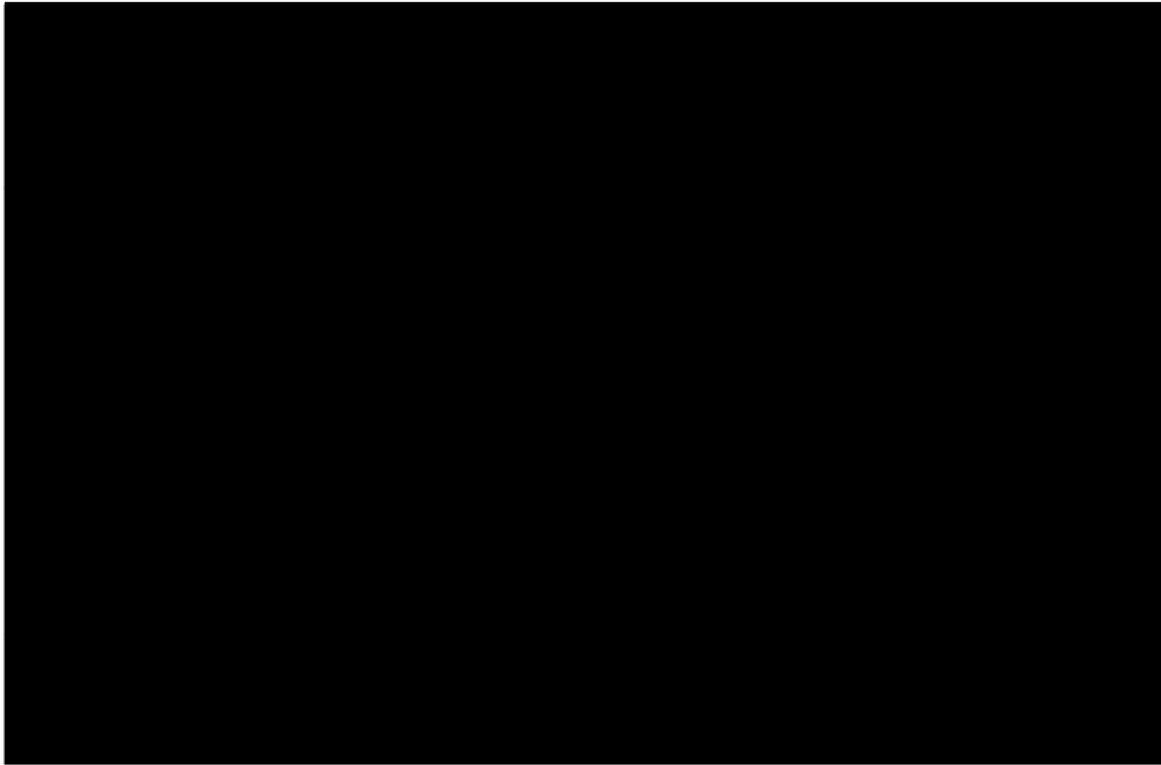


EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. Construction Start

- a. “**Construction Start**” will occur [REDACTED]

[REDACTED] The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date, as may be extended by Seller’s payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B.

- b. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Construction Start Date by paying Construction Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Construction Delay Damages. If Seller elects to extend the Guaranteed Construction Start Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date, Seller shall provide notice and payment to Buyer of the Construction Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. [REDACTED]

If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Construction Delay Damages, Buyer shall refund to Seller the Construction Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Construction Delay Damages, not to exceed the total amount of Construction Delay Damages paid by Seller pursuant to this Section 1(b) of Exhibit B. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved, which acknowledgement shall not be unreasonably withheld, conditioned or delayed. The “**Commercial Operation Date**” shall be the later of (x) the

Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation to occur no later than the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(c) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
- b. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, as may be extended by a Development Cure Period but not by the payment of Commercial Operation Delay Damages, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.
- c. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] days of extensions by such payment of Commercial Operation Delay Damages. If Seller elects to extend the Guaranteed Commercial Operation Date, on or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. [REDACTED]

[REDACTED] If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(c) of Exhibit B. [REDACTED]

3. **Termination for Failure to Achieve Construction Start by the Guaranteed Construction Start Date or Commercial Operation by the Guaranteed Commercial Operation Date.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(c) of Exhibit B

and/or a Development Cure Period pursuant to Section 4 of Exhibit B, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2. If the Facility has not achieved Construction Start on or before the Guaranteed Construction Start Date, as such date may be extended by Seller's payment of Construction Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(iv) and 11.2.

4. **Extension of the Guaranteed Dates.** Independent of Seller's extension rights under Section 1 and 2 of this Exhibit B above, the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of any of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:

- a. a Force Majeure Event occurs;

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

- e. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date [REDACTED]

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(e) above) shall not exceed one hundred twenty (120) days f [REDACTED]

[REDACTED], and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(e) above) shall not exceed one hundred eighty (180) days. Notwithstanding anything to the contrary, any Development Cure Period extension may be [REDACTED] equal to the delay of Seller's failure to (i) take commercially reasonable actions to meet its requirements and deadlines, resulting in such delay, (ii) provide requested documentation

as provided below, or (iii) provide written notice to Buyer as required for a Force Majeure Event, if applicable; [REDACTED]

[REDACTED] Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity or Storage Contract Capacity.**

- a. *Guaranteed Capacity.* If, at Commercial Operation, the Installed Generating Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] days after the Commercial Operation Date to install additional capacity such that the Installed Generating Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Generating Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, [REDACTED] in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Capacity exceeds the Installed Generating Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Construction Delay Damages, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.
- b. *Storage Contract Capacity.* If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have [REDACTED] days after the Commercial Operation Date to install additional capacity such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Battery Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay "**Storage Capacity Damages**" to Buyer, [REDACTED], in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Storage Capacity Damages shall not be offset or reduced by the payment of Construction

Delay Damages, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of Generating Facility Energy, plus Deemed Delivered Energy, if any, up to [REDACTED] of the Expected Energy for each Contract Year.

(b) Excess Contract Year Deliveries [REDACTED] Notwithstanding the foregoing, if, at any point in any Contract Year, the amount of Generating Facility Energy plus the amount of Deemed Delivered Energy, if any, exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional Generating Facility Energy or Deemed Delivered Energy, if any, shall be equal to the lesser of (a) the Delivery Point LMP for the Real-Time Market for the applicable Settlement Interval or (b) [REDACTED] of the Renewable Rate, but not less than \$0.00/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, the amount of Generating Facility Energy delivered to the Delivery Point, as measured at the Generating Facility Metering Point, is greater than the product of the Installed Generating Capacity *multiplied by* the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Curtailment Payments. Seller shall receive no compensation from Buyer for Generating Facility Energy or Deemed Delivered Energy curtailed during any Curtailment Period.

(e) Storage Payment. Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a "Storage Payment" equal to the Storage Rate *multiplied by* the Storage Contract Capacity(ies) for such month *multiplied by* the Availability Adjustment for such month (as determined under Exhibit P). Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Storage Contract Capacity and/or Efficiency Rate are adjusted pursuant to a Storage Capacity Test effective as of a day other than the first day of a calendar month, the Storage Payment shall be calculated separately for each portion of the month in which the different Storage Contract Capacity and/or Efficiency Rate are applicable.

(f) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate(s) applicable to such month is/are less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by *multiplying* (i) the total Charging Energy for such month, *by* (ii) the percentage amount by which such applicable Efficiency Rate(s) is/are less than the Guaranteed Efficiency Rate, *by* (iii) the Renewable Rate, which amount Seller shall set off against amounts payable by Buyer in the applicable monthly invoice.

(g) PTC Amount. If applicable, for new eligible PTC resources, during the period (not to exceed a total of one hundred twenty (120) consecutive months) in which Seller is receiving PTCs, [REDACTED] Buyer shall also pay the PTC Amount for Deemed Delivered Energy until the sum of Generating Facility Energy plus the amount of Deemed Delivered Energy exceeds one hundred percent (100%) of the Expected Energy for [REDACTED] such Contract Year.

(h) Test Energy and associated Green Attributes and Storage Product. Test Energy and associated Green Attributes and Storage Product shall be compensated in accordance with Section 3.6.

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

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all [REDACTED] actions and execute and deliver to Buyer and the CAISO all documents in Seller's control and responsibility which are necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, expeditiously take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid through the termination or expiration of the Delivery Term. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer or Buyer's SC shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time or other market basis that may develop after the Effective Date, as determined by Buyer consistent with the CAISO Tariff. Buyer as the Scheduling Coordinator shall cooperate with Seller to facilitate Seller's testing of the Facility, and shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as necessary for the delivery and receipt of Test Energy and the Product at the Delivery Point.

(b) Notices. Buyer or Buyer's SC shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information. Buyer or Buyer's SC shall provide Seller with read-only access to applicable real-time CAISO data to the extent Buyer has the authorization to do so.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs, charges, and penalties (including penalties, Imbalance Energy and Charging Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy and Discharging Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage

notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

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

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

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer or Buyer's designated SC as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

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

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

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

EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
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OCT																								
NOV																								
DEC																								

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

EXHIBIT F-2

AVAILABLE CAPACITY

[Available Generating Capacity, MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

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

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“**Adjusted Energy Production**” shall mean the sum of the following: Generating Facility Energy + Deemed Delivered Energy + Lost Output.

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

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

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

1. The Generating Facility and the Storage Facility are fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.
4. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
5. Seller has demonstrated functionality of the Facility’s communication systems and AGC interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.
6. The Generating Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.
7. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
8. Authorization to parallel the Facility was obtained from the Participating Transmission Owner on ____ [*DATE*] ____.
9. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation ____ [*DATE*] ____.
10. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on ____ [*DATE*] ____.

11. Seller shall have caused the Generating Facility and the Storage Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time Markets in respect of each of the Generating Facility and Storage Facility.
12. Seller has segregated and separately metered Station Use to the extent required in accordance with the retail service provider's tariff, and any such meter(s) have the same or greater level of accuracy as is required under the retail service provider's tariff.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this [] day of [], 20[].

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

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

I hereby certify the following:

(a) The performance test for the Generating Facility demonstrated peak electrical output of ___ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Generating Capacity**");

(b) The Storage Capacity Test conducted on [*DATE*] demonstrated a maximum dependable operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of ___ MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "**Installed Battery Capacity**"); and

(c) The sum of (a) and (b) is ___ MW AC and shall be the "**Installed Capacity**".

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this _____ day of _____, 20__.

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

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

Seller hereby certifies and represents to Buyer the following:

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

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as this _____ day of _____, 20____.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

Beneficiary:

San Diego Community Power
815 E. Street, Suite 12716
San Diego, CA 92112

Ladies and Gentlemen:

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

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

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

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

We hereby agree with Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to Issuer on or before the

Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

[REDACTED]

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

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an

[REDACTED]

[REDACTED]

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

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of New York, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: San Diego Community Power, Chief Financial Officer, PO Box 12716, San Diego, CA 92112. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of San Diego Community Power, a California joint powers authority, 815 E. Street, Suite 12716, San Diego, CA 92112, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

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

OR

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

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

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

[Specify account information]

San Diego Community Power

Name and Title of Authorized Representative

Date _____

EXHIBIT L
[RESERVED]

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

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

Pursuant to Section 3.8(c) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

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

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

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

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT N**NOTICES**

NOBLE SOLAR LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
All Notices: Street: 1901 Harrison Street Suite 1600 City: Oakland, CA 94612 Attn: Vice President, Asset Management Phone: (713)-256-0801 Email: assetmanagement@primergysolar.com	All Notices: PO Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Managing Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: c/o Kenon Group Consultants Phone: 480-269-9222 Email: primergy-AP@kenongroup.com	Invoices: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Scheduling: Primergy Solar Management LLC 1901 Harrison Street Suite 1600 Oakland, CA 94612 Attention: Vice President, Asset Management Phone: (713) 256-0801 Email: assetmanagement@primergysolar.com	Scheduling: Tenaska Power Services Co. Attn: Kara Whillock Phone: (972) 333-6122 Email: kwhillock@tnsk.com Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104
Confirmations: Attn: c/o Kenon Group Consultants Phone: 480-269-9222 Email: primergy@kenongroup.com	Confirmations: Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
Payments: Attn: c/o Kenon Group Consultants Phone: 480-269-9222 Email: primergy@kenongroup.com	Payments: Attn: Michael Maher Phone: (415) 526-3020 Email: mmaher@maher CPA.com
Wire Transfer: BENEFICIARY: Noble Solar LLC BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]

NOBLE SOLAR LLC ("Seller")	SAN DIEGO COMMUNITY POWER ("Buyer")
With additional Notices of an Event of Default to: Attn: Noble Solar LLC Primergy Legal General Counsel 1901 Harrison Street Suite 1600 Oakland, CA 94612 Email: legal@primergysolar.com	With additional Notices of an Event of Default to: Attn: Veera Tyagi, General Counsel, SDCP PO Box 12716 San Diego, CA 92112 Email: vtyagi@sdcommunitypower.org
Emergency Contact: Attn: Todd Lacoste, Vice President of Asset Management Phone: (713)-256-0801 Email: assetmanagement@primergysolar.com	Emergency Contact: Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test (and any subsequent Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Storage Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, [REDACTED] of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Capacity and Efficiency Rate. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(c) of the Agreement, Part II.J and Part II.K below, the actual Efficiency Rate and Storage Capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Storage Rate and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "**SCT**". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Purpose of Test. Each SCT shall:

- (1) Determine an updated Storage Contract Capacity;
- (2) Determine the amount of Energy required to fully charge the Storage Facility;
- (3) Determine the Storage Facility charge Ramp Rate;
- (4) Determine the Storage Facility discharge Ramp Rate; and
- (5) Determine an updated Efficiency Rate.

B. Test Elements. Each SCT shall include the following test elements:

- The measurement of Charging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is required to charge the Storage Facility up to the Maximum Stored Energy Level not to exceed the Storage Contract Output (MWh) (“**Energy In**”);
- The measurement of Discharging Energy, as measured by the Storage Facility Meter or other mutually agreed meter, that is discharged from the Storage Facility to the Delivery Point until the Storage Energy Level reaches zero MWh as indicated by the battery management system (“**Energy Out**”);
- Electrical output at Maximum Discharging Capacity (as defined in Exhibit Q) at the Storage Facility Meter (MW);
- Electrical input at Maximum Charging Capacity (as defined in Exhibit Q) at the Storage Facility Meter (MW);
- Amount of time between the Storage Facility’s electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Storage Facility’s electrical input going from 0 to Maximum Charging Capacity;
- Amount of Energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

C. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at ten (10) minute intervals:

- (1) discharge time (minutes);
- (2) Charging Energy (MWh);

- (3) Discharging Energy (MWh);
 - (4) Stored Energy Level (MWh).
- D. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
 - (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air Temperature (°F).
- E. Test Showing. Each SCT must demonstrate that the Storage Facility:
 - (1) successfully started;
 - (2) operated for at least four (4) consecutive hours at Maximum Discharging Capacity;
 - (3) operated for at least four (4) consecutive hours at Maximum Charging Capacity;
 - (4) has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit Q); and
 - (5) is able to deliver Discharging Energy to the Delivery Point as measured by the Storage Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity.
- F. Test Conditions.
 - (i) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit Q).
 - (ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.
 - (iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The

instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

- G. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.
- H. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:
- (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
 - (2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;
 - (3) the level of Storage Contract Capacity, Energy In, Energy Out, Efficiency Rate, Maximum Charging Capacity, the current charge and discharge Ramp Rate, and Stored Energy Level determined by the SCT, including supporting calculations; and
 - (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

- I. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) an updated supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol

(and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

- J. Adjustment to Storage Contract Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first four (4) hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) four (4) hours, shall be divided by four (4) hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.

- K. Adjustment to Efficiency Rate.

The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above), and expressed as a percentage, shall be the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

Part III. INITIAL SUPPLEMENTARY STORAGE CAPACITY TEST PROTOCOL

- A. Initial Supplementary Storage Capacity Test Protocol

The initial Supplementary Storage Capacity Test Protocol outlined below shall not be binding on the Parties until delivery of the Supplementary Storage Capacity Test Protocol in accordance with Part II.I above and is included for the convenience of the Parties.

- Procedure:

- (1) System Starting State: The Storage Facility shall be balanced using OEM procedures as appropriate and will be in the on-line state at the Minimum Stored Energy Level.
- (2) Record the initial value of the SOC.
- (3) Charge the Storage Facility at the Maximum Charging Capacity until the battery reaches the maximum SOC allowed at that rate. Stop the Storage Facility charge routine when the battery has reached the desired SOC, not to exceed six hours of charging.
- (4) Record and store the Energy In (in MWh) as measured at the Storage Facility Metering Point associated with Charging Energy [REDACTED]. All separately metered Storage Facility Station Use shall be excluded from the

measurement of Energy In.

- (5) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's Maximum Discharging Capacity and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached the Minimum Stored Energy Level, or (c) the sustained discharging level is at least 2% less than the Maximum Discharging Capacity.
- (6) Record and store the AC Energy discharged (in MWh) as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation of the Storage Capacity.
- (7) Record and store the AC Energy charged (in MWh) as measured at the Storage Facility Metering Point associated with Charging Energy. Such data point shall be used for purposes of calculation of the Efficiency Rate.
- (8) If the Storage Facility has not reached the Minimum Stored Energy Level pursuant to Part III.A.5, continue discharging the Storage Facility until it reaches the Minimum Stored Energy Level.
- (9) Record and store the Energy Out (in MWh) as measured at the Storage Facility Metering Point associated with Discharging Energy from the commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached the Minimum Stored Energy Level pursuant to either Part III.A.5 or Part III.A.8, as applicable. All separately metered Storage Facility Station Use shall be excluded from the measurement of Energy Out.

- Test Results:

- (1) The resulting Efficiency Rate is calculated as Energy Out/Energy In.
- (2) The resulting Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

EXHIBIT P

MONTHLY [REDACTED] STORAGE AVAILABILITY CALCULATION

(a) Monthly Storage Availability. Seller shall calculate the “Monthly Storage Availability” for a given month of the Delivery Term using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{[\text{AVAILHRS}_m + \text{EXCUSEDHRS}_m]}{[\text{MONTHRS}_m]}$$

Where:

m = relevant month “m” in which Monthly Storage Availability is calculated;

MONTHRS_m is the total number of hours for the month;

AVAILHRS_m is the total number of hours, or partial hours, in the month during which the Storage Facility was available to charge and discharge Energy between the Storage Facility and the Delivery Point and to provide Ancillary Services at the Delivery Point (excluding, for avoidance of doubt, all circumstances at the high-voltage side of the Delivery Point or beyond that may limit Seller’s delivery of Product). If the Storage Facility is available pursuant to the preceding sentence during any applicable hour, or partial hour, but for less than the full amount of the Storage Contract Capacity, the AVAILHRS_m for such time period shall be calculated by multiplying such AVAILHRS_m by a percentage determined by dividing (a) by (b); where (a) is the lower of such Storage Capacity amount reported as available by (i) Seller’s real-time EMS data feed to Buyer for the Storage Facility for such hours, or partial hours, or (ii) Seller’s most recent Availability Notice, and (b) is the Storage Contract Capacity; and

[REDACTED]

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

[REDACTED]

(c) Availability Adjustment. The applicable “Availability Adjustment” or “AA” is calculated as follows:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

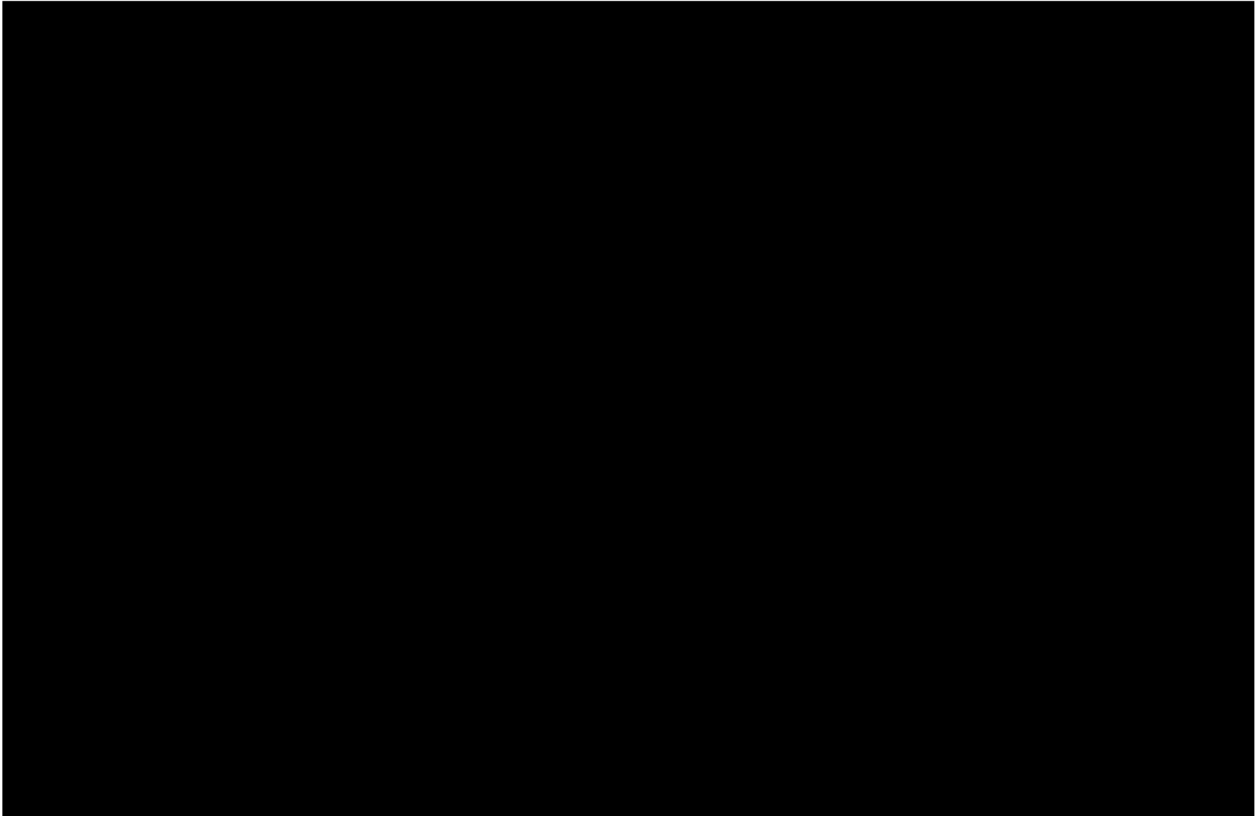
[REDACTED]

[REDACTED]

OPERATING RESTRICTIONS

EXHIBIT R

METERING DIAGRAM, METHOD OF DATA DELIVERY, DATA POINTS



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT S

WORKFORCE DEVELOPMENT

Sample Supplier Diversity Survey

Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "Not Applicable" or "Decline to State."

Pursuant to Proposition 209, SDCP does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact your participation in any future SDCP solicitation selection process. Responses are collected for informational and reporting purposes only pursuant to Senate Bill (SB) 255.

*Required

1. Business Name*

2. Email Address*

3. Where is your business located/headquartered?

4. Is your business certified under General Order 156 (GO 156)? GO 156 is a CPUC ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database at www.thesupplierclearinghouse.com.

Yes

No

Qualified as a WMDVLGBTBE but not GO 156 certified

5. If you answered "yes" to Question 4, when does your certification expire?

6. If you answered "yes" or "qualified, but not certified" to Question 4, in which categories are you certified or qualified? Please choose all that apply.

Minority Owned

Women Owned

LGBT Owned

Disabled Veteran Owned

Small Business Enterprise, as defined by 8(d) of the Small Business Act

7. If your business is a minority-owned business enterprise, what GO156 certification or qualification does your business fall under?

Black American

Hispanic American

Asian Pacific American

Native American

8. Please list the Standardized Industrial Code (SIC) of the products and services your business offers. Search for your SIC in the “Commodity Codes” search bar, here: <https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>.

9. If certified under GO 156, please list your annual business revenue as reported to the CPUC Supplier Clearinghouse. You may check your CPUC Supplier Clearinghouse status here: <https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>.

10. If your business is qualified, but not GO 156 certified, please identify the reasons for not completing the certification process?

11. If your business has used GO 156 certified subcontractors for your SDCP contract, please include a list of your subcontractor business names, if the subcontract is for products or services, and the anticipated subcontract amount. Example: Electrical Design Technology, Inc.; products (batteries); \$100,000.

12. If applicable, please describe any hiring policies your business has for using small, local, and/or economically disadvantaged subcontractors or for using subcontractors that qualify for the GO 156 Supplier Clearinghouse.

13. Does your business have a history of using apprenticeship programs, local hires, union labor, or multi-trade project labor agreements? Local hires can be defined as labor-sourced from within SDCP’s service area.

Yes, apprenticeship programs in this recent contract with SDCP

Yes, local labor in this recent contract with SDCP

Yes, union labor in this recent contract with SDCP

Yes, multi-trade PLA in this recent contract with SDCP

Yes, apprenticeship programs but not in this contract with SDCP

Yes, history of local hire but not in this contract with SDCP

Yes, history of union labor but not in this contract with SDCP

Yes, history of multi-trade PLA but not in this contract with SDCP

Uses California-based labor, but not local to SDCP's service areas

None of the above

Not applicable

14. Are you a small business? Please refer to the Small Business Association' Size Standards tool for more information: <https://www.sba.gov/sizestandards>.

Yes

No

15. If you answered "yes" to question 14, please describe your history with labor agreements, union labor, multi-trade labor, apprenticeship labor, or how many local workers/businesses you employ for your contract with SDCP.

16. Is there any additional feedback that you would like to provide to SDCP at this time?

17. Does the bidder have formal initiatives to promote diversity, equity, and inclusion among its workforce?

18. If the answer to question 17 is "Yes," please explain and provide supporting documentation.

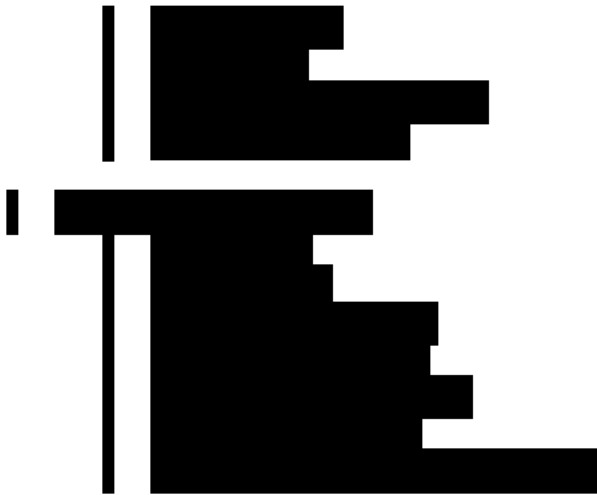
19. Has the bidder adopted formal Environmental, Social, and Governance (ESG) goals?

20. If the answer to question 19 is "Yes", please explain and provide supporting documentation.

[REDACTED]

[REDACTED]

1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem. Once the problem is identified, the next step is to define the objectives and goals of the project. This is followed by developing a plan of action, which includes identifying the resources needed and the timeline for completion. The plan is then implemented, and progress is monitored and reported regularly. Finally, the project is evaluated to determine its effectiveness and impact.



GLOSSARY OF TERMS

CAISO – California Independent System Operator - a non-profit independent system operator that oversees the operation of the California bulk electric power system, transmission lines and electricity market generated and transmitted by its members (~80% of California's electric flow). Its stated mission is to "operate the grid reliably and efficiently, provide fair and open transmission access, promote environmental stewardship and facilitate effective markets and promote infrastructure development. CAISO is regulated by FERC and governed by a five-member governing board appointed by the governor.

CALCCA – California Community Choice Association – Association made up of Community Choice Aggregation (CCA) groups which represents the interests of California's community choice electricity providers.

CARB – California Air Resources Board – The CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change in California.

CEC – California Energy Commission

CPUC – California Public Utility Commission

C&I – Commercial and Industrial – Business customers

CP – Compliance Period – Time period to become RPS compliant, set by the CPUC (California Public Utilities Commission)

DA – Direct Access – An option that allows eligible customers to purchase their electricity directly from third party providers known as Electric Service Providers (ESP).

DA Cap – the maximum amount of electric usage that may be allocated to Direct Access customers in California, or more specifically, within an Investor-Owned Utility service territory.

DA Lottery – a random drawing by which DA waitlist customers become eligible to enroll in DA service under the currently-applicable Direct Access Cap.

DA Waitlist – customers that have officially registered their interest in becoming a DA customer but are not yet able to enroll in service because of DA cap limitations.

DAC – Disadvantaged Community

DASR – Direct Access Service Request – Request submitted by C&I to become direct access eligible.

Demand - The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts (kW), megawatts (MW), or gigawatts (GW), at a given instant or averaged over any designated interval of time. Demand should not be confused with Load or Energy.

DER – Distributed Energy Resource – A small-scale physical or virtual asset (e.g. EV charger, smart thermostat, behind-the-meter solar/storage, energy efficiency) that operates locally and is connected to a larger power grid at the distribution level.

Distribution - The delivery of electricity to the retail customer's home or business through low voltage distribution lines.

DLAP – Default Load Aggregation Point – In the CAISO's electricity optimization model, DLAP is the node at which all bids for demand should be submitted and settled. SVCE settles its CAISO load at the PG&E DLAP as SVCE is in the PG&E transmission access charge area.

DR – Demand Response - An opportunity for consumers to play a significant role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates or other forms of financial incentives.

DWR – Department of Water Resources – DWR manages California's water resources, systems, and infrastructure in a responsible, sustainable way.

ELCC – Effective Load Carrying Capacity – The additional load met by an incremental generator while maintaining the same level of system reliability. For solar and wind resources the ELCC is the amount of capacity which can be counted for Resource Adequacy purposes.

EPIC – Electric Program Investment Charge – The EPIC program was created by the CPUC to support investments in clean energy technologies that provide benefits to the electricity ratepayers of PG&E, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE)

ERRA – Energy Resource Recovery Account – ERRA proceedings are used to determine fuel and purchased power costs which can be recovered in rates. The utilities do not earn a rate of return on these costs, and only recover actual costs. The costs are forecast for the year ahead. If the actual costs are lower than forecast, then the utility gives money back, and vice versa.

ESP – Energy Service Provider - An energy entity that provides service to a retail or end-use customer.

EV – Electric Vehicle

GHG – Greenhouse gas - water vapor, carbon dioxide, tropospheric ozone, nitrous oxide, methane, and chlorofluorocarbons (CFCs). A gas that causes the atmosphere to trap heat radiating from the earth. The most common GHG is Carbon Dioxide, though Methane and others have this effect as well.

GRC – General Rate Case – Proceedings used to address the costs of operating and maintaining the utility system and the allocation of those costs among customer classes. For California's three large IOUs, the GRCs are parsed into two phases. Phase I of a GRC determines the total amount the utility is authorized to collect, while Phase II determines the share of the cost each customer class is responsible and the rate schedules for each class. Each large electric utility files a GRC application every three years for review by the Public Advocates Office and interested parties and approval by the CPUC.

GWh – Gigawatt-hour - The unit of energy equal to that expended in one hour at a rate of one billion watts. One GWh equals 1,000 megawatt-hours.

IEP – Independent Energy Producers – California's oldest and leading nonprofit trade association, representing the interest of developers and operators of independent energy facilities and independent power marketers.



IOU – Investor-Owned Utility – A private electricity and natural gas provider.

IRP – Integrated Resource Plan – A plan which outlines an electric utility's resource needs in order to meet expected electricity demand long-term.

kW – Kilowatt – Measure of power where power (watts) = voltage (volts) x amperage (amps) and 1 kW = 1000 watts

kWh – Kilowatt-hour – This is a measure of consumption. It is the amount of electricity that is used over some period of time, typically a one-month period for billing purposes. Customers are charged a rate per kWh of electricity used.

LCFS – Low Carbon Fuel Standard – A CARB program designed to encourage the use of cleaner low-carbon fuels in California, encourage the production of those fuels, and therefore, reduce greenhouse gas emissions.

LCR – Local (RA) Capacity Requirements – The amount of Resource Adequacy capacity required to be demonstrated in a specific location or zone.

LMP – Locational Marginal Price – Each generator unit and load pocket is assigned a node in the CAISO optimization model. The model will assign a LMP to the node in both the day-ahead and real time market as it balances the system using the least cost. The LMP is comprised of three components: the marginal cost of energy, congestion and losses. The LMP is used to financially settle transactions in the CAISO.

Load - An end use device or customer that receives power from an energy delivery system. Load should not be confused with Demand, which is the measure of power that a load receives or requires. See Demand.

LSE – Load-serving Entity – Entities that have been granted authority by state, local law or regulation to serve their own load directly through wholesale energy purchases and have chosen to exercise that authority.

NEM – Net Energy Metering – A program in which solar customers receive credit for excess electricity generated by solar panels.

NRDC – Natural Resources Defense Council

OIR – Order Instituting Rulemaking - A procedural document that is issued by the CPUC to start a formal proceeding. A draft OIR is issued for comment by interested parties and made final by vote of the five Commissioners of the CPUC.

MW – Megawatt – measure of power. A megawatt equals 1,000 kilowatts or 1 million watts.

MWH – Megawatt-hour – measure of energy

NP-15 – North Path 15 – NP-15 is a CAISO pricing zone usually used to approximate wholesale electricity prices in northern California in PG&E's service territory.

PCC1 – RPS Portfolio Content Category 1 – Bundled renewables where the energy and REC are dynamically scheduled into a California Balancing Authority (CBA) such as the CAISO. Also known as "in-state" renewables

PCC2 – RPS Portfolio Content Category 2 – Bundled renewables where the energy and REC are from out-of-state and not dynamically scheduled to a CBA.



PCC3 – RPS Portfolio Content Category 3 – Unbundled REC

PCIA or “exit fee” - Power Charge Indifference Adjustment (PCIA) is an “exit fee” based on stranded costs of utility generation set by the California Public Utilities Commission. It is calculated annually and assessed to customers of CCAs and paid to the IOU that lost those customers as a result of the formation of a CCA.

PCL – Power Content Label - A user-friendly way of displaying information to California consumers about the energy resources used to generate the electricity they sell, as required by AB 162 (Statute of 2009) and Senate Bill 1305 (Statutes of 1997).

PD – Proposed Decision - A procedural document in a CPUC Rulemaking process that is formally commented on by Parties to the proceeding. A PD is a precursor to a final Decision voted on by the five Commissioners of the CPUC.

Pnode – Pricing Node - In the CAISO optimization model, it is a point where a physical injection or withdrawal of energy is modeled and for which a LMP is calculated.

PPA – Power Purchase Agreement - A contract used to purchase the energy, capacity and attributes from a renewable resource project.

RA – Resource Adequacy - Under its Resource Adequacy (RA) program, the California Public Utilities Commission (CPUC) requires load-serving entities—both independently owned utilities and electric service providers—to demonstrate in both monthly and annual filings that they have purchased capacity commitments of no less than 115% of their peak loads.

RE – Renewable Energy - Energy from a source that is not depleted when used, such as wind or solar power.

REC - Renewable Energy Certificate - A REC is the property right to the environmental benefits associated with generating renewable electricity. For instance, homeowners who generate solar electricity are credited with 1 solar REC for every MWh of electricity they produce. Utilities obligated to fulfill an RPS requirement can purchase these RECs on the open market.

RPS - Renewable Portfolio Standard - Law that requires CA utilities and other load serving entities (including CCAs) to provide an escalating percentage of CA qualified renewable power (culminating at 33% by 2020) in their annual energy portfolio.

SCE – Southern California Edison

SDG&E – San Diego Gas & Electric

SGIP – Self-Generation Incentive Program - A program which provides incentives to support existing, new, and emerging distributed energy resources (storage, wind turbines, waste heat to power technologies, etc.)

TCR EPS Protocol – The Climate Registry Electric Power Sector Protocol - Online tools and resources provided by The Climate Registry to assist organizations to measure, report, and reduce carbon emissions.

Time-of-Use (TOU) Rates — The pricing of delivered electricity based on the estimated cost of electricity during a particular time-block. Time-of-use rates are usually divided into three or four time-blocks per 24 hour period (on-peak, midpeak, off-peak and sometimes super off-peak) and by seasons of the year (summer and winter). Real time pricing differs from TOU rates in that it is



based on actual (as opposed to forecasted) prices that may fluctuate many times a day and are weather sensitive, rather than varying with a fixed schedule.

TURN – The Utility Reform Network - A ratepayer advocacy group charged with ensuring that California IOUs implement just and reasonable rates.

Unbundled RECs - Renewable energy certificates that verify a purchase of a MWH unit of renewable power where the actual power and the certificate are “unbundled” and sold to different buyers.

VPP – Virtual Power Plant – A cloud-based network that leverages an aggregation of distributed energy resources (DERs) to shift energy demand or provide services to the grid. For example, thousands of EV chargers could charge at a slower speed and hundreds of home batteries could discharge to the grid during a demand peak to significantly reduce the procurement of traditional supply resources.

